

EXHIBIT A

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

**YU PRIDE ALLIANCE, et al.,
Plaintiffs,**

Index No.: 154010/2021

-against-

**YESHIVA UNIVERSITY, et al.,
Defendants.**

**BRIEF OF *AMICUS CURIAE* THE LESBIAN AND GAY
LAW ASSOCIATION FOUNDATION OF GREATER NEW YORK**

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PRELIMINARY STATEMENT

Amicus The Lesbian and Gay Law Association Foundation of Greater New York (“LeGaL”) submits this brief to reaffirm the long-held principle that members of a protected class may not be denied public accommodations, consistent with the legislative intent of the New York City Human Rights Law. LeGaL is dedicated to improving the administration of the law, ensuring full equality for members of the LGBT community, promoting the expertise and advancement of LGBT legal professionals, and serving the larger community. *Amicus* LeGaL comes before this Court as a third-party advocate for a standard that is of critical importance to the manner in which all protected classes, including LGBT, are perceived and protected by the courts of New York.

INTRODUCTION

Discrimination on the basis of sexual orientation is discrimination under the New York City Human Rights Law (“NYCHRL”). ([N.Y.C. Admin. Code § 8-107.](#)) Despite this protection, members of the LGBTQ community are routinely subject to discriminatory practices, including at Yeshiva University. As a provider of a public accommodation, Yeshiva University provides services such as dining services, housing, and a host of other services. This includes resources to support student groups, so long as they do not have a connection to the LGBTQ community. Gay-straight alliances (“GSAs”) have been shown to benefit the health and well-being of the LGBTQ community, and as a provider of a public accommodation Yeshiva University must provide resources on the same basis to these groups as it does to others. The university has an established and continuing practice of accepting funds that may only be used for secular purposes; the benefit of those funds should be enjoyed by all students, including LGBTQ individuals.

I. LGBTQ STUDENTS ROUTINELY FACE DISCRIMINATION AND AFFINITY GROUPS ARE A VALUABLE RESOURCE FOR THE LGBTQ COMMUNITY AND THE UNIVERSITY GENERALLY

Yeshiva University's LGBTQ students have reported being ridiculed and bullied by fellow students, rabbis, and teachers at the university because of their sexual orientation. (Affirmation of Theresa A. Foudy, Ex. B, Molly Meisels, *I Shouldn't Have to Choose Between My Judaism and My Queerness*, N.Y. TIMES (June 10, 2021).)¹ This is not surprising, because LGBTQ individuals are statistically much more likely to experience bullying, threats, and violence than heterosexual students. (Foudy Aff. Ex. C, Ctrs. for Disease Control and Prevention, *Youth Risk Behavior Survey Data Summary & Trends Report: 2009 – 2019*, 97 (2020), (hereinafter "CDC Report").) When asked to officially recognize an LGBTQ student group, which would support Yeshiva University's LGBTQ community, the university refused. The same resources available to the Bowling Club and the YU Comedy Club would not be available to an LGBTQ student group, which seeks to "provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented." (Complaint at ¶ 75, ECF No. 1.) The university's refusal to officially recognize the group is not in the best interests of the LGBTQ students or the greater campus community who benefit from diversity when it is expressed fully. It is in the student body's interest that the status quo change.

A. The LGBTQ Community Is a Frequent Target of Discrimination and Harassment

For many LGBTQ students, experiences of discrimination and harassment are intertwined with their educational experience. The 2019 National School Climate Survey found

¹ References to "Ex." Are to the exhibits attached to the Affirmation of Theresa A. Foudy (hereinafter "Foudy Aff., Ex. _").

that more than 86% of LGBTQ students reported experiencing harassment or assault at school. (Foudy Aff. Ex. D, Gay, Lesbian & Straight Education Network, *The 2019 National School Climate Survey* at xix (2020) (hereinafter “GLSEN Report”).) LGBTQ students hear anti-LGBTQ remarks with regularity – more than 75% of LGBTQ students report that they hear homophobic remarks like the use of “gay” in a negative way often or frequently; more than half hear terms like “fag” or “dyke” on a regular basis. (*Id.* at 22.) Physical harassment and assault are also commonplace. More than one third of LGBTQ students reported being pushed or shoved in the last year because of their sexual orientation; 11% were punched, kicked, or injured with a weapon. (*Id.* at 28-29.)

