

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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 5th day of July, 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 _____ at 10:00 AM, or as soon thereafter as counsel can be heard, why an order should not be made:

- i) Pursuant to CPLR 2201, 5519, and this Court's inherent powers, and Rule 1250.4(b) of the Practice Rules of the Appellate Division, staying the execution and enforcement of the Decision and Order of the Honorable Lynn R. Kotler in the above-captioned matter, dated June 14, 2022 and entered on June 24, 2022 ("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 of said Order, and during the pendency of the within application for a stay; and
- ii) 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

MORRISON & FOERSTER LLP
Attorneys for Non-Party
Lesbian and Gay Law Association Foundation of Greater New York
250 W. 55th Street
New York, New York 10019-9710
tfoudy@mofo.com

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

Dated: _____, 2022

ENTERED :

Justice of the Appellate Division, First Department

SUPREME COURT OF THE STATE OF NEW YORK
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AFFIRMATION
IN SUPPORT

I, DAVID BLOOM, an attorney duly admitted to practice law 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 2201 and 5519, this Court’s inherent powers, and Rule 1250.4(b) of the Practice Rules of the Appellate Division, staying the execution and enforcement of the Decision and Order of the Honorable Lynn R. Kotler in the above-captioned matter, dated June 14, 2022 and entered on June 24, 2022 (“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 of said Order, and during the pendency of the within application for a stay; and
- ii) 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. Pursuant to Rule 1250.4(b)(2), by email to Plaintiffs’ counsel, Katie Rosenfeld, Esq., and to Theresa Ann Foudy, Esq., counsel for non-party Lesbian and Gay Law Association Foundation

of Greater New York, on July 1, 2022 (annexed hereto), the undersigned gave reasonable notice of the day and time when, and the location where, defendants' application for a stay and request for interim relief will be presented to this Court.

5. Annexed hereto as Exhibit A (Doc. 329) is a copy of the Decision and Order of the Supreme Court, County of New York (Lynn R. Kotler, J.) dated June 14, 2022 and entered on June 24, 2022, denying in main part Yeshiva's motion for summary judgment and granting Plaintiffs' cross-motion for summary judgment. A copy of Yeshiva's Notice of Appeal from said Order is annexed hereto as Exhibit B.

6. On summary judgment, the trial court recognized that Yeshiva University is the nation's flagship Jewish university "with a proud and rich Jewish heritage" and "an inherent and integral religious character." (Ex. A at 3, 11.) Yet it concluded that Yeshiva has no First Amendment defenses, is not a "religious corporation" within the meaning of the New York City Human Rights Law ("NYCHRL"), and therefore qualifies as a public accommodation subject to all of the nondiscrimination requirements of the NYCHRL. It then entered a permanent injunction ordering Yeshiva and its president to "immediately" upend the status quo and grant official recognition to Plaintiff YU Pride Alliance, an LGBTQ advocacy student group. (Ex. A at 18.)

7. The court's decision is directly at odds with Yeshiva's own religious determination, based on the advice of its *Roshei Yeshiva*, or senior rabbis, that granting official recognition to YU Pride Alliance would be inconsistent with the religious environment that Yeshiva University seeks to maintain on its undergraduate campus. Moreover, decreeing Yeshiva to be a secular public accommodation threatens Yeshiva with further liability under the NYCHRL for its religious standards for students, faculty, and staff on its campuses; its preference for individuals of the Orthodox Jewish faith in certain of its hiring positions; its maintenance of sex-segregated religious study halls for its students; and its myriad other religious practices maintained since its 1886 founding.

8. "Among other things, the [First Amendment's] Religion Clauses protect the right of churches *and other religious institutions* to decide matters 'of faith and doctrine' without

government intrusion.” (*Our Lady of Guadalupe Sch. v Morrissey-Berru*, 140 S Ct 2049, 2060 [2020] (emphasis added).) This means that “religious institutions” have “autonomy with respect to internal management decisions that are essential to the institution’s central mission.” (*Id.*) Yet the trial court completely ignored Yeshiva’s right to decide on its own how to apply Torah values on its campus—even though, in the court’s own words, 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.” (Ex. A at 11.) The First Amendment prohibits this outcome, and properly construed, so does the NYCHRL.

9. A stay of execution, entry, or enforcement of the permanent injunction (Ex. A) is warranted, because absent a stay, Yeshiva will suffer grave and irreparable constitutional harm pending appeal, whereas maintaining the status quo would cause Plaintiffs little to no harm. (*See* 67A NY Jur 2d, Injunctions § 157 (“A permanent injunction is a drastic remedy that may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction.”); *Kane v Walsh*, 295 NY 198, 205 [1946] (same).)

PROCEDURAL BACKGROUND

10. Defendant Yeshiva University is the nation’s flagship Jewish university rooted in Torah values. Yeshiva embraces its Jewish heritage through its commitment to *Torah Umadda*, or the integration of religious learning and worldly knowledge. While Yeshiva’s “specific form and structure has shifted depending on times, needs and circumstances,” its “core mission has always remained the same”: the inculcation of Torah values in its students, particularly its undergraduates. (Ex. B; Ex. C at 31:2-3 (“The mission of Yeshiva University has not changed.”).) Everything at Yeshiva is, and always has been, rooted in Torah values. (Ex. C at 65:14-16; *see also* Ex. S ¶¶ 1, 5, 75, Ex. X ¶ 6, Ex. G ¶¶ 3-4, 11, 17, 19-24, Ex. Z at 9.)

11. Yeshiva takes particular care to craft a religious environment on its undergraduate campuses, because it believes this period of time—when many students are still forming their religious identity—is most critical to the formation of a Torah-centered life. On the men’s undergraduate campus, students spend one to nearly six hours a day studying Torah.

Undergraduate women must take two Jewish studies courses each semester, which meet twice a week for a total of five hours. Yeshiva also shares its campus with the nation's largest Orthodox rabbinical seminary, which is highly integrated with the University's undergraduate programs. Synagogues are located throughout both the men's and women's undergraduate campuses so that students may participate in the regular prayers and other religious services required by Jewish law. And Yeshiva faithfully observes, and asks undergraduates to observe, Orthodox Jewish laws, such as the laws of Shabbat (Sabbath observance) and Kashrut (kosher dietary laws). Campuses, dorms, and prayers are sex-segregated consistent with Torah law and tradition. No major religious decisions are made without consulting Yeshiva's *Roshei Yeshiva*—its senior rabbis. (Ex. G ¶ 53, Ex. X ¶ 6.)

12. All official undergraduate student activities are also subject to University approval for religious compliance. Student leaders responsible for reviewing student club applications are specifically tasked by Yeshiva to uphold Torah values and “enrich the religious atmosphere on campus.” They are asked to authorize a club charter only if it “embod[ies] the Halachic tradition.” Those decisions are subject to review by Yeshiva's Director of Student Life, who is responsible for ensuring that all clubs comply with Yeshiva's religious values and other standards. (Ex. E at 2, Ex. F at 10.)

13. Consistent with this process, and after conferring with its *Roshei Yeshiva*, Yeshiva decided that it cannot put its imprimatur on an undergraduate organization that appears not consistent with Torah values. This decision did not occur in a vacuum. It was the culmination of over a decade of ongoing discussions and dialogue with LGBTQ students at the University, which has resulted in Yeshiva taking several public steps to support students who identify as LGBTQ. For example, Yeshiva has established “a team of administrators, psychologists and rabbanim” to create policies promoting the undergraduate university's “commit[ment] to Torah and commit[ment] to each other.” (Ex. H.) These policies have included “reaffirm[ing]” Yeshiva's longstanding policies against “harassment or discrimination”; updating sensitivity training to include sexual orientation and gender identity; adding a clinician in Yeshiva's counseling center “with specific LGBTQ+

experience”; and creating support groups that allow a safe space for LGBTQ students to gather in the counseling center. Yeshiva remains committed to ongoing dialogue toward the creation of activities and events that promote inclusivity and are consistent with Torah values. (*Id.*)

14. Plaintiffs filed this action in the Supreme Court, New York County, seeking a preliminary injunction and damages under the New York City Human Rights Law (“NYCHRL”). (N.Y.C. Admin. Code §§ 8-102, 8-107.) The injunction sought would force Yeshiva to formally and immediately recognize plaintiff YU Pride Alliance as an official undergraduate club, which would cloud the nuanced message Yeshiva seeks to convey consistent with its Torah values. Copies of the Complaint and Plaintiffs’ Motion for a Preliminary Injunction are annexed hereto as Exhibits S and W, respectively.

15. Yeshiva filed an opposition to Plaintiffs’ motion for a preliminary injunction. (Ex. I.) In response to the Complaint, Yeshiva filed a motion to dismiss pursuant to CPLR § 3211(a)(1); (7). (Ex. D.) Plaintiffs opposed Yeshiva’s motion to dismiss. (Ex. J.)

16. Upon submission of these motions, by Order dated August 18, 2021, the Honorable Lynn R. Kotler denied Plaintiffs’ motion for a preliminary injunction on the basis that it would change the status quo and that Yeshiva was likely exempt from the NYCHRL as a “religious corporation incorporated under the Education Law.” (Ex. K at 6.) At that time, the court rejected Plaintiffs’ narrow interpretation of the NYCHRL’s religious exemption as “contrary to the plain language of the statute.” (*Id.*) The court, however, converted Yeshiva’s motion to dismiss to a motion for summary judgment and authorized limited discovery into the question of Yeshiva’s religious character. (*Id.* at 7.)

17. In sworn affidavits attached to their complaint, Plaintiffs acknowledge that they chose to attend Yeshiva specifically because it is a “religious community,” (Ex. L ¶ 9), that would support their own “religious growth,” (Ex. M ¶ 9). And on summary judgment, Plaintiffs confirmed that “the University has a Jewish identity” that is “deeply important to [its] existence and activities.” (Ex. N at 11.)

18. Under the NYCHRL, a “religious corporation” that—like Yeshiva—is “incorporated under the Education law” is exempted from the law’s public accommodation provisions. Plaintiffs nevertheless argued that Yeshiva was not exempt and cross-moved for summary judgment that Yeshiva *is* a public accommodation. (Ex. N at 14; *see also* Ex. O (Plaintiffs’ Cross-Motion for Partial Summary Judgment), Ex. P (Defendants’ Surreply in support of Summary Judgment), Ex. Q (Defendants’ Opposition to Plaintiffs’ Cross-Motion).)

19. Upon submission of these motions, by Order dated June 14, 2022, the court reversed itself, denied summary judgment to Yeshiva, and granted Plaintiffs’ cross-motion, rejecting Yeshiva’s First Amendment defenses and holding that Yeshiva is not a religious corporation incorporated under the Education Law. (Ex. A.)

20. On Yeshiva’s First Amendment defenses, the trial court acknowledged that Yeshiva had raised a religious autonomy defense, (Ex. A at 13-14), but then failed entirely to address that argument, despite several U.S. Supreme Court cases holding that religious schools and institutions have autonomy to govern their own internal religious affairs. (*See Our Lady of Guadalupe Sch.*, 140 S Ct 2049; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC*, 565 US 171 [2012].) The court also rejected Yeshiva’s Free Exercise defense on the basis that the NYCHRL is a neutral and generally applicable law under the U.S. Supreme Court’s decision in *Employment Division v Smith* and the New York Court of Appeals’ decision in *Catholic Charities of Diocese of Albany v Serio*. The court dismissed the U.S. Supreme Court’s recent unanimous holding in *Fulton v City of Philadelphia* that where a city makes any exceptions to its public accommodations law, it must also make exceptions for religious organizations like Yeshiva. (Ex. A at 14; *see also Fulton*, 141 S Ct at 1879-1882; Ex. P at 16-17.) The court reasoned that since the NYCHRL exempts *some* religious organizations and other private organizations, it could refuse to exempt other religious institutions like Yeshiva and still be generally applicable. (Ex. A at 14-15.) Finally, the court rejected Yeshiva’s Free Speech and Freedom of Association arguments, concluding that Yeshiva had not proved that granting YU Pride Alliance formal recognition would be “inconsistent

with the purpose of Yeshiva's mission," (Ex. A at 16); and that putting its imprimatur on a group that advocated against its Torah values would "not make a statement," (*id.* at 15).

21. The trial court also rejected Yeshiva's statutory argument that it is exempt from the public accommodation provisions of the NYCHRL as a "religious corporation incorporated under the Education Law." (Ex. A at 5.) The court agreed that religious organizations incorporated under the Education Law, and not just those incorporated under the Religious Corporations Law, could qualify for the exemption. (*Id.* at 5-6.) And it acknowledged Yeshiva's deeply religious nature on multiple occasions. (*Id.* at 3 ("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."); *id.* at 11 ("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."); *id.* at 12 ("Yeshiva's religious character [is] evidenced by required religious studies, observation of Orthodox Jewish law, [and] students' participation in religious services, etc.")). Nevertheless, the trial court rejected the prior conclusions from its own August 2021 order, Plaintiffs' extensive admissions, and Yeshiva's substantial body of evidence regarding its religiosity, including undisputed statements and testimony from Yeshiva's president and corporate designee. (*Id.* at 5.)

22. Instead, the court held that, despite Yeshiva's obviously religious character, it somehow does not satisfy the NYCHRL's specific understanding of what is a "religious corporation." (*Id.* at 11-12.) Specifically, the court concluded that Yeshiva's primary purpose is education, that "religion is necessarily secondary to education at Yeshiva," and that only organizations with the *primary* purpose of religion could qualify under the NYCHRL. (*Id.*; *see also id.* at 10. ("Yeshiva is either a religious corporation in all manners or it is not.")). The court also concluded that Yeshiva did not qualify as a "religious" corporation under the NYCHRL, because students do not attend "for religious worship or some other function which is religious at its core," a standard that is both factually and legally erroneous. (*Id.* at 12.)

23. Upon submission of these motions, and by Order dated June 14, 2021, the Honorable Lynn R. Kotler entered a permanent injunction ordering Yeshiva and President Berman to "immediately

grant Plaintiff YU Pride Alliance” official club approval. (Ex. A at 18.) The Order was entered in the Office of the New York County Clerk on June 24, 2022, and served with Notice of Entry on June 24, 2022. (See Ex. A.)

24. Yeshiva filed a Notice of Appeal from the Order with this Court also on June 24, 2022. (See Ex. R.)

ARGUMENT

A DISCRETIONARY STAY SHOULD BE GRANTED

25. It is well settled that the courts of this State may exercise their discretion to stay proceedings, as “courts have the inherent power, and indeed responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them.” (*See Catalane v Plaza 400 Owners Corp.*, 124 AD2d 478, 480 [1st Dept 1986].) In short, “the court’s discretion is the guide.” (David D. Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C5519:4.) “The relief of an injunction is a drastic remedy granted only in a clear case, reasonably free from doubt.” (*Standard Realty Assoc., Inc. v Chelsea Gardens Corp.*, 105 AD3d 510, 510 [1st Dept 2013] (cleaned up).)

26. To obtain a stay pending an appeal, the movant must demonstrate irreparable injury in the absence of the injunction, a favorable tipping of the balance of equities, and a likelihood of success on the merits of the appeal. (*See W.T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981].) The factors which may be considered upon such an application are: (a) the merits of the argument; (b) the potential for prejudice of the movant should the motion be denied; and (c) the potential prejudice of the objector should the motion be granted. (*See Wilkinson v Sukiennik*, 120 AD2d 989 [4th Dept 1986]; *see also Da Silva v Musso*, 76 NY2d 436, 443 n 4 [1990].) Additional factors to be considered by the Court when deciding such an application include whether the appeal has been or will be prosecuted promptly. (*See Kiamesha Dev. Corp. v Guild Props.*, 3 NY2d 981 [1957].)

27. Here, all factors weigh in favor of a stay of execution, entry, or enforcement of the Court’s order pending a determination on Yeshiva’s appeal.

Yeshiva is highly likely to succeed on appeal.

28. Yeshiva is extraordinarily likely to succeed on the merits of its First Amendment and statutory defenses. Simply stated, it is Yeshiva, in consultation with its rabbis—and not the state—that gets to decide whether an undergraduate Pride Alliance or any other club is consistent with the school’s Torah values. First, Yeshiva is concededly religious. (Ex. A at 3, 11, 12.) Thus, under the religious autonomy doctrine, courts cannot interfere in Yeshiva’s internal religious decisions about whether approving particular clubs accords with Torah values. Second, the Free Exercise Clause independently¹ requires that Yeshiva be exempted from the NYCHRL’s public accommodation provisions because other institutions—both secular and religious—have already been exempted, which both triggers strict scrutiny and confirms that the City has no compelling interest in denying Yeshiva the same exemption that others get. The First Amendment forbids courts from favoring secular institutions over religious institutions in granting exemptions. Nor can courts pick and choose among religious institutions to exempt some but not others. Finally, despite the trial court’s strained reading of the law, the NYCHRL itself explicitly exempts institutions like Yeshiva.

Religious Autonomy

29. The Supreme Court’s ruling concedes that Yeshiva is deeply religious. (Ex. A at 3 (“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.”); *id.* at 11 (“There is no doubt that Yeshiva has an inherent and integral religious character[.]”); *id.* at 12 (“Yeshiva’s religious character [is] evidenced by required religious studies, observation of Orthodox Jewish law, [and] students’ participation in religious services, etc.”).) That makes sense, since Plaintiffs themselves have repeatedly conceded Yeshiva’s religious nature in both their complaint and subsequent briefing. (*See, e.g.*, Ex. L ¶ 9, Ex. M ¶ 9 (acknowledging choice to attend Yeshiva specifically

¹ Unlike Free Exercise specific doctrines, the religious autonomy doctrine is grounded in *both* the First Amendment’s Establishment Clause and the Free Exercise Clause, while having roots in “our system of laws” dating back centuries. (*See, e.g., Hosanna-Tabor*, 565 US at 185-189.)

because it is a “religious community,” that would support “religious growth”).) And on summary judgment, Plaintiffs confirmed that “the University has a Jewish identity” that is “deeply important to [its] existence and activities.” (Ex. N at 11.) So it is uncontested and undisputed, by both plaintiffs and the court, that Yeshiva is a religious institution.

30. That admission decides the case. Under the First Amendment, religious schools possess a “sphere” of “autonomy” to make “internal management decisions that are essential to the institution’s central mission.” (*Our Lady*, 140 S Ct at 2060.) They are free to “define their own doctrines, resolve their own disputes, and run their own institutions.” (*Corp. of the Presiding Bishop v Amos*, 483 US 327, 341 [1987] (Brennan, J., concurring).) Their right to “organize ... to assist in the expression and dissemination of any religious doctrine” is “unquestioned.” (*Kedroff v St. Nicholas Cathedral*, 344 US 94, 114 [1952]; *see also Obergefell v Hodges*, 576 US 644, 679-680 [2015] (First Amendment “ensures that religious organizations ... are given proper protection as they seek to teach” their own beliefs regarding marriage and sexuality).) Thus, “all who unite themselves to such a body do so with an implied consent to this government” (*Kedroff*, 344 US at 114), and the civil courts simply may not “intrude[] for the benefit of” those who may disagree, by imposing “the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.” (*Id.* at 119; *see also id.* at 116 (“religious organizations” have “independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine”).)

31. While Plaintiffs certainly disagree with Yeshiva’s decision to not grant YU Pride Alliance official recognition, they recognize and admit that it was a *religious* decision, based on Yeshiva’s Torah values and decided in consultation with Yeshiva’s *Roshei Yeshiva*. (*See, e.g.*, Ex. S ¶¶ 53, 58, 98, 101, 110; *see also* Ex. C at 60:22-61:3, 65:14-17.) Beyond their admissions in the Complaint itself, during the course of litigation, one Plaintiff gave a YouTube interview acknowledging that Yeshiva was “forthright[]” about its reason for denying YU Pride Alliance official club recognition: “The reason why they will reject a club is because it clouds the nuance of the Torah.” (Plaintiff Meisels YouTube Interview at 18:11.) Thus, the goal of this lawsuit, she

continued, is to force “cultural changes” at Yeshiva and “make a statement” about Plaintiffs’ own interpretation of what Torah values should be. (*Id.* at 26:22.)

32. To that end, the Court’s Order requires Yeshiva to “immediately” disregard its own understanding and interpretation of Torah. But only Yeshiva can decide what organizations on campus are consistent with the religious environment it seeks to maintain. The religious environment is “essential to the institution’s central mission” of forming the next generation of Modern Orthodox Jews. (*Our Lady*, 140 S Ct at 2060; *see also* Ex. G at 3 (students living on campus agree “to live in accordance with halachic [Jewish law] norms and Torah ideals”) & Ex. C at 138:20-139:5 (students are “told ... it’s a religious campus, orthodox on campus, prayer, kashrut, [S]habbos.”).) Yeshiva alone has the right to interpret Torah’s “doctrines” and resolve doctrinal “disputes” with its students. (*Amos*, 483 US at 341.) And only it can determine how best to “organize” to “disseminat[e]” its “religious doctrine.” (*Kedroff*, 344 US at 114.) The courts are forbidden from “intrude[ing] for [students’] benefit” to tell Yeshiva how to do these things. (*Id.* at 119.)

33. Although acknowledging Yeshiva’s religious autonomy defense, the lower court’s opinion never addresses it; nor does it even try to explain how, under the First Amendment, it can justify telling a religious university how to interpret and apply its own religious values.

34. The opinion makes many arguments why Yeshiva is not exempt as a “religious corporation” under the NYCHRL. For example, it claims that Yeshiva’s corporate documents “do not expressly indicate that Yeshiva has a religious purpose” (Ex. A at 7.) It claims that Yeshiva offers too many “secular multi-disciplinary degrees” to be religious. (*Id.* at 8.) It claims that Yeshiva’s “[f]aculty members, law professors even” do not consider Yeshiva to be religious (while ignoring statements from Yeshiva’s corporate representative and university president to the contrary). (*Id.*) It claims that Yeshiva has to be religious “in all manners” to be religious at all. (*Id.* at 10.) And it claims that all evidence of Yeshiva’s religious character is “secondary to Yeshiva’s primary purpose” of “educational instruction,” which the court apparently perceived as something

that can be secular only. (*Id.* at 12.) But even assuming that the NYCHRL’s *statutory* exemption allowed such line drawing, the First Amendment manifestly does not.

35. The First Amendment applies to “religious institutions” and “religious exercises” of all kinds—not just a smaller subset of “religious corporations” defined by state law.² (*See, e.g., Burwell v Hobby Lobby Stores, Inc.*, 573 US 682, 708 [2014] (“We have entertained RFRA and free-exercise claims brought by nonprofit corporations.”).) Thus, courts must not “reduce” an institution’s religious identity to “a simple semantic exercise” based on the wording of its corporate documents. (*Carson v. Makin*, 2022 WL 2203333, at *9 (June 21, 2022).) They must look to “the substance of free exercise protections, not on the presence or absence of magic words.” (*Id.*) Because the court and Plaintiffs themselves have conceded Yeshiva’s religious identity, the trial court erred in refusing to even consider, let alone apply, the First Amendment’s religious-freedom protections.

36. “Any 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.” (*Id.* at *10.) Rather, courts must refrain from “second-guessing an institution’s characterization of its own religious nature.” (*Colorado Christian Univ. v Weaver*, 534 F3d 1245, 1266 [10th Cir 2008].) As long as a religious institution’s “mission is marked by clear or obvious religious characteristics,” courts must defer to its asserted religious nature. (*Shaliehsabou v Hebrew Home of Greater Washington, Inc.*, 363 F3d 299, 310 [4th Cir 2004]; *see also Weaver*, 534 F3d at 1266 (to avoid “intrusiveness problem,” courts must “employ neutral, objective criteria” that “defer[] to the self-evaluation of the affected institutions”); *Kroth v*

² To the extent Plaintiffs rely on the Religious Corporations Law (RCL), that would draw the constitutionality of the RCL itself into question. For example, since the RCL has no statutory section that is specifically crafted for Jewish organizations, it has led to entanglement of the civil courts in Jewish governance. (*See Kupperman v Congregation Nusach Sfar of The Bronx*, 39 Misc 2d 107, 112-113 [Sup Ct, Bronx County 1963] (“[B]ecause of the nature of the structure of this religious faith, the appointment and tenure of this ordained spiritual leader ... is a temporal matter about which the court may inquire[.]”); *but see Our Lady*, 140 S Ct at 2060 (“[A] component of this [religious] autonomy is the selection of the individuals who play certain key roles[.]”).)

Congregation Chebra Ukadisha Bnai Israel Mikalwarie, 430 NYS2d 786, 790 [Sup Ct, NY County 1980] (holding that courts assess religious status by looking at its functions).)

37. Otherwise, courts would end up in the business—as here—of weighing how many secular activities a religious institution can have before it is no longer religious; how much of its religion must be described in its corporate documents, as opposed to being openly manifest in its practices, before it is no longer religious; and how many of its staff can mischaracterize it before it is no longer religious. If Yeshiva University does not qualify as “religious,” it is hard to understand what religious organization besides formal houses of worship could.

38. The trial court downplayed this concern, calling it “overblown” and saying that not all religious schools would “necessarily [be] affected” by the court’s weighing of religiosity, since some institutions will “have stated a religious purpose” sufficiently. (Ex. A at 7.) But that only underscores how the trial court reserved for itself the right to make intrusive, subjective judgments about how much religion is enough. The fact that the court, based on generic statements in corporate documents, may adjudge some schools sufficiently religious, but not others, despite their open and obvious religious identity, alone reveals the lawlessness of the approach. (*Larson v Valente*, 456 US 228, 244 [1982] (“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”).)

39. Yeshiva’s President and corporate designee both witnessed at length about Yeshiva’s religious identity. *Supra* ¶ 10. Plaintiffs have repeatedly conceded its religious identity. *Supra* ¶ 29. And the trial court candidly acknowledged its religious identity. *Supra* ¶ 29. Thus, the “authority to select and control” how Yeshiva will carry out its religious mission is Yeshiva’s “alone.” (*Hosanna-Tabor*, 565 US at 195.) The courts have no power to tell Yeshiva how to manage its internal religious affairs. Yeshiva thus is highly likely to prevail on the appeal of its religious autonomy claim.

Free Exercise

40. The U.S. Supreme Court’s Free Exercise jurisprudence separately confirms that Yeshiva cannot be forced under the NYCHRL to overturn its internal religious decisions about how to apply

Torah values on campus. Specifically, the Supreme Court has held that, under the Free Exercise Clause, strict scrutiny applies whenever government regulations “treat *any* comparable secular activity more favorable than religious exercise.” (*Tandon v Newsom*, 141 S Ct 1294, 1296 [2021].) Indeed, just the option to make exceptions, even if none are actually made, is sufficient to trigger strict scrutiny. (*Fulton v City of Philadelphia*, 141 S Ct 1868, 1879 [2021].) And those same exemptions—whether actual or potential—also mean that strict scrutiny cannot be satisfied. (*Id.* at 1882.) Once the government has opened itself to even the possibility of exemptions, it thereby concedes it does not have a compelling interest that “can brook no departures.” (*Id.*)

41. Here it is indisputable that the NYCHRL expressly exempts “distinctly private” clubs and “benevolent orders” (N.Y.C. Admin. Code § 8-102 (definition of “Place or provider of public accommodation”)) and that those exemptions are “absolute and not subject to limitation” (*Gifford v Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 707 NYS2d 722, 723-724 [3d Dept 2000].) These exemptions excuse thousands of organizations with hundreds of thousands of members from compliance with the NYCHRL’s public-accommodation provisions. (See N.Y. Benevolent Orders Law §§ 2, 7 (expressly exempting over 50 different benevolent orders with large memberships, including the Masons, the Knights of Columbus, the American Legion, and the Veterans of Foreign Wars).) Thus, they simultaneously trigger and defeat strict scrutiny. Having exempted so many institutions for secular reasons, New York City cannot refuse to grant an exemption sought for religious reasons.

42. The trial court acknowledged these exemptions, but held that the First Amendment still did not apply—apparently on the ground that the “exception for private organizations” is “smaller” than the “very broad exemption for religious corporations.” But this reasoning is flawed for several reasons. *First*, the court cannot credibly laud the breadth of the religious exemption while simultaneously construing it so narrowly as to exclude an admittedly religious school like Yeshiva University. *Second*, the Court’s reasoning directly contradicts the holdings in *Tandon* and *Fulton*. They hold that “*any*” secular exemption requires that requests for a religious exemption affecting the same government interests must be granted. (*Tandon*, 141 S Ct at 1296; *Fulton*, 141 S Ct at

1879) (true even for strictly *potential* exemptions). *Finally*, as previously noted, the trial court’s decision to subject Yeshiva to the NYCHRL cannot be warranted on the grounds that other religious schools are exempted. That only exacerbates, not justifies, the religious discrimination. (*Larson*, 456 U.S. at 244.)³

The NYCHRL Exemption

43. Yeshiva’s position on the merits is also strong because, as a “religious corporation incorporated under the education law,” (N.Y.C. Admin. Code § 8-102), it is expressly exempted from the NYCHRL. The NYCHRL’s public accommodations provision expressly exempts two different kinds of “religious corporations”: those “incorporated under the education law *or* the religious corporation law.” (N.Y.C. Admin. Code § 8-102 (emphasis added).) The trial court recognized that these two exceptions must be understood “to express ... distinct and different idea[s].” (*Matter of Tonis v Bd. of Regents of Univ. of State of N.Y.*, 295 NY 286, 293 [1946]; *see also* Ex. A at 6 (concluding that the definition of “religious corporation” under the Religious Corporation Law “is not outcome determinative since it would render the exemption duplicative insofar as it exempts both religious corporations organized under either the [Religious Corporation Law] or Education Law.”).)

44. Nevertheless, the court went on immediately to say that it “cannot ignore ... the RCL definition” and proceeded to rely on it to hold that a “corporation incorporated under the Education Law” is only religious if its “organizing documents ... expressly indicate ... a religious purpose.” (Ex. A at 6-7.) That argument is both atextual *and* runs into the same constitutional problems as previously discussed. Where, as here, everyone acknowledges an institution’s obvious religious character, courts would violate the First Amendment if they then withheld religious protections simply because an institution also performs ostensibly secular functions, hasn’t checked the right

³ The Free Speech and Assembly Clauses further support Yeshiva’s position. Respectively, they prohibit a court from compelling Yeshiva’s speech “for no better reason than promoting an approved message,” (*Hurley v Irish-American Gay, Lesbian & Bisexual Grp.*, 515 US 557, 579 [1995]), and protect the right of the Jewish community at Yeshiva to stand against the “hydraulic insistence on conformity to majoritarian standards,” (*Wisconsin v Yoder*, 406 US 206, 217 [1972]).

administrative boxes to detail its religious character in corporate documents, or because non-aligned staff decry the institution's religious beliefs.

45. Unlike the court, Yeshiva sees *all* aspects of education as part of its religious mission. Its motto—*Torah Umadda*—literally denotes the integration of religious and secular knowledge. Its religious mission includes the development of the whole student—mind, body, and spirit. The supposedly “secular” aspect of this education has deep religious significance. It reflects Jewish belief in a God who expects men and women to use their intelligence for the betterment of the world. A “secular” education better enables students to understand the Torah and Jewish history and tradition, it increases their capacity to build and strengthen communities, and it allows them to establish a foundation for their lives from which they can create and sustain families and serve others. This understanding of the religious importance of a secular education is shared across many faith traditions and at most religious institutions of higher education. Thus, when Yeshiva describes itself as “continu[ing] to be organized and operated exclusively for educational purposes,” (see Ex. A at 6), it is not pitting secular education against religious education, as the court presumed; it is describing the entire education of the whole student. Thus, by imposing a strictly secular understanding of education, the court was resolving a *religious* question about what it means for a religious institution to educate the individual.

46. The court made an even more basic error by cherry-picking among the evidence to conclude that Yeshiva has abandoned its religious identity. First and foremost, in citing Yeshiva's 1967 amended charter, the Court disregarded the importance of the language that Yeshiva “***is and continues to be*** organized and operated exclusively for educational purposes. (See Ex. A at 6 (emphasis added).) The “continues to be language” refers back to Yeshiva's pre-1967 purposes, which are defined in its original Certificate of Incorporation as being “to promote the study of Talmud.” (Ex. U.) For the court to focus instead only on the language “exclusively for educational purposes” to conclude that Yeshiva is a strictly *secular* institution not only presumed a definition of “education” that conflicts with Yeshiva's own religious understanding of the term, but also

ignored the actual text of Yeshiva’s amended charter—the very document that the court claimed “conflicts” with Yeshiva’s asserted religious identity.

47. The court also ignored Yeshiva’s Form 990 filing—one of its most publicly accessible corporate documents—which includes pages detailing its religious beliefs, including five core Torah values. (Ex. T.) It also ignored detailed testimony of Yeshiva’s designated witness regarding Yeshiva’s religious character and activities, instead crediting the unsworn statement of a few “law professors” (at one of Yeshiva’s graduate schools not at issue in this case and in a plainly inadmissible hearsay letter) who believe that Yeshiva is “non-sectarian,” (Ex. A at 8), which is not the same as being non-religious in any case. Such subjective application of the evidence inevitably entangled the court in religious questions, allowing it to weigh and waive evidence at whim to make its own determination of how much religion is enough to be religious, and leaving an unprincipled patchwork wherein some religious institutions are protected and some—like Yeshiva—are not.

48. In contrast, New York case law confirms that, rather than parse a religious institution’s corporate documents, a court must accept the institution’s obvious religious functions in determining whether it is a religious corporation under the NYCHRL. Whether a corporation is “religious” is determined by the “purpose for which it was organized” and its everyday “functions.” (*Kittinger v Churchill*, 292 NYS 35, 41, 47 [Sup Ct, Erie County 1936].) This standard does not require “any statements” in a corporate charter evidencing religious intent. (*Id.* at 38.) What it *does* require is that the “actual intent of the incorporators” be that the corporation is religious (*id.* at 38, 48)—an intent manifested by the corporation’s initial “function[s],” how “those in control” understood corporate purposes, religious “inscriptions” on the building exterior, and the “subsequent history of [the corporation’s] function.” (*Kroth*, 430 NYS2d at 790; *In re Religious Corps. & Assns. –Divestment of Prop.*, 784 NYS2d 923 [Sup Ct, NY County 2003] (identifying religious corporation based on its “enabling legislation, corporate purposes and activities, position on this lawsuit,” and “history”).)

49. Here, Yeshiva’s functions provide overwhelming and undisputed evidence of its religious purposes. Yeshiva was initially formed “to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” (Ex. U.) This purpose was broadened throughout the twentieth century to achieve Yeshiva’s *Torah Umadda* mission of united religious and secular studies—adding secular degrees, changing its name to a “University,” creating a separate women’s college, and incorporating under the Education Law (as is required for all universities, *see* 1963 N.Y. Laws 2406-2408 (enacted April 23, 1963)). (*See* Ex. V.) Given Yeshiva’s *Torah Umadda* goal of harmonizing religious and secular studies, broadening the initial religious educational purpose is, literally, to “continue[]” that purpose, as its corporate charter amendment said. (*See* Ex. V (charter amendment).)

50. As Yeshiva’s current President, Rabbi Ari Berman, stated in his 2017 investiture: Yeshiva’s “specific form and structure has shifted depending on times, needs and circumstances, but the core mission has always remained the same.” (Ex. B.) Yeshiva’s corporate representative testified similarly. (Ex. C at 31:2-3 (“The mission of Yeshiva University has not changed.”).) National press perceive the same. (*See* Masada Siegel, *The Kippahs on the Yeshiva University Basketball Court*, WSJ, Nov. 26, 2021, <https://perma.cc/KWB9-JDWA> (“Yeshiva University, which began as a school primarily for Jewish studies and is now a multifaceted university, sticks to its roots.”).) So do plaintiffs. (*See* Ex. N at 11 (“Judaism is deeply important to the University’s existence and activities.”); Ex. J at 1 (“Plaintiffs and Defendants agree that YU’s Jewish character is to be celebrated.”); Ex. M ¶ 9 (“I love Torah learning and came to YU to further my religious growth just like any other student who chooses YU.”); Ex. L ¶ 9 (“YU was a religious community for me too.”).) And while the Court claimed Yeshiva’s purpose was not “primarily” religious, that statement is inconsistent with its observation just one page earlier: 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.” (Ex. A at 11.)

51. Accordingly, when a court does what New York law requires it to do to identify a religious corporation—“look[] through the [corporation’s] structure and determin[e] what it actually is”—

there is only one substantiated conclusion: Yeshiva is a religious corporation incorporated under the Education Law. (*See Kittinger* 292 NYS at 47.)

52. The court's contrary decision overlooked the applicable law. *Kittinger, Kroth, In re Religious Corp.*, and the relevant sections of the Education and Not-for-Profit Laws went undiscussed. The result of these omissions is an analysis that does exactly what the Court recognized it *cannot* do: read the distinct exemption for religious corporations "incorporated under the education law" out of the NYCHRL, and restrict the religious exemption to corporations analogous to those incorporated under the Religious Corporations Law. Thus the court held that Yeshiva was not religious because students do not attend "for religious worship," a characteristic required only for incorporating under the Religious Corporations Law. (*See* NY Relig. Corp. Law § 2.) Indeed, the Court's entire statutory analysis is bookended by the Religious Corporations Law's definition of religious corporation. (*See, e.g.,* Ex. A at 6, 12.) That can't be right. It contradicts the court's own conclusion that "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." (*See* Ex. A at 6.)

53. Underlying this statutory evisceration is the factually unsupportable presumption that Yeshiva's broadened educational purpose somehow eliminated its foundational purpose of religious education. (*See, e.g.,* Ex. A at 7 (claiming Yeshiva "depart[ed]" from its original purpose by "broaden[ing] the scope of education it was to provide").) But this fails as a matter of fact and common sense. As discussed previously, the entire premise behind Yeshiva's broader educational offerings is expanding its **religious** mission of *Torah Umadda*—harmonizing religious and secular studies to educate the whole student. *Supra* ¶ 45.

54. The Court's contrary conclusion never explains how the four documents it relies on can upend over a century of Yeshiva's undisputed, ongoing, deeply religious identity. *First*, the 1995 Memo cited by the Court (Ex. A at 9) specifically did not apply to undergraduate schools, and the Court never contends with what Yeshiva has long explained—that it focuses most intensely on the religious formation of students at the undergraduate level, with that focus lessening (although

never entirely diminishing) as students are older and more religiously diverse within most of its graduate programs (just as the level of specific direction parents provide children over religion changes with time and age). (*See* Ex. X at ¶¶ 7-9.)⁴

55. *Second*, the Court’s invocation of Yeshiva’s CHAR410 form (Ex. A at 10), where Yeshiva did not check a box describing itself as a religious corporation, embraces denominational discrimination. As Yeshiva explained—and the Court never addressed—the only religious entities that could correctly check that box would be those organized in a way foreign to Orthodox Judaism. (*See* Ex. Y at Part I:5 (requiring proof that Yeshiva is “controlled by” another religious organization or proof of inclusion in a denominational directory).)

56. *Third*, the Court block-quotes the unsworn musings of some faculty members at Cardozo Law School. (*See* Ex. A at 8.) Why their views should be outcome determinative—when the views of Yeshiva’s corporate representative and its University President went totally ignored—is as inexplicable as it is unexplained.

57. *Fourth* and finally, the Court cites a letter from Yeshiva’s Government Relations Director to a New York State Senator where Yeshiva called itself a “501(c)(3) not-for-profit institution of higher learning.” (Ex. A at 10.) The idea that this shows Yeshiva isn’t religious—because it didn’t use the magic words “religious corporation”—is as superficial as saying that Yeshiva needs to literally wear its religion on its sleeve to be religious. (Apparently putting a Torah scroll and Hebrew lettering on the University Seal—which appears on virtually all public-facing materials—is insufficient). Indeed, Yeshiva University is widely renowned as the largest and most prominent institution of higher Torah learning, a fact that clearly overshadows whatever words it might use in its corporate documents.

58. Worse still, the Court’s analysis presumes what New York law does not. New York law does not require parsing some imagined fine line between “religious” and “education”—or the idea that the latter must exclude the former. Indeed, the Not-for-Profit Law expressly permits

⁴ To the extent Yeshiva in 1995 may have misunderstood the protection available under the NYCHRL’s religious exemption, (Ex. A at 9), it still never approved a group like Pride Alliance at the undergraduate level.

schools with “one or more” religious and educational purposes. (*See* N.Y. Not-for-Profit Corporation Law § 102(3-b).) And the Education Law is based on that same principle. (N.Y. Educ. Law §§ 216-a(4), (5) (Not-for-Profit Corporation Law governs education corporations where Education Law is silent).) Moreover, New York precedent confirms that a religious association does “educational” work when it “develop[s] and cultivat[es] various . . . moral faculties.” (*In re Moses’ Estate*, 123 NYS 443, 446-447 [2d Dept 1910].) Likewise, the U.S. Supreme Court recently concluded that “[t]he religious education and formation of students is the very reason for the existence of most private religious schools.” (*Our Lady*, 140 S Ct at 2055.) The trial court, on the other hand, came to the conflicting conclusion that while 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,” (Ex. A at 11), Yeshiva does not have a “primarily” religious purpose because its corporate charter “do[es] not expressly indicate” one. (*Id.* at 7, 12.)

