NEW YORK STATE COURT OF APPEALS

YU PRIDE ALLIANCE, *et al.*, Plaintiffs-Respondents, v. YESHIVA UNIVERSITY, *et al*., Defendants-Appellants.	Docket No.: 2022-02726 New York County Index No.: 154010/2021 **ORDER TO SHOW CAUSE**

Upon reading and filing the annexed Affirmation of David Bloom, Esq., dated the 24th day of August, 2022, and upon all the pleadings and proceedings heretofore had and held herein:

LET Plaintiffs-Respondents YU PRIDE ALLIANCE, MOLLY MEISELS, DONIEL WEINREICH, AMITAI MILLER, and ANONYMOUS, or their attorneys, show cause before this Court, at a Term thereof, to be held at the Appellate Division, First Department, located at 27 Madison Avenue, New York, NY, 10010, on the __ day of August at 10:00 AM, or as soon thereafter as counsel can be heard, why an order should not be made:

i) Pursuant to CPLR 5602(b)(1), Rule 500.25 of the Court of Appeals Rules of Practice, and this Court's inherent powers, granting Appellants leave to appeal to this Court the Decision and Order of the Supreme Court Appellate Division, First Department dated August 23, 2022, ("Order"), which denied Appellants' motion to stay the permanent injunction entered against them by the Supreme Court for the County of New York in the above-captioned matter, thereby compelling them to violate their sincerely held religious beliefs by immediately recognizing Plaintiff YU PRIDE ALLIANCE; and

ii) Granting an interim stay pending the hearing and determination of the appeal of said Order, and during the pendency of the within application for leave to appeal; and

iii) For such other and further relief as to this Court may seem just and proper, in its discretion, under all of the circumstances.

SUFFICIENT CAUSE APPEARING THEREFORE, it is

ORDERED, that pending the hearing and determination of this motion, the appealed from Order dated June 14, 2022 and entered on June 24, 2022, including the enforcement of the lower court's injunction against Yeshiva University and President Ari Berman, is hereby stayed; and it is further

ORDERED that service by electronic mail of a copy of this Order to Show Cause, together with the papers upon which it is based, upon:

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Attorneys for Plaintiffs
600 Fifth Avenue, 10th Floor
New York, NY 10020
krosenfeld@ecbawm.com

On or before the ____ day of August, 2022, be deemed good and sufficient service.

Dated: _____, 2022

ENTERED :

_____
Judge of the New York State Court of Appeals

NEW YORK STATE COURT OF APPEALS

YU PRIDE ALLIANCE, *et al.*, Plaintiffs-Respondents, v. YESHIVA UNIVERSITY, *et al*., Defendants-Appellants.	Docket No.: 2022-02726 New York County Index No.: 154010/2021 **AFFIRMATION IN SUPPORT**

I, DAVID BLOOM, an attorney admitted to practice law for this matter in the State of New York, hereby affirm the following to be true under the penalties of perjury:

1. I am an attorney with the law firm Kaufman Borgeest & Ryan LLP, counsel for defendants YESHIVA UNIVERSITY and PRESIDENT ARI BERMAN (collectively "Yeshiva"), and I am fully familiar with the facts and circumstances of this matter.

2. This affirmation is submitted in support of the motion by Yeshiva, for an order to show cause why an order should not be made and entered as follows:

   i) Pursuant to CPLR 5602(b)(1), Rule 500.25 of the Court of Appeals Rules of Practice, and this Court's inherent powers, granting Appellants leave to appeal to this Court the Decision and Order of the Supreme Court Appellate Division, First Department dated August 23, 2022, ("Order"), which denied Appellants' motion to stay the permanent injunction entered against them by the Supreme Court for the County of New York in the above-captioned matter, thereby compelling them to violate their sincerely held religious beliefs by immediately recognizing Plaintiff YU PRIDE ALLIANCE; and

   ii) Granting an interim stay pending the hearing and determination of the appeal of said Order, and during the pendency of the within application for leave to appeal; and

   iii) For such other and further relief as to this Court may seem just and proper, in its discretion, under all of the circumstances.

3. No prior application has been made in this Court for the relief requested herein.

4. A copy of the Decision and Order of the Appellate Division, First Department dated August 23, 2022, denying Appellant's motion to stay the permanent injunction entered against them by the Supreme Court, County of New York (Lynn R. Kotler, J.), is found at Dkt. 20 of the Appellate Division docket.[1]

5. A copy of the Decision and Order of the Supreme Court dated June 14, 2022 and entered on June 24, 2022, denying Yeshiva's motion for summary judgment and granting Plaintiffs' cross-motion for summary judgment, is found at Dkt. 1, at 11.

6. A copy of Yeshiva's Notice of Appeal from said Order is found at Dkt. 1, at 1.

7. The denial of a stay in this case warrants review by the Court of Appeals because Yeshiva will otherwise be forced to violate its religious beliefs, even though it is an admittedly religious organization entitled to First Amendment protection of its religious exercise. Yeshiva is being denied explicit statutory protections under the New York City Human Rights Law ("NYCHRL") on an atextual interpretation of the law on an issue of first impression. To date, no court has considered Yeshiva's religious autonomy defense. And Yeshiva's other constitutional defenses were rejected under precedent that is already under reconsideration by this Court in *Roman Catholic Diocese of Albany v Vullo*, (No. 2022-00089; *see also id.* Mot No. 2022-523). Given the unsettled questions of law and the priority of First Amendment rights in our legal system, review by the Court of Appeals is highly warranted before Yeshiva is forced to violate its sincerely held religious convictions.

8. The lawsuit arose from Yeshiva's religious decision not to give official recognition to a student club called YU Pride Alliance.

9. Plaintiffs contend that this decision violated the public accommodation provisions of the New York City Human Rights Law ("NYCHRL").

[1] All "Doc." cites are to the Supreme Court docket and "Dkt." cites are to the Appellate Division's docket.

10. But Yeshiva is expressly excluded from the law's definition of a public accommodation because it is a "religious corporation incorporated under the education law." (N.Y.C. Admin. Code § 8-102.)