The harassment endured by LGBTQ students has a measurable effect on their educational experiences and outcomes. More than half of the LGBTQ students surveyed said they feel unsafe in school because of their sexual orientation. (*Id.* at 16.) They feel particularly unsafe in some public spaces at school, including restrooms and locker rooms, and as a result they often avoid them. (*Id.* at 18.) Missing school due to safety concerns is not a rare occurrence for many LGBTQ students. More than 32% of LGBTQ students reported missing at least one day of school in the last month because they felt unsafe. (*Id.* at 18-19.) Instances of avoidance are even more pronounced for extracurricular activities and functions. More than 77% of LGBTQ students reported avoiding clubs, programs, dances, assemblies, and other school functions to some extent because they felt unsafe or uncomfortable. (*Id.* at 18.) Not surprisingly, experiences of harassment and discrimination are correlated with lower GPAs and educational aspirations. (*Id.* at 48.) In short, LGBTQ students who excel academically do so in spite of their educational climate rather than because of it.

The effects of victimization based on students' sexual orientation are not confined to classrooms and campus boundaries – students' wellbeing, including their mental health, is also at risk. The Centers for Disease Control and Prevention has found that high school students who identified as LGB were more than twice as likely to feel sad or hopeless as compared to students who identified as heterosexual. (Foudy Aff. Ex. C, CDC Report at 97.) LGB students also are more than three times more likely to seriously consider attempting suicide, make a suicide plan, attempt suicide, and injure themselves in a suicide attempt. (*Id.* at 98-101.)

B. The Yeshiva University LGBTQ Community is the Target of Discrimination and Harassment

Despite Yeshiva University's Non-Discrimination and Anti-Harassment Policy, which prohibits discrimination based on sexual orientation, the university itself discriminates against the LGBTQ community through its refusal to recognize an LGBTQ student group. A written policy without institutional support undermines its credibility. The daylight between Yeshiva University's written policy and official actions has not gone unnoticed. It has emboldened discrimination and bigotry.

Many members of Yeshiva University's LGBTQ community believe that identifying as LGBTQ while enrolled at Yeshiva University is a safety risk. In an article for *The Commentator*, Yeshiva University's independent student newspaper, a former student wrote that he left Yeshiva University because he no longer felt safe and "lived in constant fear of being discovered" as a closeted gay student. (Foudy Aff. Ex. E, Joshua Tranen, *Why I left YU, and Why I'm Writing About It Now*, THE COMMENTATOR (Jan. 4, 2017).)

Other LGBTQ students have described encounters of "casual bigotry" in their time at Yeshiva University. (Foudy Aff. Ex. B, Meisels, *supra.*) These experiences can take many forms, including being called names like "fag" and other insults. (*Id.*) Meisels said that in her

time at Yeshiva University, administrators failed to meaningfully address discrimination targeted at the LGBTQ community, refused to recognize an LGBTQ student group, and did not even provide a designated space for LGBTQ students to gather. (*Id.*)

Students' hostile and aggressive behavior toward the LGBTQ community continues to this day. A recent Facebook message to the YU Pride Alliance read "Go fuck yourselves—it's against Judaism to be gay. It actually says in the Torah, that they stoned the gays to death." (Memorandum of Law in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment at 23, ECF No. 272.) These sentiments and messages are not one-off experiences for Yeshiva University's LGBTQ community. Instead, they reflect a culture that views LGBTQ individuals as less than equal and who should hide their sexual orientation or risk ridicule, isolation, and even threats.