59. On the Court’s reasoning, Yeshiva’s “primary” purpose is providing a secular education, despite the religious character evidenced by its name, its seal, its motto, its reliance on *Roshei Yeshiva* on religious questions, the individual *mashgichim* (spiritual advisors) provided every student, its Shabbat observance, its kosher requirements, its observance of all Jewish holidays, its sex-segregated dorms, its Israel study program, intense undergraduate Torah Studies program, and mandatory Torah studies, its *beit midrashes*, where students engage in study and worship, its synagogues throughout campus, its affiliated rabbinical seminary, which shares its campus indistinguishably, and its mezuzahs and other religious symbols and imagery throughout campus, just to name a few “secondary” examples. (Ex. A at 12 (“religion is necessarily secondary to education at Yeshiva”).) If all that is lacking is that Yeshiva has not adequately described its religious character in its corporate documents, then despite the court’s repeated insistence to the contrary (Ex. A at 9, 10), it is elevating form over substance. This hairsplitting construction is no basis to enter equitable relief against Yeshiva. (Ex. A at 12.) Rather, it is the very definition of elevating form over substance. (*Cf. Kittinger*, 292 NYS at 47 (merely because company “brought into existence as a stock or profit corporation does not preclude a court of equity from looking

through the structure and determining what it actually is. It is a maxim of equity that it regards substance rather than form.”).)

60. By reducing the NYCHRL’s religious corporation exception to a magic words test, the Court needlessly raised “serious First Amendment questions” concerning the scope of the NYCHRL’s religious exemption—questions that this court must construe the NYCHRL to avoid. (*NLRB v Catholic Bishop of Chi.*, 440 US 490, 504 [1979].) Because ruling for plaintiffs requires putting the NYCHRL on a collision course with the First Amendment, it can be said for certain: Yeshiva is likely to succeed on the merits.

Prejudice absent a stay.

61. Yeshiva will suffer extreme prejudice if the Court’s permanent injunction is not stayed. The Court’s permanent injunction requires Yeshiva to “immediately” violate its Torah values and give YU Pride Alliance club status. (Ex. A at 18.) Practically, this would override Yeshiva’s religious decision, informed by its *roshei yeshiva*, about how to maintain the religious environment it envisions for its campus. This would immediately change the religious atmosphere at Yeshiva, create an impossible clash in how Yeshiva understands its religious identity, and deny Yeshiva’s right to make these types of religious decisions for itself. Necessarily, failing to stay the Court’s permanent injunction would transform the status quo pending appeal, putting the courts in control of how Yeshiva applies the Torah and carries out its religious mission. Forcing Yeshiva to reinterpret its 3,000-year-old understanding of Torah, “for even [a] minimal period[] of time,” is textbook irreparable harm. (*See Tandon*, 141 S Ct at 1297.) Once this harm occurs, the deed is done. No later reversal by the Appellate Division—or the Supreme Court of the United States—will change that.

62. For over a decade, Yeshiva University and LGBTQ undergraduates, including representatives of YU Pride Alliance (and earlier organizations that went by different names) have productively engaged in extensive dialogue over how Yeshiva can help LGBTQ students feel more welcomed on campus in ways that reflect Torah values. The court below erred by disrupting that

process to force a solution inconsistent with Yeshiva's right to determine how best to apply its own religious beliefs and practices.

63. By contrast, Plaintiffs will suffer no prejudice from a stay. They are not seeking protection of an existing right. The NYCHRL's religious exemption confirms that religious schools like Yeshiva are not subject to the law's restrictions on public accommodations. And even if that were not so, the First Amendment confirms that religious institutions like Yeshiva have the right to control how they carry out their religious mission, especially where—as here—the law exempts other entities for secular reasons. (*Tandon*, 141 S Ct at 1296 (“[G]overnment regulations are not neutral and generally applicable ... whenever they treat *any* comparable secular activity more favorably than religious exercise.”); *Fulton*, 141 S Ct at 1877 (“A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions.”) (cleaned up).)

64. Furthermore, this is not a case in which Plaintiffs will suffer “irreparable injury” absent a permanent injunction. (*Cf. Goldstone v Gracie Terrace Apt. Corp.*, 110 AD3d 101, 105 [1st Dept 2013].) Yeshiva University's religious identity is well known, particularly among students seeking to attend, including Plaintiffs. *See supra* ¶ 50. And every student admitted undergoes an individual interview, in which the University's religious nature and expectations for students are further emphasized. *See* Ex. C at 78:21 – 79:1-7. The University has also been in dialogue with students about an LGBTQ club for at least a decade—an issue that is well known and understood within the broader Yeshiva community. In short, no student, including the individual Plaintiffs or other members of YU Pride Alliance, reasonably could claim any right to control the University's religious beliefs and practices. Rather it is Yeshiva University itself that would be irreparably harmed by being forced to violate its religious beliefs—a harm not only inherent in the violation itself but also reputational in the minds of current and future students who come specifically because they share the University's religious beliefs. Thus, a stay should be granted pending the resolution of all available appeals.

65. Yeshiva will without question argue its appeal with due diligence, as it needs to protect its right to religious autonomy under both the NYCHRL and the First Amendment.


66. No prior formal application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that this Court grant defendant YESHIVA UNIVERSITY's motion for a stay of the execution, entry, and enforcement of the Supreme Court's Order of June 14, 2022 and entered on June 24, 2022, and for such other and further relief as to this Court may seem just and proper, pending the outcome of this motion and appeal of the Court's Order.

Dated: New York, New York

July 5 , 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, ESQ.

- Exhibit A -

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

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

PART 8

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



J.S.C. J.S.C.
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,

DECISION/ORDER

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

Plaintiff(s),

-against-

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

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

Defendant(s).

-----X
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, <i>amicus</i> 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.

- Exhibit B -

Investiture Speech of Rabbi Dr. Ari Berman

— Transcript of Rabbi Dr. Berman's speech as delivered

Sunday, September 10, 2017

Thank you, Rabbi Schacter, for your incredibly moving and generous words. Your friendship and mentorship has long been a source of great blessing and inspiration to me and I am honored to share the podium with you on this special day.

Chairman Moshael Straus; members of the Board of Trustees of Yeshiva University; Rabbi Joel Schrieber; members of the Board of Trustees of RIETS; past presidents, Dr. Norman Lamm and President Richard Joel; Rashei Yeshiva; Rabbis; faculty and deans; our Honorary Chairman, Mr. Mark Wilf; distinguished dignitaries, senators and ambassadors, presidents and representatives of the broader university community; respected leaders of our administration, professionals and staff; dear alumni; friends and supporters; and most especially our beloved students:

It is deeply humbling to stand here today in this hallowed hall, this hall through which the voices of our past continue to echo across the generations, the voices of our early presidents, Dr. Bernard Revel and Dr. Samuel Belkin, and those of the great scholars and sages who have lectured from this pulpit, most notably our revered teacher of blessed memory Rabbi Joseph B. Soloveitchik. As we embark on this next phase of Yeshiva University's illustrious history, I am fully conscious of the fact that we are only here today because of the incredible work and sacrifice of so many leaders who have come before us. Whatever success we hope to achieve in shaping our future will be due to the fact that we are standing on the shoulders of giants, and I begin my talk today by asking you to join me in showing recognition and appreciation to the third and fourth presidents of Yeshiva University, Dr. Norman Lamm and President Richard Joel.

I first stepped into this room when I was 13 years old as a student of the Marsha Stern Talmudical Academy. Since that moment, I have been inspired and nourished by Yeshiva University. My studies — high school, college, graduate school, ordination, post-ordination, and my early teaching career — all occurred at YU. Even my wife — I met Anita when I was a senior in high school on the MTA-Central blind date event.

Intellectually, spiritually and socially I am a product of this special institution.

Most new presidents of universities need to learn the story of their institutions to understand their narrative and their purpose, but I do not need to read a history book to understand Yeshiva University. It is in my heart and it is in my soul, as it is in the heart and soul of so many of you who are sitting here today and so many people who are our friends and partners throughout the world.

Before I officially started as president in June, I spent three months living on campus commuting back and forth from Israel. When I moved out after graduating college in 1991, I have to admit that I never thought that, 26 years later, I would move back into the Morg dorm, but life is full of surprises.

During this time, I had the opportunity to speak with board members, alumni and supporters as well as meet with the faculty, administrators and professional staff of each of our schools, and spend much quality time with our students. And in most of my meetings, I asked the same question. What does Yeshiva University stand for?

Perhaps, unsurprisingly, there were many different answers and often there was no answer at all.

This is a crucial question for us. Yeshiva University is, of course, an institution; it has campuses, buildings and students. But, at its core, Yeshiva University is an idea. And it is this idea that gives us our strength and positions us to be the educational and intellectual epicenter of a large global movement. Therefore, before I outline our direction for the future of the institution, in the first part of this talk I need to address the question of Yeshiva University as an idea. What is Yeshiva University? What does it stand for?

In my mind, there are five values that personify Yeshiva University, which I would call the Five Torot or the five central teachings of our institution.

The first is Torat Emet — we believe in truth.

We believe that God gave the Torah to Moses at Mount Sinai. We believe that in that Torah there are eternal values, not subject to the vagaries and vicissitudes of history. It is this pursuit of truth that animates our intense study of Torah during the day and deep into the night which, in turn, deepens our relationship with God.

But we also believe that our goal is not simply to sit, study and live in some ivory tower but that we must be fully engaged in the world and responsible to the world.

We do not just believe in Torat Emet but also Torat Chayyim — that our truths and values must live in the world.

Who are our graduates?

They are rabbis and Jewish educators and they are lawyers and doctors, accountants and financial analysts, social workers and psychologists, mothers and fathers, community leaders and leaders of industry — all of whom are out in the world, acting daily as productive citizens of society.

And we are uniquely qualified to raise engaged Jewish citizens for whom Judaism is vibrant and essential to their lives. Many of our students come to campus with a full day school education; some of our students come from public school, with little to no previous Jewish education. Here in Yeshiva University our students find friends for life, and often even soul mates and partners for life. Here in Yeshiva University our students have the opportunity to not just learn about Judaism but to experience Judaism, to appreciate that Shabbat is not just something we keep, it is something we treasure, and that living a life of faith adds great meaning and joy to one's life.

generation with the tools for critical critique and self-reflection so that they can not only weather the storms and tempests of contemporary moral discourse but also leave here both rooted and nimble, anchored in our values and equipped with the language and sophistication necessary to succeed as leaders in the world of tomorrow.

By offering in one institution a comprehensive, integrated educational program that produces the Jewish leaders of the next generations who are firmly committed, forward focused, engaged in the world and pillars of society, Yeshiva University is the world's premier Jewish educational institution.

But Yeshiva University is not just for our Jewish students. We are also proud to include a large non-Jewish population in our graduate programs, and this message applies to you as well.

The educational philosophy of Torah u-Madda is based on Maimonides' directive to accept the truth from whatever source it comes. We know that there are great truths to be discovered in the study of the human mind, the physical world, literature, legal interpretation and more. Our belief in the higher purpose of education is true for all of humanity. In addition, Torat Chayyim requires everyone to be engaged in the project of applying these values and truths to the world, and we look to all of our faculty and intellectual leaders to guide us in this effort. As such, by utilizing our vast, interdisciplinary resources, Yeshiva University is uniquely positioned to address the most pressing moral issues of the day. In an era in which there is a breakdown of civil and civic discourse, we stand proud as educators, thought leaders and moral voices for our generation.

These are our first two values: Torat Emet and Torat Chayyim.

But Yeshiva University does not only believe in truth, it also believes in humanity.

Our tradition teaches us that each individual is created in God's divine image and that it is a sacred task for each individual to hone and develop their unique talents and skills. In addition, we are charged with the obligation to use these unique gifts in the service of others; to care for our fellow human beings; to reach out to them in thoughtfulness, kindness and sensitivity, and form a connected community. These two values, humanity and compassion, are our next two Torot: Torat Adam and Torat Chesed.

One of the aspects of YU that simply amazed me when I was walking around the university in the spring is the way in which these themes of Torat Adam and Torat Chesed manifest themselves in each of our schools.

For example, in Cardozo, Professor Jocelyn Getgen Kestenbaum leads the Ferencz Human Rights and Atrocity Prevention Clinic, which fights against human rights violations and genocides around the world. Dr. Bill Salton heads the Parnes Clinic of the Ferkauf School of Psychology which provides low-cost, high-quality psychological treatment for a Bronx population that would not otherwise be able to afford it. The Wurzweiler School of Social Work is launching a new innovative mental health clinic, which will help people from all walks of life cope with life stress issues. When I was visiting the Albert Einstein College of Medicine I encountered a group of people sitting around a table who were introduced to me as super-scientists. I asked them about their research and each shared with me their work on some matter crucial to the betterment of humanity. One was a leader in the fight against AIDS, another the Zika virus, a third, breast cancer.

representative science program, and a program in which every freshman science undergraduate students go to the local Manhattan public schools to teach children about science and technology. When I heard this I was very impressed, but it was only later that I discovered that this program was actually launched by undergraduate students at Yeshiva University seven years ago and has subsequently spread to chapters in countries across the world. And this is emblematic of our student body, as hundreds of our students participate in these kinds of programs throughout the academic year, channeling their unique talents into extraordinary acts of kindness. Just last week our Student Life department initiated student-led missions to Houston to help our fellow citizens recover from Harvey. Within minutes our sign-up sheet had over a hundred students volunteering to go.

And this is what we do. At Yeshiva University, we teach our students to fight for justice; to fight for the underprivileged; to fight against violence; to fight against disease.

But most of all, at Yeshiva University we teach our students to fight against indifference.

The values of Torat Adam and Torat Chesed pervade our entire university, fusing a lofty sense of human dignity with an inspiring commitment to compassion.

These are our first four principles: Torah that is True and Torah that is alive; a belief in human capacity and the need to reach out to others.

And there is a fifth: Torat Tziyyon, the Torah of Redemption.

Torat Tziyyon of course directly relates to the project of building the modern State of Israel. And this is very important to us as proud Zionists. We certainly encourage students to move to Israel and we encourage those who live outside of Israel to devote their time and resources to help Israel further its role as a shining light to humanity. But it is also much more than that, because the return to Israel in Jewish theology is, in and of itself, part of a much greater narrative. Torat Tziyyon tells us that we are not accidents of history, nor even simply participants in history, but we are drivers of history.

Torat Tziyyon requires us to understand that as human beings we all have one common, overarching goal, and that is to redeem the world, and transform it for the better; to birth a world suffused by justice, goodness, prosperity and transcendence. If, as Martin Luther King Jr. proclaimed "The arc of the moral universe is long but it bends towards justice," then Torat Tziyyon charges us with the task of moving history forward. This directive applies to all of humanity. And at this moment in time — more than at any point in the entire span of Jewish history — the Jewish people are capable of partnering with the full breadth of humanity to move history forward.

Let me share with you a personal story that illustrates this point.

My wife's grandmother, Bubbe, is an extraordinary woman who survived the Holocaust by evading the Nazis hiding in caves, forests and cemeteries. She was born in Poland, and had a large family including her brother Pinchas to whom she was very close. Her childhood sweetheart, Shlomo, eventually became her husband and together they lived a relatively quiet and peaceful life. But then the Nazis invaded Poland, entered their town, and gathered and killed all of its Jews. Bubbe managed to escape into the woods with Shlomo and a few of their

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forward the story by a couple of decades, and one day Bubbe received a call from a friend of hers who just returned from a trip to the former Soviet Union. “Cyla” she said, “You need to sit down, I have something astounding to tell you. Your brother, Pinchas – he is alive. While you ran west, he escaped east. You each thought the other was dead, but Pinchas is alive and living in Russia.” Bubbe immediately contacted him, but they were never able to meet, as soon afterwards Pinchas died. Pinchas, though, had a daughter named Gala, who married Vladimer. When they had a son, they named him Pinchas, after her father. Some years later, the Iron Curtain fell, and Gala and her family moved to Israel. Shortly thereafter, Anita and I were studying in Yeshiva University’s center in Israel. At the end of the year, Anita gave birth to our first son, whom we named Shlomo after her grandfather who had recently passed away. I still remember the scene when Bubbe came to Israel for the bris. She was sitting with her new great grandson, Shlomo, on her lap, when in came a woman who carried a clear family resemblance. It was her niece Gala whom she had never previously met. And with Gala came a little boy named Pinchas. And when Pinchas ran over to see the baby, once again Bubbe was surrounded by Pinchas and Shlomo.

You see, they thought they could kill us, they thought they could remove us from the earth, but Pinchas and Shlomo were alive again, and this time they connected with each other in Jerusalem, the capital of the modern Jewish State of Israel. Bubbe’s life represents the dramatic story of the Jewish people in the modern era, a story of an indomitable spirit able to transcend destruction and to rebuild a lost world.

It is my great joy at this point to pause for a moment and acknowledge the presence of a woman who is over 100 years old, *beli ayin ha-ra*, who is here with us today celebrating the investiture of her grandson — ladies and gentlemen, my Bubbe.

[Applause]

To me, this story highlights the reality of the Jewish world today, as it provides a stark contrast with the Jewish world of yesterday. The prophet Ezekiel foretells a wondrous future in which the dry bones of Israel are brought back to life, but for us living today we know that this is no dream; it describes our reality. Pinchas and Shlomo once left for dead have now returned in a new generation. And look at the world that they face today. It is an era that is simply unprecedented in Jewish history.

We live in an era that is miraculous and wondrous. The Jewish people are no longer lost in exile but have once again returned to their homeland. Torah study is open and accessible throughout the world. Where once we might have looked at our neighbors and saw only persecutors, today we may look at them and see potential partners. And this presents us not only with great opportunities but also great responsibilities.

As Rabbi Soloveitchik taught us in 1956, in this very room, from this very podium — some of you may even have been in this room — *kol dodi dofeq*, the voice of God is metaphorically calling to us, knocking at our door. He has placed us in this incredible time, and he beckons us to respond.

Yeshiva University represents the kinds of thinkers and dreamers who have always believed in embracing history and its opportunities. Now more than ever before it is time to think bigger, to think beyond our individual selves, to

Torat Emet, Torat Chayyim, Torat Adam, Torat Chesed and Torat Tziyyon — Truth, Life, Humanity, Compassion and Redemption.

These are the Five Torot that differentiate us and are our identity. They root us deeply within a structured value system while providing moral guidance and direction in living our lives. They propel us to develop our talents and skills while directing us to reach outwards and connect to others in kindness. And they inspire us with a grand, historic purpose to make a difference, and impact the world.

This is what we believe Judaism represents and what God wants from all of us. This is not just about Modern Orthodoxy, or even Orthodoxy. These are our messages to the Jewish people and to the world at large.

This is who we are — this is our philosophy of life.

And now that we have discussed the idea of Yeshiva University, we can focus on outlining the future of Yeshiva University as an *institution*. Once we have established who we are, we can now lay out where we are going. And I have to tell you that the future of Yeshiva University as an institution is bright and it is exciting.

When Yeshiva was founded in the early 20th century, it met the needs of an Orthodox Jewish immigrant population with limited higher education possibilities. Over the generations, our specific form and structure has shifted depending on times, needs and circumstances, but the core mission has always remained the same. At this point, the world has changed greatly but our task of educating the next generation of students and future leaders has not changed, it has just shifted to be in synch with our new realities. Today, perhaps more than ever before, there is a need to raise generations of students who are both deeply rooted and forward focused. And Yeshiva University will continue to look ahead into the future to open up new worlds for them.

And I say this specifically in respect to three areas in which we will be looking to expand.

First, new industries:

We will continue to excel at educating our students in the areas of law and medicine, accounting and finance, social work and psychology, education and scholarship. But as the global economy evolves we will also create new opportunities for our students in the areas of STEM — science, technology, engineering and mathematics — as well as in the health fields. The marketplace of tomorrow will feature high demand for graduates trained in coding, data analytics, quantitative analytical skills, as well as those with entrepreneurial experience, and we will be preparing our students with the skill sets necessary to succeed in this new reality.

Second, new markets of students:

In our graduate and undergraduate programs we will be diversifying our offerings and utilizing the latest technological innovations allowing for greater accessibility to attract new student populations both in the United States and internationally. Moreover, we will actively seek to attract students who represent the values of our institution, who are role models of our Five Torot, including students who show a propensity and passion for their Torah studies, or who display extraordinary capabilities in areas that create new knowledge like in science and

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for *sherut leumi*, national service, or volunteering to become members of Tzahal, soldiers in the Israeli army, or students who volunteer to join the United States Armed Forces. We already have a significant number of these students in our ranks and we will work to attract even more of such people in the years ahead, as these are the young men and women we wish to showcase to our community as role models and future leaders,

And finally, new educational pathways:

We conceptualize Yeshiva University as a single, interconnected network, instead of a collection of separate schools. As such, new connections between our graduate schools and new pipelines between our undergraduate and graduate programs, like the Einstein College of Medicine, the Cardozo School of Law and the newly developed Katz School, will enable our students to complete their studies here market-ready and poised for immediate success. In addition, our tens of thousands of alumni and friends are a crucial part of our network and will play an important role in our new educational models as connectors who will help place our students at summer positions or advanced internships between their college and graduate school years. Moreover, we are looking to partner with the graduate schools of other stellar institutions in their areas of expertise.

One manifestation of all of these points will be our new connections with Israel. As we know, Israel is no longer simply a charity case for Diaspora Jews, but is now an economic powerhouse and major resource specifically in areas of innovation. Over the past few months, we have been working to formulate partnerships with universities in Israel, and I am excited to report that just last week we reached agreements with Bar Ilan University and the Hebrew University to create bridge programs between our institutions so that a YU student who earns a BA in computer science can complete her or his studies with a Master's degree at Bar Ilan or the Hebrew University in such areas as data science, cybersecurity and information technology. Through the assistance of our alumni, this program will include high-level internships in the start-up and hi-tech industries in Israel. We have been closely working with Israel's education ministry and government on this project, and they are providing us with substantial support because they see Yeshiva University as their natural partners. There will be more announcements like this in the future but my point now is that we will continue to leverage our close ties with Israel to create these kinds of pipelines so that our students will receive the best training in the skill sets necessary to succeed in the marketplace of the future, and the world of tomorrow.

But Israel is just the beginning. The global economy is evolving and emerging markets in places like East Asia and India are growing in importance. We already have a relationship with a number of universities in China, and have over 30 Chinese students enrolled in our Katz School, and we will be looking to expand further. In addition to growing our tuition base, these efforts will allow us to spread Jewish values and ideas across the world, help shape future global partners and ambassadors for Israel and the Jewish community, and enable our students to develop a worldwide network that will be crucial for their success in the future.

But most importantly, all of these innovative and exciting initiatives will be advanced within the context of the Five Torot. Since its founding, Yeshiva University has looked to open new worlds for its constituencies, placing them within the framework of our moral and religious ideals. Tomorrow's Yeshiva University will continue in that effort. Our differential will always be our Torot, our values and teachings, our sense of rootedness, together with our drive to engage the world, directing the development of our own special skills in the service of others, with the

We live in a rapidly changing world. Technology, medicine, education, and communications are progressing and shifting in fundamental ways. This presents daunting challenges but also extraordinary opportunities for humanity. Armed with a 3,000-year-old tradition of wisdom, Yeshiva University's mission is to guide our students and broader society in seizing these opportunities and transforming our world of tomorrow for the better. We will dedicate ourselves to empowering morally-mature, market-ready graduates with the skill sets for lifelong success, endowing them with both the will and the wherewithal to make a historic, significant impact on an ever-changing world.

This is the future of Yeshiva University.

I will close with one final story:

Last week I spent Shabbat at our Beren campus with our undergraduate women. And in a talk at the end of Shabbat I mentioned to our students how important it is for us to come together as one united whole; that in a time in which competition and self-focus are the underpinnings of the society in which we live, our student body must exemplify the value of supporting one another and rooting for each other's success. And I mentioned to our students that I am rooting for them, that I am rooting for each of them to succeed in life. And then one woman in the crowd shouted out: "Rabbi, we are rooting for *you*!"

I was very moved by what she said. And I want to tell you that this is the feeling that I have been experiencing both from inside and outside our university. Over the last number of months, I have been visiting many communities in this country and beyond, and the overwhelming feeling that I have walked away with is how many people are rooting for us to succeed. I have repeatedly encountered a clear appreciation of the crucial importance of Yeshiva University, of the necessity for Yeshiva University to live up to its own ideals, to raise the next generations of leaders, and to serve as not only the premier Jewish higher educational institute but also the spiritual and intellectual epicenter of a robust global movement that unites the international Jewish community together with all of our partners and friends in its dedication to promoting the moral and material betterment of human society.

On and off campus, there is a great feeling about this moment and a great excitement for our future.

To all of you who have long been part of the Yeshiva University community, who have been nurtured by this institution, who deeply understand the enormous potential that lies within our mission, who wish Yeshiva University not only to grow and expand but to rise and become the place it was always meant to be, and for all those who are new to us, who are meeting Yeshiva University for the first time, who identify with our values, who see the importance of such an institution for the Jewish community and the broader society — now is the time to get involved. The participation of each and every one of you will make a real difference, strengthening and energizing our renewed sense of purpose.

For all of you sitting here today and for all of our friends who are listening throughout the world — now is the time to come together.

Join us in our journey. Be a part of history, as we maximize our potential, write a new chapter in the Jewish story and work to make a lasting impact on the history of all of humanity.

- Exhibit C -

Page 1

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

-----x

YU PRIDE ALLIANCE, et al.,
Plaintiffs,

-against- Index No.
154010/2010

YESHIVA UNIVERSITY, et al.,

Defendants.

-----x

November 23, 2021
9:10 a.m.

Deposition of RABBI DR. YOSEF KALINSKY,
taken by Plaintiffs, pursuant to Notice, held
at the offices of Emery Celli Brinckerhoff
Abady Ward & Maazel LLP, 600 Fifth Avenue,
New York, New York, before Joseph R. Danyo,
a Shorthand Reporter and Notary Public within
and for the State of New York.

HUDSON COURT REPORTING & VIDEO (212) 273-9911

Page 2

1
2 A P P E A R A N C E S :
3

4 EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Attorneys for Plaintiffs

5 600 Fifth Avenue, 10th Floor
New York, New York 10020
6 (212)763-5000

7 By: KATHERINE ROSENFELD, ESQ.
MAX SELVER, ESQ.

8
9 THE BECKET FUND FOR RELIGIOUS LIBERTY
10 Attorneys for Defendants
11 1919 Pennsylvania Avenue N.W., Suite 400
Washington, D.C. 20006
12 (202)955-0095

13 By: ERIC S. BAXTER, ESQ.
14 ABIGAIL E. MAJANE SMITH, ESQ.

15 Also Present:
16 ANDREW J. LAUER, ESQ.,
Yeshiva University

17 ~oOo~
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22
23
24
25

Page 3

1 KALINSKY
2 RABBI DR. YOSEF KALINSKY, having been first duly
3 affirmed by Joseph R. Danyo, a Notary Public, was
4 examined and testified as follows:
5 EXAMINATION BY MS. ROSENFELD:
6 Q. Good morning, Rabbi Dr. Kalinsky. We
7 met off the record. My name is Katie Rosenfeld.
8 I am one of the lawyers representing the plaintiffs
9 in this lawsuit. Thank you for being here today.
10 Have you ever had your deposition taken before?
11 A. No.
12 Q. Very briefly I will explain how we
13 proceed. I will ask you a series of questions, and
14 you will respond to my questions the best you can.
15 I ask that we try not to speak over each other
16 because the court reporter is taking down my
17 questions and your answers. Does that make sense?
18 A. Sure.
19 Q. We also have to answer all questions
20 verbally out loud because the court reporter can't
21 take it down when we shake our heads or we say
22 um-hum or things like that, so I may remind you
23 from time to time because it is a little bit
24 unnatural.
25 If at any point you would like to take a

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1 KALINSKY
2 break, please let me know. The only thing I ask
3 is that we not break while there is a question
4 pending, so, if I ask a question, I ask that you
5 answer it, and if you need to take a break, let me
6 know, and then we will take a break. Does that
7 make sense?
8 A. Sure.
9 Q. If at any point you want to take a break
10 to use the restroom, to stretch your legs,
11 anything, let me know. I know we have agreed to
12 take a lunch break between 12:30 and 1:30.
13 A. Correct.
14 Q. And I think those are all the basic
15 instructions. Your attorney from time to time may
16 make objections. Unless your attorney instructs
17 you not to answer, that's an objection that's being
18 noted for the court record, and you can still
19 answer the question. Do you understand that?
20 A. Can you say that one more time.
21 Q. So, from time to time, I will ask you a
22 question and your attorney, Mr. Baxter, may object
23 to my question. If he simply says objection and he
24 doesn't instruct you not to answer the question,
25 you can still answer the question.

Pages 1 to 4

Page 5

1 KALINSKY
 2 A. Okay.
 3 Q. He's making an objection for the record
 4 to preserve it for a later evidentiary ruling.
 5 A. Okay.
 6 Q. So, unless he instructs you not to
 7 answer, don't be thrown off by these objections.
 8 They're really for the record. Do you understand?
 9 A. Yes, I understand.
 10 Q. You are currently the Dean of
 11 undergraduate Torah studies at Yeshiva University,
 12 is that correct?
 13 A. That is correct.
 14 Q. And you graduated from Yeshiva College
 15 in 2000, is that right?
 16 A. Yes.
 17 Q. And you attended RIETS and became an
 18 ordained rabbi from that institution?
 19 A. Yes, I have ordination. Yes.
 20 Q. And you received a master's degree?
 21 A. This might take a little while.
 22 Q. I'm aware. You have many degrees.
 23 We're going to work through it. You have a
 24 master's degree from the Azireli Graduate School of
 25 Jewish Education and Administration?

Page 7

1 KALINSKY
 2 the Dean of undergraduate Torah studies, please?
 3 A. Sure. My purview is to oversee
 4 primarily a few aspects of the undergraduate men.
 5 There are about a thousand men on campus, and, as
 6 the Dean, all undergraduate students are registered
 7 in one of four Torah studies programs. We have
 8 the Isaac Breuer College. We have the James Striar
 9 School. We have the Stone Beit Midrash program,
 10 and we have the Mazer Yeshiva program. I am the
 11 Dean of all four of those units. Every
 12 undergraduate has to register for at least one of
 13 those programs.
 14 The programs are a little bit different,
 15 ranging on different types of studies. A little
 16 bit about the hours. That at the very least, at
 17 least three hours a day a student is registered in
 18 one of those programs studying Torah studies and
 19 religious studies.
 20 So I oversee the academic component of
 21 that program. All the faculty are hired by me
 22 underneath me. That's number one. The academics.
 23 All the Talmud study, Jewish philosophy studies,
 24 religious studies, Jewish law, Jewish customs, all
 25 that curriculum, I also oversee the curriculum. I

Page 6

1 KALINSKY
 2 A. Azireli, yes. I graduated from Azireli.
 3 Q. And you have an MSW and a Ph.D. from the
 4 Wurzweiler School of Social Work, is that correct?
 5 A. That is correct.
 6 Q. And you started working in the Dean's
 7 Office of undergraduate Torah studies in 2007,
 8 correct?
 9 A. Yes.
 10 Q. And in 2008 you were promoted to
 11 Assistant Dean, is that right?
 12 A. Hopefully. I don't remember exactly
 13 the years. Yeah. It sounds right.
 14 Q. Okay, and were you then at a certain
 15 point promoted to Associate Dean?
 16 A. I went from Assistant Dean to Associate
 17 Dean and then Dean two years ago. Yes.
 18 Q. And you became Dean of undergraduate
 19 Torah studies in 2019. Does that sound right?
 20 A. Yes. That is correct. 2019.
 21 Q. And you're currently employed by Yeshiva
 22 University. Is that correct?
 23 A. Yes.
 24 Q. And could you just give me a brief
 25 description of your duties and responsibilities as

Page 8

1 KALINSKY
 2 work with the faculty in terms of that, and we also
 3 have another, two other aspects.
 4 One aspect is we have the Mashgichim.
 5 The Mashgiach is a spiritual advisor. We have ten
 6 spiritual advisors on campus working with each of
 7 the students on a regular basis to guide them
 8 through their spiritual journey, their religious
 9 journey, and we employ them to do that. Some of
 10 them are part-time. Some of them are full-time.
 11 Some of them are also faculty. So that's my
 12 second purview. Academics, spiritual guidance, and
 13 then we also have programming.
 14 We have religious and spiritual
 15 programming for our students. Next week over
 16 Chanukah, I got an e-mail I think we're doing 45
 17 programs with the students over the week of
 18 Chanukah. Things, having time together with the
 19 faculty and the students getting to really create
 20 relationships.
 21 One of our tag lines that I kind of put
 22 forth in terms of our recruitment is we are an
 23 education based upon relationships for life.
 24 So our faculty, one of the things that
 25 we talk about all the time in our faculty meetings

Pages 5 to 8

Page 9

1 KALINSKY
 2 is that, yes, we're here to impart information.
 3 We're here to impart information. We're here to
 4 impart tradition and the values and Jewish law and
 5 Jewish religion and text of Talmud and chumash and
 6 everything else, but also to spend time to forge
 7 relationships, and we really hope that our students
 8 will be the ones who will turn to our faculty, 5,
 9 10, 15, however many years after they graduate, and
 10 they have that faculty member as their mentor.
 11 So I oversee all those aspects in terms
 12 of being the Dean of undergraduate Torah studies.
 13 Q. Did you receive a notice to appear for
 14 today's deposition to testify on certain topics?
 15 A. I did see it. Yes.
 16 (Plaintiffs' Exhibit 1, Notice of
 17 deposition, was so marked for
 18 identification, as of this date.)
 19 Q. The court reporter has handed you what
 20 has been marked as Plaintiffs' Exhibit 1. This is
 21 the notice of deposition that was served for the
 22 deposition of Yeshiva University, and if you would
 23 please turn to the second page of the exhibit, you
 24 will see that there is a list of topics of
 25 examination. Do you see that?

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1 KALINSKY
 2 notice of deposition?
 3 A. I have knowledge in terms of preparing
 4 for this deposition. Some things might not be in
 5 my day-to-day business at Yeshiva, because some of
 6 these are not about 2021.
 7 Q. Understood. That's actually precisely
 8 what I am asking. So some of these topics did you
 9 have to prepare and educate yourself to be able to
 10 testify on behalf of the university today?
 11 A. Yes.
 12 Q. And some of them may relate to things
 13 that you know personally just because of your long
 14 affiliation with the university. Is that correct?
 15 A. Exactly correct. Yes.
 16 Q. What did you do to prepare for your
 17 deposition today. Did you meet with your counsel
 18 to prepare?
 19 MR. BAXTER: I'm going to counsel you
 20 not to share anything that you spoke about
 21 with your attorneys, but you can answer the
 22 question.
 23 A. I met with a number of individuals to
 24 understand more to prepare for these things. I'll
 25 probably go in order of what I'm seeing over here.

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1 KALINSKY
 2 A. I do.
 3 Q. Do you understand that you're here to
 4 testify today on these topics as the representative
 5 of Yeshiva University?
 6 A. As the corporate representative of
 7 Yeshiva University, I believe that is my task to be
 8 here today. Yes.
 9 Q. I'm going to be asking a series of
 10 questions regarding each topic, and your testimony
 11 here is going to be given on behalf of Yeshiva
 12 University as its representative. Do you
 13 understand that?
 14 A. Yes.
 15 Q. Are you prepared to testify on each of
 16 these topics today?
 17 A. I am prepared.
 18 MR. BAXTER: I will note for the record
 19 that we've objected to the second half of
 20 the examination question number 5, and
 21 there's a court ruling pending on that
 22 objection.
 23 Q. As the Dean of undergraduate Torah
 24 studies at Yeshiva University, did you have
 25 personal knowledge of some of the topics in this

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1 KALINSKY
 2 MR. BAXTER: Let her ask you a question
 3 and answer the question.
 4 A. That's probably a better way of doing
 5 that. Yes.
 6 Q. So who did you meet with to gather
 7 information to prepare to give testimony today?
 8 A. I met with Mr. John Greenfield.
 9 Q. Is that the public affairs director?
 10 A. I think he has a different title than
 11 public affairs. I think it's government affairs.
 12 Government relations and affairs. We could
 13 probably look it up afterwards, but he's the one
 14 who is most aware in terms of our relationships in
 15 terms of state funding and city officials. He has
 16 all those relationships with all those entities,
 17 and I look to him in terms of that.
 18 Q. Who else did you meet with?
 19 A. I met with again I'm not sure exactly
 20 what his title is officially, but the person who is
 21 the head of tax. His name is Alan Kluger.
 22 Q. Anyone else?
 23 A. I met with Rabbi David Palmer, who also
 24 works for the provost office of institutional
 25 research, just to understand he's the one who

Pages 9 to 12

Page 13

1 KALINSKY
2 churns out a lot of the data coming from the
3 university.
4 Obviously a lot of these things, as you
5 say, are personal knowledge that I have. Anything
6 related to Rabbi Isaac Elchanan Theological
7 Seminary I think I know firsthand as much as I can
8 know.
9 Q. Just to make sure that our record is
10 clean, I'm just going to stay focused on the
11 question of who you met with so we can exhaust that
12 topic.
13 So you talked about Mr. Greenfield, Mr.
14 Kluger, Rabbi David Palmer. Anyone else?
15 A. Yes. Mr. Doron Stern, who is the vice
16 president communications and also oversees
17 admissions.
18 Q. Did you meet with anyone else to prepare
19 to testify today?
20 A. Maybe I'll be reminded of it later, but
21 a lot of information trying to prepare. Yeah. I
22 don't know.
23 Q. If at any point during the deposition
24 you want to go back and add something to an answer
25 because you remember it later but you didn't

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1 KALINSKY
2 Q. Did you review documents to prepare for
3 your deposition today?
4 A. Yes.
5 Q. Which documents did you review?
6 A. Again, depending on which question, I'll
7 remember documents, but.
8 Q. So let me ask it more narrowly then.
9 For topic 1, which we're going to start with in a
10 moment, the facts forming the basis of Yeshiva
11 University's assertion that it is a religious
12 education corporation, which documents did you
13 review to prepare for topic 1?
14 MR. BAXTER: Objection for lack of
15 foundation. He reviewed a lot of
16 documents. So I think, if you want to ask
17 him about specific documents, that would
18 make sense, but he's not going to recall in
19 his mind what --
20 Q. If it's not a complete list, that's
21 okay, but I would like to know the documents as you
22 sit here that you recall the important documents
23 that you reviewed to answer question 1.
24 A. In answering the question in terms of
25 documents related to charters of the university.

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1 KALINSKY
2 remember when I asked you, that's fine. Just tell
3 me and we can put it on the record. Okay?
4 A. Great. That's helpful.
5 Q. In terms of your lawyers, did you meet
6 with Mr. Baxter to prepare for today's deposition?
7 MR. BAXTER: You can answer, but you
8 shouldn't share anything that we talked
9 about.
10 A. Yes, I did meet with Mr. Baxter.
11 Q. And did you meet with Mr. Lauer to
12 prepare for today's deposition?
13 A. Yes, I met with Mr. Lauer.
14 Q. Any other lawyers that you met with to
15 prepare for today's deposition?
16 A. No one from any other counsel. I met
17 with Mr. Baxter, Ms. Smith, who is here, and Mr.
18 Haun.
19 Q. And did you meet with President Berman
20 to prepare for your deposition today?
21 A. No.
22 Q. Did you meet with Dean Nissel to prepare
23 for your deposition today?
24 A. I did not meet with him about this.
25 Directly about this, no, I did not.

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1 KALINSKY
2 That would probably be the answer to the first one,
3 but here, again, that would be one thing, but
4 there's really a very exhaustive list of things
5 that could be used or could be reviewed to talk
6 about the religious entity that is Yeshiva
7 University. Some of these things don't have to be
8 found in documents.
9 Q. I understand. I'm just asking you to
10 narrowly to prepare for today's deposition on topic
11 1 what documents do you remember as being of
12 importance that you reviewed?
13 A. Right. So those would be things
14 related to the charter. Things related to
15 handbooks would probably be helpful to that,
16 student associations and student guides and student
17 constitutions, thinking about how we express
18 ourself with our admissions and our recruitment
19 materials as a religious education corporation.
20 Things that I produce I don't have to review them.
21 I'm trying to say like things that show -- facts
22 showing they're a religious education corporation.
23 There's literally an endless amount of things that
24 I thought about in terms of preparing for that.
25 Q. So Yeshiva University is a university

Pages 13 to 16

Page 17

1 KALINSKY
 2 comprised of a number of different colleges and
 3 schools, is that correct?
 4 A. Colleges and schools, right. Graduate
 5 schools. You would call them just schools.
 6 Q. And, for the undergraduate programs,
 7 there's Yeshiva College, the Syms School of
 8 Business, the Stern College for Women and the
 9 Katzman School of Science and Health?
 10 A. Can I just make two corrections?
 11 Q. Sure.
 12 A. I'm told that the donor prefers the Sy
 13 Syms School of Business for any records, not just
 14 Syms.
 15 Q. Okay.
 16 A. That came up in a meeting I had
 17 recently, and I think it's called the Katz School.
 18 Not Katzman. Mordecai Katz is the one who gave the
 19 money for the Katz School.
 20 Q. So there are those four --
 21 A. -- undergraduates.
 22 Q. Undergraduates.
 23 A. An undergrad would be able to enroll in
 24 one of those four schools.
 25 MR. BAXTER: Let me ask you to wait

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1 KALINSKY
 2 until she has fully stated her question.
 3 You can wait for a pause to know she's done,
 4 and then you can answer the question.
 5 Q. It's a bit unnatural, but it's actually
 6 very important, because, otherwise, our transcript
 7 will be very messy.
 8 A. We don't want that.
 9 Q. We'll just do our best and remind you.
 10 In addition to the four undergraduate colleges
 11 would you call them?
 12 A. I don't know.
 13 Q. Okay. In addition to those four
 14 undergraduate programs, there are a number of
 15 graduate programs inside within Yeshiva University,
 16 correct?
 17 A. Yes. Correct.
 18 Q. So two that you attended, the Wurzweiler
 19 School and the Azireli School?
 20 A. Azireli, yes.
 21 Q. And then the Revel Graduate School of
 22 Jewish Studies, and is that a third graduate
 23 program?
 24 A. I didn't attend that one but --
 25 Q. I understand.