11. It is undisputed that Yeshiva is a "corporation incorporated under the education law." Dkt. 1, at 15.

12. It is also undisputed that Yeshiva is "religious" within the ordinary meaning of that term. (Dkt. 1 at 13 ("Yeshiva is an educational institution with a proud and rich Jewish heritage and a self-described mission to combine 'the spirit of Torah' with strong secular studies."); Dkt. 13, Rec 454 ("Indeed, plaintiffs concede Yeshiva's deeply religious character in their pleadings."); *see also* Dkt. 16, Rec 1741-1747 (extensive unrebutted evidence of Yeshiva's religiosity).)

13. Nonetheless, Plaintiffs contended that—as used in the NYCHRL—the word "religious" is essentially a term of art that must be read narrowly to exclude Yeshiva. (Dkt. 13, Rec 7, 17.)

14. In addition to refuting this argument, (Dkt. 16, Rec 1747-1753), Yeshiva responded that, even if it were not excluded from the NYCHRL's definition of a public accommodation, it is separately exempt when acting pursuant to its religious mission. (N.Y.C. Admin. Code § 8-107(12); Dkt. 13, Rec 92, 100; Dkt. 16, Rec 1754.)

15. Plaintiffs concede that Yeshiva made the decision in consultation with its *Roshei Yeshiva* (or senior rabbis), because it believes that recognizing the club would "cloud" the Torah's "nuanced" message calling on students to "accept[] each individual with love," while still "affirming [the Torah's] timeless prescriptions." (Dkt. 13, Rec 46-47 ¶ 1; *Id.*, Rec 65 ¶¶ 98-101; *Id.*, Rec 295 ¶ 53; *Id.*, Rec 456; *Plaintiff Meisels YouTube Statement* at 18:10; Doc. 11.)

16. Moreover, because this was a "quintessentially religious" decision, (*Serbian E. Orthodox Diocese for United States of America & Canada v Milivojevich*, 426 US 696, 720 [1976]), Yeshiva argued that, even without the NYCHRL's exemptions, this lawsuit is barred by the First Amendment doctrines of religious autonomy, the free exercise of religion, and freedom of speech and assembly.

17. A year ago, when Plaintiffs first moved for club recognition, the trial court denied their motion for a preliminary injunction. There the court stated that Plaintiffs' argument that Yeshiva was not excluded from the NYCHRL as a "religious corporation incorporated under the education law" was "contrary to the plain language of the statute." (Dkt. 13, Rec 458.)

18. Plaintiffs filed a notice of appeal from that ruling, (Doc. 131), but failed to perfect it.

19. Later, on cross-motions for summary judgment, the trial court reversed itself. (Dkt. 13, Rec 4.)

20. It continued to recognize that Yeshiva is the nation's flagship Jewish university "with a proud and rich Jewish heritage" and "an inherent and integral religious character which defines it and sets it apart from other schools and universities of higher education." (Dkt. 13, Rec 7, 15.)

21. Yet it concluded that Yeshiva is not "religious" within the meaning of the New York City Human Rights Law ("NYCHRL"), (Dkt. 13, Rec 22), because it is not a house of worship, (Dkt. 13, Rec 10, 16), did not explicitly restate its religious purpose in amending its corporate charter in 1967 (stating instead that the original religious purpose was "continued"), (Dkt. 13, Rec 11-12; *see also* Dkt. 16, Rec 1750), and offers so many secular degrees that its primary purpose is no longer religious, (Dkt. 13, Rec 11-12).

22. The trial court cited no case law or other legal authority to support its conclusion that even an explicit purpose of "promot[ing] the study of Talmud" would "not necessarily make Yeshiva a religious corporation" under the NYCHRL, (Dkt. 13, Rec 12), except to say that the City Council meant for the religious exclusion to be interpreted "narrowly," (Dkt. 13, Rec 15).

23. Further, the trial court ignored entirely the NYCHRL's second religious exemption for actions taken in pursuit of a religious mission. (N.Y.C. Admin. Code § 8-107(12).)

24. Thus rejecting both of the statute's explicit religious exemptions, the trial court concluded that Yeshiva (and by extension *any* religious school) is a public accommodation fully subject to the NYCHRL, including its prohibition against decisions based on religion. Of course, religion-based decisions are at the heart of the identity of all religious schools.

25. Finally, the trial court also ignored Yeshiva's religious autonomy defense entirely, giving it no mention; rejected Yeshiva's free exercise defense on grounds currently under reconsideration before this Court in a separate matter, (*see Diocese of Albany*, No. 2022-00089; *id.* Mot No. 2022-523); and cursorily rejected Yeshiva's freedom of speech and assembly defenses.

26. The court then entered a *permanent* injunction ordering Yeshiva to upend the status quo to grant official recognition to Plaintiff YU Pride Alliance, in violation of Yeshiva's sincerely held religious beliefs. (Dkt. 13, Rec 22.)

27. Yeshiva immediately filed a notice of appeal and perfected its appeal on August 8, 2022. (Dkt. 1; Dkt. 18.)

28. It also immediately filed a motion for stay of the permanent injunction pending appeal, which the Appellate Division denied on August 23, 2022. (Dkt. 5; Dkt. 20.)

29. Yeshiva's present motion for leave to appeal to the Court of Appeals should be granted for several reasons.

30. *First*, a permanent injunction accompanied by an order that it be enforced "immediately," (Dkt. 13, Rec 22), is for all practical purposes a final decision worthy of review by the Court of Appeals. (*Jackson v Bunnell*, 113 NY 216 [1889]; *see also Moore v Ruback's Grove Campers' Assn., Inc.,* 924 NYS2d 197, 198 [2011] ("A permanent injunction is a final judgment[.]"); *Grogan v St Bonaventure Univ.*, 458 NYS2d 410, 411 [1982] (same).)

31. *Second*, even if it were not final, the permanent injunction is reviewable by the Court of Appeals under the doctrine of irreparable injury, because (1) it is an equitable action that causes an immediate change in the status quo, and (2) the injury to Yeshiva's religious freedom can never be redressed. (*Matter of Kemp & Beatley,* 61 NY2d 900 [1984] (denying motion to dismiss appeal and permitting appeal of nonfinal order because it would cause irreparable injury by forcing corporate dissolution with loss of corporate name and sale of assets); *Matter of Joyce T.*, 63 NY2d 601 [1984] (granting motion to appeal nonfinal order terminating parental rights due to irreparable injury).)