C. Affinity Groups Support Marginalized Students and Enhance the Educational Experience of All Students

Student groups, such as GSAs provide an important mechanism for LGBTQ students to feel connected to their community and supported. GSAs provide a host of benefits for the LGBTQ community, including offering an outlet for socializing, serving as a support system, raising awareness to LGBTQ issues, creating safer environments for LGBTQ students, and addressing members' experiences with victimization. (Foudy Aff. Ex. D, GLSEN Report at 59.) GSA membership is not restricted to only individuals who identify as LGBTQ, but also includes heterosexual allies who join the GSA to learn about LGBTQ issues, advocate for human rights, socialize with peers, and support LGBTQ individuals. (Foudy Aff. Ex. F, V. Paul Poteat, Gay-Straight Alliances: Promoting Student Resilience and Safer School Climates, American Educator (Winter 2016-2017).)

GSAs play a key role in improving the lives of LGBTQ students, and their existence is correlated with a more positive student experience. (Foudy Aff. Ex. D, GLSEN Report at 147.) Students in schools with GSAs report feeling safer than students in schools without GSAs, and also report fewer concerns regarding their mental and physical health. (Foudy Aff. Ex. F, Poteat, *supra*, at 11.) Students at schools with GSAs also reported fewer instances of hearing homophobic remarks and were less likely to miss school because they felt unsafe. (Foudy Aff. Ex. D, GLSEN Report at 70-71.)

GSAs and other affinity groups enhance the educational experience of all students. Among their many benefits, affinity groups provide students with a support network that fosters discussion and raises awareness of issues important to the members of those groups. This is not an issue unique to sexual orientation and LGBTQ students. Affinity groups for all protected classes under the New York Human Rights Law, including citizenship status, color, religion, and veteran status, among others, can provide support for their members and a platform to educate others on the issues that are important to the members of these groups. (N.Y.C. Admin. Code § 8-107.)

A university that admits students with diverse backgrounds, but also works to suppress expressions of that diversity does a disservice to all members of the campus community. The benefits of GSAs extend beyond the classroom, including helping to prepare students for success after graduation. Informal learning occurs through the interactions of students with a variety of backgrounds and interests. ([*Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 n.48 \(1978\)](#).) But the benefit of this diversity cannot be realized if it is suppressed. Educational institutions who prepare students to succeed in all manner of post-graduation endeavors “cannot

be effective in isolation from the individuals and institutions” with whom they will interact following graduation. (*Sweatt v. Painter*, 339 U.S. 629, 634 (1950).)

Yeshiva University’s official recognition of all affinity groups, including GSAs, would provide these benefits to the greater Yeshiva community. Moreover, promoting diversity in the classroom and on campus advances Yeshiva University’s stated educational mission. The university’s mission statement explains that a part of its mission includes advancing the “material betterment of the Jewish community and broader society.” It is widely recognized that communities – and society at large – are strengthened when future leaders are “‘trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.” (*Bakke*, 438 U.S. at 313 (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967))). This truth extends beyond the classroom and into the board room. In the last 20 years, the largest corporations in the United States have overwhelmingly adopted policies that promote diversity and inclusion, including with respect to sexual orientation. (See, e.g., Foudy Aff. Ex. G, Human Rights Campaign Foundation, *Corporate Equality Index 2021*.) As the country and the world become more diverse and inclusive, Yeshiva University’s refusal to recognize this reality does a disservice to LGBTQ students and the University’s student body.

II. UNIVERSITIES SUCH AS YESHIVA UNIVERSITY ARE PLACES OF PUBLIC ACCOMMODATION UNDER THE NYCHRL

Yeshiva University attempts to skirt the NYCHRL by claiming that the NYCHRL “deliberately excludes ‘distinctly private’ organizations,” insinuating that a university like Yeshiva University is one such organization. (Motion to Dismiss at 8, ECF No. 71.) Such a finding would mean that Yeshiva University, as well as potentially other religiously affiliated universities in New York City, such as Fordham University and St. John’s University, would be entirely exempt from having to comply in any manner whatsoever with the public

accommodations provisions of the NYCHRL, regardless of whether or not such lack of compliance purported to have a religious justification. That extraordinary and broad-sweeping result could not be more at odds with the stated public policy of the NYCHRL that all exemptions be “construed narrowly in order to maximize deterrence of discriminatory conduct.” ([N.Y.C. Admin. Code § 8-130\[b\]](#).)