Page 19

1 KALINSKY
 2 A. Yes.
 3 Q. So there is Revel. Is Albert Einstein
 4 College of Medicine still part of Yeshiva
 5 University?
 6 A. Officially, there is some lines, but I
 7 don't think that, I don't think officially, but I'm
 8 not exactly sure where we are in all those
 9 negotiations that transpired years ago, and today I
 10 know there's some connection still.
 11 Q. And the Ferkauf Graduate School of
 12 Psychology is another graduate school within
 13 Yeshiva University. Is that correct?
 14 A. That's correct.
 15 Q. And the Cardozo School of Law is another
 16 graduate program within Yeshiva University,
 17 correct?
 18 A. Correct.
 19 Q. The Katz School of Science and Health
 20 has a graduate school too, correct?
 21 A. Right, and it has a number of programs.
 22 Q. And the Sy Syms School of Business
 23 Graduate Studies, is that another graduate program
 24 within Yeshiva University?
 25 A. Yes, it's another program. Yes, and

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1 KALINSKY
 2 each of those have different certificates and
 3 different programs within them. Like cyber
 4 security is an example of a part of the Katz School
 5 of Health and Science.
 6 Q. Are there any graduate schools that are
 7 part of Yeshiva University that I didn't just
 8 mention?
 9 A. You didn't mention the Rabbi Isaac
 10 Elchanan Theological Seminary. That's a part of
 11 Yeshiva University, a very big part of Yeshiva
 12 University.
 13 Q. So I'm glad that you raised that. So
 14 right now I'm focused on the component parts of
 15 Yeshiva University as opposed to what I understand
 16 to be affiliates such as the two high schools. Is
 17 that a distinction that you understand?
 18 A. It's a distinction probably on legal
 19 terms, which is probably where you're coming from,
 20 but in terms of my understanding and my living
 21 Yeshiva University for more than 20 years I would
 22 definitely list the Rabbi Isaac Elchanan
 23 Theological Seminary as a very key part to Yeshiva
 24 University.
 25 Q. Sure, and right now, as you correctly

Pages 17 to 20

Page 21

1 KALINSKY
 2 noted, I'm asking you about Yeshiva University as
 3 it's constituted as a corporation.
 4 So, for purposes of the corporation, the
 5 schools that I just mentioned, are those the
 6 graduate schools that are part of Yeshiva
 7 University?
 8 MR. BAXTER: Objection to the extent it
 9 calls for a legal conclusion.
 10 But you can answer the question.
 11 A. And you're asking, are you missing any
 12 other schools?
 13 Q. Correct.
 14 A. Other than the Elchanan affiliate, which
 15 is the high schools.
 16 Q. Let me ask a different question. So
 17 there's Yeshiva University which has component
 18 schools and colleges. Would you agree?
 19 A. Define component.
 20 Q. Part of Yeshiva University. It has
 21 schools and colleges that are part of Yeshiva
 22 University that make up the university, would you
 23 agree?
 24 A. Correct. Yes.
 25 Q. And then there is entities that are

Page 22

1 KALINSKY
 2 affiliates of Yeshiva University which are the
 3 RIETS, which you mentioned, and the two high
 4 schools, one for girls and one for boys, is that
 5 correct?
 6 A. Correct.
 7 Q. Okay. So right now I'm asking you with
 8 respect to the component schools and colleges that
 9 are part of Yeshiva University, I've mentioned
 10 Revel, Albert Einstein, Wurzweiler, Ferkauf,
 11 Cardozo, Azireli, Katz, Sy Syms. Am I missing any
 12 of the graduate schools?
 13 MR. BAXTER: I object just to the extent
 14 it misstates the evidence on the medical
 15 school.
 16 MS. ROSENFELD: Eric, let's not have
 17 speaking objections. Let's just limit our
 18 objections to form, please.
 19 A. I don't think there's any other schools
 20 and part of the graduate schools that you did not
 21 list.
 22 Q. Thank you, and do each of those schools
 23 have its own governance documents? Do you know?
 24 A. In terms of how the Deans run the
 25 school?

Page 23

1 KALINSKY
 2 Q. That could be one source, I'm sure. Do
 3 you know if there's governing documents in terms of
 4 how the Deans run each of the schools?
 5 A. I wouldn't know firsthand. The
 6 Wurzweiler School of Social Work has a different
 7 governing from the Katz School of Health, if that's
 8 what you're asking.
 9 Q. Are there boards of overseers that
 10 oversee each of those schools independently from
 11 the board of trustees for Yeshiva University as a
 12 whole?
 13 MR. BAXTER: Objection. Calls for a
 14 legal conclusion.
 15 Go ahead.
 16 A. My understanding is there is the Yeshiva
 17 University board of trustees. My understanding is
 18 that individual schools and maybe even programs,
 19 there are many programs which you didn't mention
 20 also which aren't schools, but part of the honors
 21 program among other things, may have their own
 22 board of overseers.
 23 (Plaintiffs' Exhibit 2, Document from
 24 New York State Education Department showing
 25 Yeshiva University's enrollment for 2019 to

Page 24

1 KALINSKY
 2 2020, was so marked for identification, as
 3 of this date.)
 4 Q. The court reporter has marked Exhibit 2,
 5 which is a document from the New York State
 6 Education Department, which shows Yeshiva
 7 University's enrollment for 2019 to 2020.
 8 Does the number of total full-time
 9 students of approximately 4,248, does that sound
 10 correct to you, based on your knowledge of the
 11 university?
 12 A. I just want to read the top paragraph
 13 also.
 14 Q. Take your time.
 15 A. You want me to verify whether that is
 16 correct in terms of our total enrollment? That's
 17 including our undergraduates.
 18 Q. Right. Actually I think I asked the
 19 wrong question. So it looks like there's a total.
 20 A. Am I allowed to write on these?
 21 Q. I would prefer that you not. Would you
 22 like a piece of paper?
 23 MR. BAXTER: Don't take any notes.
 24 A. Okay. Sorry. Go ahead.
 25 Q. It looks like on this document there is

Pages 21 to 24

Page 25

1 KALINSKY
 2 4,685 total full-time students is the way I read
 3 this document.
 4 My question is whether that accords with
 5 your sense of the general number of full-time
 6 enrolled students at Yeshiva University?
 7 MR. BAXTER: Objection to the lack of
 8 foundation.
 9 But go ahead and answer.
 10 A. Give me one more second.
 11 Q. Take as much time as you need with any
 12 document.
 13 A. Thank you. I've never seen this
 14 document before, so the layout does look a little
 15 bit, I'm not sure. We're saying there is a
 16 thousand students in all of Yeshiva University's
 17 graduate schools? Is that what this is saying?
 18 That number doesn't sounds right to me.
 19 Q. Okay. So maybe the document is not
 20 helpful for us, and you can set it aside. What is
 21 your understanding approximately of how many
 22 students are enrolled let's say as undergraduates
 23 at Yeshiva University, and it doesn't have to be a
 24 precise number. I'm just looking for general
 25 round numbers.

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1 KALINSKY
 2 Q. Are there certain schools that are
 3 seeing higher levels of enrollment than other
 4 graduate schools?
 5 A. So my impression is all of our graduate
 6 schools from being at Deans meetings are healthy.
 7 I think particularly the School of Social Work.
 8 Those numbers, the current Dean has done a lot of
 9 work there. The Katz School is a new school, it's
 10 growing, and they're opening up new programs all
 11 the time. The Syms School of Business, I'm aware
 12 recently that they're bringing in new students.
 13 So I think Yeshiva is in a good place.
 14 Having more students is part of our mission. So
 15 thankfully those numbers are doing well.
 16 Q. I'm now going to turn to the first topic
 17 in the notice, topic 1, which is "The facts forming
 18 the basis of Yeshiva University's assertion that it
 19 is a religious education corporation."
 20 Yeshiva University has a mission
 21 statement. Is that correct?
 22 A. Yes. We do have a mission statement.
 23 (Plaintiffs' Exhibit 3, Vision page of
 24 website, was so marked for identification,
 25 as of this date.)

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1 KALINSKY
 2 A. If I would have known, last night I got
 3 the president's report, which had all this data.
 4 It probably had the number in there. I think
 5 around 5,000 does sound ballpark to what I'm
 6 accustomed to hearing.
 7 Q. And is that for both undergraduate and
 8 graduate students?
 9 A. I think when we say Yeshiva University.
 10 Q. Approximately 5,000?
 11 A. Approximately I think so. That number
 12 might include, and I don't know what this number
 13 includes, and we have students studying abroad in
 14 Israel. 80 percent of our undergraduates spend a
 15 year in Israel before coming, so you have to think
 16 about all of our campuses in New York, our campus
 17 in Israel and think about all our graduate schools.
 18 Now we have many students studying
 19 remotely, so it is hard for me to give, but you
 20 know, thankfully many of our graduate school
 21 numbers are on the way up. So it's hard for me to
 22 remember, estimate exactly.
 23 Q. Why are the graduate school numbers on
 24 the way up?
 25 A. We're doing a good job.

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1 KALINSKY
 2 Q. You have in front of you Exhibit 3. Is
 3 this the mission statement of Yeshiva University?
 4 A. The document says "Vision."
 5 Q. Does the sentence below that, do you
 6 recognize that as the mission of Yeshiva
 7 University?
 8 A. Just give me one second to familiarize
 9 myself, please. This does look like one
 10 iteration.
 11 (Plaintiffs' Exhibit 4, President
 12 Berman's statement to board of trustees, was
 13 so marked for identification, as of this
 14 date.)
 15 Q. You also now have in front of you what
 16 has been marked as Exhibit 4.
 17 A. Um-hum.
 18 Q. If you could please just read that, and
 19 let me know when you have had a chance.
 20 A. Sure.
 21 Q. Have you had a chance to look at Exhibit
 22 4?
 23 A. Yes.
 24 Q. Are the two exhibits in front of you,
 25 Exhibit 3 and Exhibit 4, are those Yeshiva

Pages 25 to 28

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1 KALINSKY
2 University's mission?
3 A. Well, they both don't say the same thing
4 I would say to begin with. They're not identical.
5 Q. Understanding that there are differences
6 in the words of those two documents, are these the
7 general mission statement of Yeshiva University in
8 Exhibits 3 and 4 in front of you?
9 MR. BAXTER: Objection as to form.
10 But go ahead and answer.
11 A. I'm not sure how to -- I'm not sure.
12 Q. Do you know where one would look to find
13 the mission statement of Yeshiva University?
14 A. It should be on the website.
15 Q. And do you believe that there is a
16 different mission statement for Yeshiva University
17 that's on the website that's not in front of you?
18 A. I believe that there have been
19 iterations of the mission statement that I've read
20 on the website that have a broader definition and
21 also breaks down undergraduate separate from
22 graduate.
23 Q. So, looking at Exhibit 4, this document
24 says that President Berman reviewed the
25 university's mission and then follows with a

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1 KALINSKY
2 following way. The mission of Yeshiva University
3 has not changed. Maybe certain -- there may be
4 different formulations, meaning this -- Berman --
5 did not exist five years ago clearly. He wasn't
6 here five years ago.
7 Q. Just for the record, you are pointing to
8 Exhibits 3 and 4?
9 A. Both of these. President Berman used
10 the word "ecosystem," and ecosystem of educational
11 institutions is something that I think that's a
12 word that he put in. That doesn't mean that he
13 changed, for example, right, he didn't change the
14 mission of Yeshiva University by rephrasing and
15 putting in a word "ecosystem."
16 This is how he has been expressing his
17 understanding when he speaks, but the mission of
18 Yeshiva University it's very hard to put in a
19 sentence or two, and the mission of Yeshiva
20 University runs a lot deeper in terms of the
21 undergraduate school's mission might be different
22 than -- my -- I'm a school, undergraduate of Torah
23 studies. Our mission is not the same as the
24 Ferkauf Graduate School.
25 Q. I appreciate that. What I'm really

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1 KALINSKY
2 sentence. Is that the university's mission?
3 MR. BAXTER: Objection to the extent it
4 mischaracterizes.
5 But go ahead and answer.
6 A. I think the document speaks for itself.
7 Q. Okay. If somebody asked you where can
8 I go to find Yeshiva University's mission
9 statement, what would you tell them?
10 A. Look at the website.
11 Q. And if you go to the website and you
12 click "mission," you come to that document that is
13 Exhibit --
14 A. 3.
15 Q. -- 3. Is that the mission?
16 A. Is there a page or paragraph before that
17 says mission and this is vision?
18 Q. I now understand what you're talking
19 about. We can go back to that. You said that
20 there are several iterations I believe of Yeshiva
21 University's mission. Do you mean over time the
22 mission statement has evolved, or do you mean
23 currently today there are different mission
24 statements?
25 A. I'll try to answer your question in the

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1 KALINSKY
2 asking you about is, as a corporate entity that has
3 a mission statement, which is committed to writing
4 and exists to guide the work of the entity, I'm
5 trying to then decide what that mission statement
6 is as opposed to what you're describing, which may
7 be different people's mission.
8 A. Right.
9 Q. So right now I'm just focused on trying
10 to understand for the entity which has a mission
11 statement that is, you know, on paper and
12 necessarily limited what is that mission statement,
13 and you suggested that there's a longer one than
14 the ones in 3 or 4, which I'm going to provide to
15 you.
16 A. Great.
17 (Plaintiffs' Exhibit 5, Yeshiva
18 University employee handbook, was so marked
19 for identification, as of this date.)
20 Q. So you have in front of you the Yeshiva
21 University employee handbook.
22 A. From which year? Definitely not this
23 year.
24 Q. So, if you look on the bottom, it is
25 marked Nissel Exhibit 1. So this is the employee

Pages 29 to 32

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1 KALINSKY
 2 handbook that defendants submitted to the court in
 3 June of 2021 as the employee handbook.
 4 A. Okay.
 5 Q. So, if you go to page, on the bottom,
 6 you will see it says Nissel Exhibit 1-9. If you
 7 could go to that page, please.
 8 A. Yes.
 9 Q. Do you see where it says mission
 10 statement at the top?
 11 A. Um-hum.
 12 Q. You have to say yes or no.
 13 A. Yes. It says mission statement at the
 14 top.
 15 Q. Is this the mission statement that you
 16 were speaking of which has more component parts?
 17 A. This is definitely another iteration
 18 again, but, yes, as you can see here, this mission
 19 statement in the employee handbook is broken down
 20 for undergraduate students, blank, for graduate
 21 students, blank, for faculty, blank.
 22 Q. Is this the mission statement of Yeshiva
 23 University as far as you know?
 24 A. Can I review it?
 25 Q. Of course.

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1 KALINSKY
 2 Q. So we looked at Exhibit 3, 4 and 5, and
 3 none of these are the mission statement of Yeshiva
 4 University as you recognize it? Am I
 5 understanding your testimony correctly?
 6 A. It would be helpful for me to see what's
 7 on the website currently before I respond.
 8 Q. That's fine. Are there different
 9 mission statements of Yeshiva University depending
 10 on the context of the mission statement? Is that
 11 fair to say?
 12 A. I would say there's a general mission
 13 for the university, and the university has specific
 14 missions for particular schools.
 15 (Plaintiffs' Exhibit 6, Mission
 16 statement of Yeshiva University, was so
 17 marked for identification, as of this date.)
 18 Q. Is this the mission statement? Now you
 19 have Exhibit 6 in front of you from the website.
 20 Is this the mission statement of Yeshiva
 21 University?
 22 A. Just so I understand, so this was on the
 23 page before the Vision page on the website?
 24 Q. So you have Exhibit 6 in front of you.
 25 It's from the website. You have Exhibit 5, which

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1 KALINSKY
 2 A. No.
 3 Q. This is not the mission statement of
 4 Yeshiva University?
 5 A. I don't know. A better answer I would
 6 say is I don't know.
 7 Q. Can you explain why there's a mission
 8 statement in the employee handbook that you don't
 9 recognize as the mission statement?
 10 A. I think this wasn't written for
 11 employees. If you read the first sentence, it's
 12 just, why would human resources be -- why would the
 13 mission statement talk about develop and retain
 14 excellent employees? I hope that's not the
 15 mission statement of Yeshiva University.
 16 Q. Right. Below that, there are a number
 17 of paragraphs that say, as you noted, for
 18 undergraduate students, for graduate students, for
 19 faculty. Is that the mission statement of Yeshiva
 20 University?
 21 MR. BAXTER: Objection as to form.
 22 Go ahead.
 23 A. This paragraph for undergraduate seems
 24 more accurate to me of the mission for our
 25 undergraduate students.

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1 KALINSKY
 2 is from the employee handbook. You have Exhibit
 3 4, which is President Berman's statement to the
 4 board of trustees, and you have Exhibit 3, which is
 5 from the Vision page of the website.
 6 The pending question is whether Exhibit
 7 6 is the mission statement of Yeshiva University?
 8 MR. BAXTER: Objection as to form.
 9 You can go ahead and answer.
 10 A. This looks more in line with what I'm
 11 familiar with.
 12 Q. So is there still another mission
 13 statement that I haven't shown you that you think
 14 is the actual mission statement?
 15 MR. BAXTER: Objection as to form.
 16 Go ahead.
 17 A. I don't have another document that I can
 18 think of.
 19 Q. But your answer seems to suggest that
 20 you don't recognize this document or in some way
 21 are hesitant to say it's the mission statement, so
 22 I'm just trying to understand if I don't have the
 23 right document in front of you.
 24 A. I would feel comfortable going through
 25 this document for questioning related to our

Pages 33 to 36

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1 KALINSKY
2 mission statement.
3 Q. Is there another document that contains
4 the mission statement that you're aware of that I
5 haven't shown you?
6 MR. BAXTER: Objection as to form.
7 Go ahead.
8 A. No.
9 Q. You can set that aside, please. Thank
10 you. Yeshiva University has a set of bylaws that
11 set forth how the university is supposed to
12 operate. Is that correct?
13 A. Yes.
14 Q. And Yeshiva University also has a
15 charter that contains its articles of
16 incorporation. Is that correct?
17 A. Yes.
18 (Plaintiffs' Exhibit 7, Bylaws of
19 Yeshiva University, was so marked for
20 identification, as of this date.)
21 (Plaintiffs' Exhibit 8, December 15,
22 1967 articles of incorporation amended
23 charter, was so marked for identification,
24 as of this date.)
25 Q. You have in front of you Exhibit 7,

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1 KALINSKY
2 require members of the board of trustees to be a
3 member of any particular religion?
4 MR. BAXTER: Objection. The document
5 speaks for itself.
6 But if you know, you can go ahead and
7 answer.
8 Q. Well, as the corporate representative of
9 Yeshiva University here, does Yeshiva University
10 require members of the board of trustees to be
11 members of any particular religion?
12 A. Okay. So I'm referring to the document
13 in number 4, "Trustees shall be nominated by the
14 Governance Committee for election by the board of
15 trustees at the board's annual meeting."
16 So my understanding of how the board
17 works both from general knowledge and from what the
18 document here says is that you would need to be
19 nominated by the governance committee of the board.
20 So the board is made up of let's say I
21 don't know exactly, 20 individuals who are part of
22 the board. Those individuals are obviously
23 committed to the mission of Yeshiva University and
24 interested in its growth, interested in the Jewish
25 community, know what Yeshiva is about in terms of

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1 KALINSKY
2 which are the bylaws of Yeshiva University, and
3 Exhibit 8, which is the December 15, 1967 articles
4 of incorporation amended charter.
5 So let's start with some general
6 questions. Do the bylaws of Yeshiva University
7 require members of the board of trustees to be a
8 member of any particular religion?
9 MR. BAXTER: Objection. Calls for a
10 legal conclusion.
11 Go ahead. Take time to get familiar
12 with the document if you need.
13 A. Yeah, and also if you would ask the
14 question again. The bylaws?
15 Q. Sure. Well, I will ask it in a more
16 general way. Do the Yeshiva University corporate
17 documents require members of the board of trustees
18 to be a member of any particular religion?
19 MR. BAXTER: If you know, go ahead.
20 A. Okay. So you want to know, we're just
21 talking about 7 now? We're not talking about 8?
22 You're talking about the board of trustees.
23 Q. Well, I originally asked you about the
24 bylaws, and then I asked a more general question,
25 which was does the university's corporate documents

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1 KALINSKY
2 its religious orientation in terms of understanding
3 the dual curriculum especially on the undergraduate
4 level. They would be wanting to look, as we said
5 in some of these previous documents, looking to
6 bring Jewish leadership and Jewish knowledge forth,
7 and anyone who would be interested in that would be
8 part of the possibility of joining the board. They
9 would have to be completely in line with that
10 mission statement for their friends to want to join
11 this membership of Yeshiva that makes up Yeshiva
12 University.
13 Q. That's actually not responsive to my
14 question, so I'm just going to ask you my question
15 again, because I appreciate that you're describing
16 your, Rabbi Dr. Kolinsky's, views on how board
17 selection would go, but my question is really
18 focused in your role here as corporate
19 representative. So I'm just going to ask the
20 question again.
21 As the corporate representative of
22 Yeshiva University here, does Yeshiva University
23 require members of the board of trustees to be
24 members of any particular religion?
25 MR. BAXTER: Objection. The document

Pages 37 to 40

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1 KALINSKY
 2 speaks for itself.
 3 But you can go ahead and answer.
 4 A. Right. So, speaking as the corporate
 5 representative here, the board is made up of
 6 members who are invested in Yeshiva University's
 7 future, invested in its mission, invested in all of
 8 its components.
 9 It would be strange to me to assume that
 10 someone who isn't completely aligned with that
 11 mission and the Jewish people and understanding of
 12 what the Yeshiva represents in terms of its
 13 religious focus, to be part of the board.
 14 Q. Is it required?
 15 MR. BAXTER: Objection. Same
 16 objections.
 17 A. Again, the answer is that you need to be
 18 brought in, so it's a strange question to say
 19 what's required. It's required that you need to
 20 be brought in. In order to be brought in, if we
 21 had a club, if we had a swimming club, in order to
 22 be part of the swimming club, you say, well, do you
 23 have to be X, Y or Z.
 24 Well, if there's 20 members who decide
 25 who join the swimming club, they're going to bring

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1 KALINSKY
 2 in people who are as like them into the swimming
 3 club.
 4 So the Yeshiva board is made up of like
 5 members. It's perpetuated by a tradition for
 6 decades and decades and decades, and that's how
 7 they operate.
 8 Q. So, with respect to the rules that guide
 9 the operation of the corporation, is there any rule
 10 that requires members of Yeshiva University's board
 11 of trustees to be members of a particular religion?
 12 MR. BAXTER: Asked and answered.
 13 A. The requirements are to be brought in by
 14 other board of trustees. The board of trustees
 15 would only want to bring in like-minded people who
 16 are invested in Yeshiva's mission.
 17 Q. Is that written in this document?
 18 A. Yes. "Trustees shall be nominated by
 19 the Governance Committee for election by the board
 20 of trustees."
 21 So you would look around the table. You
 22 would see who are the ones who are invested in
 23 Yeshiva's -- in line with its mission, and that's
 24 how they would elect additional board members.
 25 Q. Let's go to Exhibit 8, please. So

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1 KALINSKY
 2 Exhibit 8 is the amendment to the charter of 1967.
 3 The first page is the actual stamped charter, which
 4 is a bit difficult to read, and the second page is
 5 the typed version of that charter.
 6 A. Of 9 and 10?
 7 Q. Correct. So let's start with the top
 8 page of Exhibit 8.
 9 MR. BAXTER: Objection as to
 10 characterization of the evidence.
 11 But you go ahead and review it.
 12 Q. So for the first page of Exhibit 8, it's
 13 very small.
 14 A. Yeah.
 15 Q. But --
 16 A. You don't have a larger font?
 17 Q. I don't. If you go down, well, do you
 18 see that there are very small numerical paragraphs,
 19 1, 2, 3, 4, 5, 6, 7, 8?
 20 A. Yeah.
 21 Q. Okay. Then, if you look at Exhibit 8,
 22 I'm sorry. If you look at paragraph 8, it says,
 23 "Persons of any religious denomination shall be
 24 equally eligible."
 25 A. Yes. You skipped a word I think.

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1 KALINSKY
 2 Q. "Persons of every religious denomination
 3 shall be equally eligible to offices and
 4 appointments."
 5 Is that part of the charter of Yeshiva
 6 University, that statement?
 7 MR. BAXTER: Objection. Calling for a
 8 legal conclusion.
 9 But go ahead.
 10 A. You're reading the words correctly.
 11 Q. So does reading that statement in the
 12 charter of Yeshiva University help you to answer
 13 the question of whether there's any requirement
 14 that members of the board of trustees are members
 15 of any particular religious denomination?
 16 A. The way -- the document speaks for
 17 itself. The way the board functions is I think
 18 how I understand the board functions. We are
 19 members of the board. There are 20 members. If
 20 someone wants to be brought on, they have to be
 21 brought on.
 22 Q. Rabbi Dr. Kolinsky, you understand here
 23 that you're testifying as a corporate
 24 representative of Yeshiva University today?
 25 A. Yes.

Pages 41 to 44

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1 KALINSKY
 2 Q. So I am going to ask you when I'm asking
 3 questions about whether Yeshiva University has
 4 certain policies or procedures to -- you're
 5 answering on behalf of the university.
 6 A. Yes.
 7 Q. So what I'm asking you right now is
 8 whether in your role as someone who's testifying on
 9 behalf of the corporate entity, Yeshiva University,
 10 whether there is a written requirement that any
 11 members of the board of trustees belong to a
 12 particular religion? That is the pending question.
 13 A. Okay. So the board doesn't have other
 14 than what you have, you have the documents. You
 15 have Exhibit 7, and you have Exhibit 8. That is
 16 what is written. The way the board operates, just
 17 like many things in Judaism, there's a passing of
 18 the baton. There's a tradition. There's a father
 19 to son. There's a grandfather to grandson, and
 20 that is how the board officially operates.
 21 Q. What is how the board officially
 22 operates?
 23 A. You would need to be brought on.
 24 Q. Okay, but I'm asking about the rules.
 25 I'm asking about what are the rules? What are the

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1 KALINSKY
 2 legal requirements?
 3 MR. BAXTER: Asked and answered.
 4 Q. And I'm asking you is there a legal
 5 requirement that members of the board of trustees
 6 be a member of a certain religious denomination?
 7 MR. BAXTER: Objection, calls for a
 8 legal conclusion.
 9 A. You're asking a legal question. I'm
 10 telling you how it operates.
 11 Q. You're the corporate representative.
 12 A. Correct.
 13 Q. And the topic that we are seeking
 14 testimony on is the facts forming the basis of
 15 Yeshiva University's assertion that it's a
 16 religious education corporation.
 17 A. Sure.
 18 Q. And so one of the questions that we need
 19 to get a clear answer to is whether the governance
 20 documents of the university require as a matter of
 21 law that members of the board of trustees belong to
 22 a particular religious denomination?
 23 MR. BAXTER: The document speaks for
 24 itself. Same objections.
 25 Q. I'm not asking for what the document

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1 KALINSKY
 2 speaks. I'm asking for the testimony of the
 3 Yeshiva University corporate representative. So
 4 we need to have a clear answer to that question.
 5 Should I ask it one more time just so you know what
 6 the pending question is?
 7 A. Sure.
 8 Q. Okay. Do the governance documents of
 9 the university require as a matter of law that
 10 members of the board of trustees belong to a
 11 particular religious denomination?
 12 MR. BAXTER: Same objections.
 13 A. The governance documents -- we read the
 14 governance documents. I don't think there's
 15 anything more to say in terms of what they say.
 16 Q. So does Yeshiva University require as a
 17 matter of law that members of the board of trustees
 18 belong to a particular religious denomination?
 19 A. The governance of the board works
 20 through how I've explained it three times, I think.
 21 Q. That's not the answer to my question.
 22 We'll have to stick with this question.
 23 MR. BAXTER: He already answered the
 24 question.
 25 MS. ROSENFELD: He has not. That's why

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1 KALINSKY
 2 we're struggling here.
 3 Q. So the reason that I gave you the
 4 documents is so that you have them in front of you,
 5 but I'm not asking you about what the documents
 6 say. I'm asking you does Yeshiva University
 7 require, Yeshiva University that you're testifying
 8 here on behalf of, does Yeshiva University require
 9 that members of the board of trustees belong to a
 10 particular religious denomination as a matter of
 11 policy?
 12 A. I don't know. Other than what I've
 13 said, I don't know if there is anything else I can
 14 add to that in terms of requirements of how it
 15 works.
 16 Q. I'm not clear on what your answer is.
 17 Is it required, or is it not required as a matter
 18 of what the governance documents say?
 19 A. It's required that the members of the
 20 board would think that you are a right fit to be on
 21 the board of the university.
 22 Q. But it's not required that, as we just
 23 read in Exhibit 8, it's not required that you
 24 belong to any religious denomination to be eligible
 25 for offices or appointments as a matter of law?

Pages 45 to 48

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1 KALINSKY
2 A. To be eligible, correct. To be
3 eligible, right. It says eligible. It doesn't say
4 to be appointed. It says to be eligible.
5 Q. It says, "Persons of every religious
6 denomination shall be equally eligible to offices
7 and appointments."
8 A. Right.
9 Q. Is that an article of Yeshiva
10 University's charter?
11 A. So this is correct. They are eligible.
12 They're eligible.
13 Q. Thank you. So are there any positions
14 within the administration of Yeshiva University
15 that are required to be filled as a matter of
16 written policy by members of any particular
17 religious denomination?
18 MR. BAXTER: Objection as to form.
19 Go ahead.
20 A. Can you give me an example?
21 Q. Sure. For example, the president of
22 the university. Is there a written requirement
23 anywhere that the president of the university be a
24 member of any particular religious denomination?
25 A. I'm not aware of a particular document.

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1 KALINSKY
2 Q. So, again, I appreciate that that's your
3 perspective, given your history, but what I'm
4 asking for, as the corporate representative of
5 Yeshiva University, are you aware of any written
6 requirements that any positions in the
7 administration of Yeshiva University be filled by
8 persons of a certain religious denomination?
9 MR. BAXTER: Asked and answered.
10 A. Sure. Okay. Yeah. Again, I think
11 this is another example. There's a tradition.
12 There's how we do things, and then you're asking
13 for where does it say a specific thing.
14 So my answer is, being the corporate
15 representative, not being Rabbi Yosef Kalinsky,
16 being the corporate representative to understand
17 that there is a rich history of over 100 years of
18 the university that is taken into account when we
19 make any of these decisions, so it might not be
20 written on a document, but there is a clear
21 understanding of what should be done and what
22 shouldn't be done.
23 Q. I appreciate that, but my question is
24 limited to whether there is a written document that
25 states that there's a requirement that positions in

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1 KALINSKY
2 I haven't seen one, but the tradition of Yeshiva
3 has always been that the president is at the very
4 least a very strong-standing orthodox member of the
5 Jewish tradition. The majority of our presidents
6 have been rabbis.
7 Some of them Rabbi doctors, but it would
8 be, I think it would be absurd to think that
9 someone who is not completely in line with our
10 tradition to be the president of the university.
11 Q. And is that requirement reduced to
12 writing anywhere that you're aware of?
13 A. I don't know where that would even be.
14 No. I don't know where that is, but again the
15 president is appointed by the board. The board are
16 made up of members of people who are completely
17 invested in Yeshiva's mission, and they would be
18 the ones who would hire the university president.
19 The president of the university is also
20 the president of Rabbi Isaac Elchanan Theological
21 Seminary. So that would play a role in terms of
22 who is being hired as the president of the
23 university. You would have to take that into
24 account. He is also the president of the Rabbi
25 Isaac Elchanan Theological Seminary.

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1 KALINSKY
2 the administration of Yeshiva University be filled
3 by persons of a certain religious denomination?
4 A. I don't know.
5 Q. So the same question with respect to
6 written requirements. Are there any written
7 requirements for students that they are required to
8 participate in religious services?
9 A. Are there any written requirements that
10 students -- is "required" is the word?
11 Q. Yes.
12 A. We don't run the school or the Yeshiva
13 in that way, not for undergraduates, not for
14 students in the seminary. We don't have a
15 document saying you are required. There are
16 expectations. There is an understanding.
17 Students when they apply to Yeshiva University they
18 realize they're applying to Yeshiva University with
19 a dual curriculum and the campus environment. We
20 have services in every single academic and
21 non-academic building throughout the day generally,
22 but we don't force students. They're not
23 five-years-old.
24 Q. So there's no written requirement that
25 students are required to participate in religious

Pages 49 to 52

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1 KALINSKY
2 services. Is that correct?
3 A. We do not have a written requirement.
4 We have an environment that puts one -- you're
5 self-selective.
6 When you come to Yeshiva University,
7 you're saying I want to be, I mean they're
8 students, and you ask them at open house why do you
9 want to come to this university? Because I want to
10 be in this religious environment. I don't want to
11 be forced to be religious. I want to feel I want
12 to be religious. I want to be encouraged to be
13 part of this religion. That's not the philosophy
14 to force someone to come to services. It doesn't
15 really do anything for them.
16 Q. So are there any religious service,
17 mandatory religious service requirement for
18 faculty?
19 A. It's the same answer. We don't. Out
20 of maybe other religions or other schools have that
21 practice. I'm not familiar of any higher level
22 Yeshiva -- the highest Yeshivas in the world don't
23 force their students to come to prayers or their
24 faculty to come to prayers. They come to prayers,
25 because that's why they're there. Otherwise, they

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1 KALINSKY
2 university.
3 Q. Does Yeshiva University ask its faculty
4 to sign a statement affirming their religious
5 beliefs?
6 A. One more time.
7 Q. Sure. Does Yeshiva University ask its
8 faculty to sign a statement affirming their
9 religious beliefs?
10 A. They're faculty as a whole. No.
11 Q. What about students? Are students
12 required to sign any statement of religious belief
13 by Yeshiva University?
14 A. We recruit, and our feeder schools are
15 coming from generally Jewish religious background.
16 Again, we want the right fit for our students to be
17 here, to be in the right environment.
18 Q. Are students required to sign a
19 statement of their religious beliefs by Yeshiva
20 University?
21 A. Not that I'm aware of.
22 Q. Does Yeshiva University receive --
23 withdrawn. Let's start somewhere else. What's
24 the largest source of revenue to Yeshiva
25 University?

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1 KALINSKY
2 would be on Wall Street.
3 Q. So are there any written policies
4 requiring mandating religious service attendance
5 for any student, faculty or staff at Yeshiva
6 University?
7 A. Is that different from the previous
8 question?
9 Q. Well, I appreciate that you are trying
10 to give full answers, but they are not actually
11 responsive to my questions, and I'm looking at the
12 transcript as you're testifying, so I do need to
13 ask the question so that, in addition to the
14 context that you want to give, we also have a
15 specific answer to my question.
16 A. Okay.
17 Q. So my question is, are there any written
18 policies mandating religious service attendance for
19 any student, faculty or staff at Yeshiva
20 University?
21 MR. BAXTER: Asked and answered.
22 But go ahead.
23 A. We don't mandate religion. We create a
24 fostering environment. We don't force. We don't
25 coerce people who self-select to come to the

Page 56

1 KALINSKY
2 MR. BAXTER: Objection. Outside the
3 scope.
4 Go ahead and answer.
5 A. I'm not sure whether it's tuition or
6 donations.
7 Q. Does Yeshiva University receive
8 significant financial support from any religious
9 entity?
10 A. I'm not aware of major donations from
11 outside individuals. That's typically where our
12 donations would come from, from philanthropy.
13 Q. Does Yeshiva University track -- well,
14 withdrawn. Is there any requirement at Yeshiva
15 University that funds raised must come from
16 Jewish-affiliated sources?
17 A. Is there a particular school you're
18 asking?
19 Q. No, just for the whole university. Is
20 there any requirement that funds raised for Yeshiva
21 University must come from Jewish-affiliated
22 sources?
23 A. We're a Jewish university. We're
24 unabashedly Jewish. People who'd want to give
25 money to us would most probably be Jewish, so I'm

Pages 53 to 56

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1 KALINSKY
 2 not sure.
 3 Q. Is there a requirement that the funds
 4 that Yeshiva raises come from Jewish-affiliated
 5 sources?
 6 A. You're asking if we would reject money
 7 from someone who's not Jewish who gave a donation
 8 to Yeshiva?
 9 Q. I'm not just talking about individuals.
 10 I'm talking about any funds. I'm saying is there
 11 any requirement that, when Yeshiva University
 12 brings in revenue, that that revenue must come from
 13 a Jewish-affiliated source?
 14 A. Only?
 15 Q. Correct.
 16 A. I don't think so.
 17 Q. Yeshiva University receives money from
 18 federal, state and city government, for example,
 19 correct?
 20 A. Correct.
 21 Q. And Yeshiva University receives money
 22 from private foundations, is that correct?
 23 A. Yeah. I assume so.
 24 Q. And Yeshiva doesn't track whether the
 25 source of its funds come from a Jewish or

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1 KALINSKY
 2 non-Jewish source, does it?
 3 A. I don't know.
 4 Q. Are you aware as you sit here today of
 5 whether Yeshiva University tracks whether the funds
 6 that it receives come from a Jewish or non-Jewish
 7 origin?
 8 A. I'm assuming there is an excel sheet
 9 somewhere of every single donation, whether it's a
 10 dollar to \$100 million. So I don't know. You
 11 could sort excel sheets and do lots of things. I'm
 12 not sure.
 13 Q. Of course, there's many excel sheets in
 14 the world, and my question is a little bit more
 15 limited. Does Yeshiva University track whether the
 16 funds that it receives come from a Jewish or
 17 non-Jewish origin?
 18 MR. BAXTER: Asked and answered.
 19 Go ahead.
 20 A. I don't know, but -- I don't know.
 21 Q. Is Yeshiva University controlled by a
 22 religious entity?
 23 MR. BAXTER: Objection to the extent it
 24 calls for a legal conclusion.
 25 But go ahead.

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1 KALINSKY
 2 A. Can you explain control.
 3 Q. Well, is there a religious entity that
 4 makes decisions, final decisions, about the
 5 operation of Yeshiva University?
 6 A. There are -- there is religious
 7 guidance. There is religious guidance. Of
 8 course. Yeah. The Yeshiva part of Yeshiva
 9 University is a very, very vibrant part of the
 10 university and that is definitely going to lead any
 11 decision made by the university.
 12 Q. So, just to go back to your question
 13 about when I asked is there -- is Yeshiva
 14 University controlled by a religious entity.
 15 So, when I say control, I mean is there
 16 a religious entity that has the final
 17 decision-making authority about how the university
 18 operates?
 19 MR. BAXTER: Objection to form.
 20 Go ahead.
 21 A. Okay. So you wouldn't use the word
 22 "influence"? You want to use the word "control"?
 23 Q. Well, I can ask you both questions.
 24 I'll ask you influence first, and then I will ask
 25 you control.