32. It is undisputed that enforcing the trial court's order would disturb the status quo. Yeshiva consistently rejects undergraduate clubs that celebrate values inconsistent with the Torah or that are otherwise not consistent with the religious atmosphere it seeks to maintain on its undergraduate campus. (Dkt. 13, Rec 90; Dkt. 13, Rec 294 ¶¶ 38-44 (noting that Yeshiva has rejected videogame, gambling, and shooting clubs, as well as the Jewish "AEPi" fraternity, as "not consistent with Yeshiva's Torah values").)

33. Moreover, as a matter of law, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (*Roman Catholic Diocese of Brooklyn v Cuomo*, 141 S Ct 63, 67 [2020]; *see also Nebraska Press Assn. v Stuart*, 423 US 1327, 1329 [1975] ("[A]ny First Amendment infringement that occurs with each passing day is irreparable." (Blackmun, J.)).)

34. Yeshiva could also suffer irreparable injury to its reputation. The trial court's order sent a shockwave through the Yeshiva community. Students come to Yeshiva because "[t]he undergraduate program is structured to help [them] embrace the Jewish faith and engage with the secular world from a foundation of Torah values." (Dkt. 13, Rec 401.) Constituent communities around the world similarly look to Yeshiva as a standard-bearer for Torah values. (Dkt. 13, Rec 400 ¶¶ 2-4; *Id.*, Rec 292-293 ¶¶ 24-27.) The government forcing a Jewish school to violate its beliefs evokes echoes of the early 20th century in Europe, when hostile governments likewise sought to impose government control over yeshivas.

35. Because the trial court's ruling, as upheld by this Court, upends the status quo and is highly injurious, immediate review of whether Yeshiva is entitled to a stay is warranted.

36. The trial court's NYCHRL interpretation is a matter of first impression, one that potentially subjects hundreds of religious schools to unprecedented litigation. Virtually every religious-based decision in New York City religious schools is open to attack. The NYCHRL could be used to force a Catholic university to approve a Wiccan club, to stop a Muslim day school from restricting pork in its cafeteria, and to disrupt all religious schools' religious hiring and admissions standards. This unprecedented danger arising from the trial court's novel statutory interpretation—that the

drafters of the NYCHRL clearly did not intend—is further support for review by the Court of Appeals.

37. By refusing Yeshiva's stay request, this Court left in place the trial court's novel, unprecedented ruling that a religious school can have an "inherent," "integral," and "defin[ing]" religious character, but still not be "religious" under the NYCHRL because it is not a house of worship, is not sufficiently explicit in stating a religious purpose in its charter, and offers too many secular degrees. (Dkt. 13, Rec 36.)

38. This method of determining when the NYRCHL's religious exemptions *do* apply raises significant First Amendment concerns. The trial court's statutory construction encourages courts to intrude into a religious organization's internal affairs and to weigh how religious schools pursue their religious missions. Time and again, the U.S. Supreme Court has prohibited judicial entanglement of this sort. (*See Carson v Makin*, 142 S Ct 1987, 2000-2001 [2022] (concluding that "[a]ny attempt" to distinguish between religious entities based on "magic words" within their corporate documents would "raise serious concerns about state entanglement with religion and denominational favoritism"); *Our Lady of Guadalupe Sch. v Morrissey-Berru*, 140 S Ct 2049, 2066 [2020] ("A religious institution's explanation of the role [of a certain employee or function] in the life of the religion in question is important"); *id.* at 2060 (holding that First Amendment "protect[s] [a religious school's] autonomy with respect to internal management decisions that are essential to the institution's central mission"); *Colorado Christian Univ. v Weaver*, 534 F3d 1245, 1266 [10th Cir 2008] (Courts must refrain from "second-guessing an institution's characterization of its own religious nature."); *Kroth v Congregation Chebra Ukadisha Bnai Israel Mikalwarie*, 430 NYS2d 786, 790 [1980] (holding that courts assess religious status by looking at its functions).)

39. It also raises significant concerns under the Free Exercise clause by denying Yeshiva a religious exemption from the NYCHRL, while expressly exempting hundreds of secular organizations. (*See* Benevolent Orders Law §§ 2, 7 (exempting various orders of Masons, the Knights of Columbus, the American Legion, the Veterans of Foreign Wars and numerous other

fraternal orders); *Gifford v Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 707 NYS2d 722, 723-724 [3d Dept 2000] (recognizing that these secular exemptions are "absolute and not subject to limitation").) Under the Free Exercise Clause, if "*any*" such secular exemption is allowed, requests for religious exemptions must also be granted. (*Tandon v Newsom*, 141 S Ct 1294, 1296 [2021]; *see also Kennedy v Bremerton Sch. Dist.*, 142 S Ct 2407, 2421-2422 [2022].) This is true even if a law's exemptions are only discretionary and the government has never exercised that discretion, (*Fulton v City of Philadelphia*, 141 S Ct 1868, 1879, 1882 [2021]), a factor also relevant here, (*see* Administrative Code § 8-107(4)(b) (providing that the NYCHRL "shall not apply, with respect to … gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy").)

40. Considering that the Court of Appeals is already reconsidering its free exercise jurisprudence under these precedents on remand from the United States Supreme Court, (*see Roman Catholic Diocese of Albany v Emami*, 142 S Ct 421 [2021] (remanding in light of *Fulton*); *see also Diocese of Albany*, No. 2022-00089; *id.* Mot No. 2022-523), a stay is warranted at least until the Court of Appeals has completed its review.