It could not be clearer that universities, including private universities such as Yeshiva University, should be classified as a place of public accommodation under the NYCHRL. A “place or provider of public accommodation” under the NYCHRL is broadly defined, *see* [N.Y.C. Admin. Code § 8-102](#), and should be broadly construed. (*Id.* at [§ 8-130\[a\]](#).²) And, the 2016 NYCHRL amendments emphasize the intent to keep the law’s scope broad. Excluding universities from the scope of the NYCHRL goes against the purpose of the law. Indeed, the legislative history of the 1991 NYCHRL amendments makes clear that such institutions fall within the scope of the NYCHRL. The NYCHRL should be construed to cover universities, even if they have a religious affiliation, such as Yeshiva University, Fordham University, and St. John’s University.

² A recent New York Supreme Court opinion recognized that the analogous New York State Human Rights Law “treats ‘place of public accommodation’ as an extremely broad category. The statute’s definition of this term is expressly framed in illustrative rather than exclusive or limiting terms.” [Sullivan v. BDG Media, Inc.](#), 71 Misc. 3d 863, 869 (N.Y. Sup. Ct., N.Y. Cnty 2021). Relying on the same analysis, the court also held that “the NYCHRL is to be construed *more* broadly than the NYSHRL.” [Id.](#) at 871 (emphasis in original).

A. The Text of the NYCHRL is Clear That Universities Should be Considered Places of Public Accommodation Under the NYCHRL

1. Universities Neatly Fit in the Definition of “Places of Public Accommodation”

The NYCHRL seeks to “prevent discrimination from playing any role in actions relating to . . . public accommodations.” The NYCHRL defines a place of public accommodation in exemplary terms:

The term “place or provider of public accommodation” includes providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages, or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages, or privileges of any kind are extended, offered, sold, or otherwise made available.

([N.Y.C. Admin. Code § 8-102.](#)) Universities neatly fall into this definition.

Universities such as Yeshiva University are providers of goods and services. Universities such as Yeshiva University are providers of facilities. Universities such as Yeshiva University are providers of accommodations. Universities such as Yeshiva University also provide “advantages or privileges of any kind.” Finally, Yeshiva University is a place that makes available all of the above.

Courts have consistently held that universities are subject to the NYCHRL. (*See, e.g., Bonaffini v. City University of New York and Anne Lopes*, No. 20-cv-5118(BMC), 2021 WL 2895688, at*4 (E.D.N.Y. July 9, 2021) (“I conclude that plaintiff has stated a claim under the NYCHRL as well.”).) Likewise, university-affiliated institutions have also been held to be subject to the NYCHRL. (*See, e.g., Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 277 (2d Cir. 2009) (recognizing that the NYCHRL applied to a University Hospital); *Farrugia v. North Shore University Hosp.* 13 Misc. 3d 740, 748 (N.Y. Sup. Ct., N.Y. Cnty 2006) (same).) Entities found not to be places or providers of accommodation are rare, and do not at all resemble a large

university such as Yeshiva University. (See, e.g., [Sattler v. City of New York Comm'n on Hum. Rts.](#), 180 A.D.2d 644, 645 (2d Dep't 1992) (finding that under the pre-1991 NYCHRL, a one-person dental clinic was not a place of public accommodation).)