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1 KALINSKY
 2 A. Okay.
 3 Q. Do you think is there a religious entity
 4 that influences Yeshiva University, and if so,
 5 which one is it?
 6 A. Okay. So influence is I think a very
 7 good way to describe the decision-making. The
 8 decisions that are made by the university, again
 9 every university is making millions of decisions
 10 every day, but every decision that Yeshiva
 11 University makes is in the context of a Yeshiva
 12 University. Yeshiva has an undergraduate program
 13 of a dual program. Yeshiva that sits on the same
 14 campus as Rabbi Isaac Elchanan Theological
 15 Seminary. All of our campuses have kosher food.
 16 All of those things are taken into account when you
 17 ask about religion in terms of decision.
 18 So someone wouldn't just make a decision
 19 over to put non-kosher food in the vending machine.
 20 Right? So why is that there? Because we have a
 21 long history and tradition of how Yeshiva
 22 University operates, and the Roshei Yeshiva are
 23 very much connected to guiding the university's
 24 religious and spiritual direction, and, more than
 25 that guiding, holding onto their tradition of the

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1 KALINSKY
 2 university, and they are very large influencers on
 3 campus. Many of them have hundreds of students.
 4 Obviously a student wouldn't make a
 5 decision that would create a lot of stir amongst
 6 students. That's not something a university would
 7 like to do.
 8 So they're very heavily influencers on
 9 campus for our students. So, in other words, I'm
 10 trying to answer your question.
 11 Q. I appreciate that. I just want to stop
 12 for you one second, because I want to make sure I
 13 understand the phrase that you're using. So the
 14 Roshei Yeshiva, R-o-s-h-e-i, Yeshiva?
 15 A. Yes.
 16 Q. Are those the senior rabbis at RIETS?
 17 A. We have about 20 Roshei Yeshiva.
 18 There's no single -- the last Rosh High Yeshiva was
 19 Rabbi Lamm. We don't have a Rosh High Yeshiva.
 20 So it's more of a conglomerate of the
 21 senior Rosh Yeshiva, but there are junior Roshei
 22 Yeshiva as well, and they also have influence.
 23 Q. Okay, but what that phrase means is a
 24 group of --
 25 A. Leading Torah scholars, faculty members

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1 KALINSKY
 2 University, for purposes of this deposition, you've
 3 described the influence of the Roshei Yeshiva on
 4 the university.
 5 A. Um-hum.
 6 Q. Now I want to ask you about control of
 7 the university's decision-making.
 8 Is there a religious entity or
 9 individual who controls the university's
 10 decision-making?
 11 MR. BAXTER: Objection to the extent it
 12 calls for a legal conclusion.
 13 Go ahead.
 14 A. Right, so --
 15 Q. Well, this was a distinction that you
 16 offered, right, influence versus control.
 17 A. Yeah. Right.
 18 Q. And we talked about influence. I'm now
 19 asking --
 20 A. So it's easier for me to answer
 21 influence, because I understand what it means to
 22 influence a decision.
 23 Q. Okay. So control means who has the --
 24 is there a last word on the decisions of the
 25 university that is made by any religious entity

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1 KALINSKY
 2 at the Yeshiva.
 3 Q. Meaning at RIETS?
 4 A. Both, meaning Roshei Yeshiva are
 5 integrated into both the Rabbi Isaac Elchanan
 6 Theological Seminary and the undergrad of Torah
 7 studies. I oversee Roshei Yeshiva. The Dean of
 8 RIETS also oversees Roshei Yeshiva. We have
 9 classes that the Roshei High Yeshiva teach and
 10 sitting next to each other is undergraduate and
 11 graduate students. In the Stone Beit Midrash, we
 12 have graduates and undergraduate students. They
 13 don't really separate the two.
 14 Q. Who is their employer?
 15 MR. BAXTER: Objection to form.
 16 Q. Who is the employer of the Roshei
 17 Yeshiva?
 18 A. I have some on my faculty. Yeshiva
 19 University is the employer of some of the Roshei
 20 Yeshiva, and some of them it's RIETS.
 21 Q. So there's some employed by Yeshiva
 22 University, and there's some employed by RIETS?
 23 A. Yes.
 24 Q. Okay. So, with respect to the question
 25 of a religious entity that influences Yeshiva

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1 KALINSKY
 2 that you can identify?
 3 A. So the way control works is through
 4 influence, right? That's just the reality. The
 5 reality is the control works through influence,
 6 meaning let's just say the head of the PR
 7 department, Mr. Doron Stern, let's say he would
 8 want to run an ad that is antithetical to Torah and
 9 Torah values.
 10 Could he do that? He could. Would he
 11 get all -- would all the Roshei Yeshiva call him
 12 the next day and say how could you have done that,
 13 and they'll be on his throat and say you're not
 14 representing us, you're not representing the
 15 university? Yes.
 16 Therefore, will he not do it? Yes.
 17 Do they control him? It depends how you define the
 18 word "control." They definitely are very large
 19 influencers on all the decisions.
 20 Q. And is the influence of the Roshei
 21 Yeshiva documented in writing in terms of how that
 22 relationship over the corporate entity works?
 23 A. This is similar to I think the previous
 24 question. The influence is the reality. Yeah.
 25 Q. Okay. We have a long outline, and you

Pages 61 to 64

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1 KALINSKY
2 can answer as much and as long as you want, but for
3 some of these questions I think the question of
4 whether something is documented in writing is
5 really all I'm trying to get at, and the question
6 is, is the influence of the Roshei Yeshiva that you
7 just described set forth in writing anywhere in
8 terms of how they --
9 A. -- exert their control?
10 Q. -- exert control over the corporate
11 entity?
12 A. I don't know. I don't know if there
13 is. The facts are the reality in terms of how the
14 university operates. The university operates with
15 an understanding of our values. Our values come
16 from the Torah. Our Torah is taught to us by
17 Roshei Yeshiva. Therefore, Rosh Yeshiva have a
18 great influence on the campus life.
19 Q. But you don't know if there is any
20 document that sets forth whether that relationship
21 is a matter of governance, is that correct?
22 A. Correct.
23 Q. If that did exist, do you think you
24 would be aware of it?
25 A. Probably. I don't know.

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1 KALINSKY
2 A. There still exists the Beren Jewish
3 studies department at the Beren campus. That is
4 still a functioning department of Jewish studies.
5 You're referring to the Wilf campus in your
6 question?
7 Q. Yes.
8 A. So I don't -- I actually don't know
9 exactly what it constitutes right now. All the
10 faculty members are still there. All the courses
11 are still taking place. I think it was some sort
12 of an academic restructuring, but I don't know
13 exactly. Facts on the ground I don't think the
14 students have seen changes.
15 Q. So, in the Yeshiva College Jewish
16 studies department, the Jewish history class was
17 moved into the history department. Are you aware
18 of that?
19 A. I'm not exactly sure. I deal with the
20 Torah studies. I have relationships with the
21 college. I do know that the Jewish history courses
22 are still taking place. Whether they come out of
23 the Jewish studies department or the history
24 department I'm not exactly sure.
25 Q. Are you aware that in -- Yeshiva College

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1 KALINSKY
2 MR. BAXTER: We've been going about an
3 hour and a half.
4 MS. ROSENFELD: You want to take a
5 break? Sure.
6 (Recess taken)
7 BY MS. ROSENFELD:
8 Q. Did Yeshiva University recently dissolve
9 its Jewish studies department?
10 A. I don't have a direct answer to that
11 question. I don't know if the right word is
12 dissolve. That's why I'm -- was delaying my
13 answer. There were some changes made with the
14 Jewish studies department. I don't know if I would
15 define them as dissolve. Maybe the newspaper said
16 it, but I don't know if we would characterize that
17 as dissolving. We still have --
18 Let me answer correctly. We still have
19 the same courses. We have Bible courses in the
20 college. We have Jewish history courses. We have
21 Talmud courses. We have Jewish philosophy courses.
22 Those all exist.
23 Q. So at one point Yeshiva University had a
24 department called the Jewish studies department.
25 Is that correct?

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1 KALINSKY
2 in lieu of the Jewish studies department created a
3 Bible, Hebrew and Near Eastern studies department?
4 A. That sounds correct. Again, I don't
5 know exactly the terminology. Do you have
6 documentation that would support that?
7 Q. I'm just asking you what you know right
8 now.
9 A. I don't know for sure what happened.
10 Q. Did Yeshiva College recently eliminate
11 in-person Hebrew instruction?
12 A. No.
13 Q. There still is within --
14 A. This morning there was face-to-face
15 Hebrew instruction.
16 Q. Okay, and can you tell me what does the
17 phrase "academic Jewish studies" means?
18 A. Academic Jewish studies refers to an
19 approach to Jewish studies that includes the
20 traditional approach to study of text, but also
21 brings in other academic approaches, literary
22 approaches that one would find in other subjects
23 that would not be considered classical study of the
24 text.
25 Q. Does Yeshiva University offer academic

Pages 65 to 68

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1 KALINSKY
 2 Jewish studies?
 3 A. Of course. Yes.
 4 Q. And does Yeshiva University have a core
 5 curriculum?
 6 A. The curriculum is in the hands of the
 7 faculty. Curriculums are updated. They change
 8 from time to time from year to year. I believe
 9 currently for the academic year we have a core
 10 curriculum in Yeshiva College. I don't know if Sy
 11 Syms School of Business has a core curriculum.
 12 Q. What is your understanding of the
 13 components of the core curriculum for Yeshiva
 14 College?
 15 A. It's probably clearly stated in the
 16 catalogue and the website, so I'll try to give you
 17 the best of how I'm trying to reproduce what it
 18 says there.
 19 Q. Well, would you prefer that I give you a
 20 document to refer to?
 21 A. Sure.
 22 Q. Okay.
 23 (Plaintiffs' Exhibit 9, Document Bates
 24 stamped YU 02560 through 2589 and YU 02747
 25 through YU 02752, was so marked for

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1 KALINSKY
 2 MR. BAXTER: Do you want to restate the
 3 question? I don't know if there was a
 4 question pending.
 5 Q. My question is whether these are still
 6 the elements of the general education core
 7 curriculum?
 8 A. I'm not aware that anything has changed
 9 in the core curriculum since 2012.
 10 Q. If you could please turn back one page
 11 to 2747.
 12 A. Okay.
 13 Q. I'm going to ask you a few questions
 14 about the middle paragraph about academic Jewish
 15 studies, but take your time.
 16 A. Yeah. Let me catch up here. Should I
 17 read the bottom paragraph?
 18 Q. I'll tell you my question, and then you
 19 can go back to the document as you decide is
 20 appropriate.
 21 There is a major at Yeshiva University
 22 called Jewish studies, correct?
 23 A. Correct.
 24 (Plaintiffs' Exhibit 10, Pages from
 25 Yeshiva University Career Center Class of

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1 KALINSKY
 2 identification, as of this date.)
 3 Q. For the record, this is Exhibit 9, and
 4 this is selected pages from the Self-Study dated
 5 March 5, 2012 prepared by Yeshiva University and
 6 submitted to the Middle States Association of
 7 Colleges and Schools. The Bates it contains are
 8 YU 02560 through 2589, and YU 02747 through
 9 YU 02752.
 10 A. This is a continuation, or it's a
 11 separate document?
 12 Q. It's a single exhibit.
 13 A. Okay.
 14 Q. So, if you would turn, please, to the
 15 document that has on the bottom of it, on the
 16 bottom right, YU 02749 towards the back of the
 17 exhibit.
 18 A. Okay.
 19 Q. My question is whether this list 1 to 8
 20 continues on to the next page. Are these still
 21 the elements of the general education core
 22 curriculum?
 23 A. Just give me a few minutes. Okay?
 24 Q. Please take all the time you want.
 25 A. Thank you.

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1 KALINSKY
 2 2018 Post-Graduation Destination Survey, was
 3 so marked for identification, as of this
 4 date.)
 5 Q. And Jewish studies is one of more than
 6 10 or 15 or 20 majors that an undergraduate student
 7 could choose, is that correct?
 8 A. Yes. In Yeshiva College, it's one of
 9 the majors.
 10 Q. So, looking at what I just handed you
 11 which is marked Exhibit 10, which is a document
 12 that is from the Yeshiva University Career Center
 13 Class of 2018 Post-Graduation Destination Survey,
 14 please turn to the second page. Do you see there
 15 is a list of majors and concentrations?
 16 A. Yes.
 17 Q. Actually the third page, you see that
 18 there's a list of majors and concentrations?
 19 A. Yes.
 20 Q. And Jewish studies is one of those
 21 majors, is that correct?
 22 A. Yes.
 23 Q. So, on the first page of Exhibit 10, it
 24 states that there is a post-graduation survey of
 25 579 undergraduate students. Do you see that?

Pages 69 to 72

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1 KALINSKY
2 A. Yeah, I do.
3 Q. Are you familiar with this
4 post-graduation destination survey?
5 A. I may have seen it.
6 Q. So it says 579 students were surveyed,
7 and then it gives the breakdown by concentration of
8 each student. Do you see that?
9 A. So those numbers equal the 579?
10 Q. I believe so.
11 MR. BAXTER: I don't think that would
12 add up.
13 MS. ROSENFELD: Eric, these are majors
14 concentrations reporting at least ten
15 instances, and so it's 463 students I think
16 is the denominator.
17 MR. BAXTER: Say that one more time.
18 MS. ROSENFELD: Sure. So, for Exhibit
19 10, if you look on the front, they have 579
20 surveyed, and then they included results for
21 463 students, and then this page is a list
22 of any major that had at least ten students
23 in it. So I don't think we will be able to
24 get an exact percentage, which is fine for
25 purposes of my question.

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1 KALINSKY
2 Q. And it does not require students to wear
3 yarmulkes, correct?
4 A. The dress code, the current dress code,
5 I do not believe has a particular bullet point
6 related to men wearing yarmulkes.
7 Q. So, in other words, there's nothing in
8 the current dress code that addresses yarmulkes.
9 Is that correct?
10 A. The current dress code does not speak
11 directly to -- do you have it in front of you?
12 That would be helpful.
13 Q. Sure.
14 A. I'm trying to remember exactly what I
15 said there.
16 (Plaintiffs' Exhibit 11, Yeshiva
17 University Undergraduate Dress Code, was so
18 marked for identification, as of this date.)
19 Q. You have Exhibit 11 in front of you,
20 Yeshiva University Undergraduate Dress Code.
21 Would you agree there's nothing in the Yeshiva
22 University undergraduate dress code that requires
23 students to wear yarmulkes?
24 MR. BAXTER: Objection as to the lack of
25 foundation.

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1 KALINSKY
2 Q. So, according to Exhibit 10, there was
3 14 students in this class who majored in Jewish
4 studies who responded to the survey. Is that
5 right?
6 MR. BAXTER: I'll just have a running
7 objection as to the lack of foundation, but
8 you can answer to the best you know.
9 A. That's what it looks like from the
10 document.
11 Q. Okay. So is this consistent with your
12 understanding that less than 5 percent of students
13 have an academic major of Jewish studies?
14 A. I can't speak to the percentage.
15 Q. Well, you can set aside the document.
16 Just in your experience as an administrator and
17 Dean at Yeshiva University, does it sound correct
18 to you that approximately 5 percent of students
19 major in Jewish studies from the different academic
20 majors available?
21 A. So that wouldn't surprise me.
22 Q. Yeshiva University has a -- you can set
23 that aside. Yeshiva University has an
24 undergraduate dress code, correct?
25 A. Yes.

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1 KALINSKY
2 But you can go ahead.
3 A. I would answer the particular curtness
4 of this document doesn't exemplify the
5 institution's desire and expectations for students
6 in terms of their full dress code.
7 Q. This is the written Yeshiva University
8 undergraduate dress code, correct?
9 A. This is what it -- I believe that's
10 correct. I don't know of another iteration of
11 this dress code.
12 Q. Okay. You can set that aside, please.
13 Are there any requirements that undergraduate
14 students at Yeshiva University keep kosher?
15 A. Everything on campus that is served by
16 the university is super kosher. Everyone should
17 be able to feel comfortable to eat at the
18 university. Anywhere where there is any public
19 areas are expected to be kosher. We do have
20 employees on campus. We do not tell employees that
21 they cannot bring any nonkosher item. There needs
22 to be a sensitivity to the campus environment and
23 understanding that everything on campus has to be
24 kosher in terms of the majority of those that are
25 on campus do eat kosher.

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1 KALINSKY
2 Q. Is there any requirement that
3 undergraduate students at Yeshiva University keep
4 kosher?
5 A. The students that come to Yeshiva
6 University are screened to be part of the
7 community. So we enforce our policies in terms of
8 having an inviting religious environment that
9 encourages students to eat kosher. That is
10 definitely what we would want them to do, but we do
11 not force our students in a certain -- in terms of
12 what they would be eating or not.
13 Q. Is there any written requirement that
14 says that students must keep kosher?
15 A. Students need to keep kosher when
16 they're in the public dining areas. There are
17 signs. There is signage if you're walking into a
18 dining room, before walking into any of the food
19 courts I believe on both campuses, only kosher food
20 can be brought in, and we encourage all of our
21 students to keep kosher at all times. That is our
22 policy.
23 Q. So it's encouraged, but it's not
24 required. Is that correct?
25 A. Even more than encouraged. It's

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1 KALINSKY
2 part of this environment. We want you to grow in
3 your religiosity on campus. That's where it would
4 be explained I think to a student in terms of the
5 interview process that you know when you're coming
6 here we're assuming you are going to be keeping
7 kosher.
8 Q. And are those messages as part of the
9 recruitment to undergraduate students in writing
10 anywhere?
11 A. I don't know.
12 Q. What about graduate students? Are
13 graduate students required or expected to keep
14 kosher?
15 A. Our graduate students are a little bit
16 different in nature. There are students that don't
17 keep kosher in the graduate schools. We would --
18 most -- none of them -- not none of them I
19 shouldn't say. Most of them don't live on campus,
20 but, if they would be walking into campus or they
21 would be eating in a food court or whatever it is,
22 they would -- it would be expected that they would
23 be eating kosher there.
24 Q. But are graduate students expected to
25 keep kosher in the same way that you just described

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1 KALINSKY
2 expected. It's expected is probably a better word
3 than encourage. It's encouraged and expected that
4 a student coming to Yeshiva University would be
5 keeping kosher.
6 Q. Is there a document that sets out that
7 expectation for undergraduate students?
8 MR. BAXTER: Asked and answered.
9 But go ahead.
10 MS. ROSENFELD: I didn't ask that, and I
11 certainly didn't get an answer to it.
12 A. The kosher aspect of a campus is run
13 through how our religious comport and our religious
14 expectations are for students in terms of how
15 everything that is served is kosher on campus.
16 That's how the rule is expected and is laid out in
17 terms of the university.
18 Q. So there is not a written document that
19 sets out the expectation for undergraduate students
20 about keeping kosher?
21 A. I don't know if there's a document.
22 Again, what I do know is, in terms of recruitment,
23 we would talk to students, hey, if you're coming to
24 Yeshiva, remember, this is a kosher campus. We
25 keep shabbat on campus. We're expecting you to be

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1 KALINSKY
2 the expectations for undergraduates?
3 A. No.
4 Q. What about religious services? Are
5 graduate students expected to attend religious
6 services?
7 A. Our graduate schools are very different.
8 If they were in the Rabbi -- yes, even going back
9 on your previous question, I should probably
10 restate. If there was a student in the Rabbi Isaac
11 Elchanan Theological Seminary, I think we would
12 expect them to keep kosher. I don't know for
13 sure, but perhaps even in the Azireli School of
14 Jewish Education in the Bernard Revel School of
15 Judaic Studies I think those expectations would be
16 different than someone who was in the Ferkau
17 Graduate School in terms of what they're studying
18 and the environment that they're in. Each school
19 has a little bit different environment.
20 Q. Okay. Are there any written
21 requirements that you are aware of that Yeshiva
22 University promulgates for graduate students about
23 religious observance?
24 A. The observance is done through the
25 environment and the sensitivity for the

Pages 77 to 80

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1 KALINSKY
2 environment. I don't know. I'm not sure if every
3 single document that every single graduate school
4 would be sending out. I don't know.
5 Q. Well, are you aware of any documents
6 from any graduate school of Yeshiva University that
7 address requirements or expectations for their
8 students to attend religious services other than
9 RIETS, the affiliate?
10 A. I don't know if RIETS has a document.
11 That's not how it works.
12 Q. Okay. That's my question. Are you
13 aware of any documents from any graduate school
14 that conveys the requirements?
15 A. I believe the expectations are on the
16 way in when we express to our students what the
17 school is about. Once they're in, I don't think
18 there is a -- I'm not aware that there is a
19 further, oh, you're in the Ferkauf Graduate School.
20 Make sure you are eating kosher in your dormitory
21 room.
22 Q. Does Yeshiva University require its
23 faculty to keep kosher?
24 A. Not all of the faculty is Jewish. So
25 we wouldn't expect them to be in kosher

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1 KALINSKY
2 A. With that title, I don't know.
3 (Plaintiffs' Exhibit 12, List of current
4 board of trustees from Yeshiva University
5 website, was so marked for identification,
6 as of this date.)
7 Q. So we handed you what has been marked as
8 Exhibit 12.
9 A. Okay.
10 Q. Which is a list of the current board of
11 trustees from the Yeshiva University website. Are
12 any of the current board of trustees members Roshei
13 Yeshiva?
14 A. Give me a second, please. This was
15 just updated. I think there was some voting that
16 went on recently. None of these names are
17 employed as a Rosh High Yeshiva.
18 Q. You can set that aside. Thank you. Is
19 there a dress code in the graduate schools?
20 A. I don't know. There's definitely an
21 understanding of being sensitive to the campus and
22 to the classmates and the environment. That I
23 would assume for sure is the case.
24 Q. So does Yeshiva College have a career
25 center?

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1 KALINSKY
2 necessarily, but, again, if they're in the
3 cafeteria, if they're in a public space, if they
4 were meeting with a student, we would expect them
5 to be eating kosher and definitely to be sensitive.
6 The faculty and the staff should all be
7 understanding and sensitive and aware of -- the
8 human resource department has -- they do have
9 resources about what kashrut is, what Shabbos is.
10 They have information about that for faculty and
11 staff, what is a shared kitchenette, how that's
12 supposed to be understood, the sensitivity for
13 those.
14 Q. We were, before we took a short break,
15 you were testifying about the Roshei Yeshiva.
16 A. Um-hum.
17 Q. Are any of the Roshei Yeshiva members of
18 the board of trustees?
19 A. Not that I'm aware of. Members of the
20 Roshei Yeshiva. In the past, I would probably say
21 that Rabbi Lamm was a Roshei Yeshiva, and he was a
22 member of the board of trustees. I think that
23 would be correct.
24 Q. Any members of the board of trustees
25 today that are also Roshei Yeshiva?

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1 KALINSKY
2 A. The university has a career center. I
3 don't know if Yeshiva College has their own career
4 center. Maybe they have specific guidance
5 counselors in the career center that focus on
6 Yeshiva College students and graduates, but I don't
7 think the entity is called Yeshiva College Career
8 Center.
9 Q. Do you know how many people, how many
10 full-time staff members the career center has?
11 A. It's growing. They just got an
12 endowment for money, and they just hired like five
13 people this year, so I would only know if you went
14 to the website the exact number.
15 Q. You don't have any general sense of the
16 baseline number of people who work there?
17 A. Ten.
18 Q. And is one of the purposes of the career
19 center to connect students to prospective
20 employers?
21 A. Sure.
22 Q. Do employers come to campus to recruit
23 students ever?
24 A. Pre-COVID, definitely. We have nights
25 for accountants. We've seen other corporate

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1 KALINSKY
 2 entities come to campus.
 3 Q. So we're going to go to topic 2, which
 4 is "The evolution of the Yeshiva University's
 5 corporate status over time."
 6 A. Um-hum.
 7 Q. And so we looked at the Yeshiva
 8 University amendment to its charter from 1967,
 9 correct? That was Exhibit --
 10 A. 8.
 11 Q. 8, and Yeshiva then amended its charter
 12 again in 1969. Are you aware of that?
 13 MR. BAXTER: Objection to the lack of
 14 foundation.
 15 A. If you had documentation, it would help
 16 refresh. There have been many amendments, so hard
 17 to know which one was the '69.
 18 Q. Sure. So the 1967 amendment that we
 19 looked at, would you agree that that was the
 20 amendment that separated RIETS from Yeshiva
 21 University and created RIETS as an affiliate and
 22 removed the seminary-related degrees from Yeshiva
 23 University and put them in the RIETS affiliate?
 24 MR. BAXTER: Objection as to the lack of
 25 foundation. The documents speak for

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1 KALINSKY
 2 themselves.
 3 If you remember, you can answer.
 4 A. I don't know if I can remember offhand
 5 to all the facets of the question.
 6 Q. Okay. I'll break it down a bit. There
 7 came a time when Yeshiva University separated
 8 formally from RIETS, and RIETS became an affiliate
 9 of the university. Would you agree?
 10 A. Yes.
 11 Q. And that occurred in 1967? Are you
 12 aware of that?
 13 MR. BAXTER: Objection as to the lack of
 14 foundation.
 15 But you can answer if you know.
 16 A. If you can point me to the line, that
 17 would be helpful.
 18 Q. Okay. If you go to the typewritten
 19 document, which is the second page of Exhibit 8.
 20 A. Okay. Yes.
 21 Q. Just so you know, if you look at the
 22 first page of Exhibit 8, you can see it says on the
 23 bottom right-hand corner "adopted December 15,
 24 1967."
 25 Do you see that?

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1 KALINSKY
 2 A. I do see that.
 3 Q. And then, if you flip to the next page,
 4 it says, "adopted December 15, 1967."
 5 A. I don't have that.
 6 MR. BAXTER: I'm not sure we have the
 7 same pages.
 8 A. This is my second page. Oh. There's
 9 another page.
 10 Q. Right. It is all double-sided.
 11 MR. BAXTER: We don't have -- our
 12 Exhibit 8 is not the same.
 13 THE WITNESS: Yes. Correct.
 14 MR. BAXTER: I have pages 1 and 2.
 15 MS. SMITH: I have 5 and 6.
 16 Q. We'll keep on while Max is doing that.
 17 Are you aware just without looking at documents
 18 that there came a time when there was a legal
 19 separation between Yeshiva University and RIETS?
 20 A. Yes.
 21 Q. Okay, and are you aware without looking
 22 at documents generally that as part of that
 23 separation the divinity degrees were awarded by
 24 RIETS, and the remaining degrees were awarded by
 25 Yeshiva University? Is that your understanding?

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1 KALINSKY
 2 A. Again, I would like to see the document,
 3 but there were some degrees that, because of the
 4 nature of the curriculum and those degrees, that
 5 they were being taught in the seminary, and they
 6 weren't being taught in the university part.
 7 Q. What's your understanding of why Yeshiva
 8 University separated legally in this manner that we
 9 just discussed from RIETS in 1967?
 10 MR. BAXTER: Objection to the extent it
 11 mischaracterizes the evidence. I don't
 12 think we have the dates right and to the
 13 extent it calls for a legal conclusion.
 14 But you go ahead and answer.
 15 A. I'm not sure.
 16 Q. You don't know?
 17 A. I'm not sure.
 18 Q. So one of our topics today is the
 19 evolution of Yeshiva University's corporate status
 20 over time from a membership corporation to an
 21 educational corporation to a "religious
 22 corporation."
 23 Are you able to explain as part of that
 24 your understanding of why the seminary portion of
 25 Yeshiva University was made into an affiliate of

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1 KALINSKY
2 the university at a certain point?
3 A. That component of that sentence, I'm not
4 sure. We can talk about evolution. We can talk
5 about religious corporation.
6 Q. Well, my question is more specific.
7 It's really why did Yeshiva University create RIETS
8 as a separate affiliate?
9 MR. BAXTER: Same objection.
10 Q. Can you answer that?
11 A. I don't know. I don't know. That
12 decision was made many decades ago.
13 Q. You're aware that Yeshiva University
14 amended its charter from being a membership
15 corporation to an educational corporation, correct?
16 A. Yes.
17 Q. And do you know why that decision was
18 made?
19 MR. BAXTER: Same objections.
20 MS. ROSENFELD: This is the core topic
21 of the notice, Eric. I'm not sure what the
22 objection is. I'm asking him why Yeshiva's
23 corporate status evolved from being a
24 membership corporation to an educational
25 corporation.

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1 KALINSKY
2 why Yeshiva University evolved from being a
3 membership corporation to an educational
4 corporation, and I believe you said before we took
5 a break that you think it was a legal decision.
6 Do you have any other information about why that
7 change was made?
8 MR. BAXTER: I instruct the witness not
9 to speculate.
10 If you've talked to someone or gained
11 knowledge or if you have personal knowledge
12 other than talking to your attorneys, you
13 may answer the question.
14 A. No. I don't know. I don't know the
15 difference between membership to an education -- I
16 know what an education corporation is. That we
17 are. It would make sense for a university to be an
18 educational corporation.
19 Q. Okay. So let's look at this 1967
20 document, which is Exhibit 8, which is the charter
21 amendment.
22 So just to direct your attention,
23 please, first to the page that is marked PL 000010.
24 A. Yeah.
25 MR. BAXTER: Let me just note for the

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1 KALINSKY
2 MR. BAXTER: And he says he doesn't know
3 why. The topic is about the evolution.
4 He's testified he knows the dates when it
5 changed. He may not know the reasons why.
6 MS. ROSENFELD: Okay. That's the only
7 thing we're here to discuss. So, if he
8 doesn't know that, that's going to be
9 difficult.
10 Q. But do you know why Yeshiva University
11 evolved from a membership corporation to an
12 educational corporation?
13 A. I think that was a legal decision. I
14 don't know. Which year is that are you referring
15 to? You want to go back to this and hold off on
16 what you're asking right now?
17 Q. There's no pending question for you
18 right now.
19 A. Okay. I'm going to run to the restroom
20 for about 60 seconds if that's okay.
21 MS. ROSENFELD: Sure. That's fine.
22 MR. BAXTER: Off the record.
23 (Recess taken)
24 BY MS. ROSENFELD:
25 Q. So the question that I was asking was

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1 KALINSKY
2 record, this appears to be the typed out
3 version of the original document, but we
4 haven't had a chance to compare word for
5 word, but we will, we understand the
6 premises under which you operate.
7 Q. Sure, and, just for the record, PL
8 000010 through 15 are documents that we obtained
9 via subpoena from the New York State Education
10 department and previously produced to defendants
11 with these Bates stamp marks, and it is our
12 understanding that PL 10 to 15 represent the
13 typed-out version of the charter that is page 1 of
14 Exhibit 8.
15 So, with respect to page 10 of this
16 Exhibit 8, paragraph 1 says, "This corporation
17 incorporated as the Rabbi Isaac Elchanan
18 Theological Seminary Association under the
19 membership corporation law of the State of New York
20 on March 20, 1897, the name of which was
21 subsequently changed by the Regents of the
22 University of the State of New York to Yeshiva
23 University is hereby continued as an educational
24 corporation under the education law of the State of
25 New York and with all of its previous powers and

Pages 89 to 92

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1 KALINSKY
2 privileges as herein restated or modified."
3 Do you see that?
4 A. Yes.
5 Q. So is it correct that Yeshiva University
6 changed its corporate status from a membership
7 corporation to an educational corporation under the
8 education law in 1967?
9 MR. BAXTER: Objection to the extent it
10 calls for a legal conclusion, and the
11 document speaks for itself.
12 But you can answer.
13 A. Yes. Correct. We continued as an
14 educational corporation, so we had a status. That
15 status continued to the educational corporation.
16 Q. Okay, and if you go to paragraph 9,
17 please, which is on page 12, it says that "Yeshiva
18 University is and continues to be organized and
19 operated exclusively for educational purposes" as
20 the first phrase of that sentence. Do you see
21 that?
22 A. I do.
23 MR. BAXTER: Go ahead and read the whole
24 paragraph.
25 THE WITNESS: Yeah.

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1 KALINSKY
2 go to the very last page, please.
3 A. Can you just -- what am I looking at?
4 Q. I'm orienting you to that by starting at
5 the last page to give you the date.
6 A. Great.
7 Q. So this document is signed by Samuel
8 Belkin. Is he the former president of Yeshiva
9 University?
10 A. Yes, he was.
11 Q. That document is dated October 9, 1969.
12 Do you see that?
13 A. Yes.
14 Q. Okay, and if you can go back to the
15 first page, so this is a petition of Yeshiva
16 University to amend its charter, and you'll see
17 that it refers to Exhibit 12 that we just looked
18 at, the 1967 charter amendment?
19 MR. BAXTER: Where is that?
20 MS. ROSENFELD: Paragraph second.
21 Q. It says, "That annexed hereto and marked
22 Exhibit A is a copy of the amended and restated
23 certificate of incorporation of said corporation,
24 which was duly granted on December 15, 1967 by the
25 Board of Regents."

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1 KALINSKY
2 MS. ROSENFELD: Well, I'm not asking you
3 any question about it, but you're welcome to
4 read it.
5 Q. And then it also describes in paragraph
6 10 which degrees that Yeshiva University is now
7 authorized to confer. Do you see that?
8 A. Give me a few seconds here. I'm sorry.
9 Am I answering a question?
10 Q. Yeah. The question is just do you see
11 where this document says that under the amended
12 charter, Yeshiva University is now authorized to
13 confer the degrees that are listed in the document?
14 A. Right. Including Yeshiva University
15 will be conferring a degree of doctor of divinity,
16 of religious education, a master of religious
17 education, those degrees as part of Yeshiva
18 University.
19 Q. Right. Do you see that?
20 A. I do see that.
21 (Plaintiffs' Exhibit 13, Petition dated
22 October 9, 1969 of Yeshiva University to
23 amend charter, was so marked for
24 identification, as of this date.)
25 Q. What we've marked as Exhibit 13 if you

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1 KALINSKY
2 So this document 1969 comes after the
3 1967 document that we just looked at that created
4 Yeshiva University as an educational corporation.
5 I'm just orienting you. There's no question.
6 A. Thank you.
7 Q. So let's read, if you turn to the second
8 page, please, you will see the paragraph that says
9 "Third."
10 A. Um-hum.
11 Q. So this is Third, Fourth and Fifth.
12 A. I don't know what Third said.
13 Q. So --
14 A. That's what I'm trying to read. I'm
15 not sure.
16 Q. You can read the whole document. I'll
17 summarize for you as you're reading it, just to
18 orient you that 3, 4 and 5 are explaining what
19 degrees the university is authorized to confer, and
20 then at the Sixth paragraph it says, "That your
21 petitioner does show that it wishes in addition to
22 the foregoing, to amend the said Certificate of
23 Incorporation by eliminating therefrom the
24 degrees," and then it lists certain degrees. Do
25 you see that?

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1 KALINSKY
2 A. Um-hum. Yes.
3 Q. So was the ability to confer the degrees
4 listed in this paragraph eliminated from Yeshiva
5 University's charter in 1969?
6 MR. BAXTER: Objection to the extent it
7 calls for a legal conclusion, and the
8 document speaks for itself.
9 You can answer if you know.
10 A. I'm catching up, but that seems to be
11 what number Sixth says.
12 Q. Okay. Do you see then Seventh says
13 "That your petitioner desires to effectuate the
14 foregoing amendment to its charter consistent with
15 its present corporate organization and operations.
16 In its petition dated November 6, 1967 to the Board
17 of Regents to amend and restate its charter as an
18 educational corporation," and then actually, Rabbi
19 Dr. Kalinsky, if you can just read pages 4 and 5 to
20 yourself and let me know when you've had a chance.
21 A. Can I ask a question on page 3?
22 Q. Sure.
23 A. Are we saying that these were eliminated
24 and placed elsewhere, or they were completely
25 eliminated?

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1 KALINSKY
2 Hebrew literature and religious education degrees
3 were eliminated from Yeshiva's charter and moved to
4 RIETS in 1969?
5 MR. BAXTER: Objection, and I counsel
6 the witness not to speculate or to speak on
7 anything you may have learned from counsel,
8 but, if you have personal knowledge or have
9 spoken to anyone else at Yeshiva University
10 other than your counsel, you can testify to
11 that knowledge.
12 A. I don't know.
13 Q. Today, RIETS issues -- RIETS has the
14 authority to ordain rabbis, is that correct?
15 A. Yes.
16 Q. And the ordination degree is called
17 what?
18 A. Semikha. S-e-m-i-k-h-a would be one way
19 of spelling it.
20 Q. Thank you. Is that the title of the
21 certificate of ordination that one gets to become a
22 Rabbi?
23 A. When one becomes a Rabbi from RIETS,
24 you're awarded the Hebrew documents. It's called
25 semikha. It's all in Hebrew. There is a way I

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1 KALINSKY
2 Q. You know, it's a funny device, but I
3 can't answer your question, so, if you could just
4 read the document, and if you want to take a break
5 and talk to your attorney about it, I don't mind,
6 but I can't really explain the document to you in
7 that way.
8 A. Okay.
9 Q. And, actually, if you can just please
10 read to the end of the top line of page 6, please.
11 It ends with the words "higher education."
12 Have you had a chance to read those two
13 pages?
14 A. Yes, I did.
15 Q. So is it correct that in 1969 the
16 ordination and other degrees related to Hebrew
17 literature and religious education degrees were
18 eliminated from Yeshiva University's charter and
19 moved to the separate charter of RIETS?
20 MR. BAXTER: Objection to lack of
21 foundation and calls for a legal conclusion.
22 The document speaks for itself.
23 But if you know, you can answer.
24 A. I believe that's what it says.
25 Q. And do you know why the ordination and

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1 KALINSKY
2 believe of obtaining an English translation of
3 that. Sometimes a student wants to show that he
4 has another degree, he's ordained, and not everyone
5 is able to read the Hebrew ordination.
6 Q. And that degree is awarded by RIETS,
7 correct?
8 A. RIETS ordains its students. We had 150
9 students ordained a few weeks ago.
10 Q. Congratulations, and so in this document
11 where the separation of the ordination degrees
12 occurred in 1969, that's consistent with how the
13 university operates today in the sense that Yeshiva
14 University does not issue the semikha. It comes
15 from RIETS. Is that correct?
16 A. The semikha ordination is issued by the
17 Rabbi Isaac Elchanan Theological Seminary. I
18 believe that these --
19 MR. BAXTER: I don't think there's a
20 pending question.
21 THE WITNESS: Okay. Fine.
22 Q. Okay, and it also -- this document
23 states that the changes described in the document
24 are to clarify the corporate status of the
25 university as a nondenominational institution of

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1 KALINSKY
2 higher education. Do you see that?
3 That's on the last two sentences of page
4 5 and the first of page 6?
5 A. I see that. Yes.
6 Q. Okay. Is Yeshiva University a
7 nondenominational institution of higher education?
8 MR. BAXTER: Objection to the extent it
9 calls for a legal conclusion.
10 But you can answer the question.
11 MS. ROSENFELD: Eric, I don't think
12 that's a proper objection in this deposition
13 where the topic is the evolution of Yeshiva
14 University's corporate status over time from
15 a membership corporation to an educational
16 corporation to a religious corporation.
17 If this was a lay or a fact witness, I
18 understand your objection, but the
19 university has designated this witness to
20 testify about its corporate status.
21 So the objection that it's a legal
22 conclusion is not a proper objection for
23 this corporate witness about corporate
24 status questions.
25 MR. BAXTER: I'm stating my objections

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1 KALINSKY
2 MR. BAXTER: Same objection.
3 Go ahead.
4 A. That's what the document says.
5 Q. Well, I'm not asking about the document.
6 You can set it aside, please.
7 In your designation as the corporate
8 representative of Yeshiva University, is Yeshiva
9 University a non-denominational institution?
10 A. We do not perform any illegal
11 discrimination.
12 Q. I'm sorry. You don't perform any
13 illegal?
14 A. Any illegal discrimination. So --
15 Q. Are you saying illegal or legal?
16 A. Illegal discrimination.
17 Q. Do you know what the term
18 "non-denominational" means?
19 A. I think so.
20 Q. Okay. So consistent with this charter
21 document that says that the university is a
22 non-denominational institution, can you answer
23 either yes or no whether Yeshiva University is a
24 non-denominational institution?
25 A. We're a religious institution. We are

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1 KALINSKY
2 for the record. He can answer the
3 question.
4 A. Okay. Can you --
5 Q. Is Yeshiva University a
6 non-denominational institution of higher education?
7 A. Yeshiva University is a religious
8 institution. It's incorporated under the
9 education law. That is how we view ourselves as a
10 corporation, a religious corporation incorporated
11 as an education corporation, and that's what it
12 was.
13 If you want to just review some of what
14 we've read here in the last ten minutes or half
15 hour, we started as incorporated as a Yeshiva.
16 If you want, the evolution was starting
17 as Rabbi Isaac Elchanan Theological Seminary, which
18 was obviously a religious institution, and it
19 evolved into Yeshiva University, maintaining,
20 continuing, I think the document says, the
21 religious institution status continuing as an
22 educational institution, and that's who we are
23 today.
24 Q. Is Yeshiva University a
25 non-denominational institution?

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1 KALINSKY
2 incorporated under the education corporation, and
3 the charter speaks for itself in terms of our
4 denomination.
5 Q. That doesn't answer my question, because
6 I understand what you're saying affirmatively that
7 you are, but I'm asking about a different facet of
8 the university's organization.
9 I'm asking you whether the university is
10 a non-denominational institution?
11 MR. BAXTER: Objection as to form. I
12 think the witness didn't understand what you
13 mean by non-denominational perhaps.
14 MS. ROSENFELD: Well, he said that he
15 does understand what non-denominational
16 means.
17 A. If you could spell it out, that would be
18 helpful for me.
19 Q. So, just to clarify, sitting here today
20 as the representative of Yeshiva University, you
21 are not able to answer whether Yeshiva is a
22 non-denominational institution or not, absent me
23 providing you with a definition of that word? Is
24 that correct?
25 A. I'm trying to understand the question

Pages 101 to 104

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1 KALINSKY
2 better to be able to answer the question.
3 Q. So the definition in the dictionary of
4 Merriam-Webster of non-denominational is "not
5 restricted to a denomination."
6 MR. BAXTER: You can go ahead and answer
7 as best as you know how to answer that
8 question.
9 Q. So the question again is, looking at
10 Exhibit 13, which is a petition related to the
11 charter signed by Samuel Belkin affirming that the
12 university is a non-denominational institution of
13 higher education, is Yeshiva University today a
14 non-denominational institution?
15 A. I would say that this is true.
16 Q. Okay. Let's look at Exhibit 11.
17 Actually, you don't have Exhibit 11 yet. I will
18 give it to you.
19 (Plaintiffs' Exhibit 14, Schedule E, was
20 so marked for identification, as of this
21 date.)
22 Q. Have you seen this document before
23 that's Exhibit 14?
24 A. Schedule E?
25 Q. Correct.