41. The trial court's reasoning is also contrary to Supreme Court precedent under the Free Speech and Free Assembly Clauses. "[T]he Free Speech Clause provides overlapping protection for expressive religious activities." (*Kennedy*, 142 S Ct at 2421.) This overlapping protection prohibits compelling a religious organization "to be an instrument for fostering public adherence to an ideological point of view." (*Wooley v Maynard*, 430 US 705, 715 [1977].) And the Assembly Clause protects the freedom of private organizations, including religious organizations, to educate and form the next generation according to their particular tradition's religious vision. (*Our Lady*, 140 S Ct at 2055; *Thomas v Collins*, 323 US 516, 532 [1945].) Yet Plaintiffs seek to use the NYCHRL and this Court to force "cultural changes" both at Yeshiva and in the Orthodox Jewish community at large. (*See, e.g.*, Dkt. 13, Rec 91; *see also Hurley v Irish-Am. Gay, Lesbian and Bisexual Group,* 515 US 557, 572-573 [1995] (forcing a gay club's participation in private parade

would "essentially require[e] petitioners to alter the expressive content of their parade" in violation of Free Speech and Assembly Clauses).)

42. All religious schools will be adversely impacted by the resulting violation of the separation of church and state. For example, because the NYCHRL prohibits discrimination on the basis of religion, religious schools could be tied up in endless, crippling litigation over their most basic functions that define their religious identity.

43. Any religious school's faith-based standards for admissions and hiring, worship and conduct, curricula and coursework would potentially violate the public accommodation provisions of the NYCHRL. (*See* Dkt. 18 at 31-32.)

44. A ruling that disregards the NYCHRL's plain meaning, upends the status quo for all religious schools in New York City, and adopts a test that invites religious entanglement by courts is the very type of "question[] of law" that this court has noted "ought to be reviewed" by the Court of Appeals before taking full effect. (CPLR § 5713.)

45. Forcing Yeshiva to violate its sincerely held religious beliefs inflicts immediate, final, and permanent injury that cannot be remedied. (*Supra* ¶¶ 30-33.)

46. Plaintiffs, in contrast, will suffer no harm from a stay, which would simply preserve the status quo pending the appeal on the merits, which has already been perfected and is scheduled to be heard on this Court's October calendar.

47. Moreover, three of the Plaintiffs have already graduated from Yeshiva and are no longer on its undergraduate campuses.

48. Plaintiffs also concede that Yeshiva has worked extensively with its LGBTQ students to build a welcoming environment. (Dkt. 11 at 26.) For example, it is undisputed that, in response to this dialogue, Yeshiva has recently committed to continue enforcing its policies prohibiting "any form of harassment or discrimination against students on the basis of protected classifications"; to updating its "diversity, inclusion and sensitivity training" to better reflect concerns of LGBTQ students; to ensuring there is staff in its counseling center "with specific LGBTQ+ experience"; to "appoint[ing] a point person to oversee a Warm Line that will be available" for anyone to "report

any concerns pertaining to non-inclusive behavior, such as harassment, bullying or inappropriate comments"; and to continuing "to create a space for students, faculty and Roshei Yeshiva to continue this conversation." (Doc. 11 at 2; *see also* Dkt. 13, Rec 295-296.) Plaintiffs cannot credibly claim irreparable harm just because Yeshiva has not gone as far as they want it to.

49. Plaintiffs came to Yeshiva because of its religious character and knowing full well its traditional view regarding human intimacy. Mere disagreement with Yeshiva's internal religious decisions, or inability to change Yeshiva's beliefs, is not irreparable harm.

50. Finally, it is well-established that "securing First Amendment rights is in the public interest." (*New York Progress and Protection PAC v Walsh*, 733 F3d 483, 488 [2d Cir 2013].) And when courts balance statutory violations against constitutional ones, constitutional rights bear out. (*Hosanna-Tabor Evangelical Lutheran Church and Sch. v EEOC*, 565 US 171, 196 [2012] ("[T]he First Amendment has struck the balance for us.").)

51. Considering the critical legal questions at issue and the irreparable injury that Yeshiva will suffer under the injunction, review by the Court of Appeals is warranted before Yeshiva is compelled to violate its sincerely held religious convictions and all other religious schools are also exposed to the full scope of the NYCHRL.

52. No prior formal application has been made in this Court for the relief requested herein.

WHEREFORE, it is respectfully requested that this Court grant Yeshiva leave to appeal to the Court of Appeals, stay enforcement of the injunction pending the appeal, and stay enforcement of the injunction pending briefing on this Order.

Dated: New York, New York

August 24, 2022

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this paper and the contentions herein are not frivolous as that term is defined in Part 130 of the Court Rules.

David Bloom

By consent of the parties, this motion has been simultaneously served on Plaintiffs via email.

David Bloom

Supreme Court of the State of New York
Appellate Division, First Judicial Department

PRESENT: Hon. Angela M. Mazzarelli, Justice Presiding,
Anil C. Singh
Saliann Scarpulla
Julio Rodriguez III, Justices.

YU Pride Alliance, et al., Plaintiffs-Respondents,	Motion No.	2022-02616
	Index No.	154010/21
	Case No.	2022-02726
-against-		
Yeshiva University and President Ari Berman, Defendants-Appellants,		
Vice Provost Chaim Nissel, Defendant.		

An appeal having been taken to this Court from an order of the Supreme Court, New York County, entered on or about June 24, 2022, and the appeal having been perfected,

And defendants-appellants having moved to stay execution and enforcement of the aforesaid order, which adjudged and declared that defendants Yeshiva University and President Ari Berman must immediately recognize plaintiff YU Pride Alliance as an official campus club, pending the hearing and determination of the appeal taken therefrom,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: August 23, 2022

Susanna Molina Rojas
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C. **PART** 8
Justice

YU PRIDE ALLIANCE et al.

INDEX NO. 154010/21

-v-

MOTION DATE _____

MOTION SEQ. NO. 6 and 13

YESHIVA UNIVERSITY et al.

The following papers, numbered 1 to _____, **were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision/order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: June 14, 2022

HON. LYNN R. KOTLER, J.S.C.

1. **CHECK ONE:** ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. **CHECK AS APPROPRIATE:** MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. **CHECK IF APPROPRIATE:** ☐ SETTLE ORDER ☐ SUBMIT ORDER
   ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8

---x

YU PRIDE ALLIANCE, MOLLY MEISELS, DONIEL WEINREICH, AMITAI MILLER, and ANONYMOUS,

Plaintiff(s),

-against-

YESHIVA UNIVERSITY, VICE PROVOST CHAIM NISSEL, and PRESIDENT ARI BERMAN,

Defendant(s).