2. *The Text of the NYCHRL Instructs Courts to Construe the NYCHRL Liberally*

Even if universities are not explicitly listed as places of public accommodation, the scope of the NYCHRL should be construed broadly so as to encompass universities. ([N.Y.C. Admin. Code § 8-130](#)[a].) To assist courts in construing the NYCHRL, the New York City Council's 2016 amendments to the law explicitly recognized three cases that courts should use to aid in construction:

Cases that have correctly understood and analyzed the liberal construction requirement of subdivision a of this section and that have developed legal doctrines accordingly that reflect the broad and remedial purposes of this title include *Albunio v. City of New York*, 16 N.Y.3d 472 (2011), *Bennett v. Health Management Systems, Inc.*, 92 A.D.3d 29 (1st Dep't 2011), and the majority opinion in *Williams v. New York City Housing Authority*, 61 A.D.3d 62 (1st Dep't 2009).

(*Id.* at [c].) While all three cases reinforce the requirement that the NYCHRL should be broadly construed,³ *Albunio* is particularly instructive for construing particular phrases used in the NYCHRL.

In *Albunio*, the court determined whether the record supported a jury's finding that plaintiffs suffered retaliation under NYCHRL § 8-107. The "dispositive question" was whether

³ For example, the court in *Williams* recognized that "the text and legislative history represent a desire that the City HRL 'meld the broadest vision of social justice with the strongest law enforcement deterrent.' Whether or not that desire is wise as a matter of legislative policy, our judicial function is to give force to legislative decisions." ([Williams v. New York City Hous. Auth.](#), 61 A.D.3d 62, 68-69 (1st Dep't 2009).) Likewise, the courts in *Bennett* and *Albunio* explained that "all provisions of the City HRL be construed 'broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible.'" ([Bennett v. Health Mgmt. Sys., Inc.](#), 92 A.D.3d 29, 34 (1st Dep't 2011) (citing *Albunio v. City of New York*, 16 N.Y.3d 472, 478 (2011).)

plaintiffs had “opposed” discriminatory conduct—in that case refusal to transfer police officer Sorrenti to another department on the basis of sexual orientation—as required for a retaliation claim. (*Albunio v. City of New York*, 16 N.Y.3d 472, 475 (2011).) As to plaintiff Albunio, the only evidence on the record was a post-hoc statement from Albunio that “[i]f I had to do it all again, I would have recommended Sorrenti again.” (*Id.* at 479.) The court held that this was sufficient evidence to support the jury’s finding that Albunio had “opposed” discriminatory conduct because she had, through maintaining her position, “made clear her disapproval of that discrimination.” (*Id.*)

The *Albunio* court held that such a single, post-hoc statement was sufficient “oppos[ition]” under the NYCHRL. In reaching this holding, the *Albunio* court acknowledged NYCHRL § 8-130’s requirement that the law be interpreted broadly. As *Albunio* explained:

The application of the [NYCHRL] provision to this case is clear: we must construe Administrative Code § 8-107 (7), *like other provisions of the City’s Human Rights Law*, broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible. We interpret the word “opposed” according to this principle.

(*Id.* at 477-78.) Section 8-130[c] of the NYCHRL instructs courts to follow *Albunio* and construe any provision of the NYCHRL as broadly as “reasonably possible.” (*Id.* at 478.) It is certainly not a stretch to construe “place of public accommodation” as including Yeshiva University.

To the extent that this court is asked to consider Yeshiva University as falling under an exception to the NYCHRL, the NYCHRL instructs courts to construe exceptions narrowly:

Exceptions to and exemptions from the provisions of this title shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

([N.Y.C. Admin. Code § 8-130](#)[b].) This is consistent with the legislature’s instruction to construe the applicability of the NYCHRL as broadly as possible,

B. Exempting Yeshiva University from the NYCHRL Goes Against the Purpose of the NYCHRL

The NYCHRL is premised on the idea that “[i]n the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety, and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences,” including differences in gender and sexual orientation. ([N.Y.C. Admin. Code § 8-101](#).) Few institutions have a larger impact on New York City than universities. Wholesale exclusion of universities from the NYCHRL just because they happen to have some sort of religious affiliation would go against the NYCHRL’s aim of “prevent[ing] discrimination” to a significant number of New Yorkers. (*Id.*) An educational corporation that has a religious affiliation is not a “religious corporation.” If the New York City Council wanted to exempt any religiously affiliated corporation from the public accommodation sections of the NYCHRL, it could have easily done so. However, in keeping with the broad remedial reach intended for the NYCHRL, the City Council did no such thing.