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1 KALINSKY
2 from your personal knowledge or having
3 spoken to people at the university other
4 than your counsel.
5 A. Okay. Can I take a look at the top
6 paragraph just so I can familiarize what the
7 instructions were so that we understood that when
8 we were filling it out.
9 Q. Please take all the time you want with
10 any document.
11 A. Okay.
12 Q. So the question was why did Yeshiva
13 University decide to represent itself this way to
14 the New York State Attorney General's Office?
15 MR. BAXTER: The same advice, but go
16 ahead and answer.
17 A. Yeah. Again, it's unclear to say 100 --
18 well, just back it up. It is true that we checked
19 the box which is true, number 1. Number 2, I was
20 reading again the instructions, "an exemption
21 request that is not accompanied by all required
22 documentation as listed below will not be
23 considered." On the right side, "Required
24 additional documentation," there's none for number
25 6. Number 6 is correct. We are an educational

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1 KALINSKY
2 A. Yes.
3 Q. When did you see this document?
4 A. This week.
5 Q. In 2018 Yeshiva University filed a
6 request for registration exemption for charitable
7 organizations with the New York State Office of the
8 Attorney General according to this document. Is
9 that correct?
10 MR. BAXTER: Objection, based on it
11 calls for a legal conclusion, lack of
12 foundation.
13 Go ahead.
14 A. That seems to be what the document says.
15 Q. And Yeshiva University in this document
16 represented to the New York State Attorney General
17 that it was exempt as an educational institution by
18 checking box 6 and box 7 on page 2. Do you see
19 that?
20 A. Yes.
21 Q. Why did Yeshiva University decide to
22 represent itself this way to the New York State
23 Attorney General's Office?
24 MR. BAXTER: Objection.
25 You can answer that question if you know

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1 KALINSKY
2 institution. We didn't have to provide any
3 additional documentation. Any others in the top
4 field require additional documentation that may not
5 have been easily accessible or had. So we checked
6 box number 6.
7 Q. So, if you look at number 5, it says --
8 there's an option in box 5, right?
9 A. Yes.
10 Q. So your point is that you would have had
11 to submit additional documents in order to be able
12 to check box 5 that may not have been easily
13 accessible?
14 A. Or had. Let's see what it says in
15 number 5. Can I read it again?
16 Q. Yes. I will ask you the question. So
17 is there a copy of a listing of an official -- in
18 an official denominational directory of Yeshiva
19 University?
20 MR. BAXTER: Are you pointing to
21 something in the document?
22 Q. Yes. Do you see that in box 5 in the
23 second column, the top bullet point?
24 A. "Attach a copy of listing in official
25 denominational directory." Yeah. I don't know.

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1 KALINSKY
 2 Q. You don't know if Yeshiva University
 3 could produce that?
 4 A. Correct.
 5 Q. Okay, and then it says, if you are an
 6 organization "operated, supervised or controlled by
 7 or in connection with another organization that is
 8 exempt from registration as religious, attach a
 9 description of the relationship between your
 10 organization and that other organization."
 11 Is it your testimony that that is
 12 something that wasn't easily accessible or
 13 something that Yeshiva couldn't provide?
 14 A. I think it would be difficult to provide
 15 a documentation showing that there is control.
 16 Q. Okay. What about a copy of a letter
 17 from the Charities Bureau confirming the religious
 18 exemption of that other organization?
 19 Is that something that was not easily
 20 accessible to Yeshiva or something that it didn't
 21 possess?
 22 A. I think both could be correct.
 23 Q. Okay, and what about the other
 24 organization's bylaws, certificate of
 25 incorporation, et cetera? Could Yeshiva University

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1 KALINSKY
 2 have provided those?
 3 A. I don't think so.
 4 Q. Okay, and then, if you go to page --
 5 well, actually let's go back to paragraph 5,
 6 please.
 7 A. Um-hum.
 8 Q. Yeshiva University is not incorporated
 9 under the religious corporation law, correct?
 10 A. Yeshiva University is a religious
 11 corporation incorporated under education law.
 12 Q. Just please listen to my question. Is
 13 Yeshiva University incorporated legally under the
 14 New York religious corporation law?
 15 MR. BAXTER: Objection to the extent it
 16 calls for a legal conclusion.
 17 Q. It's a yes or no question.
 18 A. We are not incorporated under the
 19 religious corporation law. Correct.
 20 Q. Okay. Now let's go to the second page,
 21 please. Actually it's the same, so we don't need
 22 to go through that again.
 23 So, just to make sure I understand your
 24 testimony, Rabbi Dr. Kalinsky, the reason that you
 25 believe Yeshiva University checked the box that it

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1 KALINSKY
 2 did on this form is because, to check the other
 3 boxes, Yeshiva University would have been required
 4 to provide documentation that it either didn't have
 5 or was not accessible to it?
 6 A. The answer to the question is this
 7 document is a tax exemption form. It's not
 8 defining us as an institution. So we're a
 9 religious corporation. So, in order to check box
 10 number 5, we would have had to have had additional
 11 documents, which it either would have or would not
 12 have been able to provide them.
 13 So number 6 for someone filling out the
 14 form, and I did speak to the person who filled out
 15 the form, who said, yes.
 16 So number 6 it allows us to be exempted.
 17 Number 5 was much more complicated to be able to
 18 know for sure whether we would be able to attach
 19 all the additional documents in order for this to
 20 be submitted.
 21 Q. And you spoke to Mr. Melgar?
 22 A. No.
 23 Q. Who did you speak to that prepared this
 24 form?
 25 A. Who is Mr. Melgar?

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1 KALINSKY
 2 Q. He's the author of the cover letter on
 3 the first page of Exhibit 14. Who did you speak
 4 with?
 5 A. I spoke with --
 6 MR. BAXTER: You can say other than your
 7 counsel who you spoke to.
 8 A. Yeah. I spoke with Alan Kluger.
 9 Q. Did Alan Kluger prepare this form?
 10 A. I believe so.
 11 Q. And Alan Kluger, what did Alan Kluger
 12 tell you about why he couldn't provide the
 13 documentation requested in box 5?
 14 A. He didn't think it was easily accessible
 15 to be able to submit it.
 16 Q. And when you say accessible, do you mean
 17 it was hard to find because it was in a drawer
 18 somewhere or that it didn't exist, because it just
 19 simply did not exist?
 20 A. I'm not sure.
 21 Q. Well, how did you understand it?
 22 A. It could have been both.
 23 Q. So Alan Kluger's title is what?
 24 A. Tax something.
 25 Q. Director of tax and compliance? Is

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1 KALINSKY
2 that correct?
3 A. It sounds right.
4 Q. Alan Kluger is the director of tax and
5 compliance for Yeshiva University. Your testimony
6 is that Mr. Kluger told you that he checked certain
7 boxes on this form because certain documents were
8 not accessible to him?
9 A. If you're asking for the
10 characterization of the organization for religious
11 purpose, that's the documentation we have to bring.
12 Q. No, no. Let's just stick with my
13 question. Did Alan Kluger tell you that the
14 reason he checked certain boxes on this form,
15 whatever boxes he checked, was because certain
16 documents that he needed were not accessible to
17 him?
18 A. I believe so.
19 Q. Okay. Alan Kluger is the director of
20 tax and compliance for the whole university, right?
21 A. Um-hum.
22 Q. Alan Kluger presumably has access to any
23 documents that he needs to support Yeshiva
24 University's legal filings, correct?
25 A. Um-hum.

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1 KALINSKY
2 MR. BAXTER: Objection to form.
3 A. Yeah, I don't even --
4 Q. Okay. We'll go over it again then. So
5 there is no official -- there's no listing in an
6 official denominational directory, correct?
7 A. I don't know.
8 Q. Okay. There is no description of the
9 relationship for an organization operated,
10 supervised or controlled by or in connection with a
11 religious organization? You said that that
12 doesn't --
13 A. I think that would be a complicated
14 thing to provide documentation for.
15 Q. Does it exist?
16 A. I don't know. Again, the word
17 "control" in Judaism is a hard word to document.
18 That there's a control.
19 Q. Okay. Would Yeshiva University be able
20 to provide a copy of a letter confirming a
21 religious exemption of an organization that
22 operated, supervised or controlled Yeshiva
23 University?
24 A. I presume yes.
25 Q. Which organization would that be?

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1 KALINSKY
2 Q. Can you say yes?
3 A. Yes. Sorry.
4 Q. Okay. So Alan Kluger made a decision to
5 select a certain exemption category on this form,
6 correct?
7 A. No. He decided not to check an
8 additional box.
9 Q. Which additional box did he decide not
10 to check?
11 A. I think you're questioning number 5.
12 Q. And what's your understanding of why
13 Alan Kluger decided not to check box 5?
14 MR. BAXTER: Asked and answered.
15 A. Having to do with the top paragraph of
16 to be required to list all of the documentation to
17 accompany it with the request.
18 Q. And the documentation that would need to
19 accompany the request is the documentation that you
20 and I discussed a little bit earlier, right?
21 MR. BAXTER: Objection as to form.
22 A. I'm cannot --
23 Q. Some of the documents that Yeshiva
24 needed, if it wanted to check box 5, don't exist at
25 all, correct?

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1 KALINSKY
2 A. I presume it would be difficult to do.
3 I'm not following. Again, I don't fill out these
4 forms.
5 Q. No. This is, the question is would
6 Yeshiva University be able to provide a copy of a
7 letter confirming a religious exemption of an
8 organization that operated, supervised or
9 controlled Yeshiva University as this form would
10 require?
11 A. I don't know.
12 Q. Did Alan Kluger tell you that that was
13 possible or impossible?
14 A. I don't know. I don't remember
15 exactly.
16 Q. So, in order to understand how or why
17 this form was filled out, would I need to speak
18 with Alan Kluger?
19 MR. BAXTER: Objection. Calls for
20 speculation.
21 A. I don't think that would give you more
22 information.
23 Q. Well, he filled out the form, right?
24 A. He filled out the form.
25 Q. Have you seen any other versions of this

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1 KALINSKY
2 form other than this 2018 Schedule E one?
3 MR. BAXTER: Objection to form.
4 Go ahead.
5 A. I'm not sure.
6 Q. Okay. You're aware that the one that
7 we're looking at was filled out in 2018. Is that
8 correct?
9 A. Yes.
10 Q. Do you know if other versions of this
11 exist from other years?
12 A. I'm not sure.
13 Q. Did you see any versions dated a
14 different year?
15 A. If you have them, you can share them.
16 Q. I do not have them. I'm asking if you
17 have seen them.
18 A. No.
19 MS. ROSENFELD: Okay. It's about 12:23
20 p.m. We can go off the record.
21 (Lunch recess: 12:23 p.m.)
22
23
24
25

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1 KALINSKY
2 corporation. Would you agree?
3 MR. BAXTER: Objection, calls for a
4 legal conclusion.
5 A. I know that they're two different words.
6 They probably have two different legal contexts.
7 Q. Right, but that gets to my point. The
8 term "corporation" has a specific legal meaning.
9 Would you agree?
10 MR. BAXTER: Objection. Calls for a
11 legal conclusion.
12 A. I think it would. Yeah.
13 Q. And the meaning of something that is a
14 corporation is different than something that is an
15 institution or an organization, for example, right?
16 MR. BAXTER: Objection, calls for a
17 legal conclusion.
18 A. I don't know enough to answer that well.
19 I know that they're different terms.
20 Q. But they mean different things, right?
21 A corporation means something specific under the
22 law, is that right?
23 MR. BAXTER: Same objection.
24 Q. I'm not asking you at this point what it
25 means. I'm saying the term "corporation" is a

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1 KALINSKY
2 Afternoon Session
3 1:37 p.m.
4 RABBI DR. YOSEF KALINSKY, having been previously
5 duly affirmed, was examined and testified further
6 as follows:
7 EXAMINATION (Continued)
8 BY MS. ROSENFELD:
9 Q. Rabbi Dr. Kalinsky, before we took a
10 lunch break, you had given some testimony that
11 Yeshiva University is a religious corporation under
12 the education law.
13 A. Um-hum.
14 Q. And I want to ask you about that
15 testimony. You would agree that a corporation is a
16 different entity than an organization that is not
17 legally organized as such, right?
18 MR. BAXTER: Objection, calls for a
19 legal conclusion.
20 Go ahead.
21 A. If you could define the terms, that
22 would help me.
23 Q. Sure. So, for example, one could say
24 that something is a religious institution, and that
25 would be different than saying it's a religious

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1 KALINSKY
2 legal term. Would you agree?
3 A. "Corporation" I believe is a legal term.
4 I don't know why institution wouldn't be a legal
5 term either, though.
6 Q. Well, are you aware that in New York
7 there is a business corporation law, there's a
8 not-for-profit corporation law and that the law is
9 the entity that creates a corporation? Do you
10 understand that?
11 A. Okay.
12 Q. So, when you say that Yeshiva University
13 is a religious corporation, are you saying that as
14 a legally organized form of an organization it's a
15 corporation or something different?
16 MR. BAXTER: Calls for a legal
17 conclusion.
18 You can answer.
19 MS. ROSENFELD: This is the subject
20 matter of the deposition notice, Eric. The
21 deposition topic is the corporate entity's
22 testimony about its corporate legal status.
23 So I continue to object to your
24 objection, because I think it's misleading
25 to the witness to say it's a legal question.

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1 KALINSKY
2 This is the question for which he has been
3 designated to testify.
4 Q. You can answer the question.
5 A. My understanding is that we're a
6 religious corporation incorporated as an education
7 corporation.
8 Q. So why do you use the term "religious
9 corporation"? What makes Yeshiva University a
10 corporation?
11 MR. BAXTER: Objection. Calls for a
12 legal conclusion.
13 You can answer.
14 A. The corporation means that we're a unit
15 that's not -- my understanding of corporation is
16 that we're a unit that you can't define it as one
17 single person as owning the corporation. That's
18 why you incorporate is my understanding.
19 Q. Right, and is it your understanding also
20 that you incorporate under the law?
21 A. Yes.
22 Q. Okay, and so what law is Yeshiva
23 University incorporated under?
24 A. The corporations law.
25 Q. Okay. You have said it is a religious

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1 KALINSKY
2 a university.
3 Q. So my question is, when you say it's a
4 religious corporation and corporation has a
5 specific legal meaning, what are you referring to
6 that makes it a religious corporation?
7 A. So I'm referring to the fact that
8 Yeshiva began as Rabbi Isaac Elchanan Theological
9 Seminary as a membership corporation. Even as a
10 membership corporation, it was clearly a religious
11 corporation. It was a seminary. They were
12 studying Torah all day long. There were no other
13 studies than Torah.
14 So, even when we were a membership
15 corporation, it was a religious corporation at its
16 core, and that was continued forever. That's where
17 my understanding comes from.
18 Q. And so, having looked together at those
19 documents from 1967, which showed that in 1967
20 Yeshiva University became an educational
21 corporation and RIETS became an affiliate with a --
22 a separate entity, in what way now is it a
23 religious corporation?
24 A. By its nature.
25 Q. I see. So you're saying, are you using

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1 KALINSKY
2 corporation under the education law, right?
3 A. Right.
4 Q. So do we agree that Yeshiva University
5 is incorporated under the education law?
6 A. It's a religious corporation
7 incorporated under the education law.
8 Q. Right, and this phrase where you say
9 it's a religious corporation, well, let me ask you
10 this way.
11 Would you say that it's fair to describe
12 Yeshiva University as a religious institution?
13 A. Yeah. That would also be true.
14 Q. And would you also say it's fair to
15 describe Yeshiva as a religious organization?
16 A. I don't think people refer to Yeshiva as
17 an organization.
18 Q. Okay. What about it's a religious
19 university? Would that be correct to say?
20 A. I could understand someone saying that.
21 We are a Yeshiva University, and people think of
22 the word Yeshiva as a religious corporation.
23 Q. Okay.
24 A. Sometimes we even have to explain to
25 them why we're not a Yeshiva only, and we are also

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1 KALINSKY
2 "religious" as an adjective like it's descriptive
3 of the word "corporation"?
4 A. As opposed to?
5 Q. As opposed to it's incorporated legally
6 as a religious corporation.
7 MR. BAXTER: Asked and answered.
8 Objection.
9 Go ahead and answer it.
10 A. I understand that the documents show
11 that we are incorporated as an educational -- under
12 the education law, but I also understand that we're
13 a religious corporation.
14 Q. And I appreciate that, but I'm really
15 trying to understand what is the basis that you
16 believe that makes it a religious corporation,
17 because a corporation -- well, let me ask you this
18 way.
19 A. Um-hum.
20 Q. Would you agree that a corporation is an
21 entity -- something is a corporation because it's
22 an entity that has been recognized by the law as
23 such?
24 MR. BAXTER: Objection, calls for a
25 legal conclusion.

Pages 121 to 124

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1 KALINSKY
2 But you can answer if you know.
3 A. I would assume that's correct.
4 Q. Okay, and there are different laws in
5 New York that allow one to be a corporation.
6 There's the religious corporations law. There is
7 an educational corporation. There is a
8 not-for-profit corporation. There's a business
9 corporation.
10 So what I'm asking you is, given that a
11 corporation is a legal term, what makes Yeshiva
12 University a religious corporation?
13 MR. BAXTER: Objection.
14 But go ahead.
15 A. I think by the nature of who we are.
16 Q. I see. So the nature of who you are
17 meaning the beliefs, the practices, the activities
18 of the organization?
19 A. How we comport ourselves, how we
20 introduce ourselves to our students, how our
21 donors, how everyone recognizes us. I don't think
22 there's a question when they say Yeshiva
23 University, oh, that's just like Boston University.
24 It's Yeshiva University.
25 Q. Understood, so you said that it is by

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1 KALINSKY
2 legal conclusion.
3 But you may answer that question.
4 A. My understanding is, as you've stated,
5 if you look at the corporate legal document, the
6 legal document would not have a capital R.
7 Q. It's not a religious corporation under
8 New York law, correct?
9 MR. BAXTER: Objection. Calls for a
10 legal conclusion.
11 A. Right. I'm not sure how to answer that.
12 Q. I mean we will have to get to an answer
13 on that question, so I'll ask it in some different
14 way.
15 A. Okay.
16 Q. I think we arrived at an understanding
17 that the ways that you've described Yeshiva as
18 being religious relate to how you introduce
19 yourselves, how you think about yourselves, your
20 practices, your identity, your character, your
21 physical layout. Those things have a religious
22 aspect or are religious, but what I'm asking you
23 about is the legal organization as a religious
24 corporation under New York law.
25 Is Yeshiva a religious corporation under

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1 KALINSKY
2 the nature of who we are that you are a religious
3 corporation because of the character and identity
4 of the institution makes it a religious
5 corporation?
6 A. More than that. That's part of it. I
7 mean the fact that there are physical things in
8 terms of the setup of the campus that makes it a
9 religious corporation, our studies, the dual
10 curriculum.
11 Q. Right.
12 A. Make it sound, more than sound like, we
13 present as a religious studies corporation.
14 Q. I understand that, and I guess the
15 distinction that I'm trying to understand is, if we
16 say that a religious corporation is organized under
17 the law as that entity versus a religious
18 corporation, because the activities of the
19 organization, its beliefs, its identity, all the
20 things you just mentioned are religious, you're
21 referring to religious corporation in the latter.
22 Is that right? Because you're not literally
23 saying that Yeshiva is legally organized as a
24 religious corporation, are you?
25 MR. BAXTER: Objection, calls for a

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1 KALINSKY
2 New York law?
3 MR. BAXTER: Asked and answered.
4 MS. ROSENFELD: It's not asked and
5 answered. He said he's not sure how to
6 answer that. That was his last answer.
7 MR. BAXTER: We both know that the
8 law --
9 MS. ROSENFELD: Please no speaking
10 objections.
11 MR. BAXTER: It is a legal question.
12 You can argue this to the court.
13 Q. Can you answer that question, Rabbi Dr.
14 Kalinsky? Under New York law, is it organized as
15 a religious corporation?
16 MR. BAXTER: Same objection.
17 You can answer.
18 A. I don't know for sure.
19 Q. You don't know?
20 A. We're an education corporation, but
21 we're a religious corporation.
22 Q. Well, we're going to go back to square 1
23 with that. We talked about under New York law
24 corporations are recognized as either educational
25 corporations, religious corporations,

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1 KALINSKY
2 not-for-profit corporations, business corporations.
3 There's all these designations of how the law
4 characterizes a corporation.
5 Under that rubric, is Yeshiva University
6 organized as a religious corporation?
7 A. My understanding is that the identity
8 does play a role in how a corporation is viewed.
9 I think that it does play a role.
10 Q. What's the basis of your understanding
11 that the definition of a corporation is based on
12 that?
13 A. If you ask me what we are, I'll tell you
14 a religious corporation.
15 Q. But I'm not asking about your identity
16 or affiliation or your belief about yourself. I'm
17 asking about your legal organization.
18 A. Right.
19 Q. And, for purposes of your legal
20 organization, is Yeshiva University organized as a
21 religious corporation?
22 A. I would say it's religious. It's run as
23 a religious institution, if you want to use that
24 word instead, but we're incorporated under the
25 education law.

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1 KALINSKY
2 A. Yes.
3 Q. Okay. Has Yeshiva University done that?
4 A. I'm not aware that we've done that.
5 Q. Okay, and are you aware that there is a
6 legal status that is a religious corporation? Are
7 you aware of that?
8 A. Yes.
9 Q. Is Yeshiva University in its legal
10 status a religious corporation?
11 MR. BAXTER: Objection, calls for a
12 legal conclusion.
13 A. I'm not aware of us filing.
14 Q. Is there any document that you're aware
15 of where Yeshiva has filed with any government
16 entity representing that it's a religious
17 corporation?
18 MR. BAXTER: Objection.
19 Q. Under the law?
20 A. Again, this is where there's a bit of a
21 question. In other words, do governments and
22 states and city officials view us as a religious
23 entity? Yes.
24 Q. Right, and that's one piece of this
25 inquiry, and I appreciate your answer on that piece

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1 KALINSKY
2 Q. So you're not incorporated as a
3 religious corporation, correct?
4 A. With New York.
5 MR. BAXTER: Objection. You mean under
6 the religious corporations law?
7 MS. ROSENFELD: Please don't prompt the
8 witness.
9 Q. You can answer my question.
10 A. That's what I'm trying to understand,
11 exactly where you're pegging this question.
12 Q. My question was you're not incorporated
13 as a religious corporation under New York law. Is
14 that correct?
15 A. It depends what aspect of New York law I
16 think. That's part of the question.
17 Q. Well --
18 MR. BAXTER: He's already told you we're
19 incorporated as an educational corporation.
20 You know that.
21 Q. So maybe we'll go at this a different
22 way. Do you understand that institutions do have
23 the ability to -- that an entity could register as
24 a religious corporation under the religious
25 corporations law?

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1 KALINSKY
2 of it.
3 I'm focused only on the legal
4 organization piece of whether you as Yeshiva has
5 ever represented itself to be a religious
6 corporation in the legal sense to any government
7 entity?
8 MR. BAXTER: Objection. Calls for a
9 legal conclusion.
10 A. I can't speak for every single instance,
11 but again we present ourselves as a religious
12 institution. I can't tell you what, if there's a
13 line somewhere of a document somewhere.
14 Q. Do you agree that there's a difference
15 between being a religious institution and being a
16 religious corporation under -- in the eyes of the
17 law?
18 A. I presume there is a difference. I'm
19 not as well-versed as you are to know the
20 differences though.
21 Q. Right. I appreciate that. Because
22 you've been designated by Yeshiva to be the witness
23 on this question --
24 MR. BAXTER: There's no topic that asks
25 him to distinguish between what is the legal

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1 KALINSKY
 2 definition of a religious corporation. So
 3 I'm just going to ask you not to answer any
 4 more questions on this line.
 5 MS. ROSENFELD: Well, that's not true,
 6 because topic 2 says that the topic for
 7 discussion is the evolution of Yeshiva
 8 University's corporate status over time from
 9 a membership corporation to an educational
 10 corporation to a religious corporation.
 11 MR. BAXTER: And he has already
 12 testified --
 13 MS. ROSENFELD: This is directly within
 14 the notice's topics.
 15 MR. BAXTER: -- that they're
 16 incorporated as a religious corporation.
 17 MS. ROSENFELD: Eric, you can't testify
 18 for the witness because there's no question
 19 pending.
 20 Q. Rabbi Dr. Kalinsky, has Yeshiva
 21 University ever represented itself to be legally
 22 organized as a religious corporation in any filing
 23 with the federal government that you're aware of?
 24 A. I don't know. Legally filing. Give
 25 me an example of something where we would have done

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1 KALINSKY
 2 that.
 3 Q. Well, we looked at one document that was
 4 filed with the New York State Attorney General
 5 where Yeshiva University did not choose that it was
 6 a religious corporation. It chose that it was an
 7 educational institution, right?
 8 A. Yes.
 9 Q. Are you aware of any document that
 10 Yeshiva University has filed where it has
 11 represented itself to the federal government to be
 12 a religious corporation?
 13 A. So, when we do file, let's say for other
 14 grants as you have brought in that other documents,
 15 I believe, when we talk about the university is
 16 asking for a grant, say from the city or the state,
 17 we definitely present ourselves as a religion
 18 institution.
 19 We happen to have a curriculum for
 20 undergrads. We're very proud of our culture on
 21 campus.
 22 So those that would be seeing the
 23 document, that would be part of the pros, let's
 24 say, the explanation of who we are as a university
 25 institution that started in 1897, that would all be

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1 KALINSKY
 2 included in our -- so, when you say representation,
 3 that's how we would present ourselves.
 4 Q. Understood, and that goes to the sort of
 5 religious institution presentation, and thank you
 6 for that answer.
 7 Now I'm also asking you separately
 8 similarly to the 410 form that we looked at, are
 9 you aware of any filings where Yeshiva University
 10 has represented itself to be a religious
 11 corporation to the federal government, not a
 12 religious institution in the way you just
 13 described, but a religious corporation under the
 14 law? Are you aware of any filings?
 15 A. I don't know.
 16 Q. Okay. What about to New York State
 17 government? Are you aware of any filings where
 18 Yeshiva University has represented itself to be a
 19 religious corporation under the law to New York
 20 State?
 21 A. I don't know of for checking off a box
 22 saying, yes, we're religious?
 23 Q. Any representations. It doesn't just
 24 have to be a box.
 25 A. Well, that's what I'm saying. There is

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1 KALINSKY
 2 a representation I think in the documents saying,
 3 you know, knowing who we are and defining who we
 4 are and the institution that we are, but, in terms
 5 of saying we deserve this because we're religious,
 6 I'm not aware.
 7 Q. Right, and again I'm setting aside and
 8 accepting everything that you're saying about the
 9 presentation of the institution as being religious.
 10 I'm focused on the religious corporate legal
 11 status.
 12 A. Okay.
 13 Q. So I'm just really trying to hone in on
 14 are you aware of any documents where Yeshiva
 15 University has ever presented itself to state or
 16 city government as a corporation? Religious
 17 corporation?
 18 A. Under the law?
 19 Q. Yes.
 20 A. I'm not aware.
 21 Q. And is it the same for the federal
 22 government? You're not aware of any documents
 23 where Yeshiva has represented itself as a religious
 24 corporation under the law?
 25 A. I'm not aware.

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1 KALINSKY
 2 Q. Does Yeshiva University's claim now to
 3 be a religious corporation carry over into how it
 4 files and reports itself to taxing authorities?
 5 MR. BAXTER: Objection as outside the
 6 scope, I guess.
 7 But you can answer.
 8 A. I don't know.
 9 Q. Okay. Just to finish this line of
 10 questioning, are you aware of any document that we
 11 haven't looked at or discussed today that supports
 12 Yeshiva University's claim to be legally organized
 13 as a religious corporation?
 14 A. By the law? Going back to that line of
 15 questioning?
 16 Q. Correct.
 17 A. I'm just trying to think of things that
 18 could be fitting this category. Not that come to
 19 mind.
 20 Q. Okay. Now I'm going to topic 3, which
 21 is "Yeshiva University's policies and practices for
 22 operating as 'non-denominational and nonsectarian
 23 in admitting students from any Jewish or other
 24 faith tradition' and Yeshiva University's policy
 25 and practices regarding 'students of all faiths.'"

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1 KALINSKY
 2 campus, prayer, kashrut, shabbos, in other words,
 3 to understand what the campus life is really about.
 4 That's how we recruit. That's how we present
 5 ourselves.
 6 Q. Do you recruit -- do you have students
 7 who are different denominations of Jewish faith?
 8 A. If denominations mean reform and
 9 conservative?
 10 Q. That's what I mean.
 11 A. Yeah. We definitely have all. The
 12 university represents the larger Jewish community.
 13 Q. Do you know what it means to say that
 14 Yeshiva University is nonsectarian?
 15 MR. BAXTER: Objection to the extent it
 16 calls for a legal conclusion.
 17 A. It's a hard word to define. I don't
 18 use it in my general vocabulary. So sectarian, if
 19 sectarian means are we a religious school or a
 20 religious school? Are all types of Jews eligible
 21 to apply? All types of Jews are eligible to
 22 apply.
 23 Q. All, anyone of any faith is eligible to
 24 apply, correct?
 25 A. Eligible to apply, yeah.

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1 KALINSKY
 2 Just to go back to this, you mentioned a
 3 little bit earlier that not all of the professors
 4 at Yeshiva University's graduate schools are
 5 Jewish.
 6 Does Stern College have faculty members
 7 who are not Jewish?
 8 A. I assume so. I don't know. I would
 9 assume. I don't know about all the faculty.
 10 Q. Why would you assume?
 11 A. Meaning I don't know every single one of
 12 them. I would not be surprised if some of them
 13 are not Jewish. I can't tell you offhand, but I
 14 don't know them intimately to say anything.
 15 Q. Okay. What about Wilf? Are there
 16 faculty members at Wilf who are not Jewish?
 17 A. I think so.
 18 Q. Do students have to be an orthodox
 19 Jewish person to attend Yeshiva University?
 20 A. Our recruiters go to our regular feeder
 21 schools, and we express who we are to them.
 22 Anyone is eligible to apply to Yeshiva University,
 23 but, as long as they're willing and interested in
 24 terms of being a student, they're told to do a
 25 curriculum, it's a religious campus, orthodox on

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1 KALINSKY
 2 Q. And what is your testimony with respect
 3 to when Yeshiva University became a "religious
 4 corporation" under New York law?
 5 MR. BAXTER: Objection, calls for a
 6 legal conclusion.
 7 Go ahead.
 8 A. You're asking for a date?
 9 Q. Yes, if there is one that you know.
 10 A. 1897 it started as a religious
 11 corporation, and it has continued as such. So I
 12 don't think we ever shook that off in terms of a
 13 date of when did we define ourselves as a religious
 14 corporation.
 15 Q. You would agree that Yeshiva University
 16 and RIETS have a different purpose clause in their
 17 charters, would you not?
 18 A. If you have documentation, it would help
 19 me.
 20 Q. Sure. Well, we looked at Yeshiva's
 21 charter earlier, which says that it was
 22 incorporated for an educational purpose. Would you
 23 agree?
 24 A. Education law?
 25 Q. Let's look at it. If you can look at

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1 KALINSKY
2 Exhibit 8, please.
3 A. Do you mind if I look at it?
4 Q. No, no. I think it's much better to
5 look at it that way. So we're looking at
6 paragraph 9 of this document which is PL 12 on the
7 bottom.
8 A. 9. Got it.
9 Q. You see that? It says, "Yeshiva
10 University is and continues to be organized and
11 operated exclusively for educational purposes."
12 Do you see that?
13 A. Yes.
14 Q. Okay. So that's the purpose clause of
15 the charter document. Are you aware that RIETS has
16 a different purpose clause in its corporate
17 documents?
18 A. I would love to see that actually.
19 Q. Okay. So let's go to --
20 (Plaintiffs' Exhibit 15, Document Bates
21 stamped YU 02981 through 2985, was so marked
22 for identification, as of this date.)
23 Q. So Exhibit 15 was produced to us
24 yesterday by your lawyers, and it's Bates stamped
25 YU 02981 through 2985. We don't have a better

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1 KALINSKY
2 objects for which the corporation is to be formed
3 are to promote the study of Talmud and to assist in
4 educating and preparing students of the Hebrew
5 faith for the Hebrew Orthodox ministry."
6 Do you see that?
7 A. I do. Yes.
8 Q. Now, when RIETS reconstituted itself as
9 a separate affiliate in 1967, did the purpose of
10 the organization change?
11 A. Are you asking --
12 Q. I'm asking if you know?
13 A. -- did RIETS change, or did the
14 university change?
15 Q. We know that the university changed its
16 purpose clause in 1967 because we just looked at it
17 in Exhibit 8. What I'm asking now is if RIETS
18 changed its purpose clause at any time since 1897
19 that you're aware of?
20 A. I believe -- is it here? Is it the same
21 where RIETS changed its charter or its purpose or
22 both?
23 Q. I was just asking about its purpose.
24 A. So RIETS, as an ordination school, its
25 tradition hasn't changed since 1897. The faculty

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1 KALINSKY
2 copy of this. So I will just ask you to bear with
3 me. This is what we were provided.
4 If you look at the top, and when it was
5 provided to us, it was represented to us that this
6 is the certificate of incorporation for RIETS.
7 MR. BAXTER: I'm just going to object,
8 because I think this document actually it
9 says something this 26th day of February
10 1897.
11 THE WITNESS: I think something is 1957?
12 MR. BAXTER: Yeah. I thought there was
13 a 1957.
14 MS. ROSENFELD: What's your objection?
15 MR. BAXTER: Well, I'm just objecting to
16 the representation of what the document is.
17 MS. ROSENFELD: Well, this is certainly
18 the original certificate of incorporation
19 for RIETS. If there's a later one that
20 we're going to talk about, that's fine, but
21 for right now we're just talking about this
22 one.
23 Q. So this is the certificate of
24 incorporation from 1897 for RIETS, and if you look
25 in the first page, it says, "First, the particular

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1 KALINSKY
2 has changed, but its purpose has not changed. Its
3 direction hasn't changed. 1897, when they
4 established, they called themselves a carryover of
5 Volozhin actually, a European Yeshiva.
6 So the rabbis today when issues come up
7 sometimes, they'll say this is how they did it in
8 Volozhin, clearly expressing that the character of
9 RIETS, Rabbi Isaac Elchanan Theological Seminary,
10 which started in 1897, continues today in 2021.
11 Q. Okay. That answers part of my
12 question. So what does RIETS offer today?
13 MR. BAXTER: I object as to the -- I'm
14 not sure, if it's a topic, I'll let him
15 answer it.
16 MS. ROSENFELD: I am sequeing into topic
17 4, which is the highly integrated
18 relationship between the two institutions
19 and their differences.
20 THE WITNESS: Yeah. I'm okay
21 answering.
22 A. So I'll just share the reason why I have
23 information about RIETS is also firsthand. My
24 office is situated next to the Dean of RIETS'
25 office. We consult. The previous Dean of

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1 KALINSKY
 2 Undergraduate, before I was Dean of UTS, the
 3 previous Dean was Rabbi Penner, who was also the
 4 Dean of RIETS UTS, so there's a lot of overlap.
 5 Q. I understand.
 6 A. So the specific answer to your question
 7 is RIETS offers ordination. On the books, it also
 8 has additional degrees. We are able to give other
 9 degrees. I think the MRE is still there.
 10 Whatever is here is still on the books. There are
 11 master's and doctorate degrees that RIETS is able
 12 to offer its students. RIETS is actually in the
 13 process of exploring additional master's degrees.
 14 Q. So do you know what -- let me ask you
 15 this. When was the last time, to your knowledge,
 16 that RIETS awarded a doctoral degree?
 17 A. I don't know.
 18 Q. In the last 20 years?
 19 A. There's an advanced ordination, but
 20 that's not a doctoral degree I guess according to
 21 what the State would say. The Doctorate of
 22 Divinity, is that what you're asking?
 23 Q. Exactly.
 24 A. I don't know the last time they offered
 25 it.

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1 KALINSKY
 2 all degrees that RIETS offers are ordination
 3 degrees or advanced ordination degrees?
 4 MR. BAXTER: Objection to form.
 5 A. I think currently that is -- if you
 6 looked at 2021, that's probably the majority of
 7 what they would be giving, ordinations.
 8 Q. And is that fair to say for the last ten
 9 years since you've been there?
 10 A. Yeah.
 11 Q. Okay, and it's correct that Yeshiva
 12 University does not offer any ordination degrees?
 13 Is that correct?
 14 A. Separate from RIETS you're saying as a
 15 Yeshiva University offering degrees in ordination?
 16 Q. Yes.
 17 A. Not ordination. There is a GPATS
 18 program. That's the advanced study in Talmud at
 19 the Beren campus, and they offer something there.
 20 I think there's a certificate or a master's. I
 21 don't know exactly, but it's not ordination, and
 22 that's Yeshiva University.
 23 Q. If you want to be ordained as a Rabbi,
 24 can you get that ordination from Yeshiva University
 25 other than from its affiliate RIETS?

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1 KALINSKY
 2 Q. Okay. Has it been in the last --
 3 A. I couldn't speak for more than 20 years.
 4 Q. Okay. In the last 20 years, has it
 5 issued a Doctorate of Divinity?
 6 A. I'm not aware.
 7 Q. Does that mean likely not?
 8 A. I haven't seen anyone with that degree
 9 conferred on them in the last 20 years.
 10 Q. If somebody had earned a doctorate in
 11 divinity at RIETS in the last 20 years, do you
 12 think you would be aware of it?
 13 A. Maybe in the last ten I would, but not
 14 the last, not the ten to 20. I wouldn't
 15 necessarily know.
 16 Q. Okay, so in the last ten years is it
 17 fair to say that it is likely RIETS has not issued
 18 any Doctorates of Divinity?
 19 A. I'm not aware.
 20 Q. Okay, and what about master's in
 21 divinity? Do you know if RIETS has issued any of
 22 those in the last two decades?
 23 A. I'm not aware.
 24 Q. Okay. Is it fair to say that the main
 25 degrees that RIETS, the majority, vast majority,

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1 KALINSKY
 2 A. I don't think so.
 3 (Plaintiffs' Exhibit 16, Charter of
 4 RIETS dated February 27, 1970, was so marked
 5 for identification, as of this date.)
 6 Q. So we're back to difficult to read
 7 documents, but this is Exhibit 16, and this is the
 8 charter of RIETS that is dated February 27, 1970,
 9 and if you look at the second paragraph, it says,
 10 "The purpose for which such corporation is being
 11 formed" -- "The purposes for which such corporation
 12 is being formed are to continue, maintain and
 13 conduct as an educational corporation this
 14 seminary, which for many years has been an
 15 institutional branch of Yeshiva University. The
 16 purposes are to prepare students for the rabbinate
 17 and to issue the traditional certificate of
 18 ordination in connection therewith."
 19 Do you see that?
 20 A. Yes.
 21 Q. Okay.
 22 A. And there are additional degrees.
 23 Q. Right, and then it says there are
 24 additional degrees. So RIETS has a different
 25 purpose clause in its charter than Yeshiva

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1 KALINSKY
2 University. Would you agree?
3 A. Partially. Can I elaborate on why I say
4 partially instead of fully?
5 Q. I mean it really was a yes or no
6 question. So, if there's something burning that
7 you need to say, you can.
8 A. We're both religious corporations, and
9 we're both educational corporations.
10 Q. Where do you see that RIETS is a
11 religious corporation in this document?
12 A. Not in this document.
13 Q. Okay. Let's move on to topic 5. I'm
14 sorry. Just a couple more questions. RIETS has a
15 separate board of trustees from Yeshiva University,
16 correct?
17 A. Yes.
18 Q. How many students attend RIETS right
19 now?
20 A. We have two campuses. One in Israel,
21 and one in New York. Let's say 180.
22 Q. Total.
23 A. Maybe 200, but I don't know exactly.
24 Q. Okay. You can set that exhibit aside,
25 please, and mark this.

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1 KALINSKY
2 A. Yes.
3 Q. Okay, and then, if you could please open
4 Exhibit 18 to this policy statement. Exhibit 17
5 if you look on the front is dated March 2019, and
6 Exhibit 18 if you look on the front is dated
7 October 25, 2021.
8 Do you see in the policy statement in
9 Exhibit 18 that there's a new paragraph that
10 appears that starts, "Yeshiva University is further
11 guided by the timeless religious values," and you
12 see that that second paragraph that appears in
13 Exhibit 18 does not exist in Exhibit 17?
14 A. Yes.
15 Q. Do you know why paragraph -- the second
16 paragraph of the policy statement was added to
17 Exhibit 18?
18 A. Can I just read it through one time?
19 Q. Of course.
20 A. I'm going to start from the beginning.
21 I want to make sure I get the flow.
22 Q. Sure. Take as much time as you want
23 with these exhibits and spend whatever time you
24 need to read them.
25 A. Okay. I have read them.

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1 KALINSKY
2 (Plaintiffs' Exhibit 17, Document dated
3 March 2019, was so marked for
4 identification, as of this date.)
5 (Plaintiffs' Exhibit 18, Document dated
6 October 25, 2021, was so marked for
7 identification, as of this date.)
8 MS. ROSENFELD: So, with respect to
9 topic 5, Eric, we're going to ask questions
10 that are consistent with defendants'
11 representations to the court that it does
12 not object to testifying about how these
13 policies are consistent with and support its
14 religious identity or whether they have
15 recently been amended to include the phrase
16 "consistent with Torah values."
17 MR. BAXTER: Okay.
18 Q. Okay. So, first of all, if you could
19 please turn to page 3 of Exhibit 17, not the page 3
20 like counting pages, but literally on the bottom
21 where it says page 3. Are you there?
22 A. Yes.
23 Q. Okay, and you'll see that there's a
24 paragraph that's titled Policy Statement. Do you
25 see that?