---x

DECISION/ORDER
INDEX NO.: 154010/21
MOT SEQ: 006 AND 013

Present:
Hon. Lynn R. Kotler, J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	**Numbered**
Motion Sequence 006	
N/Motion, exhs, Memo of Law	70-83
Aff in opp, exhs, Memo of Law in opp	105
Reply Aff, exhs	107
Decision/Order and Interim Order dated 8/18/21	117
Affirm in opp, exhs	188-229
N/X-mot, affirm, exhs, Memo of Law	230-272
Sur-reply, Memo of Law	277-300
2/10/22 Transcript	325
Motion Sequence 013	
N/Motion, exhs, *amicus* brief	308-324

Two motions are pending in this action (sequence 6 and 13) and are hereby consolidated for consideration and disposition in this single decision/order. Previously, in a decision/order and interim order dated August 8, 2021 (the "prior decision"), the court converted defendants' motion to dismiss (sequence 6) to a motion for summary judgment pursuant to CPLR § 3211(c). Plaintiffs then cross-moved for partial summary judgment and a determination that defendant Yeshiva University ("Yeshiva") is not a

"religious corporation" as the term is used in Admin. Code § 8-102's definition of a "Place or provider of public accommodation". In motion sequence 13, The Lesbian and Gay Law Association Foundation of Greater New York ("LeGaL") moves for leave to submit a brief of *amicus curiae*. LeGaL's motion is submitted without opposition and is granted. As for sequence 6, defendants' motion is denied, and plaintiffs' cross-motion is granted as follows.

The prior decision is herein incorporated by reference. As the court stated therein, Yeshiva refuses to formally recognize plaintiff YU Pride Alliance, an LGBTQ student organization. The remaining plaintiffs are former students and an anonymous current student. The remaining defendants are Vice Provost Chaim Nissel and President Ari Berman of Yeshiva.

The prior decision was issued in the context of plaintiffs' application for a preliminary injunction for an order compelling Yeshiva to officially recognize the YU Pride Alliance as an LGBTQ student organization. The court denied plaintiffs' motion for injunctive relief because plaintiffs had failed to demonstrate a likelihood of success on the merits at that juncture. In tandem, defendants argued that plaintiff's claims were untenable under the New York City Human Rights Law, Admin Code § 8-101, *et seq.* (the "NYCHRL"), because Yeshiva falls within an exception to its application. Defendants further argued that if the NYCHRL applies to them, such application is unconstitutional. However, defendants' motion was based upon facts and proof which could not be properly considered on a CPLR § 3211 motion to dismiss. After limited discovery, the issue of whether the NYCHRL applies to Yeshiva is ripe for summary adjudication and the present motion sequence is now before the court.

Discussion

Applicable standard of review

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Is Yeshiva a Religious Corporation under Admin Code § 8-102?

This motion turns on whether Yeshiva is a religious corporation within the meaning of the NYCHRL. At first blush, the answer to this question may seem obvious given Yeshiva is an educational institution with a proud and rich Jewish heritage and a self-described mission to combine "the spirit of Torah" with strong secular studies. However, the court must examine the precise language of the NYCHRL exemption which Yeshiva relies on, Admin Code § 8-102, as well as the legislative intent, and determine whether Yeshiva is a religious corporation exempt under the statute as the

legislature intended.

Plaintiffs have sued Yeshiva as a "place or provider of public accommodation" pursuant to Admin Code § 8-107(4) and (20). This statute provides in relevant part as follows:

> 4. Public accommodations.
>
> a. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:
>
> 1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or immigration or citizenship status, directly or indirectly:
>
> (a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation; ...
>
> ...
>
> 20. Relationship or association. The provisions of this section set forth as unlawful discriminatory practices shall be construed to prohibit such discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation, uniformed service or immigration or citizenship status of a person with whom such person has a known relationship or association.

Meanwhile, Admin Code § 8-102, which sets forth the definitions of terms used under the NYCHRL, defines place or providers of public accommodation as follows:

> 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. Such term

> does not include any club which proves that it is in its nature distinctly private. A club is not in its nature distinctly private if it has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for the furtherance of trade or business. **For the purposes of this definition, a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law is deemed to be in its nature distinctly private.** No club that sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements is a private exhibition within the meaning of this definition.
>
> (Emphasis added.)

The NYCHRL expressly excludes "a religious corporation incorporated under the education law" from application of the NYCHRL prohibition of discrimination by places or providers of public accommodation. Yeshiva asserts that it is a religious corporation incorporated under the education law. If that is the case, then plaintiffs do not have a claim under the NYCHRL against Yeshiva for failure to officially recognize YU Pride Alliance.

There is no dispute that Yeshiva is incorporated under the education law. Thus, the court must determine whether Yeshiva is a religious corporation as defendants contend. This court finds that it is not. Defendants' position conflicts with the fact that Yeshiva's own Amendment to its Charter adopted December 15, 1967 provides as follows:

> 1. This corporation, incorporated as The Rabbi Isaac Eichanan Theological Seminary Association under the Membership Corporations Law of the State of New York on March 20, 1897, the name of which was subsequently changed by the Regents of the

> University of the State of New York to Yeshiva University, is hereby continued as an **educational corporation under the Education Law** of the State of New York...
>
> ...
>
> 9. Yeshiva University is and continues to be organized and operated **exclusively for educational purposes**...
>
> (Emphasis added).

Defendants would have this court look beyond its own organizing documents and examine its functions and attributes to determine that it is a "religious" corporation as that term is used in the Section 8-102 exemption. Meanwhile, plaintiffs point to the Religious Corporations Law definition of a religious corporation. Defendants correctly assert that the RCL definition is not outcome determinative since it would render the exemption duplicative insofar as it exempts both religious corporations organized under either the RCL or Educational Law. The court cannot ignore, however, the RCL definition or caselaw that seeks to define religious corporations.