Universities host a significant number of New York City residents, including students and employees. A 2003 based on the 2000 census study estimated that there were 593,000 university students in New York City. (Foudy Aff. Ex. H, Brookings Institution Center on Urban and Metropolitan Policy, New York in Focus: A Profile from Census 2000.) In 2008, the New York City government estimated that colleges and universities employed 69,665 people across 139 universities. (Foudy Aff. Ex. I, New York City Labor Market Information Service, Employment in New York City Colleges and Universities (2009).) These numbers have

undoubtedly increased over the past decade or two. Excluding any religiously affiliated university from the NYCHRL would render the law meaningless for a large subset of New Yorkers.

Yeshiva University alone owns four campuses in New York City. Yeshiva University alone has a population of 4,685 students, including 2,157 undergraduates. (*See Foudy Aff. Ex. J, New York State Education Department, Yeshiva University Enrollment (2019-20).*) Yeshiva University alone employs over 2,000 people. Excluding even just Yeshiva University from the NYCHRL would deny protections for a significant number of New Yorkers. Such a large exclusion was not contemplated by the New York City Council. To the contrary, the NYCHRL considers an entity with “more than 400 members” as not “distinctly private” and thus a place or provider of public accommodation. ([N.Y.C. Admin. Code § 8-102.](#)) It would be unreasonable to consider Yeshiva University, with its population of over ten times a “distinctly private” club, exempt from the NYCHRL.

C. The Legislative History of the NYCHRL Demonstrates that Educational Institutions are Places of Public Accommodation

Although the original 1965 NYCHRL explicitly excluded “colleges and universities” from classification as a place of public accommodation, N.Y.C. Local Law 97 (1965), the New York City Council explicitly removed this exemption in 1991, N.Y.C. Local Law 39 (1991). The 1991 amendments were meant to be a “complete overhaul of the city’s human rights law,” and this expanded definition of a place of public accommodation was one of “seven key areas addressed by the bill.” (*Foudy Aff. Ex. K, Report of the Committee on General Welfare on Local Law 39 (1991) at 5.*) As the New York City Council explained, “the commission’s power to combat discrimination is expanded through the inclusion of educational institutions within the provider of public accommodations.” (*Id.* at 8.) Specifically, the term “place or provider of

public accommodation” was amended to “include both public and private educational institutions” in recognition of New York City’s “independent and overriding interest in routing out discrimination from its schools.” (*Id.* at 4 (emphasis added).) This expansion of the NYCHRL to encompass educational institutions as places of public accommodation has never been abrogated. (*Compare* N.Y.C. Local Law 39 (1991) with [N.Y.C. Admin. Code § 8-102.](#))

Later amendments to the NYCHRL continued to broaden the scope of the law. For example, in 2016, the NYCHRL was expanded “with regard to public accommodations.” (N.Y.C. Local Law 34 (2016).) Specifically, this law was intended to “extend the [NYC]HRL’s public accommodations provisions to cover franchisors, franchisees, and lessors of public accommodations,” again demonstrating the New York City Council’s commitment to broadening the scope of the NYCHRL. (Foudy Aff. Ex. L, Committee Report of the Governmental Affairs Division, Committee on Civil Rights (2016) at 5-6.) The trend is clear: the New York City Council consistently expands the scope of the NYCHRL. To consider religiously affiliated universities exempt from the NYCHRL not only goes directly against the legislative intent of the 1991 amendments, but also flies in the face of the general legislative intent over the past three decades.