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1 KALINSKY
2 Q. Okay. Do you know why the additional
3 paragraph was added to the October 2021 version of
4 the anti-discrimination policy?
5 A. No.
6 Q. Were you part of any discussions about
7 adding this language to the anti-discrimination
8 policy?
9 A. No.
10 Q. Does the addition of the paragraph in
11 the policy statement paragraph -- withdrawn.
12 Does the addition of the second
13 paragraph to the policy statement change the
14 meaning of the non-discrimination policy?
15 MR. BAXTER: Objection.
16 A. The definition?
17 Q. Does the additional language change
18 Yeshiva University's non-discrimination and
19 anti-harassment policy and complaint procedures?
20 MR. BAXTER: Objection to the extent it
21 calls for a legal conclusion.
22 A. Yeah. It's hard for me to answer that
23 question, because -- it's hard for me to answer
24 that question. Change the policy? Is anything
25 else in the document different?

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1 KALINSKY
 2 Q. Assume that nothing else in the document
 3 is different except this additional paragraph.
 4 A. The additional paragraph is further
 5 explaining why these are really important. It's
 6 explaining, it's further guiding the reason for the
 7 policy. Respecting individuals with dignity.
 8 Rejecting any misconduct is in consonance with
 9 Torah values. The university professes we should
 10 be moral. Yeshiva wants us to be moral. God
 11 wants us to be moral.
 12 Q. Okay. Does Yeshiva University's
 13 claimed status as a religious corporation impact
 14 its non-discrimination policies in any way?
 15 A. Say it one more time.
 16 Q. Does Yeshiva University's claimed status
 17 as a religious corporation impact its
 18 non-discrimination policies in any way?
 19 A. The university I think, in concert with
 20 this paragraph over here, the university based on
 21 Torah values would not want to engage in any
 22 illegal discrimination.
 23 Q. Is there any other way that its status
 24 as a religious corporation impacts its
 25 non-discrimination policies?

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1 KALINSKY
 2 (Recess taken)
 3 BY MS. ROSENFELD:
 4 Q. Rabbi Dr. Kalinsky, I want to go back to
 5 an answer that you gave a little bit earlier and
 6 ask what you meant.
 7 You said that -- so I asked you, are you
 8 literally saying that Yeshiva is legally organized
 9 as a religious corporation, and your answer was
 10 that, "My understanding is, as you stated, if you
 11 look at the corporate legal documents, the legal
 12 document would not have a capital R."
 13 What did you mean by that, a capital R?
 14 A. Meaning we are a religious institution,
 15 so they would probably view us as a religious
 16 corporation, but there might not be that word there
 17 that you're asking me about.
 18 Q. I see. So, when you say a capital R,
 19 are you speaking to the formal legal name, the
 20 formal legal status that Yeshiva has as opposed to
 21 how it presents itself?
 22 A. Yes.
 23 Q. So, while it may feel itself to be a
 24 religious corporation because it's religious, it's
 25 not formally organized legally as a religious

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1 KALINSKY
 2 A. In terms of this document?
 3 Q. Just in general in your role as the
 4 corporate designee. Like is there any way that
 5 Yeshiva's claim to function as a religious
 6 corporation impacts its non-discrimination
 7 policies?
 8 A. I think it underscores this document.
 9 That's how I would understand it. Our religious
 10 corporation and our religious faith would double
 11 down and double underline in bold because of that,
 12 this document. Harassment, sexual assault,
 13 stalking, domestic violence, sexual misconduct.
 14 Q. Do you understand that Yeshiva
 15 University is claiming to be excluded from certain
 16 anti-discrimination laws because it claims to be a
 17 religious corporation?
 18 A. As a religious corporation, yes.
 19 Q. You can set that aside. I'm going to
 20 move on to topic 6, which is "Yeshiva's policies
 21 and practices in obtaining Bundy Aid from New York
 22 State."
 23 MR. BAXTER: Do you mind if we take a
 24 break just to go to the bathroom?
 25 MS. ROSENFELD: Fine. Off the record.

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1 KALINSKY
 2 corporation. Is that the distinction you're
 3 making?
 4 A. It's a religious corporation filed as an
 5 education corporation.
 6 Q. Not filed as a capital R religious
 7 corporation, correct?
 8 A. Yes.
 9 Q. Okay. Let's talk about Bundy Aid. Did
 10 you prepare or were you already aware of the fact
 11 that the university receives funding from New York
 12 State called Bundy Aid?
 13 A. Yes.
 14 Q. And, for example, are you aware that
 15 Yeshiva University received about \$386,000 in Bundy
 16 Aid for the 2019-2020 academic year?
 17 A. Sounds about right. I don't remember
 18 the exact numbers. We file for a lot of places for
 19 aid as we should.
 20 Q. And Yeshiva University has received
 21 Bundy Aid for decades. Is that right?
 22 A. Sounds right.
 23 Q. What information do you have about the
 24 decision for Yeshiva University to separately
 25 incorporate as an educational institution and the

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1 KALINSKY
 2 receipt of Bundy Aid?
 3 A. I'm not sure I understand the question.
 4 Q. Sure. Do you have any information
 5 about the relationship between the decision in the
 6 late 60s for Yeshiva University to become an
 7 educational corporation and Yeshiva University's
 8 desire at that time to receive Bundy Aid?
 9 A. No.
 10 Q. Do you have any information about what
 11 requirements Yeshiva University has to meet in
 12 order to receive Bundy Aid with respect to its
 13 religious nature?
 14 A. There are many. You want specific --
 15 there are many applications that we put in to
 16 receive funding from state and city, whatever it
 17 might be, and Bundy is one of them. If you have a
 18 document that will help remind me of the specifics.
 19 Q. Sure. I'm happy to give you a
 20 document, but, before I do, I just want to find out
 21 what you personally or have prepared to testify
 22 about.
 23 A. Sure.
 24 Q. So do you have any information about
 25 what requirements New York State imposes to receive

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1 KALINSKY
 2 Bundy Aid with respect to the religious nature of
 3 the grantee?
 4 A. If I'm recalling correctly, it shouldn't
 5 be used for a religious purpose.
 6 Q. And how has Yeshiva University been able
 7 to receive Bundy Aid if that aid cannot be used for
 8 a religious purpose?
 9 MR. BAXTER: I'm going to object to the
 10 extent it calls for a legal conclusion.
 11 Calls for a legal characterization.
 12 THE WITNESS: Should I try to answer?
 13 MR. BAXTER: If you know what she's
 14 talking about and you can answer, go ahead.
 15 If you need more information.
 16 A. In the broadest sense, because again I'm
 17 not the one who would be laying out exactly how
 18 it's being used, but whatever we would say it's
 19 being used, it should be used for, that's what we
 20 use it for.
 21 Whatever we're told it should not be
 22 used for, we're careful not to use it for that.
 23 Q. So, just for the record, topic 6 is
 24 "Yeshiva University's policies and practices in
 25 obtaining Bundy Aid from New York State and how

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1 KALINSKY
 2 Yeshiva University characterizes and has
 3 characterized its status as a religious corporation
 4 for obtaining Bundy Aid including to any Bundy Aid
 5 review committee appointed to evaluate its
 6 religious links."
 7 A. Okay.
 8 Q. Are you able to testify on that topic
 9 today?
 10 A. Yes.
 11 Q. So how does Yeshiva University's claim
 12 that it is "a religious corporation" impact its
 13 ability to obtain Bundy Aid, which you said is not
 14 supposed to be used for a religious purpose?
 15 MR. BAXTER: Objection. The witness
 16 hasn't been shown any documents about Bundy
 17 Aid.
 18 If you know what she's talking about,
 19 you can answer. I'm going to ask you not to
 20 speculate.
 21 A. Right. It would be easier for me to
 22 answer if I saw what the things were.
 23 Q. I appreciate that. I'm not holding a
 24 document that has the answer to the question. I'm
 25 just asking you what you know.

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1 KALINSKY
 2 A. To me I don't think it's -- you're
 3 asking a contradiction.
 4 Q. Okay. So let me ask a better question
 5 if you can't answer it that way.
 6 So you testified right at the beginning
 7 here that your understanding is that Bundy Aid is
 8 not supposed to be used for a religious purpose.
 9 What's the basis of that information?
 10 How do you know that?
 11 A. By reviewing some of the Bundy
 12 documents. I don't remember all the details.
 13 Q. Okay. So to prepare for this deposition
 14 you reviewed some documents and from those
 15 documents you learned that Bundy Aid comes with
 16 restrictions on its use for religious purposes. Is
 17 that fair?
 18 A. Yes.
 19 Q. And what documents did you review?
 20 A. The names of the documents or the years?
 21 Q. If you could just generally describe
 22 what the documents were, please?
 23 MR. BAXTER: I'm just going to ask you
 24 not to speculate. If you remember what
 25 specific documents had to do with Bundy

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1 KALINSKY
2 versus other grants you received, then you
3 can testify.
4 A. Yeah. I could be confusing Bundy with
5 DASNY right now in terms of the clarity.
6 Q. Did you review anything called a
7 constitutional eligibility questionnaire?
8 A. Yes.
9 Q. Has Yeshiva University ever completed
10 one of those in order to qualify for Bundy Aid?
11 MR. BAXTER: I ask the witness not to
12 speculate. If you remember, you can say,
13 but, if you want to show him the document to
14 trigger his memory, that might help.
15 A. Is that okay?
16 MS. ROSENFELD: I would ask that you not
17 make speaking objections and prompt the
18 witness, because, as you know, your client
19 has taken the position that he doesn't have
20 those and never filled them out, so to ask
21 me to show it to the witness is not helpful.
22 A. Okay. I don't know. I'm not aware.
23 Q. Do you know if Yeshiva University has
24 ever had to fill out a questionnaire answering
25 certain questions about its religious nature in

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1 KALINSKY
2 Q. Did you see any completed questionnaires
3 like this when you reviewed documents to prepare
4 for your deposition?
5 A. No.
6 Q. Do you have any more information than
7 you've already shared about how Yeshiva University
8 characterizes its religious nature for purposes of
9 obtaining Bundy Aid?
10 A. In terms of filling out any other forms?
11 In terms of an introductory paragraph?
12 Q. So really anything. We know that
13 Yeshiva University receives Bundy Aid.
14 A. Yes.
15 Q. And we know that Bundy Aid according to
16 you is not supposed to be used for a religious
17 purpose. Is there anything else that you can
18 testify about with regard to Bundy Aid?
19 A. Other than doing what we're supposed to
20 be doing in terms of filling out the correct forms
21 and only using the money as it has been
22 appropriated for, if that's a correct way of saying
23 something.
24 Q. So what did Yeshiva University use the
25 Bundy Aid money for?

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1 KALINSKY
2 order to get this Bundy Aid?
3 A. Again, I think there are different forms
4 that have to be filled out. So some of the forms
5 may be questionnaires. Some of the forms may be
6 checked boxes.
7 (Plaintiffs' Exhibit 19, Blank
8 application for participation in Bundy Aid,
9 was so marked for identification, as of this
10 date.)
11 Q. I'm handing you what has been marked as
12 Exhibit 19, and this is a blank application for
13 participation in Bundy Aid. If you turn to page 3
14 of the document, you will see there's something
15 called a constitutional eligibility questionnaire.
16 Take your time to read it, and then my question
17 after you have read it is has Yeshiva University
18 ever completed a questionnaire of this type to
19 receive Bundy Aid?
20 A. Let me take the first page first.
21 Okay.
22 Q. Has Yeshiva University ever completed a
23 questionnaire of the type in front of you in this
24 exhibit in order to receive Bundy Aid?
25 A. I'm not aware.

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1 KALINSKY
2 A. I believe it -- I don't want to
3 speculate here. I just don't want to be confused
4 between what we used DASNY money and Bundy funding
5 for. Bundy Aid has to do with --
6 Q. Let me mark an exhibit to show you.
7 That might help you.
8 (Plaintiffs' Exhibit 20, Document, was
9 so marked for identification, as of this
10 date.)
11 Q. Please take your time and read Exhibit
12 20, and let me know when you've had a chance to
13 read it.
14 A. Okay.
15 Q. Does Exhibit 20 refresh your
16 recollection that Bundy Aid relates to financial
17 aid for students?
18 A. Yes. That was helpful. Thank you.
19 Q. Sure, and just to go back to my question
20 then, can you tell me what Yeshiva University uses
21 the Bundy Aid funds for?
22 A. Definitely what I can see from this
23 document for the previous year relates to financial
24 aid that helps make Yeshiva University affordable
25 for our students. I think we give \$46 million in

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1 KALINSKY
2 scholarships to students. Everything helps.
3 Q. So does Yeshiva University make some
4 attempt to designate the use of funds for religious
5 versus nonreligious purposes when it's giving out
6 financial aid?
7 MR. BAXTER: Objection as to form.
8 A. Are you asking if we -- how we allocate
9 the money?
10 Q. In the beginning of discussing this
11 topic, you testified that Bundy Aid is not supposed
12 to be used for religious purposes.
13 A. Um-hum.
14 Q. And now that you have refreshed your
15 recollection that it receives Bundy Aid and that it
16 goes toward financial aid, does Yeshiva University
17 need to make any special provisions about how it
18 distributes Bundy Aid, given the restrictions that
19 the aid comes with?
20 MR. BAXTER: Objection to the
21 characterization and it calls for a legal
22 conclusion.
23 But if you know, you can answer.
24 A. I don't think so.
25 Q. Okay. You can set that aside. You

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1 KALINSKY
2 A. Um-hum.
3 Q. The table of contents. Do you
4 understand that Yeshiva University participated in
5 a bond issuance from the Dormitory Authority of the
6 State of New York for \$90 million in 2011?
7 A. Yes.
8 Q. If you go, please, to the page of the
9 exhibit that has the number 12 on the bottom, so do
10 you understand that the bonds were issued to raise
11 money for Yeshiva University to conduct certain
12 capital improvement projects?
13 A. Yes.
14 Q. And the 2011 project is defined in this
15 bond document as consisting "of the financing or
16 refinancing of the renovation, improvement, repair
17 and equipping of the exterior and interior of the
18 existing facilities located at the university's
19 campuses in the Bronx and Manhattan in New York
20 City including the refunding of certain taxable
21 debt that financed a portion of such expenditures."
22 My question is do you know which
23 facilities on the university's campuses the 2011
24 project financed or refinanced the renovation,
25 improvement, repair and equipping of?

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1 KALINSKY
2 mentioned DASNY. So Yeshiva University also
3 receives, participates in bond issuances from the
4 Dormitory Authority of the State of New York. Is
5 that right?
6 A. Yes.
7 Q. And, for example, in 2011 Yeshiva
8 University participated in a bond issuance for
9 approximately \$90 million. Is that correct?
10 MR. BAXTER: Objection, lack of
11 foundation.
12 A. 90?
13 Q. 90.
14 MR. BAXTER: Objection. Foundation.
15 A. If you have the document, it would help
16 me.
17 Q. Sure.
18 (Plaintiffs' Exhibit 21, Excerpt from
19 bond issuance documents for DASNY to Yeshiva
20 University, was so marked for
21 identification, as of this date.)
22 Q. So this is an excerpt from the bond
23 issuance documents for DASNY to Yeshiva University.
24 The original is about 150 pages, but what you have
25 here is the cover sheet.

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1 KALINSKY
2 A. I believe these monies went towards some
3 of the buildings that are dormitories. I believe
4 it also went towards some classrooms, office space.
5 Q. Do you know the names of any of the
6 buildings that were renovated, improved, repaired
7 or equipped using the DASNY bond issuance money?
8 A. I'm not sure which dormitories. I'm
9 trying to remember. Maybe it had to do with air
10 conditioning that maybe was brought into all of
11 them. So those would be Rubin Hall, Morganstern
12 Hall and some areas related to the -- I'm trying to
13 think of the years here, though. This is 2011.
14 MR. BAXTER: I caution you not to
15 speculate, but, if you know, you can
16 testify.
17 A. I don't remember exactly which areas.
18 Again, \$90 million would be helpful to make some
19 improvements.
20 Q. So, broadly speaking, your testimony is
21 that it went to improvements for dormitories,
22 classrooms and office space, but, as you sit here
23 today, you don't know specifically which buildings.
24 Is that right?
25 A. I think bathrooms also. It could be

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1 KALINSKY
2 multiple buildings. I don't remember.
3 (Plaintiffs' Exhibit 22, Document Bates
4 stamped YU 01301, was so marked for
5 identification, as of this date.)
6 Q. Okay. So I'm handing you what has been
7 marked as Exhibit 22, and this is Bates stamped
8 YU 01301. This is a page that was produced by your
9 lawyers from the DASNY bond applications.
10 Are you aware that the participation in
11 the DASNY bond issuances comes with this
12 restriction on religious use clause?
13 A. Just give me one second, please. Okay.
14 I just read it. I'm sorry. What was the
15 question?
16 Q. The question was are you aware that the
17 participation in the DASNY bond issuance comes with
18 this restriction on religious use clause?
19 A. I'm aware that this is here in the
20 document.
21 Q. But were you aware before you saw it
22 today that it was part of the DASNY bond issuance
23 restrictions?
24 MR. BAXTER: I am going to note the
25 exhibit itself is separated from any other

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1 KALINSKY
2 your knowledge, how has Yeshiva University
3 attempted to meet the restrictions whatever they
4 say in this paragraph with its receipt of these
5 funds?
6 MR. BAXTER: Objection as outside the
7 scope.
8 You can answer if you know.
9 A. Taking great care and diligence that the
10 money would not be allocated specifically for a
11 place of worship.
12 Q. Anything else?
13 A. No.
14 Q. Has Yeshiva University taken steps to
15 ensure that the DASNY funds are not allocated for
16 places that are used for sectarian religious
17 instruction?
18 MR. BAXTER: Objection. Outside the
19 scope.
20 If you know, you can answer.
21 A. I'm not sure.
22 Q. What about in connection with any part
23 of a program or department or school of divinity?
24 MR. BAXTER: Same objection.
25 A. Point of information. Getting back to

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1 KALINSKY
2 documents.
3 A. I think I may have seen this before.
4 Yes. I would note that it is confusing language.
5 Q. Sure. Can you tell us what steps if
6 any Yeshiva University takes to comply with DASNY's
7 restriction on the religious use of funds with
8 respect to the 2011 bond issuance funds?
9 MR. BAXTER: I object as outside the
10 scope of number 7.
11 But you can answer.
12 A. My knowledge would be in connection to
13 places of religious worship would probably be
14 something that would be taken into account.
15 Q. Can you explain what you mean?
16 A. That funding given to us through DASNY
17 would not be designated for places of religion
18 worship.
19 Q. So what place would that be, for
20 example, on YU's campus?
21 A. Beit Midrash Prayer Hall, that would
22 probably, but then again "that the foregoing
23 restriction shall not prohibit the free exercise of
24 any religion," so it's a little bit confusing.
25 Q. Right, and so my question is just, to

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1 KALINSKY
2 number 2 or whichever one it is before, number 4,
3 highly integrated, because there's a lot of
4 integration between all of the purposes and usages
5 of the buildings on campus.
6 Q. So, with respect to this language and
7 the restrictions from DASNY, are you aware of any
8 restrictions on the use of the DASNY money to
9 comply with this language that it can't be used in
10 connection with any part of a program or school or
11 department of divinity?
12 MR. BAXTER: Objection as outside the
13 scope.
14 A. Yeah. I'm not sure if I understood.
15 Q. Sure. So you said that you think that
16 Yeshiva takes great care to not use the DASNY funds
17 for improvements is the way I understood your
18 testimony in places of religious worship.
19 A. Correct.
20 Q. You said that you didn't know what steps
21 it took to segregate the funds with respect to
22 places that were used for sectarian religious
23 instruction if I understood your testimony
24 correctly?
25 A. And it would be difficult, even if we

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1 KALINSKY
2 wanted to, to define what's a sectarian place and
3 what's not a sectarian place on campus.
4 Q. Right, and so my entire question is just
5 to get the extent of your knowledge as to what
6 Yeshiva University has done to try and comply with
7 this if anything.
8 A. Okay.
9 MR. BAXTER: Again, objection as outside
10 the scope.
11 If you know, you can answer.
12 A. Definitely I don't know firsthand what
13 instructions were given in terms of the
14 construction people, but, if we were asked, but
15 knowing that we would comply with anything that we
16 were told to do and if it was within the purview of
17 our understanding that we would not be able to use
18 the funding for a place of worship, we wouldn't be
19 allocating any of the funding toward improvement in
20 a place of worship.
21 Q. Did Yeshiva University allocate any of
22 the DASNY funds for places that are used for
23 sectarian religion instruction?
24 MR. BAXTER: Objection. Outside the
25 scope. Actually, objection as to

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1 KALINSKY
2 which you designated him to testify.
3 MR. BAXTER: It still has some mix of
4 factual and legal conclusions. For
5 example, the meaning of religious
6 corporation.
7 But go ahead and answer the question if
8 you're able to.
9 MS. ROSENFELD: Well, he's here to give
10 binding testimony on behalf of the
11 corporation.
12 MR. BAXTER: I'm not stopping him from
13 testifying. I've stated my objection. He
14 can answer the question.
15 MS. ROSENFELD: But your objection is
16 marring the regard claiming that this is a
17 legal conclusion, when you designated
18 somebody to testify. If you thought this
19 was an improper subject for deposition, you
20 should've objected to it, but you didn't.
21 You produced him.
22 So your objections to the questions at
23 this point on that basis is not proper, and
24 I'm going to move to strike them.
25 Q. So, to go back to my question, has

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1 KALINSKY
2 mischaracterizing the statement, which says
3 not to be used for sectarian religious
4 instruction.
5 A. Right. So I'm not sure what that even
6 means. What sectarian religious instruction?
7 Q. Has Yeshiva University ever represented
8 to DASNY that it is a religious corporation?
9 MR. BAXTER: Objection, calls for a
10 legal conclusion.
11 Q. This is from topic 7, "Yeshiva
12 University's policies and practices in obtaining
13 bond issuances from DASNY and how Yeshiva
14 University characterizes or has characterized its
15 status as a religious corporation for purposes of
16 obtaining bond issuances from DASNY."
17 MR. BAXTER: You can answer, but I'm
18 still stating an objection.
19 MS. ROSENFELD: What is the objection?
20 MR. BAXTER: To the extent it calls for
21 a legal conclusion, he doesn't have to
22 testify to it, but he can answer to the
23 extent it doesn't call for a legal
24 conclusion.
25 MS. ROSENFELD: This is the topic for

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1 KALINSKY
2 Yeshiva University ever represented to DASNY that
3 it is a religious corporation?
4 MR. BAXTER: Same objection.
5 Go ahead.
6 A. We would represent ourselves to DASNY as
7 we would represent ourselves to any state, city,
8 federal, any official documentation as to who we
9 are. I think actually it's even here, right?
10 History and general description. Yeshiva
11 University, we have here who Yeshiva University is.
12 Q. Just so the record is clear, are you
13 reading from an exhibit?
14 A. Yes.
15 Q. Can you just put it on the record which
16 exhibit.
17 A. 21, where it says general information.
18 Q. Sure. So again back to this distinction
19 that we were drawing earlier that Yeshiva
20 University may represent itself as a religious
21 institution or religiously affiliated or having a
22 religious identity on the one hand versus Yeshiva
23 University claiming a legal status as a religious
24 corporation under New York law.
25 My question is the latter. Has Yeshiva

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1 KALINSKY
2 University ever represented itself to DASNY as a
3 religious corporation under New York law?
4 A. I think we represented ourselves as the
5 document shows. A religious orientation is clear
6 from the documentation. Our affiliations are
7 clear. I don't know what boxes were checked
8 unless I have the document adjacent here.
9 Q. So the answer is you don't know?
10 A. I'm not aware of which boxes off the top
11 of my head without seeing the document.
12 Q. Okay. Well, the topic that you were
13 designated to testify about is how Yeshiva
14 University characterizes or has characterized its
15 status as a religious corporation for purposes of
16 obtaining bond issuances from DASNY.
17 So I think we need to just make a clear
18 record about whether you can answer that question
19 or not. Can you answer the question of whether
20 Yeshiva University has characterized itself as a
21 religious corporation, capital R religious, under
22 the law for purposes of obtaining bond issuances
23 from DASNY?
24 A. I would assume that we have not.
25 Q. And why would you assume that you have

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1 KALINSKY
2 A. Because I haven't seen all the
3 university documents.
4 Q. Okay. Have you ever seen a document
5 where Yeshiva University applied for any source of
6 funding where it represented that it was a
7 religious corporation under New York law?
8 A. I don't think so.
9 Q. Let's move, please, to number 20.
10 Actually, you know what? I don't think we need
11 that.
12 (Plaintiffs' Exhibit 23, Document Bates
13 stamped YU 01171 through YU 01173, was so
14 marked for identification, as of this date.)
15 Q. For the record, Exhibit 23 is Bates
16 stamped YU 01171, YU 01172 and YU 01173. So did
17 Yeshiva University at some point complete a project
18 to update the pedestrian plaza around campus?
19 MR. BAXTER: I object. This is outside
20 the scope, but I will let him answer.
21 A. There's a 185th Street plaza project.
22 It's actually a New York City street plaza project,
23 if that's what you're referring to.
24 Q. And did Yeshiva University receive funds
25 from DASNY to support that project?

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1 KALINSKY
2 not?
3 A. From my recollection from the
4 documentation that need to be presented, we
5 presented under the education law.
6 Q. When you say "we presented under the
7 education law," what are you referring to?
8 A. We presented as a university.
9 Q. To whom?
10 A. To DASNY.
11 Q. Perhaps just to speed up our walk
12 through these various exhibits, are you aware,
13 Rabbi Dr. Kalinsky, of any instance where Yeshiva
14 University has characterized itself as a religious
15 corporation under New York law for purposes of
16 obtaining funding from any source?
17 A. With the capital R?
18 Q. Meaning legally organized as a religious
19 corporation when we say capital R, are you aware of
20 any presentation of that type by Yeshiva
21 University?
22 A. I'm not sure.
23 Q. And are you not sure because you think
24 it's possible, or are you not sure -- what makes it
25 hard to answer that question?

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1 KALINSKY
2 A. We applied for funding. Again, the
3 document in front of me is about security cameras
4 at the pedestrian plaza. So I'm not sure which
5 part you're asking about.
6 Q. Sure. It says it applied for a grant in
7 the amount of \$250,000. Do you see that?
8 A. Yes.
9 Q. If you go to the next page, 1171, it's
10 on the DASNY letterhead, 1172, you can see that a
11 grantee questionnaire was filled out by Yeshiva
12 University?
13 MR. BAXTER: I'm just going to note for
14 the record you don't have the full document
15 here. This is excerpts.
16 But go ahead and review the document.
17 A. Yeah.
18 Q. Do you see that grantee questionnaire?
19 A. It's just information here. I'm not
20 sure.
21 Q. Well, do you see at the top it says,
22 "New York State of Opportunity DASNY Grant Programs
23 Grantee Questionnaire"?
24 A. Yes.
25 Q. Okay, and then, if you flip to the back

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1 KALINSKY
2 of that page, 1173, Yeshiva University reported to
3 DASNY that it was a university educational
4 organization. Is that correct?
5 A. Yes.
6 MR. BAXTER: Where is that? Okay.
7 Q. Okay. You can set that aside. Handing
8 you what has been marked as Exhibit 24.
9 (Plaintiffs' Exhibit 24, Document Bates
10 stamped 1355 through 1356, was so marked for
11 identification, as of this date.)
12 Q. This was produced by your counsel Bates
13 stamped 1355 and 1356. This is a letter from John
14 Greenfield, director of government relations. Is
15 he one of the people that you spoke with to prepare
16 for your deposition today?
17 A. Yes.
18 Q. And did Yeshiva University seek to
19 obtain \$10 million from New York State to renovate
20 the Amsterdam Avenue pedestrian plaza?
21 A. I believe that's what that says here in
22 bold.
23 Q. And do you know if Yeshiva University
24 received that money?
25 A. I don't know if that went through. I

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1 KALINSKY
2 people are hanging out there especially in the
3 summer when we're not in session, our local
4 community members, for probably four or five months
5 out of the year. They're there throughout the
6 whole year, but they're the main ones here.
7 So it's definitely a place of respite,
8 and that's why New York City has a plaza project.
9 There's plazas all over the place. Near Pinehurst
10 there's a plaza project. That's what it does.
11 Q. So is the plaza open to all members of
12 the public?
13 A. Sure.
14 Q. Can Yeshiva University refuse to allow
15 members of the public to access the plaza?
16 A. No.
17 MR. BAXTER: Objection. Calls for a
18 legal conclusion.
19 If you know, you can answer.
20 Q. Okay. Is there any exception that
21 Yeshiva University would claim to public use of the
22 plaza based on its status as a religious
23 corporation?
24 A. Let me answer the question a little bit
25 that I was going to say before in answering my

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1 KALINSKY
2 don't know how quickly these things go. This is
3 not so long ago. February 16, 2021. I don't know.
4 Q. Okay, and in this document Yeshiva
5 University represents itself as a 501(c)(3)
6 not-for-profit institution of higher learning
7 located in the City of New York, is that right?
8 A. That is what it says.
9 Q. Okay, and it says here that "This would
10 provide a needed space for respite and community
11 gathering in Washington Heights."
12 Do you see that?
13 MR. BAXTER: I'm going to object to the
14 extent this is outside the scope of the
15 deposition.
16 You can answer.
17 A. Which paragraph are you in?
18 Q. The second to last full paragraph, "The
19 benefit of this project is twofold."
20 A. Yeah, this is true, yeah, meaning if
21 you're familiar with the project, it's on Amsterdam
22 Avenue. Amsterdam Avenue is the heart of the
23 campus, but it's also Amsterdam Avenue, and,
24 generally speaking, both from the 185th Street
25 plaza and the Amsterdam Avenue plaza, with joy, the

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1 KALINSKY
2 first question.
3 There's a difference between individuals
4 and groups. If someone would want to bring 50
5 people to the plaza and play loud music and give
6 out, you know, whatever it might be, they would
7 actually have to go to the city to ask for
8 permission to run a program on the plaza.
9 If you're asking about a single
10 individual entering the plaza or leaving the plaza,
11 it's an open plaza for the community.
12 Q. My question was, is there any exception
13 that Yeshiva University would claim to public use
14 of this plaza based on its status as a religious
15 corporation?
16 MR. BAXTER: I'm going to object to this
17 line of questioning as outside the scope of
18 the notice. So I instruct the witness not
19 to answer.
20 A. I don't know.
21 MS. ROSENFELD: It's not outside the
22 scope of the notice, because the notice is
23 its practices in obtaining bond issuances
24 and how it characterizes itself as a
25 religious corporation.

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1 KALINSKY
2 MR. BAXTER: From DASNY. From DASNY.
3 MS. ROSENFELD: This is money from New
4 York State, and I don't think that the judge
5 would appreciate us slicing it quite so
6 narrowly, since this is an application for
7 funding from New York State similar to
8 DASNY.
9 MR. BAXTER: I'm going to stick with
10 what the notice says and instruct the
11 witness not to answer any questions about
12 this topic.
13 Q. So, with respect to the DASNY funds we
14 talked about in those buildings that the DASNY
15 funds were used for, has Yeshiva University ever
16 tried to limit activities in any of those
17 facilities based on its claimed status as a
18 religious corporation to your knowledge?
19 MR. BAXTER: Again, I object as outside
20 the scope.
21 MS. ROSENFELD: That's directly in the
22 scope of topic 10.
23 MR. BAXTER: 7?
24 MS. ROSENFELD: Topic 7.
25 MR. BAXTER: How they use it after they

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1 KALINSKY
2 get it is not within the scope of the
3 question.
4 MS. ROSENFELD: Okay. Well, I think it
5 is fairly implied in the topic, and I would
6 like the witness to answer the question.
7 MR. BAXTER: You can answer if you know.
8 I just ask you not to speculate.
9 A. Okay. So can you say it one more time
10 so I can try not to speculate.
11 Q. Um-hum. With respect to the DASNY funds
12 that we talked about previously that were used to
13 improve certain facilities on Yeshiva's campus, has
14 Yeshiva University ever tried to limit activities
15 in those buildings based on its claimed status as a
16 religious corporation to your knowledge?
17 A. Activities? I'm not sure. Like what
18 would happen? What you would be referring to?
19 Are you asking if we would limit activities? I
20 don't know. I'm not sure.
21 Q. Is Yeshiva University's legal status
22 as -- claimed legal status as a quote unquote
23 religious corporation, has Yeshiva -- you know
24 what? I think this is not your question. I will
25 just withdraw it.

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1 KALINSKY
2 Is it accurate that Yeshiva enters into
3 contracts with the City of New York from time to
4 time to provide services?
5 MR. BAXTER: Objection. Outside the
6 scope of the deposition. You don't have to
7 answer the question.
8 MS. ROSENFELD: These are all going to
9 be questions about Yeshiva's representations
10 to -- public-facing representations about
11 its legal status.
12 MR. BAXTER: Ask the question again.
13 Back to number 1?
14 MS. ROSENFELD: Exhibit 25.
15 (Plaintiffs' Exhibit 25, Contract
16 effective July 1st, 2018, was so marked for
17 identification, as of this date.)
18 MR. BAXTER: Tell me what topic you're
19 asking questions under.
20 MS. ROSENFELD: I think it goes probably
21 to 2 and also partially to 1. I mean these
22 are issues about its public presentation of
23 its status.
24 So I would assume these are facts that
25 would go to its claim to be a religious

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1 KALINSKY
2 corporation and as well as its actual
3 status.
4 Q. So if you go to --
5 A. And I've never seen this before.
6 Q. I understand. There's no question.
7 If you go to the second page of the document, it
8 says this is an agreement between the City of New
9 York acting --
10 A. Page 1 or page 2?
11 Q. Page 1 of the actual contract. It
12 says, "This agreement effective July 1st, 2018
13 between the City of New York acting by and through
14 its Department of Health and Mental Hygiene and
15 Yeshiva University, contractor, a not-for-profit
16 corporation," et cetera.
17 So this is a contract between the City
18 through DOHMH and Yeshiva University to provide
19 certain services. You can see at the end that the
20 contract is executed by Mr. Lauer for Yeshiva
21 University and by the Assistant Commissioner for
22 the City.
23 A. Do you have what this is about?
24 MR. BAXTER: I object. I don't think
25 this is the full document.

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1 KALINSKY
2 THE WITNESS: Yeah.
3 Q. I believe it's the full document.
4 A. It can't be.
5 Q. It's the agreement, and it's signed.
6 This is the agreement.
7 A. What are they agreeing to?
8 Q. So what I wanted to ask you, Rabbi Dr.
9 Kalinsky, is do you see at the top where it says
10 Recitals, and it says, "Contractor is a
11 community-based not-for-profit corporation or other
12 public service organization"?
13 A. No.
14 Q. It's in the very top recital.
15 A. "Contractor, which is community-based
16 not-for-profit corporation or other public service
17 organization." Okay.
18 Q. And, in this case in this contract with
19 Yeshiva University, do you see that above?
20 A. Yes.
21 Q. So from time to time has Yeshiva
22 University represented that it's a community-based
23 not-for-profit corporation?
24 MR. BAXTER: Objection. The document
25 speaks for itself, and it's outside the

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1 KALINSKY
2 Q. Well, as a legal entity, does Yeshiva
3 University represent itself differently depending
4 on whether it's speaking to a government funder,
5 whether it's speaking to its students, whether it
6 is speaking to the Bundy Aid funders?
7 A. So, again, if you want to differentiate
8 between asking for aid and talking to students, you
9 can use different language. One is going to be a
10 legal technical term. One is going to be reality.
11 Q. What about for its legal corporate
12 status? Does that change depending on who it's
13 speaking to?
14 A. I don't think the university speaks to
15 its students about its legal corporate status.
16 Q. Okay, but what about with respect to
17 representations to government? Does Yeshiva
18 University change how it describes its legal status
19 depending on who it's speaking to, whether city,
20 state or federal government?
21 A. I assume whoever fills out forms is
22 being honest in filling them out appropriately
23 representing the university and representing what
24 needs to be done.
25 Q. So I'll show you what has been marked as

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1 KALINSKY
2 scope.
3 A. I think we need to know what this is
4 talking about before we talk about why we would be
5 presenting ourselves in a certain way.
6 Q. If you can answer my question, you do
7 need to. So in this document is Yeshiva University
8 representing that it's a community-based
9 not-for-profit corporation?
10 MR. BAXTER: Again, objection for lack
11 of foundation and incomplete document.
12 If you know, then you can answer. If
13 you don't know, don't speculate.
14 A. This may be a very specific -- I
15 wouldn't say that this references Yeshiva
16 University necessarily. I don't know what it's
17 talking about. Maybe it's about --
18 Q. Do you see on page 11 of the document
19 that it's signed by Yeshiva University by Mr.
20 Lauer?
21 A. Yes.
22 Q. Okay. Does Yeshiva University change
23 how it represents itself depending on the audience
24 to whom it's speaking?
25 A. I can't answer that question.