A Religious Corporations Law corporation is a corporation created for religious purposes (RCL § 2). RCL § 2 further defines incorporated and unincorporated churches, clergyman and ministers and funeral entities. Both types of churches are defined as enabling people to meet for divine worship or other religious observances. Two Second Department cases have also defined corporations as religious when the certificate of incorporation specifies religious purposes such as "a place of worship" (*Temple-Ashram v. Satyanandji*, 84 AD3d 1158 [2d Dept 2011]) and "to provide religious services and services to senior citizens" (*Agudist Council of Greater N.Y. v. Imperial Sales Co.*, 158 AD2d 683 [2d Dept 1990]).

Yeshiva's organizing documents do not expressly indicate that Yeshiva has a religious purpose. Rather, Yeshiva organized itself as an "educational corporation" and for educational purposes, exclusively. Defense counsel's arguments about the implications of this court's ruling are overblown. Every school with a religious affiliation or association is not necessarily affected by this court's determination that Yeshiva is not exempt from the NYCHRL. Rather, the inquiry must focus on the purpose of the institution, which is typically expressed in a corporation's organizing documents. There may be schools organized under the education law that have stated a religious purpose so that they are exempt from the NYCHRL under Section 8-102. Since Yeshiva has not done so, the court does not need to reach this issue.

Indeed, defendants concede that Yeshiva's amended charter represented a departure from its initial charter which stated an exclusively religious purpose, to wit, "to promote the study of Talmud". Then, in 1967, Yeshiva amended its charter to state that it "is and continues to be organized and operated exclusively for educational purposes". The court rejects defendants' contention that Yeshiva's amended charter confirmed "that the original religious education purposes carried through". Yeshiva itself broadened the scope of education it was to provide; pursuant to the amended charter Yeshiva was now authorized by the State of New York to confer degrees of: [1] Doctor of Hebrew Literature; [2] Bachelor of Arts; [3] Bachelor of Science; [4] Doctor of Humane Letters; [5] Doctor of Laws; [6] Bachelor of Hebrew Literature; [7] Master of Hebrew Literature; [8] Bachelor of Religious Education; [9] Master of Religious Education; [10] Master of Science; [11] Doctor of Philosophy; [12] Doctor of Medicine; [13] Doctor of Dental Surgery; [14] Master of Art; [15] Doctor of Education; [16] Master of Social Work; [17]

Associate in Arts; and [18] Doctor of Religious Education. The court finds that Yeshiva's educational function, evidenced by its ability to now confer many secular multi-disciplinary degrees, thus became Yeshiva's primary purpose. Even if Yeshiva still "promote[d] the study of Talmud", that does not necessarily make Yeshiva a religious corporation as that term was intended by the City Council when it enacted Section 8-102.

In a letter dated April 27, 2021 from faculty members of the Benjamin N. Cardozo School of Law to defendant Berman, the authors write:

> As members of the Yeshiva University community, the fifty-one undersigned faculty members of Benjamin N. Cardozo School of Law write to express our dismay at the University's continued refusal not to allow undergraduate students to form a group devoted to building community and support for LGBTQ+ students. ...
>
> ... Indeed, at Cardozo, where LGBTQ+ students are a vital part of our community, with an active and engaged student group, no such discrimination is practiced or tolerated. We find it unacceptable that our parent University would adopt such a hurtful policy towards the undergraduate student body.
>
> The University's decision also is unlawful under federal, state, and city civil rights laws, all of which prohibit discrimination on the basis of sex and sexual orientation. **As a non-sectarian institution of higher education, the University must abide by these proscriptions.** We understand that the University came to the same conclusion more than 25 years ago – concluding that it was required by antidiscrimination laws to afford equal treatment to LGBTQ+ students – and the legal protections for LGBTQ+ people have significantly strengthened since that time.

Faculty members, law professors even, within Yeshiva's own community recognize that Yeshiva is not a religious corporation and is subject to the NYCHRL.

Further, Yeshiva itself has long acknowledged that it was subject to the NYCHRL.

A 1995 fact sheet about gay student organizations at Yeshiva prepared by Yeshiva as per a September 5, 1995 letter from David M. Rosen, Director of Yeshiva's Department of Public Relations, provides in pertinent part as follows:

> **1. I've read that there are "gay student clubs" at some of Yeshiva University's graduate schools. Is this true?**
>
> *Yes. A handful of students at two graduate schools have formed organizations – sometimes referred to as "clubs" – to discuss issues of concern to the gay community.*
>
> **2. Which schools have these clubs? How many students are involved? What do they do?**
>
> *Gay student clubs exist at Benjamin N. Cardozo School of Law and Albert Einstein College of Medicine. Informal groups with similar interests have met sporadically at Wurzweiler School of Social Work and Ferkauf Graduate School of Psychology. The student bodies of these graduate-level, professional schools are co-educational and diverse ethnically, religiously, and racially. Altogether about three dozen out of YU's 5,000 students are involved. Their activities generally involve informational and educational meetings. They do not proselytize. These groups have existed for years but went largely unnoticed prior to the recent spate of distorted media reports.*
> ...
>
> **4. Given the strong prohibition against homosexual behavior in Jewish law, why does YU permit gay groups on campus?**
>
> *Yeshiva University is subject to the human rights ordinance of the City of New York, which provides protected status to homosexuals. Under this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does for other student groups.*

At oral argument, defense counsel proffered "Yeshiva would be happy to stipulate to adding a more direct statement of religious purpose in its charter if plaintiffs would agree to dismiss the case." This assertion concedes the point. Yeshiva's charter is not merely form over substance. Its corporate purpose is the basis for licensure and receipt of grants and other public funding. As plaintiffs learned during the course of limited

discovery, Yeshiva submitted various forms to governmental agencies which belie its contention in this action that it is a religious corporation. In 2018, Yeshiva reported in Form CHAR410 to the New York State Department of Law, Charities Bureau, that it was an "educational institution, museum or library incorporated under the NY State Education Law or by special act" rather than an "organization [] incorporated under the religious corporations law or is another type of organization with a religious purpose or is operated, supervised or controlled by or in connection with a religious organization" (emphasis in original). Yeshiva's Director of Tax & Compliance, Alan Kruger, testified that Yeshiva registered as an educational corporation and not a religious corporation because "it would be difficult" to produce documents showing entitlement to the latter exemption.