III. YU ALLIANCE IS ENTITLED TO THE TANGIBLE BENEFITS THAT ACCOMPANY STUDENT GROUP STATUS

Yeshiva University presents a false dichotomy in its argument against recognizing the YU Alliance. The university has compartmentalized various aspects of its operations, including its finances, into religious and secular purposes. It can do the same for student groups like the YU Alliance.

Yeshiva University has acknowledged its ability to separate its religious affiliation from its ability to provide secular services for students. For example, Yeshiva University received

\$140 million of tax-exempt bond financing in 2009 through the Dormitory Authority of the State of New York (“DASNY”), which prohibits issuers from using the funds for religious purposes. The University has explained that its plans for the funds include deploying wireless connectivity throughout its campuses, e-mail migration, and constructing a new information technology data center. (Foudy Aff. Ex. M, Yeshiva University, *DASNY Funding of \$140 Million Enables Capital Improvements, Including Wireless Connectivity* (Aug. 26, 2009).) It obtained an additional \$90 million from DASNY in 2011 for other capital projects. In total, Yeshiva University currently has obligations for more than \$138 million of bonds payable to DASNY, funds that cannot be used for a religious purpose.

Moreover, Yeshiva University’s graduate schools have had no issue with providing resources on a non-discriminatory basis to LGBTQ students without violating their values. For example, the Cardozo Law School recognizes OUTlaw, an LGBTQ and allied student association, as an official group. (Foudy Aff. Ex. N, Cardozo Law Student Organizations.) Yeshiva University’s medical school, the Albert Einstein College of Medicine, recognizes a student club called Einstein PRIDE, which “serve[s] as a source of community for the queer students of Einstein.” (Foudy Aff. Ex. O, Einstein Student Clubs.) Yeshiva University’s undergraduate LGBTQ students deserve the same access to resources as their peers in Yeshiva University’s graduate schools.

Courts have recognized that entities with religious affiliations can both adhere to their values while complying with the law. For example, in [*Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*](#) the court held that the university could not withhold tangible benefits on the basis of students’ sexual orientation, which would violate the District of Columbia Human Rights Act. ([536 A.2d 1, 39 \(D.C. 1987\)](#).) The tangible benefits

sought by the student group included a mailbox, mailing services, and other services that would facilitate communications with other students. ([Id. at 17.](#))

The tangible benefits sought by the YU Alliance are similar to those sought by the students in *Gay Rights Coalition*. The university can provide these basic tangible benefits, the same benefits afforded to the YU Menswear Club, without incurring a hardship or compromising its values. Yeshiva University accepts funds for use on non-religious projects and services, including improving its campus spaces and technology infrastructure. The YU Alliance should, at minimum, be granted the same access to these facilities as other student groups. As the NYCHRL must be construed “broadly in favor of discrimination plaintiffs,” a wholesale exemption from the law for Yeshiva University is against the legislative intent of the law and Yeshiva University’s demonstrated ability to compartmentalize its operations. ([Albunio, 16 N.Y.3d at 477.](#))

CONCLUSION

Yeshiva University’s refusal to recognize an LGBTQ affinity group is a violation of the NYCHRL. Affinity groups are an important resource for the marginalized communities of Yeshiva University and, by extension, New York City. The LGBTQ community, which continues to face discrimination, is one such marginalized community that benefits from affinity groups. The NYCHRL exists to deter such discrimination. Yeshiva University falls under the broad scope of the NYCHRL as demonstrated by the text of, the purpose of, and the legislative intent behind the statute. Accordingly, this Court should deny Yeshiva University’s motion to dismiss converted by the Court to a motion for summary judgment.

Dated: February 8, 2022
New York, NY

Respectfully submitted,

/s/ Theresa A. Foudy

MORRISON & FOERSTER LLP

Theresa A. Foudy
250 West 55th Street
New York, NY 10019-9601
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Email: tfoudy@mofo.com

Counsel for The Lesbian and Gay Law
Association Foundation of Greater New York
("LeGaL")