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1 KALINSKY
2 Exhibit 27.
3 (Plaintiffs' Exhibit 27, Application for
4 grant, was so marked for identification, as
5 of this date.)
6 Q. Are you aware that Yeshiva University
7 applied for grants from the Department of Homeland
8 Security for security cameras?
9 MR. BAXTER: Again objection as outside
10 the scope.
11 You can answer.
12 A. I think so. It would be a worthwhile
13 thing to ask for. Was this for the university?
14 Is this for the high school?
15 Q. So, if you look at the second page which
16 is Bates stamped by your lawyers YU 01085, it says
17 "Summary description of the project."
18 Do you see the first two sentences
19 provide a description of the grantee as Yeshiva
20 University?
21 A. I see the first sentence. That's the
22 first time I'm seeing it described in those exact
23 words.
24 Q. Okay. Well, would you agree that the
25 university has become one of the world's premier

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1 KALINSKY
2 centers for the academic study of Jewish culture,
3 religion, philosophy and tradition?
4 A. Amongst other things.
5 Q. And on the front page, did you speak
6 with Ronald Nahum, director of finance and
7 administration, to prepare for your deposition
8 today?
9 A. Not in the recent week. I do know who
10 he is, and I have spoken to him in the past, but
11 not in the last week or so.
12 Q. Okay. Have you ever spoken to him to
13 get ready for today's deposition?
14 A. No.
15 Q. Do you see here that somebody checked
16 the box on here not-for-profit? There's two
17 choices, sectarian entity and not-for-profit, on
18 page 1084.
19 A. Um-hum.
20 MR. BAXTER: I'm just going to object.
21 This is an incomplete form.
22 But go ahead.
23 Q. Do you know who made that selection?
24 A. No.
25 Q. Is this another example of Yeshiva

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1 KALINSKY
2 University representing itself as a not-for-profit
3 corporation?
4 A. I wouldn't categorize it as that.
5 Q. You disagree with the categorization of
6 whoever filled out this form made?
7 A. No, I didn't say that either. Again, I
8 didn't speak to the person who filled out the form.
9 There's two boxes. They filled out one of them to
10 apply for the grants. It could be this person is
11 not familiar with the other terminology of
12 sectarian. I think, as we discovered, it's a very
13 unclear word.
14 So whoever it is of these four people, I
15 wouldn't define university on this piece of paper.
16 Q. This is a representation made to obtain
17 money from the federal government, right?
18 A. Um-hum.
19 Q. It has to be accurate, right?
20 A. It is accurate.
21 Q. Okay. In the beginning of the
22 deposition when I asked you who you had spoken to,
23 one of the people that you mentioned is somebody
24 who I believe you said is responsible for
25 institutional research. I may be misstating that

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1 KALINSKY
2 name.
3 A. He's maybe the director or assistant --
4 associate director. I don't know exactly his
5 title. You're referring to David Palmer?
6 Q. Yes. What is the division or
7 department or group that he works in?
8 A. David Palmer is a faculty member, and he
9 also works for the Provost in the Department of
10 Institutional Research.
11 Q. Okay. The Department of Institutional
12 Research.
13 A. Yeah, but he's not, I don't think he
14 runs the department being that he doesn't do it
15 full-time, but he runs a lot of, crunches a lot of
16 the numbers for the institution.
17 Q. Okay, and what specifically did you
18 discuss with him that was helpful or that was
19 needed for you to prepare for today's deposition?
20 A. He was the one who crunches the number
21 for the Bundy funding, for the graduates. That's
22 the institutional research. That area is his area.
23 He'll work with the registrar's office and look at
24 the end of the year to see how many students
25 completed X amount of degrees, and he's the one who

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1 KALINSKY
2 would be able to create that report.
3 Q. And so did he create a report for you
4 that showed how much Bundy Aid had been received by
5 Yeshiva University?
6 MR. BAXTER: Objection to form.
7 A. It was a discussion about what he does
8 for Bundy funding.
9 Q. And so can you just describe what he
10 said to you and what you said to him about the
11 Bundy funding that you haven't already testified
12 about today?
13 A. Sure. If I recall, I just asked him, so
14 I need to know information on Bundy. He said sure.
15 We apply. We fill out the forms. I think at one
16 point they were paper forms. Then they became more
17 digital forms. He fills them out as appropriate
18 and obviously representing it's accurate data.
19 Q. Okay. Did you and he speak at all about
20 this element of the topic that related to its
21 religious corporate status and Bundy Aid?
22 A. Are you referring to --
23 Q. -- the topic.
24 A. -- 19?
25 Q. I'm actually referring to topic 6 in the

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1 KALINSKY
 2 original notice, which was about the university's
 3 status as a religious corporation for purposes of
 4 obtaining Bundy Aid, and my question was whether
 5 you had spoken to this individual about that aspect
 6 of the notice?
 7 A. If I recall, I asked him what are the
 8 procedures for receiving Bundy Aid. He told me
 9 there are forms. We fill out the forms. We didn't
 10 go through specifics every single line all the
 11 things that he needs to fill out, and he did not
 12 know about any additional forms about the religious
 13 characterization.
 14 (Recess taken)
 15 BY MS. ROSENFELD:
 16 Q. Rabbi Dr. Kalinsky, I'm handing you
 17 Pathways to Our Future, which is Exhibit 26.
 18 (Plaintiffs' Exhibit 26, Pathways to Our
 19 Future, Yeshiva University's strategic plan
 20 2016 to 2020, was so marked for
 21 identification, as of this date.)
 22 Q. Did you review this document, Yeshiva
 23 University's strategic plan 2016 to 2020, to
 24 prepare for your deposition?
 25 A. Yes. I refreshed my memory. I was

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1 KALINSKY
 2 involved in creating it, so I should be somewhat
 3 familiar.
 4 Q. Okay. If you'd please turn to page 6
 5 using the document numbering.
 6 A. Okay.
 7 Q. So in that first sort of introductory
 8 paragraph, it says, the last sentence of the
 9 paragraph, "YU will grow its enrollment by building
 10 and extending its intellectual brand, retaining the
 11 hearts and minds of the Modern Orthodox community
 12 while expanding beyond our traditional
 13 constituency."
 14 What does this mean when the strategic
 15 plan talks about expanding beyond Yeshiva
 16 University's traditional constituency?
 17 A. If I recall and also can -- I believe
 18 this has to do with looking at trajectory to the
 19 more Yeshivish community, to the more Hasidic
 20 community and to build programs for that
 21 constituent beyond the traditional Modern Orthodox
 22 community, and we actually did that.
 23 The Wurzweiler School of Social Work has
 24 a program, a collaboration with the Sara
 25 Schenirer -- I'm not sure what the last --

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1 KALINSKY
 2 Institute or something, and we've recruited many
 3 more students from the more Yeshiva community,
 4 Hasidic community, to the social work school.
 5 In cyber security, we're now recruiting
 6 students from Lakeland, New Jersey to come take our
 7 cyber security graduate program.
 8 Q. And so when the document speaks about
 9 traditional and new markets at 2B?
 10 A. 2B. One second. "Increase student
 11 enrollment in all schools." Yeah. Traditional is
 12 used in terms of a secular word here, I think.
 13 Q. But is the new markets referring to the
 14 same group that you just spoke about before?
 15 A. I think so. Again, this is a strategic
 16 plan. The university was trying to figure out ways
 17 to expand enrollment in our graduate schools. That
 18 was the goal.
 19 So, if we viewed ourselves as the
 20 middle, the Modern Orthodox, the traditional, it
 21 could be new markets also. I don't know what the
 22 traditional brand of a Ferkauf student was or is.
 23 You could say the same thing for undergraduate.
 24 Maybe in 2016 we didn't have a lot of
 25 students from Brooklyn, New York. Now we're going

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1 KALINSKY
 2 to get into Brooklyn, New York and recruit in those
 3 high schools, and they're not traditional in that
 4 we don't traditionally recruit from there, but now
 5 we're going to go in there and recruit those
 6 students, all aligned in the mission and things of
 7 that sort.
 8 Q. Okay. Thanks. You can set that aside.
 9 I am handing you what has been marked as
 10 Plaintiffs' Exhibit 29.
 11 (Plaintiffs' Exhibit 29, List of
 12 lobbying activities performed by Yeshiva
 13 University's lobbyists as reported to New
 14 York State, was so marked for
 15 identification, as of this date.)
 16 Q. Are you aware that Yeshiva University
 17 hires lobbyists, and its lobbyists are required to
 18 report their lobbying activity to the public?
 19 MR. BAXTER: Objection, outside the
 20 scope.
 21 MS. ROSENFELD: Well, I'm going to get
 22 there.
 23 A. I don't know so much about this
 24 document.
 25 Q. Okay. I'm not asking about the

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1 KALINSKY
2 document. I am just asking you in general, are
3 you aware that Yeshiva University has lobbyists
4 that lobby?
5 A. For our interests, yes.
6 Q. Okay, and what this document is, whether
7 or not you've seen it before, is a list of lobbying
8 activities performed by Yeshiva University's
9 lobbyists as reported to New York State.
10 So my question is does Yeshiva
11 University report in connection with its lobbying
12 activities that it is a religious corporation under
13 any New York law?
14 A. I don't know.
15 Q. And do you know if the lobbying
16 reporting requirements for religious corporations
17 are different for religious corporations or other
18 entities?
19 A. I don't know. I didn't prepare this
20 piece. I don't know.
21 Q. Well, this is just another aspect of
22 Yeshiva University's outward-facing reporting.
23 So --
24 A. Again, but I would speculate if I could.
25 MR. BAXTER: Don't speculate. Let her

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1 KALINSKY
2 ask a question, and you answer the question.
3 A. Yeah. I mean it would be the same
4 things that I said for other things that we
5 represent ourselves as.
6 Q. Okay. So, in particular, though, you're
7 not aware of how Yeshiva University characterizes
8 itself for purposes of registering its lobbying
9 activities, is that correct?
10 A. Right.
11 Q. Okay. You can set that aside. Are you
12 aware of whether Yeshiva University has reported to
13 City Council, Borough President or any of the
14 lobbying targets in here that it characterizes
15 itself as a religious corporation under New York
16 law?
17 A. No. I don't know.
18 Q. I'm handing you what has been marked as
19 Plaintiffs' Exhibit 28.
20 (Plaintiffs' Exhibit 28, Document headed
21 Religious Institution Certification Form,
22 was so marked for identification, as of this
23 date.)
24 Q. Rabbi Dr. Kalinsky, why don't you take a
25 minute and review this document, and let me know

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1 KALINSKY
2 when you have had a chance to review it. I will
3 ask you some questions.
4 Have you had a chance to skim the
5 document?
6 A. I think I have the basic idea.
7 Q. Okay. So my first question, just
8 generally, are you aware that colleges and
9 universities may register as religious institutions
10 with the New York State Department of Education for
11 the purpose of receiving Title 4 funding for
12 financial aid from the federal government?
13 A. Now I understand this document. Yeah.
14 Q. Okay, and so, in your designated role as
15 corporate representative, are you aware of whether
16 Yeshiva University has registered as a religious
17 institution with the New York State Department of
18 Education?
19 A. I'm not aware.
20 Q. Do you know if Yeshiva University has
21 registered as a religious institution with the New
22 York State Department of Education?
23 A. I don't know.
24 Q. If you look at page 1, it's titled
25 Religious Institution Certification Form, and it

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1 KALINSKY
2 asks certain questions about the institution, for
3 example, the name, the address. Do you see that?
4 A. Yes.
5 Q. Then question 3 asks if the religious
6 institution with the New York State Department of
7 Education -- I'm sorry. Withdrawn. The question
8 at 3A asks, "If the institution is owned,
9 controlled, operated and maintained by a religious
10 organization lawfully operating as a nonprofit
11 religious corporation," and then defines that as
12 religious organization. Do you see that?
13 A. Yes.
14 Q. And then it also asks at attachment A,
15 which is the second page, do you see it says at the
16 top attachment A?
17 A. Yes.
18 Q. So then it says that, to register as a
19 religious institution, it has to also submit this
20 certification form from the organization that owns,
21 operates, controls, maintains it. Do you see
22 that?
23 A. Okay. Yeah.
24 Q. And if you turn to the back of that
25 page, it says that the religious organization has

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1 KALINSKY
 2 to provide documentation --
 3 A. Where does it say religious
 4 organization?
 5 Q. I'm sort of paraphrasing. It says,
 6 "Attach a copy of documentation establishing that
 7 the religious organization is lawfully operating as
 8 a nonprofit religious corporation pursuant to New
 9 York State's Religious Corporations Law."
 10 Do you see that?
 11 A. Yes.
 12 Q. Okay. So does Yeshiva University
 13 operate under New York State's Religious
 14 Corporations law?
 15 MR. BAXTER: Objection, calls for a
 16 legal conclusion.
 17 But go ahead.
 18 A. Do we have documentation saying this is
 19 your question?
 20 Q. No. My question is does Yeshiva
 21 University operate under New York State's Religious
 22 Corporations Law?
 23 A. We are a religious corporation
 24 incorporated under an education corporation.
 25 Q. So does Yeshiva University operate under

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1 KALINSKY
 2 New York State's Religious Corporations Law as
 3 asked in question 5 in the document in front of
 4 you?
 5 A. I'm not sure about the legal definition.
 6 Q. Well, you have been designated to answer
 7 this precise question.
 8 A. Really?
 9 Q. Yes. So the question is does Yeshiva
 10 University operate pursuant to New York State's
 11 Religious Corporations Law?
 12 A. My understanding, I feel like this
 13 question was asked like hours ago, so I'm just not
 14 sure if it's different than what it was then. We
 15 operate as a religious corporation, and we're
 16 incorporated as an education corporation with the
 17 State of New York.
 18 Q. Well, this uses New York State's
 19 Religious Corporations Law, capital R, capital C,
 20 capital L, correct?
 21 A. Yes.
 22 Q. Does Yeshiva University operate under
 23 New York State's Religious Corporations Law,
 24 capital R, capital C, capital L?
 25 A. I don't know.

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1 KALINSKY
 2 Q. Okay. Do you know if Yeshiva University
 3 operates as a nonprofit religious corporation
 4 pursuant to New York State's Religious Corporations
 5 Law?
 6 MR. BAXTER: Same objections.
 7 A. The wording in here is a little bit,
 8 religious corporation, and then you have "pursuant
 9 to New York State's Religious Corporations Law."
 10 We discussed already a few times the
 11 capital R Religious Corporation. I do not believe
 12 we're incorporated -- we're incorporated as an
 13 education with the State of New York, but we are a
 14 religious corporation. I don't think that has
 15 changed in anything that we've said or that I've
 16 seen.
 17 Q. So this document is asking if a
 18 religious organization is operating pursuant to New
 19 York State's Religious Corporations Law.
 20 So my pretty straightforward question to
 21 you is does Yeshiva University operate pursuant to
 22 New York State's Religious Corporations Law as you
 23 see it in front of you in this document?
 24 A. I don't think we can attach a copy of
 25 documentation. That's what this question is

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1 KALINSKY
 2 asking.
 3 Q. Because why?
 4 A. I don't know where that would be
 5 documented as a New York State Religious
 6 Corporation Law. I said we're a religious
 7 corporation incorporated under the education law.
 8 Q. So can we agree that Yeshiva University
 9 is not incorporated under New York State's
 10 Religious Corporations Law?
 11 A. With a capital R. Yes.
 12 Q. And can we, and, with respect to its
 13 operations as a -- okay. Withdrawn.
 14 So is Yeshiva University controlled
 15 within the meaning that is on the front page, if we
 16 look at 3A?
 17 A. Yes.
 18 Q. So this would be the document that a
 19 college or university registering as a religious
 20 institution with New York State Department of
 21 Education for purposes of receiving federal
 22 financial aid would have to fill out.
 23 Is Yeshiva University an institution,
 24 I'm sorry, is Yeshiva University controlled by an
 25 institution that operates under the Religious

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1 KALINSKY
2 Corporations Law?
3 MR. BAXTER: Objection.
4 Go ahead.
5 A. Yeah. This is again a nuanced reading
6 of the word "controlled," and I'll restate I think
7 what I mentioned before.
8 We don't operate under control of the
9 religion here. We are a religious institution.
10 We are a religious corporation. We have many
11 faculty members who are rabbis who influence the
12 decisions of the university. It would be hard to
13 necessarily that they have complete control in a
14 controlling type of way where they would be forcing
15 people to do certain things.
16 Q. Do you know if Yeshiva University
17 intends to fill out this religious institutions
18 certification form?
19 A. I don't know.
20 Q. Who would know the answer to that? Who
21 would be in charge at Yeshiva of making decisions
22 about whether to certify and submit this form or
23 not?
24 A. I don't know if it's one person who
25 would decide. I don't know. This may have to go

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1 KALINSKY
2 wouldn't necessarily know the distinction, I don't
3 know.
4 Q. Are you aware of any document that
5 exists prior to the filing of this lawsuit where
6 Yeshiva University refers to itself as a religious
7 corporation?
8 A. Anything dated earlier that said we are
9 a religious corporation that I would have seen?
10 Prior to preparing for this, I don't think in
11 corporate terms, meaning if you ask me what are we?
12 We're Yeshiva University. What's Yeshiva
13 University? Yeshiva University.
14 Q. So for purposes of preparing for this
15 deposition, did you review any documents that
16 predate the filing of this lawsuit and refer to
17 Yeshiva University as a religious corporation?
18 A. Other than the fact that RIETS, Rabbi
19 Isaac Elchanan Theological Seminary, when it was
20 incorporated in 1897 as a seminary, it wasn't
21 incorporated as a religious corporation, even
22 though no one would argue whether that is a
23 religious corporation or not, and that being
24 continued, so that any further documents that we've
25 seen the charter says it's education has continued

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1 KALINSKY
2 to the board. I don't know. It's defining the
3 institution. I would think that would be -- I
4 would assume that would be important discussion
5 before being just signed on a piece of paper.
6 Q. Do you make any distinction between
7 being a religious institution or a religious
8 corporation?
9 A. In my understanding, there's not much of
10 a distinction.
11 Q. So for you those phrases are essentially
12 interchangeable?
13 A. I would use, in my speaking, I would use
14 the word "institution" because people don't use the
15 word "corporation" in talking about recruiting
16 students, talking about a Yeshiva. Yeshiva would
17 be described more of an institution, but, in
18 talking about our corporate manner, we would say
19 definitely religious in that way as well.
20 Q. So, if somebody asks you to explain the
21 difference between your perception of being a
22 religious corporation and a religious institution,
23 is there any difference that you would draw?
24 A. One is more of a legal term, but, just
25 talking to neighbors and to young people who

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1 KALINSKY
2 in with amendment, amended, but it has continued,
3 continuing that tradition and that philosophy of
4 the Yeshiva, that's where I would understand our
5 origin of saying that we are a religious
6 corporation.
7 Q. But, in order to prepare for today's
8 deposition, did you review any documents that
9 predate the filing of this lawsuit that refer to
10 Yeshiva University using the term "religious
11 corporation"?
12 A. That predate this deposition or predate
13 or any documents?
14 Q. Well, let's start with have you ever
15 seen any documents to prepare for this deposition
16 that refer to Yeshiva as a religious corporation?
17 A. I would have to look back if there are
18 any filings, but off the top of my head I'm not
19 sure. I would say it's definitional to Yeshiva
20 University. In the first word, Yeshiva University,
21 Yeshiva means religious corporation.
22 Q. Okay. So the answer to the question of
23 whether you've ever seen a document that refers to
24 Yeshiva University as a "religious corporation" is
25 I'm not sure. Is that right?

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1 KALINSKY
 2 A. Correct.
 3 Q. And, prior to being asked to testify in
 4 this deposition and preparing for this deposition,
 5 have you ever heard anybody refer to Yeshiva
 6 University as a "religious corporation"?
 7 A. Definitely religious institution. That
 8 for sure. Again, prior to this, I don't think I
 9 thought of the word "corporation" with Yeshiva
 10 University.
 11 MS. ROSENFELD: I don't have any more
 12 questions. Thank you for your time today.
 13 THE WITNESS: Sure.
 14 MR. BAXTER: I have just a couple of
 15 questions.
 16 MR. BAXTER: I'm going to ask the court
 17 reporter to show the witness Exhibit 20.
 18 EXAMINATION BY MR. BAXTER:
 19 Q. Do you remember this document from
 20 earlier in your deposition?
 21 A. Yes.
 22 Q. And you testified that you spoke to
 23 David Palmer again do you remember?
 24 A. Yes. Associate. Now I see here his
 25 title is associate director of institutional

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1 KALINSKY
 2 research.
 3 Q. And what did you speak to David Palmer
 4 about?
 5 A. Bundy Aid.
 6 Q. Okay. I'm going to ask the reporter to
 7 show you Exhibit 19. Do you remember this document
 8 from earlier in your deposition?
 9 A. Yes.
 10 Q. And did you ask Mr. Palmer if he had
 11 ever seen this document?
 12 A. Yes.
 13 Q. And what was his response?
 14 A. He had not seen it.
 15 MR. BAXTER: Okay. No further
 16 questions.
 17 MS. ROSENFELD: Thank you very much.
 18 MR. BAXTER: Thank you.
 19 (Time noted: 4:30 p.m.)
 20 _____
 21
 22 Subscribed and affirmed to
 23 before me this ____ day of _____, 2021.
 24 _____
 25

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1
 2 C E R T I F I C A T I O N
 3
 4 I, JOSEPH R. DANYO, a Shorthand
 5 Reporter and Notary Public, within and for the
 6 State of New York, do hereby certify:
 7 That I reported the proceedings in the
 8 within entitled matter, and that the within
 9 transcript is a true record of such proceedings.
 10 I further certify that I am not related,
 11 by blood or marriage, to any of the parties in this
 12 matter and that I am in no way interested in the
 13 outcome of this matter.
 14 IN WITNESS WHEREOF, I have hereunto
 15 set my hand this 30th day of November, 2021.

JOSEPH R. DANYO

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1	I N D E X		
2	Witness	Page	
3	RABBI DR. YOSEF KALINSKY		3
4	E X H I B I T S		
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1 SIGNATURE PAGE OF YOSEF KALINSKY

2 Page Line Should be Changed to Read

3 **See attached errata sheet**

4 _____

5 _____

6 _____

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12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18

19 I, YOSEF KALINSKY, hereby certify that I have

20 read the transcript of my testimony taken under oath and that

21 the transcript is a true and complete record of my testimony,

22 and that the answers on the record as given by me are true

23 and correct.

24 _____

25 YOSEF KALINSKY

Sworn to before me

this ____ day of _____, 2021

Notary Public

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Errata Sheet of Yosef Kalinsky for November 23, 2021 Deposition Transcript

Page	Line	Should be Changed to Read
5	24	"Azireli" should read "Azrieli"
6	2	"Azireli" should read "Azrieli"
18	19	"Azireli" should read "Azrieli"
40	16	"Kolinsky" should read "Kalinsky"
44	22	"Kolinsky" should read "Kalinsky"
56	10-11	"outside individuals" should read "aside from individuals"
61	18-19	"Roshei High Yeshiva" should read "Rosh HaYeshiva"
62	6	"undergrad of" should read "undergraduate"
62	9	"Roshei High Yeshiva" should read "Rosh HaYeshiva"
62	11	"Stone" should be deleted
80	13	"Azireli" should read "Azrieli"
81	25	"to be in kosher" should read "to eat kosher"
83	17	"Roshei High Yeshiva" should read "Rosh HaYeshiva"
111	21	"Mr. Melgar" should read "Mr. Kluger"
111	25	"Mr. Melgar" should read "Mr. Kluger"
133	16	Change "a religious" to "an education"
134	19	Insert "dual" before "curriculum" so that it reads "dual curriculum"
134	23	Change "pros" to "prose"
139	19-20	Delete "or a religious school"
145	2	Add "Torah Studies" after "Undergraduate"
145	4	Delete "UTS"
168	11	Change "Morganstern" to "Morgenstern"
191	9-10	Change "legal technical term" to "formal technical term", change "reality" to "informal"
199	6	Change "Lakeland" to "Lakewood"
204	8	Move quotation mark to "is," from "If"
209	13	Insert "say" before "necessarily"
211	13	Italicize "Yeshiva"

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- Exhibit D -

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

YU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS THE COMPLAINT**

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PRELIMINARY STATEMENT

Yeshiva University is the nation's flagship Jewish university rooted in Torah values. Along with giving a first-class secular education, its purpose is to pass Torah values to each new generation of undergraduate students, the overwhelming majority of whom are Orthodox Jews. This case is about whether the government can compel Yeshiva to give official recognition to Plaintiff YU Pride Alliance, a club that—as described by Plaintiffs and as understood by the culture at large—is not consistent with Torah values. It cannot. As a religious institution, Yeshiva's right to manage its internal religious affairs without government interference is protected by the First Amendment's religion clauses. And the Free Exercise Clause, the Free Speech Clause, and the Assembly Clause also preclude the government from telling Yeshiva how to shape its religious environment and apply its Torah values.

Plaintiffs invoke the public-accommodation provisions of the New York City Human Rights Law ("NYCHRL") to argue that Yeshiva must recognize the Pride Alliance. But the doctrine of constitutional avoidance requires that—wherever possible—statutes be read to avoid constitutional conflicts. Here, that's easy. The statute itself categorically exempts "a religious corporation incorporated under the education law." N.Y.C. Admin. Code § 8-102. That's Yeshiva. As New York courts hold, this exemption is "absolute and not subject to limitation." Because Yeshiva is a religious education corporation, the NYCHRL does not apply and the First Amendment protects Yeshiva in managing its own religious affairs. All of the claims against the individual Defendants similarly turn on Yeshiva being a public accommodation. Because it is not, all claims against all Defendants must be dismissed as a matter of law.

Plaintiffs' claims against Defendant Chaim Nissel must be dismissed for an additional reason. The NYCHRL applies only to employees with decision-making authority over the alleged misconduct. But the Complaint acknowledges that Nissel doesn't have that authority. Accordingly, the Court should grant Defendants' motion and dismiss this case in its entirety.

FACTUAL BACKGROUND

Yeshiva's Religious Character

By its very name, Yeshiva University makes clear it is a university with religious values. Its slogan of Torah Umadda reflects its mission to combine “the spirit of Torah” with strong secular studies (“*madda*”). Nissel Aff. Ex.3 at 2 (2020 Mission Statement).¹ See also Sher Aff. Ex.4 ¶¶ 1, 5 (hereinafter “Complaint”) (Yeshiva offers “a dual curriculum of Jewish scholarship and academics”); ¶ 75 (referencing “YU and the Orthodox community”). It is both ranked among the best national universities, [2021 Best National University Rankings | U.S. News & World Report \(https://www.usnews.com\)](https://www.usnews.com), and deeply religious, Berman Aff. ¶¶ 3-4. All students are required to engage in religious studies—for most male undergraduates, often several hours per day.

Yeshiva carefully structures its undergraduate program to instill Torah values. All of Yeshiva's presidents have been Orthodox Jews and many, including the current president, have been ordained rabbis. Yeshiva's employee handbook directs employees to “bring wisdom to life by combining the finest, contemporary, academic education with the timeless teachings of Torah.” Nissel Aff. Ex.1 at 9. As at most post-high-school yeshivas and Jewish seminaries, the University's undergraduate campuses are sex-segregated, with several campus-specific student leadership organizations. Nissel Aff. ¶ 11.

The Rabbi Isaac Elchanan Theological Seminary (“RIETS”), one of the nation's largest Orthodox rabbinical seminaries, is housed on the Yeshiva men's campus and is intertwined with Yeshiva's undergraduate programs. They have the same Executive Officers, partial overlap in their boards of trustees, and an express affiliation that, among other things, allows undergraduates to take courses in the Seminary and vice-versa. See Berman Aff. ¶ 6. RIETS faculty also provide much of the undergraduates' Torah studies. *Id.*

Synagogues are located throughout both the men's and women's campuses so that students may participate in the regular prayers and other religious services required by Jewish law. Yeshiva

¹ When considering a motion to dismiss under CPLR 3211(a)(7), a defendant may submit evidence via affidavits showing “that the plaintiff has no cause of action.” (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 980 NYS2d 21, 26-27 & n.4 [1st Dept 2014]).

faithfully observes, and asks undergraduates to observe, Orthodox Jewish laws throughout campus life. Its offices and classes are closed on Shabbat and Jewish holidays and its dining facilities prepare and serve only kosher food. Nissel Aff. ¶ 17. Undergraduate dorms are also governed by Torah values. Male and female undergraduates live in separate dormitories. Nissel Aff. ¶ 19. Men may live on campus only if they are “enrolled in one of the Jewish studies divisions and enrolled for at least 12 credits each semester or are a full-time ‘semicha’ (or seminary) student.” Nissel Aff. ¶ 20; [Men’s Housing | Yeshiva University \(yu.edu\)](#) (“Eligibility”). They must agree “to live in accordance with halachic [Jewish law] norms and Torah ideals.” Nissel Aff. ¶ 21. All dormitories are governed by a policy of public Shabbat observance. Nissel Aff. ¶ 22; *see also* [Women’s Housing | Yeshiva University \(yu.edu\)](#). Elevators are set to run automatically and electronic appliances may be confiscated if used in blatant violation of the rules of Shabbat, and the students involved may be “subject to disciplinary action.” Nissel Aff. ¶ 23.

Yeshiva has long sought to “[p]romote a Jewish community that champions Torah Umadda, love for humankind, and support for the State of Israel” and to “enabl[e] communities to turn to Yeshiva for guidance on contemporary halachic and hashkafic matters.” Nissel Aff. ¶ 24; Nissel Aff. Ex.2 at 2, 12.

Plaintiffs’ Recognition of Yeshiva’s Religious Character

Plaintiffs admit that Yeshiva is deeply religious. One supporting declaration states, “I love Torah learning and came to YU to further my religious growth *just like any other student who chooses YU*.” Doc. 25 ¶ 9 (Jane Doe affidavit) (emphasis added). Plaintiff Miller states that “YU was a religious community for me too.” Doc. 23 ¶ 9. Events requested by Plaintiffs include LGBTQ “shabbatons,” or LGBTQ programming as part of celebrating the Sabbath. *See, e.g., id.* ¶ 21; Doc. 24 ¶ 32. Even Plaintiffs’ critiques of Yeshiva are rooted in Yeshiva’s religious views. Plaintiff Weinreich, for example, “published an article in one of the student newspapers” criticizing Yeshiva for its *religious* approach to LGBTQ issues. Doc. 22 ¶ 16 (citing <https://yucommentator.org/2019/09/walking-the-walk-of-empathy>). For Plaintiffs, Yeshiva’s religiosity is a feature, not a bug.

Yeshiva's Corporate Charter

Yeshiva (originally named RIETS) started in 1897 as a membership corporation. Over time, the seminary became a division within the University. *See* Sher Aff. Ex.1 at 26; *see also* Doc. 16. Its corporate status gradually evolved, with many amendments to expand its academic offerings, change its corporate name, and increase its number of trustees. *See generally* Sher Aff. Ex.1. Revisions to the Education Law in 1963 confirmed that absent “the consent of the commissioner of education,” membership corporations had to be incorporated under the Education Law. Sher Aff. Ex.2 at 4, 1963 N.Y. Laws 2406-2408 (enacted April 23, 1963). Consistent with the Education Law, Yeshiva “continued” the University as “an educational corporation under the Education Law” in 1967. Doc. 14. RIETS followed suit by separately incorporating “as an educational corporation” in 1970. Doc. 16. The general requirement to incorporate as an education corporation remains today. *See* N.Y. Educ. Law § 216. Thus, neither Yeshiva nor RIETS has ever been incorporated as a “religious corporation” within the meaning of the New York Religious Corporations Law. N.Y. Religious Corporations Law § 2. But despite New York’s compelled classification, both institutions have always *functioned* as religious corporations. While nondenominational and nonsectarian in admitting students from any Jewish or other faith tradition, Yeshiva’s undergraduate program is designed to encourage all students to embrace Torah-based Jewish beliefs. *See* Berman Aff. ¶ 7.

Decision Not To Approve Pride Alliance

In its effort to “establish[] a caring campus community that is supportive of all its members,” Yeshiva is “wholly committed to and guided by Halacha and Torah values.” Doc. 11; Complaint ¶ 98. To that end, it has long distinguished undergraduates “socializ[ing] in gatherings as they see fit” from putting its seal of approval on clubs that appear not consistent with Torah values. Doc. 11; *see also* Nissel Aff. ¶¶ 7, 18, 36, 44.

Official club recognition (or revocation) starts with Yeshiva’s Student Government. *See* Complaint ¶¶ 29-36; Nissel Aff. Ex.4 (Male Student Government Constitution, art. V § 1(c), (i)); Nissel Aff. Ex.5 (Women’s Student Government Constitution art. VI, §1(b)). The Student

Government is specifically tasked by Yeshiva to uphold Torah values and “enrich the religious atmosphere on campus.” *See, e.g.*, Nissel Aff. Ex.4 at 2 (Men’s Constitution, “Preamble”); *see also* Nissel Aff. Ex.5 at 2 (Women’s Constitution, art. II §1). Indeed, every elected male student leader is charged to “maintain the religious atmosphere on campus.” Nissel Aff. Ex.4 at 8. Men’s Constitution, art. III § 6(3). Similarly, the Women’s Student Council can only authorize a club charter if it “embod[ies] the Halachic tradition.” Nissel Aff. Ex.5 at 10 (Women’s Constitution, art. II A). These decisions are also subject to review by Yeshiva’s Director of Student Life, who is responsible for ensuring that club approvals comply with Yeshiva’s religious values and other standards. Nissel Aff. ¶¶ 36, 38.

If a proposed club raises especially complex issues, the Director of Student Life will discuss the approval with Chaim Nissel, Vice Provost for Students and University Dean of Students at Yeshiva. Nissel Aff. ¶¶ 1, 38. On particularly difficult issues, especially those affecting Yeshiva’s religious mission, the Director of Student Life and Vice Provost Nissel may additionally consult with Yeshiva’s religious leadership and other senior administrators. Nissel Aff. ¶ 40. Even after a club has been approved, all its activities and speakers must be approved via the same process to help provide a student experience steeped in Torah values. Nissel Aff. ¶ 45.

This standardized process was followed with respect to Pride Alliance. Over the past several years, senior religious and administration officials at Yeshiva have engaged in regular discussions with LGBTQ students over forums or clubs that can explore issues of interest to LGBTQ individuals within a Torah framework. *Id.* ¶ 46; Complaint ¶ 1. That has included discussions concerning students’ requests for Yeshiva to put its imprimatur on the YU Pride Alliance and, before that, a Gay-Straight Alliance. Nissel Aff. ¶ 46; Complaint ¶ 43. When Plaintiffs submitted their most recent request for official approval of YU Pride Alliance in February 2019, Plaintiffs requested to meet with a senior administrator and Nissel. Complaint ¶¶ 45-46, 90. But as Nissel had repeatedly informed Plaintiffs, he lacked the authority to decide an issue so intertwined with Yeshiva’s religious mission and “needed to speak to more senior administrators.” *Id.* ¶ 43.

As the Complaint itself alleges, Plaintiffs next elevated discussions beyond Nissel to those with decision-making authority. *Id.* ¶ 53. A panel of rabbis and educators was established to review the issues surrounding the request for formal recognition, *id.* ¶ 58, and there were ongoing meetings with student representatives to discuss the same, *id.* ¶¶ 62-71. On September 3, 2020, after conversations among Yeshiva's senior officials and religious leaders, Yeshiva announced that it would not officially recognize Pride Alliance because doing so would not be consistent with Torah values. *Id.* ¶¶ 98, 101. Nissel was not personally involved in making this decision. *Id.* ¶¶ 98, 103 (alleging that other Yeshiva administrators and religious officials, not Nissel, authorized this decision). Nor did he sign the letter. Doc. 11. And his own recounting of these events confirms Plaintiffs' allegations, demonstrating that Nissel's only role in this process was as a messenger, "communicat[ing] the decision to the students as it was conveyed to [him]." Nissel Aff. ¶ 57. He "was not personally involved" in making the final decision." *Id.* ¶ 54; Doc. 11. Rather, "[g]iven the religious ramifications of their request, this was not a decision [he] had authority to make." Nissel Aff. ¶ 56.

It is undisputed that Yeshiva's decision was a decision based upon religious values and principles. Plaintiffs acknowledge that "timeless prescriptions" in the Torah are the basis for this decision. *See, e.g.*, Complaint at ¶ 101. In a recent YouTube interview, Plaintiff Meisels agreed that "they said this forthrightly. The reason why they will reject a club is because it clouds the nuance of the Torah." [Plaintiff Meisels YouTube Statement at 18:10](#); *see also* Nissel Aff. ¶ 53; Doc. 11.

Yeshiva's decision not to recognize YU Pride Alliance is consistent with how it has evaluated other student groups. For example, Yeshiva has declined to approve the Jewish "AEPi" fraternity. Nissel Aff. ¶ 43. Although Yeshiva appreciates the fraternity's commitment to certain Jewish values, it has concluded that other aspects of fraternity life are not consistent with Yeshiva's Torah values. Nissel Aff. ¶ 43. Similarly, Yeshiva declined to approve proposed gaming and gambling clubs. Nissel Aff. ¶ 44.

Plaintiffs are candid as to what more they seek to accomplish through a YU Pride Alliance. They want Yeshiva to “send[] a clear message” that Plaintiffs’ own views of Judaism on human sexuality “belong at YU.” Doc. 28 at 5, 9. Plaintiff Meisel has confirmed that the lawsuit’s goal is to force “cultural changes” at Yeshiva. [Plaintiff Meisels YouTube Statement at 26:22](#). Plaintiffs want Yeshiva to “make a statement.” *Id.* And they hope that “an establishment of a club really could change things” at Yeshiva, including changing the “people who are against the movement in the student body.” *Id.*

Yeshiva’s senior administrators, faculty, rabbis, and student body of course deeply care for its LGBTQ students. And the University is similarly committed to seeing all its students, including its LGBTQ students, succeed. Nissel Aff. ¶¶ 63-65. Yeshiva thus is committed to continuing this conversation with its students within the context of Torah values. But Plaintiffs’ disagreement with Yeshiva’s religious decision is not sufficient to state a claim for relief.

ARGUMENT

Under New York law, a cause of action must be dismissed if there is documentary evidence of a defense or if the complaint fails to state a cause of action. CPLR 3211(a)(1), (7). “[F]actual claims inherently incredible or flatly contradicted by documentary evidence” do not suffice. (*Caniglia v Chi. Tribune-N.Y. News Syndicate, Inc.*, 204 AD2d 233, 233-34 [1st Dept 1994]).

Here, Plaintiffs’ claims against all Defendants must be dismissed for two reasons:

First, Yeshiva is exempt from the NYCHRL’s public accommodation provisions because, as a “religious corporation incorporated under the education law,” it is “distinctly private.” N.Y.C. Admin Code § 8-102. Because every claim—including those against the individual Defendants—require Yeshiva to be a “public accommodation,” which it is not, each claim fails as a matter of law.

Second, construing the NYCHRL otherwise would lead to constitutional problems—violating the principle of constitutional avoidance. If the NYCHRL applies here, then Plaintiffs’ claims are

forbidden by the First Amendment.² The Free Exercise, Establishment, Free Speech, and Assembly Clauses all protect Yeshiva University's freedom to carry out its religious mission and form the next generation of undergraduate students according to its own religious beliefs, free from government interference.

Plaintiffs' claims against Nissel must be dismissed for an additional reason. As a mere conduit with no decision-making authority over Plaintiffs' desired club, Nissel is not subject to liability under the NYCHRL.

I. Plaintiffs have failed to state a claim under the NYCHRL.

A. The public accommodation provisions do not apply to religious organizations.

Plaintiffs have sued Yeshiva as a "place or provider of public accommodation." N.Y.C. Admin. Code § 8-107(4); *see also* Complaint at ¶¶ 142-156. But the NYCHRL's definition of "place or provider of public accommodation" deliberately excludes "distinctly private" organizations. N.Y.C. Admin. Code § 8-102. Religious corporations expressly fall within this exclusion—and not only those incorporated under New York's Religious Corporations Law. *See id.* Rather, the NYCHRL explicitly states that "a religious corporation incorporated under the education law" is "distinctly private." *Id.* "A plain reading of the statute reveals that the exemption" "is absolute and not subject to limitation." (*Gifford v Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 707 NYS2d 722, 723-724 [3d Dept 2000]).

This plain reading accords with both the NYCHRL's "legislative intent" and "the construction of the statute adopted by other appellate courts." *Id.* (citing cases); *see also* N.Y.C. Admin. Code § 8-107(12) (protecting religious schools even outside of the public accommodations context). As the NYCHRL's legislative history states, the law was only directed toward "business purposes, employment, and professional advancement." Local Law No. 63 [1984] of the City of New York § 1. When amending the NYCHRL to apply certain other, non-public accommodation provisions

² The First Amendment requires resolving claims that impact internal religious affairs at the outset. (*See, e.g., Fratello v Archdiocese of N.Y.*, 863 F3d 190, 198 [2d Cir 2017] (resolving whether the "ministerial exception" applied at the motion to dismiss stage); (*see also NLRB v Catholic Bishop*, 440 US 490, 502 [1979] ("very process of inquiry" into internal religious affairs can "impinge on rights guaranteed by the Religion Clauses").

to private organizations, the City Council expressly exempted religious organizations “[b]ecause small clubs, benevolent orders and religious corporations have not been identified . . . as places where business activity is prevalent.” *Id.*; (see also *N. Y. State Club Ass’n, Inc. v City of New York*, 487 US 1, 16-17 [1988]). Yeshiva’s entire existence centers not on “business activity,” but on infusing secular (“madda”) studies with Torah values. *Supra* 2. “Madda” without “Torah” is not Yeshiva. Berman Aff. ¶¶ 4, 7, 10.

In short, because Yeshiva is “a religious corporation incorporated under the education law,” it is “distinctly private” and not subject to the NYCHRL’s public accommodations provisions.

B. Yeshiva University is a religious organization.

Yeshiva is a “religious corporation incorporated under the education law,” making it “distinctly private” under the NYCHRL.

1. Religious status is based on overall character, not corporate form.

When assessing whether an organization is religious under the NYCHRL, “courts engage in a robust analysis of the facts that arguably demonstrate the religious character of the organization and its work.” (*Jing Zhang v Jenzabar, Inc.*, 2015 WL 1475793, *9 [ED NY Mar. 30, 2015, No. 12-CV-2988]). There is no “particular test or measure to define a religious organization.” *Id.* Factors to consider include evidence of the organization’s “founding,” “key documents purporting to represent [its] religious nature,” its “public presentation,” and whether “by the time” of the relevant events, the organization has “evolved” such that it is religious in nature. *See id.* at *9-11. Focusing on function means that the “corporation’s certificate of incorporation” is not dispositive; “the actual practices of the organization” are what count. (*Watt Samakki Dhammikaram, Inc. v Thenjitto*, 631 NYS2d 229, 231 [Sup Ct, Kings County 1995]). Courts can be led astray if they myopically let one document gloss over a religious organization’s functions. (*Kittinger v Churchill*, 292 NYS 35, 46-47 [Sup Ct, Erie County 1936], *affd*, 292 NYS 51 [4th Dept 1936]) (“Although the Churchill Evangelistic Association, Inc., has the form of a stock trading corporation, it is patent that it is . . . a religious society.”). By focusing on function, a court can assess the organization “as it was intended to be, and actually is.” *Id.* at 48.

This function-based approach is required by the U.S. Constitution. The U.S. Supreme Court has long held that even “independent organization[s]” possess “full, entire, and practical freedom for all forms of religious belief and practice.” (*Watson v Jones*, 80 US 679, 724-728 [1871]). This is because a religious organization’s chosen legal form “is more or less intimately connected [to its] religious views” and understanding of “ecclesiastical government.” *Id.* at 726. “Fear of potential liability” cannot be allowed to drive how a religious organization forms and operates. (*Corp. of Presiding Bishop v Amos*, 483 US 327, 336 [1987]). Accordingly, the “definition and explanation” a religious organization provides of its religious functions “is important”; the nation’s religious diversity precludes judges from “hav[ing] a complete understanding and appreciation of . . . a particular role in every religious tradition.” (*Our Lady of Guadalupe Sch. v Morrissey-Berru*, 140 S Ct 2049, 2066 [2020]; *see also Amos*, 483 US at 341) (Brennan, J., concurring) (First Amendment guarantees religious organizations freedom to “define their own doctrines, resolve their own disputes, and run their own institutions.”).

2. Yeshiva’s overall character is deeply religious.

Yeshiva’s functions confirm it is deeply religious. All undergraduates are strongly encouraged to begin their Yeshiva experience with intensive religious studies in Israel, with over 80% doing so for University credit. On campus, students spend one to nearly six hours per day in Torah study with rabbis or other religious educators—a requirement that is facilitated by Yeshiva being home to one of the nation’s largest Orthodox seminaries (RIETS); students living on campus agree “to live in accordance with halachic [Jewish law] norms and Torah ideals”; Yeshiva complies fully with the laws of Shabbat and Kashrut and encourages students to do the same; campuses, dorms, and prayers are sex-segregated consistent with Torah law and tradition; student government officers are charged to help “maintain the religious atmosphere on campus”; and all student activities are subject to University approval for religious compliance. *Supra* 2-3, 5. For Yeshiva, Judaism is not a matter of intellectual curiosity. It is the heart of what Yeshiva is.

Plaintiffs admit that Yeshiva is renowned for its religious character. Plaintiff Miller states that “YU was a religious community for [him] too.” Doc. 23 ¶ 9. Declarant Jane Doe acknowledges

that “any . . . student who chooses YU” does so because they “love Torah learning and came to YU to further [their] religious growth.” Doc. 25 ¶ 9.