In a letter dated February 16, 2021, Jon Greenfield, Director of Government Relations at Yeshiva, wrote to Senator Robert Jackson requesting New York State capital construction funding. Greenfield identified Yeshiva as a "501[c][3] not-for-profit institution of higher learning…", not a religious corporation. How Yeshiva represents itself is not merely "form over substance" as defense counsel argues. Rather, the term "religious corporation" as the City Council intended neatly squares with how the term is used in other legal and/or formal applications and settings. Yeshiva is either a religious corporation in all manners or it is not. Yeshiva's decision to amend its charter in 1967 and otherwise hold itself out as non-sectarian since then must be accorded. Thus, the record shows that Yeshiva is not a "religious corporation" on paper, does not hold itself out to be a "religious corporation" and at least 27-years ago knew that it was not exempt from the NYCHRL and was otherwise bound by its antidiscrimination mandates.

The court also does not need to contort itself to ascertain the intent of the legislature when it enacted the NYCHRL, commonly known as one of the most protective anti-discrimination laws in the country. The legislative intent is no better stated than in Admin Code § 8-130, entitled "Construction":

> a. The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.
>
> b. Exceptions to and exemptions from the provisions of this title shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

While the 1965 NYCHRL excluded "colleges and universities" from classification as a place of public accommodation, in 1991, the City Council removed this exemption from the NYCHRL. Thus, the court's determination that Yeshiva is not exempt from the NYCHRL is wholly consistent with the legislative intent of the NYCHRL, which requires that exemption from it be narrowly construed in order to minimize discriminatory conduct.

Even if the court were to adopt Yeshiva's religious function test, the court would reach the same result. Plaintiffs' counsel correctly characterizes defendants' argument on this point: defendants want this court to find that Yeshiva is a religious corporation in the same manner an ordinary person would describe themselves as a religious person. There is no doubt that Yeshiva has an inherent and integral religious character which defines it and sets it apart from other schools and universities of higher education. However, Yeshiva must fit within the term "religious corporation" as the legislature intended the term to mean in the NYCHRL. Yeshiva is a university which provides

educational instruction, first and foremost. Yeshiva's religious character evidenced by required religious studies, observation of Orthodox Jewish law, students' participation in religious services, etc. are all secondary to Yeshiva's primary purpose. "[A] religious corporation should be one formed primarily for religious purposes; exercising some ecclesiastical control over its members, having some distinct form of worship and some method of discipline for violation thereof" (*Naarim v. Kunda*, 7 Misc.3d 1032(A) [NY Sup Ct, Kings Co 2005]). Defense counsel's assertion that "[y]ou cannot step onto the campus or into a batei midrash without recognizing that this is a sacred space for students who are studying there" undercuts defendants' argument. The record shows that the purpose students attend Yeshiva is to obtain an education, not for religious worship or some other function which is religious at its core. Thus, religion is necessarily secondary to education at Yeshiva.

Defendants' reliance on *Scheiber v. St. John's University* (84 NY2d 120 [1994]) is misplaced. In that case, the Court of Appeals found that St. John's University ("SJU") was a "religious institution" within the meaning of the New York State Human Rights Law, to wit Exec. Law § 296(11). Chief Judge Judith Kaye concluded that although SJU was "conceived with the intent of fulfilling a secular educational role, SJU has not abandoned its religious heritage and plainly falls within the exemption for entities that are 'operated, supervised or controlled by or in connection with a religious organization". Exec. Law § 296(11) is more expansive than Admin Code § 8-102 in that the former exempts "any religious or denominational institution or organization, or any organization operated for charitable or education purposes, which is operated, supervised or controlled by or in connection with a religious organization..." Since SJU was "an

educational organization operated in connection with the Vincentian order – a religious institution or organization – SJU is itself a "religious institution" within the language of Executive Law § 296(11)". That fact has no bearing on whether Yeshiva is a "religious corporation" within the meaning of the NYCHLR. Therefore, contrary to defense counsel's contention, *Scheiber* is not on point and this court does not need to "contradict the Court of Appeals to rule in plaintiffs' favor."

Accordingly, the court finds that Yeshiva is not a "religious corporation" as the term is used in Admin Code § 8-102. Defendants' motion on this point is denied and plaintiffs' cross-motion for partial summary judgment is granted to the extent that the court finds that the defendant Yeshiva is not a "religious corporation" as the term is used in the Admin Code § 8-102 exemption of a "Place or provider of public accommodation".

First Amendment implications

The court now must consider whether the NYCHRL as applied to Yeshiva violates Yeshiva's First Amendment rights. The First Amendment to the US Constitution, as applied to the States via the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, ... or the right of the people peaceably to assemble..."

Defense counsel quotes *Obergefell v Hodges*, (576 US 644, 679-680 [2015]) and claims that "[t]he First Amendment ensures that religious organizations ... are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." Defendants argue that plaintiffs' claims as applied to

Yeshiva violate Yeshiva's religious autonomy, the Free Exercise Clause, the Free Speech Clause and the Assembly Clause. Meanwhile, plaintiffs assert that the NYCHRL does not violate defendants' First Amendment rights because "[i]t is a law of general applicability, and the Council's intent to prohibit discrimination in places of public accommodation provides a rational basis for its enactment" citing *Catholic Charities of Diocese of Albany v. Serio*, 7 NY3d 510 [2006].

The NYCHRL and the First Amendment are not incompatible (*see i.e. Salemi v. Gloria's Tribeca Inc.*, 116 AD3d 569 [1st Dept 2014]). In *Catholic Charities*, the Court of Appeals explained that the First Amendment does not protect an individual from valid and neutral laws of general applicability, even when those laws forbid or compel conduct which goes against the grain of a religion. *Catholic Charities* cited *Employment Div., Dept of Human Resources of Oregon v. Smith*, 494 US 872 [1990], in which the Supreme Court upheld a state law of general applicability against a free exercise challenge. In response to *Employment Division*, Congress enacted the Religious Freedom Restoration Act of 1993, which was then held unconstitutional in 1997 by the Supreme Court in *City of Boerne v. Flores*, 521 US 507. Thus, *Employment Division* is good precedent (*see i.e. Matter of Gifford v. McCarthy*, 137 AD3d 30 [3d Dept 2016]).

Defense counsel argues that *Catholic Charities* is no longer good precedent because of *Fulton v. City of Philadelphia, Pennsylvania*, 141 SCt 1868 [2021]). That case, however, found a foster care contract was not generally applicable and thus was subject to strict scrutiny. Nor do cases involving secular exemptions apply, since Section 8-102 contains a very broad exemption for religious corporations organized under the RCL or Education Law and a smaller exception for private organizations.

Assuming *arguendo* that Yeshiva's refusal to recognize an LGBTQ student group is part of its exercise of religion, the NYCHRL's impact on Yeshiva's exercise of religion is only incidental to the NYCHRL's ban on discrimination. There can be no dispute that the NYCHRL is a neutral law of general applicability. It does not target religious practice, its intent is to deter discrimination, only, and it applies equally to all places of public accommodation other than those expressly exempted as distinctly private or a religious corporation organized under the education or religious corporations law. Indeed, the religious corporation carve-out under Section 8-102 was an attempt by the City Council to ensure that the NYCHRL will not be unconstitutionally applied to religious organizations. Thus, Yeshiva's Free Exercise argument is rejected.

The court further finds that Yeshiva's Free Speech rights will not be violated by application of the NYCHRL. Formal recognition of a student group does not equate to endorsement with that group's message (*see e.g. Bd. Of Educ. of Westside Community Schools v. Mergens By and Through Mergens*, 496 US 226, 250 [1990]). What plaintiffs seek is simply equal access to the tangible benefits that Yeshiva affords other student groups on its campus. By following the law and granting the YU Pride Alliance formal recognition and equal access, Yeshiva need not make a statement endorsing a particular viewpoint as defense counsel posits. Moreover, Yeshiva's Graduate Schools have LGBTQ student groups, which undercuts Yeshiva's arguments regarding compelled speech when LGBTQ student groups are already a formally recognized part of the Yeshiva community and have been so for nearly 30 years. Thus, the record shows that Yeshiva knows that formal recognition of LGBTQ student groups does not equate endorsement (see the 1995 Fact Sheet).

Finally, the court is unpersuaded by defendants' association argument, as Yeshiva has not come forward with any evidence that formal recognition of an LGBTQ student group and/or the grant of accommodations, advantages, facilities, and privileges at Yeshiva is inconsistent with the purpose of Yeshiva's mission and will impermissibly infringe on Yeshiva's assembly rights (*Matter of Gifford*, *supra* at 42 ["[t]here is nothing in this record to indicate that petitioners' wedding business was 'organized for specific expressive purposes'"]. The Supreme Court's decision in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* is illustrative. In that case, the Court explained that law schools could not deny military recruiters equal access to their campuses on a theory that such access "impairs their own expression by requiring them to associate with the recruiters" because "just as saying conduct is undertaken for expressive purposes cannot make it symbolic speech, [] so too a speaker cannot erect a shield against laws requiring access simply by asserting that mere association "would impair its message" (547 US 47, 69 [2006] [internal quotations and citations omitted]).

Based on the foregoing, defendants' motion to dismiss plaintiff's complaint on grounds that the NYCHRL as applied to Yeshiva violates the First Amendment is denied.

Remaining issues

The court next considers defendants' motion for dismissal of the claims against Vice Provost Chaim Nissel on the grounds that he is not a decision-maker, but rather, a messenger. There is no opposition to that branch of the motion. Since there is no dispute that VP Nissel is not a proper defendant, that branch of defendants' motion is granted.

In addition to moving for partial summary judgment, plaintiffs request "such other

and further relief as may be just and proper" in their notice of cross-motion. In light of the court's finding that Yeshiva is not a "religious corporation" as the term is used in Admin Code § 8-102, the court finds that plaintiffs are entitled to a permanent injunction restraining Yeshiva and President Ari Berman from continuing their refusal to officially recognize the YU Pride Alliance as a student organization because of the members' sexual orientation or gender and/or YU Pride Alliance's status, mission, and/or activities on behalf of LGBTQ students. There is no dispute on this record that Yeshiva is a place or provider of public accommodation within the meaning of the NYCHRL and that Yeshiva withheld and denied plaintiffs the full and equal enjoyment, on equal terms and conditions, of its accommodations, advantages, services, facilities or privileges because of plaintiffs' actual or perceived sexual orientation. Thus, there is no dispute on this record that Yeshiva's failure to grant such access to the YU Pride Alliance violates the NYCHRL. Therefore, plaintiffs are further entitled to an order directing Yeshiva to provide YU Pride Alliance the full and equal accommodations, advantages, facilities, and privileges of all other student groups at Yeshiva.

CONCLUSION

In accordance herewith, it is hereby

ORDERED that the motion by the Lesbian and Gay Law Association Foundation of Greater New York for leave to submit a brief of *amicus curiae* is granted without opposition and said brief is considered by the court in connection with motion sequence 6; and it is further

ORDERED that defendants' converted motion for summary judgment (sequence 6) is granted only to the extent that plaintiffs' claims against defendant Vice Provost

Chaim Nissel are severed and dismissed; and it is further

ORDERED that plaintiffs' cross-motion for partial summary judgment is granted to the extent that the court finds that the defendant Yeshiva University is not a "religious corporation" as the term is used in Admin Code § 8-102's definition of a "Place or provider of public accommodation"; and it is further

ORDERED and ADJUDGED that defendants Yeshiva University and President Ari Berman are permanently restrained from continuing their refusal to officially recognize the YU Pride Alliance as a student organization because of the members' sexual orientation or gender and/or YU Pride Alliance's status, mission, and/or activities on behalf of LGBTQ students; and it is further

ORDERED and ADJUDGED that defendants Yeshiva University and President Ari Berman are directed 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; and it is further

ORDERED that the balance of defendants' motion sequence 6 is denied; and it is further

ORDERED that the parties are directed to submit a joint letter to the court on or before July 19, 2022 advising as to the status of this action.

This constitutes the decision and order of the court.

Dated: New York, New York
June 14, 2022

So Ordered:

Hon. Lynn R. Kotler, J.S.C.