Moreover, Plaintiffs unapologetically seek to change Yeshiva’s Torah-based understanding of LGBTQ issues. This is why Plaintiff Weinreich published an article asking students to “stop either pretending or being under the delusion that any of the dominant issues are halachic.” Doc. 22 ¶ 16 (citing <https://perma.cc/JWC9-9VDC>). This is why Plaintiffs want Pride Alliance to be allowed to host “shabbaton” events on Yeshiva’s premises. *See, e.g.*, Doc. 23 ¶ 21; Doc. 24 ¶ 32. And it is why Plaintiffs ask this Court to force Yeshiva to approve the Pride Alliance: Doing so will force Yeshiva to “make a *statement*,” which “could really change things” at Yeshiva, including the minds of “people who are against the movement in the student body.” [Plaintiff Meisels YouTube Statement at 26:22](#) (emphasis added). Plaintiffs disagree with Yeshiva’s view that “the proposed club . . . was somehow religiously prohibited.” Doc. 22 ¶ 30. And they think Yeshiva’s “forthright[]” “reason why they will reject a club”—*i.e.*, that “it clouds the nuance of the Torah”—is simply wrong. [Plaintiff Meisels YouTube Statement at 18:10](#). None of this makes any sense if Yeshiva is non-religious.

Despite this overwhelming and undisputed evidence, Plaintiffs claim that two stray documents—from 1967 and 1995—negate Yeshiva’s deeply religious character. Neither does.

1967 amendment to certificate of incorporation. Plaintiffs claim that Yeshiva’s 1967 amended certificate of incorporation shows that Yeshiva is not religious. Complaint at ¶¶ 20,22. Rather, the certificate shows that, in 1967, Yeshiva modified its corporate status from “membership corporation under the laws of the State of New York” to “educational corporation under the Education Law of the State of New York.” Doc. 14. And in 1970, RIETS was separately incorporated under the Education Law as well. Doc. 16. This did not make Yeshiva non-religious.

First, corporate status does not determine religious character. *Supra* 9-10 (citing *Watt* and *Kittinger*). Concluding otherwise would violate the First Amendment. *Supra* 10 (citing *Watson*, *Amos*, and *Our Lady*). In any event, Plaintiffs’ view leads to obviously wrong results. On Plaintiffs’ reasoning, not even Yeshiva’s affiliated *rabbinical seminary* would be religious, because, like

Yeshiva itself, RIETS is currently incorporated “as an educational corporation” and before 1970 was a “membership corporation.” Doc. 16; Sher Aff. Ex.1 at 26. Function is the proper analysis here, and Yeshiva’s functions are infused with religious exercise.

Second, the 1963 revision to the Education Law confirmed that, absent contrary written approval, all colleges, universities, and other higher educational institutions *must* incorporate as educational corporations. Sher Aff. Ex.2. It therefore cannot be the law that a corporation is “religious” only when incorporated under the Religious Corporations Law. That would be inconsistent with every New York corporate law case cited above. It would also render meaningless the NYCHRL’s specific exemption for “any religious corporation incorporated under the education law.” N.Y.C. Admin. Code § 8-102.

1995 “fact sheet.” Plaintiffs also point to a 1995 “fact sheet” addressing “the gay student clubs” at some of Yeshiva’s graduate schools. Doc. 6 at 2. But this “fact” sheet does not override Yeshiva’s religious character for three reasons:

First, whatever advice Yeshiva leaders were given nearly three decades ago, it does not change the fact that—long before 1995 and continuing ever since—Yeshiva has always been a deeply religious institution. Berman Aff. ¶¶ 2-4. While nondenominational in the sense that it welcomes students of all faiths, Yeshiva does so for the purpose of teaching them Judaism. And the 1995 “fact” sheet itself repeatedly confirms that Yeshiva “has not, by virtue of any of its actions, abandoned moral principles”; that Yeshiva “make[s] a unique and vital contribution to the Jewish community and society at large” by preserving the integration of its rabbinical training into university life; and that Yeshiva “makes every effort to . . . remain true to the history and traditions of the institution,” such as in keeping kosher and observing Shabbat. Doc. 6 at 3-5. A function-focused analysis must situate the 1995 “fact” sheet within Yeshiva’s 124-year institutional religious history and 3,000-year-old religious tradition—neither of which could be, or ever has been, trumped by a PR “fact” sheet.

Second, the 1995 “fact” sheet distinguishes Yeshiva’s graduate schools from its undergraduate and seminary programs, a distinction that aligns with Yeshiva’s religious beliefs and practices. A

central purpose of the undergraduate and seminary programs is to help students grow in their observance of the Torah and to enable them to take Torah into their chosen professions. Berman Aff. ¶¶ 4, 7. All undergraduate students spend hours each day studying Torah. Nissel Aff. ¶ 6. And campus life is designed to imbue Torah values in its students. Indeed, as Plaintiffs admit, spiritual formation is why students choose to attend Yeshiva—usually after spending a full gap year in Israel studying Torah full time. Nissel Aff. ¶ 5. While Yeshiva’s graduate schools are also structured to enable religious observance, their emphasis shifts from religious formation to greater professional development. Berman Aff. ¶ 8. The University’s decision to allow at the graduate level what it does not at the undergraduate level reflects its mission to form students’ faith during their most impressionable years. Berman Aff. ¶¶ 7-8.

Third, while there is no evidence that Yeshiva has ever retreated from the religious mission of its undergraduate program for any reason, including to get public funding (as Plaintiffs allege), it is undisputed that Yeshiva *today* is deeply religious. Under the NYCHRL, what counts is whether an organization is religious at the time of the events giving rise to the cause of action. *See Jenzabar*, 2015 WL 1475793, at *11 (under NYCHRL, “[n]othing prohibits an entity from evolving in such a way as to affect its status as a religious organization.”) (*Kroth v Congregation Kadisha*, 105 Misc 2d 904, 910 [Sup Ct, NY County 1980]) (organization can “metamorphose[] into a de facto religious corporation”). Plaintiffs do not dispute that Yeshiva’s decision not to approve of Pride Alliance has *always* been a religious decision. Berman Aff. ¶ 11; Nissel Aff. ¶ 53; *supra* 6. Plaintiffs may disagree with that decision, but it simply is “not within the judicial function and judicial competence to inquire whether [Plaintiffs] or [Yeshiva] more correctly perceive[] the commands of their common faith. Courts are not arbiters of scriptural interpretation.” (*Thomas v Review Bd. of Indiana*, 450 US 707, 716 [1981]).

Yeshiva’s receipt of public aid does not change the analysis. Plaintiffs argue that, in applying for state and federal funding, Yeshiva has often represented itself as not being a “religious corporation” and as being “nondenominational” and “nonsectarian.” *See, e.g.*, Complaint ¶ 5. But none of these statements is inconsistent with Yeshiva’s status as a religious organization.

Consistent with the strictures of the Education Law, *supra* 4, Yeshiva is not incorporated under the Religious Corporations Law, but under the Education Law. Moreover, Yeshiva accepts students from all Jewish denominations, and indeed from all faiths, making it both nondenominational and nonsectarian.³

None of this precludes Yeshiva from being a religious institution with a religious mission. Indeed, the NYCHRL's public accommodations provisions expressly recognize that an organization incorporated under the Education Law can still be "religious." N.Y.C. Admin. Code § 8-102. Nor does it disqualify Yeshiva from receiving public funding. The U.S. Supreme Court has twice held recently that religious organizations cannot be denied generally available funding based on their religious status. (*Espinoza*, 140 S Ct at 2259; *Trinity Lutheran Church of Columbia, Inc. v Comer*, 137 S Ct 2012, 2021 [2017]). Reflecting this reality, the DASNY bond that Plaintiffs refer to (Complaint at ¶ 23) makes clear that its use restriction "shall not prohibit the free exercise of any religion." Sher Aff. Ex.3 at 108. Plaintiffs' argument that Yeshiva forfeited its religious identity by applying for public funding is simply wrong.

* * * *

Because Yeshiva is a "religious corporation incorporated under the education law," it is exempt from the NYCHRL's public accommodation provisions. Every claim, against both Yeshiva and the individual Defendants, depend on this faulty premise. Because it is wrong as a matter of law, the claims against all Defendants must be dismissed.

II. Plaintiffs' reading of the NYCHRL would violate the First Amendment.

A plain reading of the NYCHRL's exemption for religious corporations avoids constitutional conflict. By contrast, ignoring the exemption would make the NYCHRL's public accommodation provisions unconstitutional.

³ Many churches refer to themselves as "nondenominational" despite their obvious religiosity. And the U.S. Supreme Court has held that "sectarian" as used in funding restrictions is "code for Catholic" and a term "born of bigotry." (*See Espinoza v Montana Dept. of Revenue*, 140 S Ct 2246 [2020]; *Mitchell v Helms*, 530 US 793, 828-829 [2000].) Moreover, Judaism is not a "sect" in any sense of the word.

A. Plaintiffs' NYCHRL claims violate religious autonomy.

The First Amendment ensures religious organizations can “define their own doctrines, resolve their own disputes, and run their own institutions.” (*Amos*, 483 US at 341) (Brennan, J., concurring); (*see also Our Lady*, 140 S Ct at 2060) (holding that religious schools possess a “sphere” of “autonomy” to make “internal management decisions that are essential to the institution’s central mission”). Therefore, a civil court cannot “intrude for the benefit of one segment of a [religious organization] the power of the state.” (*Kedroff v St. Nicholas Cathedral of Russian Orthodox Church*, 344 US 94, 119 [1952]). Yet Plaintiffs’ claims require exactly that.

If the Court were to accept Plaintiffs’ NYCHRL construction, then it would have to tell Yeshiva how to construe and apply its religious mission and values when deciding to approve a club. Indeed, Plaintiffs admit this goal. *Supra* 7. But “the First Amendment has struck the balance” already. (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC*, 565 US 171, 196 [2012]). Yeshiva “alone” has the right and the duty to decide those religious questions. *Id.* at 195.

B. Plaintiffs' NYCHRL claims violate the Free Exercise Clause.

Plaintiffs wrongly claim that the NYCHRL satisfies the Free Exercise Clause simply because it is not targeted toward religious beliefs or crafted ““because of religious motivation.”” Doc. 28 at 19.⁴ But the “Free Exercise Clause is not limited to acts motivated by religious hostility.” (*Cent. Rabbinical Congress v New York City Dept. of Health & Mental Hygiene*, 763 F3d 183, 197 [2d Cir 2014]) (cleaned up). Rather, “Government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny ... whenever they treat *any* comparable secular activity more favorably than religious exercise.” (*Tandon v Newsom*, 141 S Ct 1294, 1296 [2021]). With the NYCHRL, that is clearly the case.

⁴ Plaintiffs also claim that Yeshiva giving its imprimatur to the Pride Alliance “does not burden [its] religious exercise at all.” Doc. 28 at 19. But that claim is undermined by one of their own cases. (*See Gay Rights Coal. of Georgetown Univ. Law Ctr. v Georgetown Univ.*, 536 A.2d 1, 5 [DC 1987]) (recognizing a student club on a religious campus “carr[ies] an intangible ‘endorsement’”). Forcing Yeshiva to “make a statement” contrary to Yeshiva’s understanding of the Torah is precisely what Plaintiffs want. *See, e.g., Plaintiff Meisels YouTube Statement at 26:22.*

Here, it is undisputed that the NYCHRL exempts “distinctly private” clubs and benevolent orders. (*Gifford*, 707 NYS2d at 723-724). Similarly, in instances where the NYCHRL applies to private entities, it exempts some religious activities but not others. (*See, e.g.*, N.Y.C. Admin. Code § 8-107(12)). These distinctions alone, to say nothing of the NYCHRL’s other exemptions, require strict scrutiny under *Tandon*. And Plaintiffs’ desired goal—forcing Yeshiva to make “cultural changes” to its religious environment and “make a **statement**,” *supra* 7 (emphasis added)—cannot satisfy what strict scrutiny requires: a compelling governmental interest pursued in the least-restrictive way. “The 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.” (*Obergefell v Hodges*, 576 US 644, 679-680 [2015]).

C. Plaintiffs’ NYCHRL claims violate the Free Speech Clause.

The Free Speech Clause prohibits compelling a private party “to be an instrument for fostering public adherence to an ideological point of view.” (*Wooley v Maynard*, 430 US 705, 715 [1977]).

Here, this is exactly what Plaintiffs want. They admit—both in their briefing and in public interviews—that the point of this lawsuit is to force “cultural changes” onto Yeshiva and send a different “statement” than the one Yeshiva’s Torah values produce. *Supra* 7. The First Amendment prohibits courts from imposing “what shall be orthodox in . . . religion . . . or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.” (*W. Virginia Bd. of Educ. v Barnette*, 319 US 624, 642 [1943]); (*see also Hurley v Irish-American Gay, Lesbian & Bisexual Group*, 515 US 557, 579 [1995]) (government “is not free to interfere with speech for no better reason than promoting an approved **message** or discouraging a disfavored one, however enlightened either purpose may strike the government”) (emphasis added).

D. Plaintiffs’ NYCHRL claims violate the Assembly Clause.

The Assembly Clause protects the freedom of private organizations to form their members in ways of life that are “indispensable to the effective and intelligent use of the processes of popular

government.” (*See Thomas v Collins*, 323 US 516, 532 [1945]). This freedom includes the right of religious organizations to “educat[e] and form[]” the next generation according to their particular tradition’s religious vision. (*Our Lady*, 140 S Ct at 2055; *Obergefell*, 576 US at 679-680). The freedom of assembly protects the right of distinct religious communities to unite in witness against the “hydraulic insistence on conformity to majoritarian standards.” (*Wisconsin v Yoder*, 406 US 206, 217 [1972]).

Here, Plaintiffs seek to employ secular judicial power to turn Yeshiva away from its 3,000-year-old religious tradition toward Plaintiffs’ preferred religious message. But “our constitutional tradition” flatly forbids such an infringement. *See Collins*, 323 US at 531-532.

III. Nissel is not subject to liability under the NYCHRL.

Defendants Nissel and Berman should be dismissed along with Yeshiva because Yeshiva is not a public accommodation and thus not subject to the public accommodation provisions of the NYCHRL. If Yeshiva cannot be liable, neither can its employee or officer.

The Complaint’s own allegations confirm that Defendant Nissel must also be dismissed because he lacked authority to decide whether to approve Plaintiffs’ desired club—“he needed to speak to more senior administrators.” Complaint ¶ 43. The NYCHRL primarily affects businesses and organizations; it extends liability to employees of said organizations only “under limited circumstances,” (*Palmer v Cook*, 64 Misc 3d 1222(A), 2019 NY Slip Op 51228[U], *4 [Sup Ct, Queens County 2019]), and does not apply to employees where they do not “act with or on behalf of” their employer (*i.e.*, “in some agency or supervisory capacity”), (*Priore v New York Yankees*, 307 AD2d 67, 74 [2003]) (addressing identical language in a related provision of the NYCHRL).⁵ To be liable, an employee “must be found to possess the power to do more than simply carry out . . . decisions made by others.” (*Id.*) (holding that this rationale under the NYSHRL also applies to the NYCHRL). As such, where a plaintiff “does not allege that [a defendant] possessed any

⁵ An earlier case from the Second Department, *Murphy v ERA United Realty*, 251 AD2d 469, 471 [1998], held without analysis that any employee can be held liable under the NYCHRL. However, *Priore* confirms that the First Department expressly rejects that analysis. (*See* 307 AD2d at 74).

supervisory authority,” that plaintiff “cannot sustain a cause of action against [that defendant] pursuant to NYCHRL.” (*Palmer*, 2019 NY Slip Op 51228[U], *4). Merely possessing a leadership title is not sufficient—if the employee accused under the NYCHRL did not have the authority to make decisions over the alleged conduct, that employee cannot be liable under the NYCHRL. (*Mitra v State Bank of India*, 2005 WL 2143144, *3 [SD NY Sept. 6, 2005, No. 03 CIV. 6331]) (dismissing NYCHRL claims against supervisor defendants because plaintiffs did not allege they had authority to make relevant personnel decisions).

Here, the Complaint fails to allege Nissel had any decision-making authority over whether to approve the Gay-Straight Alliance or, later, the YU Pride Alliance. Rather, Plaintiffs consistently allege that Nissel did *not* have that authority. For example, Plaintiffs allege Nissel told them “that he needed to speak to more senior administrators” because he lacked authority to recognize YU Pride Alliance. Complaint ¶ 43. They further allege that Plaintiffs themselves elevated discussions over club approval to other Yeshiva administrators and religious leaders with real authority. *Id.* ¶ 53. Indeed, Plaintiffs acknowledge that a senior administrator, not Nissel, was tasked with convening a committee to assist Yeshiva in deciding whether to officially acknowledge YU Pride Alliance. *Id.* ¶¶ 58, 62-71. From the face of the Complaint, Nissel lacks the requisite authority for NYCHRL liability.

While the Complaint alone demonstrates the need to dismiss Nissel, his own testimony further confirms it. *See* Nissel Aff. ¶ 56 (“Given the religious ramifications of their request, this was not a decision I had authority to make on my own.”). Nissel was merely a conduit, relaying the students’ concerns and the administration’s decisions between them. *See, e.g., id.* ¶¶ 54 (“I was not personally involved in making the decision [to deny official recognition].”); ¶ 55 (“As Plaintiffs acknowledge at paragraph 43 of their complaint, I relayed to them that I ‘needed to speak to more senior administrators.’”), ¶ 57 (“My only role was to communicate the decision to the students as it was conveyed to me.”). Vice Provost Nissel has never taken any actions against Plaintiffs and, to the contrary, is well-known to be an ally and supporter of Yeshiva’s LGBTQ community. He has attended LGBTQ events at Yeshiva in the past and continues to support various

LGBTQ initiatives on campus. Nissel Aff. ¶ 58-59, 63. Nissel has also written personal letters of recommendation for various members of the YU Pride Alliance and has continued to do so even after this lawsuit was filed. *Id.* ¶ 64.

In sum, Nissel has not taken any action against YU Pride Alliance and lacks the authority to do so. Because he did not have the authority to “den[y]” Plaintiffs their desired recognition, he therefore cannot be held liable under Counts I, II, or IV. *See* Complaint ¶¶ 145, 148, & 156. Similarly, Nissel cannot be held liable under Count III, which turns on him “communicat[ing] [his] intent to refuse, withhold from, and/or deny” Plaintiffs their desired recognition. *Id.* ¶ 152. The communication that Plaintiffs point to—Yeshiva’s September 3, 2020 letter (*id.*)—is one that Nissel did not sign. Complaint at ¶ 98 (listing signatories); *see also* Nissel Aff. ¶¶ 53-56. Indeed, the fact that Yeshiva communicated this decision without Nissel at all confirms that he cannot be liable under Count III. Nissel is therefore well outside the NYCHRL’s ambit. All causes of action against Nissel must be dismissed.

CONCLUSION

Applying the NYCHRL’s public accommodation provisions against Yeshiva would not simply stretch the statute beyond its plain words and purpose. It would allow the government to intervene in all aspects of Yeshiva’s application of its religious values, as well as its religious programming. Beyond sexual orientation, the public accommodation provisions also prohibit distinctions based on “creed” and “gender.” Thus, if Yeshiva were deemed a public accommodation, any of its Torah-based actions—including its religious curriculum requirements, its sex-segregated campuses and classes, its efforts to maintain a kosher campus, and its observance of the Sabbath and Jewish holidays—would all be subject to challenge in the courts. Neither the NYCHRL nor the First Amendment permits this result. Both protect Yeshiva’s right to control its internal religious affairs and shape its religious environment. The Court thus should dismiss Plaintiffs’ case in its entirety.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

By: /s/ Brian M. Sher

Brian M. Sher

Samantha R. Montrose

Kenneth Abeyratne

120 Broadway, 14th Floor

New York, New York 10271

Telephone: 212-980-9600

Facsimile: 212-980-9291

Email: bsher@kbrlaw.com

smontrose@kbrlaw.com

kabeyratne@kbrlaw.com

Eric S. Baxter*

William J. Haun*

Abigail E. Majane Smith

**pro hac vice* admission pending

The Becket Fund for Religious Liberty

1919 Pennsylvania Ave. NW, Suite 400

Washington, DC 20006

Telephone: 202-955-0095

Facsimile: 202-955-0090

Email: ebaxter@becketlaw.org

whaun@becketlaw.org

Attorneys for Defendants

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Defendants' Motion to Dismiss Complaint has 6888 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

/s/ Brian M. Sher

- Exhibit E -

Constitution



*of the Yeshiva University
Undergraduate Student
Government*

Preamble

We, the undergraduate male students of Yeshiva University, in order to further the interests and provide for the general welfare of the Student Body, cooperate with Yeshiva University administrators and faculty in handling problems concerning the Student Body, provide for the management of student activities, maintain cooperative exchange of ideas with Student Bodies of other institutions, and enrich the religious atmosphere on campus, do hereby establish this Student Government Constitution.

Article I

Name and Purpose

Section 1

- (1) The Student Government shall represent the undergraduate male students of Yeshiva University in all their collective dealings with the administration and faculty of Yeshiva University, and with similar organizations in other institutions, and shall determine policy for the Student Body for all student affairs.
- (2) The Student Government shall endeavor to improve the quality of life for all undergraduate male students, and shall utilize its resources for this purpose alone.

Article II

Membership

Section 1

- (1) The Student Government shall consist of the Yeshiva Student Union (YSU), the Yeshiva College Student Association (YCSA), the Syms Student Council (SYMSSC), and the Student Organization of Yeshiva (SOY).

Section 2

- (1) The representative organ for the undergraduate male students of Yeshiva University shall be the Yeshiva Student Union (YSU).
- (2) The Yeshiva Student Union Council shall comprise of the Yeshiva Student Union President, the Student Union Vice President of Clubs, and the Student Union Vice President of Class Affairs.
- (3) The YSU President must be a senior in good standing and a full-time student.
- (4) The YSU President shall preside over all meetings of the Yeshiva Student Union, shall prepare an agenda before all such meetings, shall appoint all members of standing and special committees that serve under the auspices of the Yeshiva Student Union, shall call meetings of the entire Student Body when necessary, shall be an ex-officio member of all committees and clubs under their auspices, and shall act as a representative of the Student Body at all official functions and meetings with the administration and faculty.
- (5) If for any reason the YSU President temporarily cannot perform his duties, the Student Union Vice President of Class Affairs shall serve as Acting YSU President. If the YSU President is permanently unable to perform his duties or is removed from office before March 1, the YSU Vice President of Class Affairs shall succeed to the YSU Presidency, and an election for a new YSU Vice President of Class Affairs shall be held within two weeks. If the vacancy occurs after March 1, the YSU Vice

President of Class Affairs shall succeed to the YSU Presidency and shall appoint a Vice President of Class Affairs, with the approval of a majority of the Student Union Executive Council.

Section 3

- (1) The YSU Vice President of Clubs must be a senior or junior in good standing and a full-time student.
- (2) The YSU Vice President of Clubs shall assist the YSU President in the performance of his duties.
- (3) The YSU Vice President of Clubs shall be an ex-officio member of all clubs, and shall receive and act upon all student complaints.
- (4) The YSU Vice President of Clubs shall maintain a record of all receipts and expenditures of the Student Union and shall retain the right to audit and monitor the finances of all Student Union extensions, clubs and societies.
- (5) The YSU Vice President of Clubs, along with the YSU President, shall coordinate all major fund raising activities and be responsible for raising necessary revenues.
- (6) If for any reason the YSU Vice President of Clubs temporarily cannot perform his duties, the YSU President shall appoint a temporary replacement with the approval of a majority of the YSU Executive Council. If the YSU Vice President of Clubs is permanently unable to perform his duties or is removed from office before March 1, an election for a new YSU President of Clubs shall be held within two weeks. If the vacancy occurs after March 1, the YSU shall appoint a replacement with the approval of a majority of the YSU.

Section 4

- (1) The YSU Vice President of Class Affairs must be a senior in good standing and a full-time student.
- (2) The YSU Vice President of Class Affairs shall assist the YSU President in the performance of his duties.
- (3) The YSU Vice President of Class Affairs shall serve as the Government Assembly liaison to all class officers and assist them in coordinating class activities.
 - (a) The YSU Vice President of Class Affairs shall preside over a subcommittee consisting of four representatives from each undergraduate class of the university. All class Representatives must be members in good standing of their respective classes.
 - (b) The Vice President of Class Affairs and Representatives of each class shall represent their respective classes at all meetings of the Subcommittee on Class Affairs, shall hold class meetings at their discretion, and shall be responsible for all class functions, providing a minimum of two each semester.
 - (c) The Representative of each class shall record the minutes of all class meetings, shall maintain a file of all class correspondence and official documents, shall be responsible for all finances for class activities in cooperation with the Student Union Vice President of Clubs and shall keep a record of all receipts and expenditures.
 - (d) The Senior Class Representative shall be responsible for arrangements for the Senior Class Dinner, Senior Service Awards and for the production of Masmid, as described in Article VIII, Section 2 of this Constitution.
 - (e) If any class officer temporarily cannot perform his duties, the Vice President of Class Affairs shall appoint a replacement. If the vacancy is permanent, and occurs before March 1, an election shall be held within two weeks of the vacancy to fill the position. If a position is vacated after March 1, the Vice President shall appoint a new class Representative.

- (6) If for any reason the YSU Vice President of Class Affairs temporarily cannot perform his duties, the YSU President shall appoint a temporary replacement with the approval of a majority of the Government Assembly. If the YSU Vice President of Class Affairs is permanently unable to perform his duties or is removed from office before March 1, an election for a new YSU Vice President of Class Affairs shall be held within two weeks. If the vacancy occurs after March 1, the YSU President shall appoint a replacement with the approval of a majority of the Government Assembly.

If the above occurs, it is recommended that the Yeshiva Student Union President give priority towards the appointment of a member of the Class Subcommittee prior to finding an outsider.

Section 5

- (1) The YCSA shall serve the students of Yeshiva College, and shall be the representative organ of Yeshiva College students in all matters of specific interest to these students.
- (2) The YCSA will act as the liaison for any matters for the student body to the faculty and administration at Yeshiva College. This includes all academic matters and any other matters that affect the student body.
- (3) The YCSA shall consist of a President, a Vice President, and a Secretary/Treasurer.
- (4) The YCSA President must be a senior in good standing and a full-time student of the Yeshiva College for at least two semesters prior to taking office.
- (5) The YCSA President may appoint standing committees as he sees fit, including the Yeshiva College Academic Standards Committee and the Yeshiva College Curriculum Committee"
- (6) The YCSA Vice President must be a junior or senior in good standing and a full-time student of the Yeshiva College for at least two semesters prior to taking office.
- (7) The YCSA Secretary/Treasurer must be at least a junior in good standing and a full-time student of the Yeshiva College for at least one semester prior to taking office.
- (8) If any YCSA officer temporarily cannot perform his duties, the officer below him in rank shall fill the position.
- (9) If the YCSA President is permanently unable to perform his duties or is removed from office before March 1, the YCSA Vice President shall succeed to the YCSA Presidency, and an election for a new Student Union Vice President shall be held within two weeks. If the vacancy occurs after March 1, the YCSA Vice President shall succeed to the YCSA Presidency and shall appoint a Vice President.
- (10) If any other YCSA officer is permanently unable to perform his duties or is removed from office before March 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after March 1, the YCSA President shall appoint a replacement.

Section 6

- (1) The SYMSSC shall serve the students of Sy Syms School of Business on Yeshiva University's uptown campus, and shall be the representative organ of Sy Syms School of Business students in all matters of specific interest to these students.
- (2) The SYMSSC shall consist of a President, a Vice President, and a Secretary/Treasurer.
- (3) The SYMSSC President must be a senior in good standing and a full-time student of the Sy Syms School of Business for at least two semesters prior to taking office.
- (4) The SYMSSC Vice President must be a junior senior in good standing and a full-time student of the Sy Syms School of Business for at least two semesters prior to taking office.

- (5) The SYMSSC Secretary/Treasurer must be at least a junior in good standing and a full-time student of the Sy Syms School of Business for at least one semester prior to taking office.
- (6) If any SYMSSC officer temporarily cannot perform his duties, the officer below him in rank shall fill the position.
- (7) If the SYMSSC President is permanently unable to perform his duties or is removed from office before March 1, the SYMSSC Vice President shall succeed to the SYMSSC Presidency, and an election for a new Student Union Vice President shall be held within two weeks. If the vacancy occurs after March 1, the SYMSSC Vice President shall succeed to the SYMSSC Presidency and shall appoint a Vice President.
- (8) If any other SYMSSC officer is permanently unable to perform his duties or is removed from office before March 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after March 1, the SYMSSC President shall appoint a replacement.

Section 7

- (1) The SOY shall serve the undergraduate students of the Yeshiva Program/Mazer School of Talmudic Studies (MYP), Irving I. Stone Beit Midrash Program (SBMP), Isaac Breuer College, (IBC), James Striar School of General Jewish Studies (JSS) and shall be the representative organ of all religious and spiritual life on the Wilf Campus.
- (2) The SOY board shall consist of a President, a Vice President, and a representative from MYP, SBMP, IBC and JSS.
- (3) The SOY President must be a senior or upper junior in good standing, and enrolled in the Judaic Studies morning program with the largest student population.
- (4) The SOY Vice President may be either a Senior or Junior from any Judaic Studies morning program.
- (5) The MYP, SBMP, IBC and JSS Representatives shall represent the interests of their respective Judaic Studies morning programs to the SOY Council.
- (6) The MYP, SBMP, IBC and JSS Representatives shall assist the SOY President and Vice President in the performance of their duties.
- (7) If the SOY President is permanently unable to perform his duties or is removed from office before March 1, the SOY Vice President shall succeed to the SOY Presidency, and an election for a new Student Union Vice President shall be held within two weeks. If the vacancy occurs after March 1, the SOY Vice President shall succeed to the SOY Presidency and shall appoint a Vice President.
- (8) If any other SOY officer is permanently unable to perform his duties or is removed from office before March 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after March 1, the SOY President shall appoint a replacement.

Section 8

- (1) The General Assembly shall consist of five voting members, including the Presidents of the YSU, YCSA, SYMSSC, and SOY, as well as the Senior co-chair of the Student Life Committee.
- (2) The four class Representatives shall serve as non-voting members of the General Assembly.

Section 9

- (1) The Student Government Parliamentarian shall be nominated by the YSU President, and shall be confirmed by a majority vote of the General Assembly.
- (2) The Parliamentarian shall serve as an advisor to the General Assembly on Constitutional and parliamentary matters.

- (3) The Parliamentarian may not serve as an elected member of YSU.

Section 10

- (1) No student may be a member of the General Assembly while holding a position on the Governing Boards of The Commentator, Dramatics Society, or WYUR, nor while holding the position of Editor-in-Chief of Masmid or serving as a Justice on Student Court, a Student Senator, or a Resident Advisor.
- (2) No student may be a member of the General Assembly while holding the position of Editor-in-Chief of The Commentator, Editor-in-Chief of Masmid, or Station Manager of WYUR, nor while serving as a Justice on the Student Court, a Student Senator, or a Head Resident Advisor.
- (3) No student may hold more than one elected position on the General Assembly simultaneously.
- (4) For any positions with qualifications based on class standing, the class standing of candidates or officers shall be determined by the Office of the Registrar and verified by the Canvassing Committee, through the Office of the Dean of Students.
- (5) The Student Court shall verify the qualifications, as defined in Article II, of each elected officer during the first academic week of the school year. Ineligible officers shall be immediately removed from office.

Article III

Elections and Installations

Section 1

- (1) The Canvassing Committee shall be responsible for all elections, and shall be responsible for ensuring that all candidates meet all qualifications for their respective positions as defined in Article II of this Constitution.
- (2) The Chairman of the Canvassing Committee, who may not be an elected member of the YSU, shall be nominated by the Yeshiva Student Union President, and shall be approved by a majority vote of the Executive Council.
- (3) The Presidents of YSU, YCSA, SYMSSC and SOY, shall each serve as a member of the Canvassing Committee, or may appoint another student from their respective schools to represent their schools on the Canvassing Committee and assist in matters deemed necessary by the Chairman of the Canvassing Committee. In the event that any one of the aforementioned officials shall be running for any Student Union position, or shall be involved in any other conflict of interest, he shall be required to appoint another student from his school to serve on the Canvassing Committee in his place.
- (4) The Chairman shall select two other students, neither of whom may be elected members of YSU to complete the committee of nine members, each of whom shall have a vote on the Canvassing Committee. Any voting member of the Canvassing Committee, with the approval of the Chairman, may appoint additional non-voting members, as he shall deem necessary.
- (5) The Canvassing Committee shall have jurisdiction over the regulation of campaign spending limits, campaign advertisement limits, and the types of paraphernalia that candidates may distribute, and shall disqualify all candidates who violate election rules or fail to meet the applicable requirements.
- (6) The Canvassing Committee shall be responsible for posting a public notification of all election rules and requirements at least two weeks prior to elections, and shall be responsible for publicizing the Executive Council debates at least three days prior to the event.

- (7) The Canvassing Committee shall conduct elections through a secret/closed written ballot in a manner that ensures that the elections are held in as objective a fashion as possible, and shall be responsible for the tallying of votes.
- (8) The Canvassing Committee shall publicize election results as soon as possible.
- (9) In the event of a conflict between this Constitution and the rules set forth by the Canvassing Committee, this Constitution shall remain supreme.

Section 2

- (1) Elections for the following year's YSU, excluding the Freshman and Sophomore Class Representatives, shall be held no earlier than the second week in March and no later than the first week in May.
- (2) Elections for the Freshman and Sophomore Class councils shall be held between the third and sixth academic week of the Fall semester.
- (3) Any candidate may run for only one office per election period.

Section 3

- (1) The Canvassing Committee shall post a public notification of all available positions at least five days prior to the stated deadline for declaration of candidacy.
- (2) All rules governing the elections shall be clearly outlined by the Canvassing Committee for the candidates at an official meeting to be convened after the deadline for declaration of candidacy.
- (3) Following the official meeting, the Canvassing Committee must allow candidates at least five days to submit a petition signed by one-third of the body they wish to represent or five hundred students, whichever is less. Only candidates who submit valid petitions may have their names printed on the ballots.
- (4) Following the deadline for the submission of petitions, candidates may start to campaign at the time set forth by the Canvassing Committee, according to the rules set forth by the Canvassing Committee.
- (5) Failure to adhere to the rules set forth by this Constitution and the Canvassing Committee may result in a disqualification of the candidate by the Canvassing Committee.
- (6) No candidate may run on a ticket or otherwise campaign jointly with any other candidate for any Student Government position.

Section 4

- (1) All students may vote in the election for YSU President, YSU Vice President of Class Affairs, and YSU Vice President of Clubs
- (2) Only students of Yeshiva College may vote for the YCSA.
- (3) Only students of Sy Syms School of Business may vote for the SYMSSC.
- (4) All students may vote in the election for the SOY President and Vice President. Students of MYP, IBC, JSS, and SBMP may only vote for the Representatives of their respective Judaic Studies morning programs.
- (5) All students who are members of a particular class at the time of an election may vote for all officers of that class for the following year.

Section 5

- (1) All officers shall be elected by a plurality of the votes cast, excluding blanks, the elections to be conducted by the Canvassing Committee.

- (2) In the event of a tie, the Student Government shall vote from amongst the candidates who have tied, and a majority vote of the Student Government shall be required to elect a candidate.
- (3) All students running as a write in must receive a minimum of 20 votes to win that position. Any position not filled during the election will be elected in fall elections.

Section 6

- (1) All elected members of the Student Union shall be inducted by the outgoing Student Union President in the presence of the outgoing Executive Council, excluding the Freshman and Sophomore Class Representatives, who shall be inducted in the fall.
- (2) Official duties of the incoming officers shall be assumed upon graduation day of the outgoing senior class, but incoming officers may begin work from the date of their election.
- (3) Prior to taking office, each newly elected officer must sign an affirmation stating that he will strive protect the integrity of the Constitution, unify the Student Body, and maintain the religious atmosphere on campus.
- (4) All newly elected officers must meet all qualifications for their position, as defined in Article II of this Constitution, at the time they take office, and at all times during which they hold office, to be determined by the Canvassing Committee.

Article IV

Meetings

Section 1

- (1) The General Assembly shall meet either upon the discretion of the YSU President or upon petition to the YSU President by at least three voting members of the General Assembly within the time requested by the petition.
- (2) A majority of the voting members of the General Assembly shall constitute a quorum for General Assembly meetings.
- (3) All meetings of the General Assembly shall be open meetings unless a closed meeting is called by the YSU President or by petition of a majority of the voting members of the General Assembly. Once an open meeting is in progress, it may be closed only by a vote of a majority of the voting members of the General Assembly.
- (4) At open meetings of the General Assembly, all students may participate in debate upon recognition by the YSU President, but only the General Assembly shall have parliamentary power.
- (5) Only voting members of the General Assembly shall be allowed to vote at General Assembly meetings.
- (6) In the event of a tie in the General Assembly, the YSU President's vote shall be counted twice.

Section 2

- (1) Two written proxies on agenda matters will be accepted per semester for each member of the General Assembly to be used at meetings of the General Assembly.
- (2) The rules contained in Robert's Rules of Order shall govern the meetings of the General Assembly in all cases in which they are applicable and in which they are consistent with this Constitution and its By-laws.
- (3) At each meeting of the General Assembly, the senior SLC co-chair shall have with him a copy of this Constitution and a copy of Robert's Rules of Order.

Section 3

- (1) The YSU President may appoint a Sergeant-at-Arms to help keep decorum for all meetings of the General Assembly.

Article V**Powers of the Student Government and the Student Body****Section 1**

- (1) The Student Government shall have the power to:
- Be the representative, self-governing body of the undergraduate male students of Yeshiva University and have precedence over all other organized and duly established undergraduate male student organizations.
 - Represent student opinion in all student-faculty and student-administration relations.
 - Coordinate all duly chartered and recognized student organizations and their activities.
 - Regulate all student elections through the Canvassing Committee.
 - Provide for the preparation and publication of all student publications.
 - Authorize all student social functions.
 - Sponsor a moneymaking project for any charity it sees fit.
 - Receive any recall, initiative, or referendum petitions pertaining to the Student Government or the Student Body. Within two weeks of the receipt of such petitions, an election on the matter shall be held.
 - Grant or revoke the charter of any student organization.
 - Regulate the use of University facilities by undergraduate male students of Yeshiva University.

Section 2

- (1) The General Assembly shall have the power to:
- Exercise legislative authority in all General Assembly matters.
 - Impose sanctions upon any student organization for infraction of this Constitution, its By Laws, or any regulations passed by General Assembly.
 - Affiliate or disaffiliate with recognized regional, national, or international student organizations and their activities.
 - Exercise authority as delegated elsewhere in this Constitution.

Section 3

- (1) The Student Body shall have the power to:
- Elect all members of the Student Government.
 - Submit petitions to members of the Student Government.
 - Submit petitions of initiative and referendum by no less than a two-thirds of the Student Body.
 - Pass petitions of initiative and referendum by no less than half of the entire Student Body.
 - Submit petitions of recall by no less than a two-thirds of the represented Student Body.
 - Pass petitions of recall by no less than half of the represented Student Body.
 - Exercise authority as delegated elsewhere in this Constitution.

Article VI Impeachment

Section 1

- (1) Impeachment proceedings may be brought against any member of the Student Government by a majority of the General Assembly or by a petition signed by at least two-thirds of the Student Body.
- (2) Upon reception for a petition for impeachment, a procedural motion for investigation of the charges against any member of the Student Government must be passed, by a majority of the General Assembly, whereupon the YSU President shall appoint an investigative committee, composed of elected Student Government officials and other members of the Student Body, to secure the facts involved.
- (3) The accused shall be tried at an open meeting of the General Assembly as soon as possible, whereupon the General Assembly shall discuss the case, the accused being given every reasonable opportunity to present his defense.
- (4) Conviction and removal of the accused from office shall require a two-thirds vote of the General Assembly, counting the YSU President's vote in the whole.
- (5) The accused shall not vote and shall not be included in the two-thirds tabulation.

Article VII Extensions

Section 1

- (1) The Yeshiva College Dramatics Society shall produce dramatic presentations for the enjoyment of the Student Body, faculty, and administration of Yeshiva University.
- (2) The Dramatics Society shall choose a Faculty Advisor for each academic year.
- (3) The outgoing Dramatics Society President shall appoint the Dramatics Society President for the following year, who shall, in turn, appoint the other officers for the following year, with the approval of the YSU Vice President of Clubs, before the end of the previous academic year.
- (4) The incoming Dramatics Society President shall appoint the other officers for the following year, shall choose a Governing Board from among the newly appointed officers, and shall submit a list of the Governing Board to the YSU Vice President of Clubs.
- (5) All presentations to be produced shall be selected jointly by the Governing Board of the Dramatics Society and the Faculty Advisor. The Dramatics Society must produce at least one presentation each semester.
- (6) The YSU must allocate funds for at least one Dramatics Society production each academic year.

Section 2

- (1) The Radio Station of Yeshiva University shall be WYUR, which shall broadcast during hours determined by the Governing Board of WYUR.
- (2) WYUR shall have one Faculty Advisor, who shall be selected by the Governing Board of WYUR, with the approval of the previous year's Faculty Advisor.
- (3) The outgoing WYUR Station Manager shall appoint the Station Manager for the following year, who shall, in turn, appoint the other officers for the following year, with the approval of the YSU Vice President of Clubs, before the end of the previous academic year.
- (4) The incoming Station Manager shall choose a Governing Board from among the newly appointed officers, and shall submit a list of the Governing Board to the YSU Vice President of Clubs

- (5) The Governing Board of WYUR shall determine the editorial policy of WYUR.
- (6) WYUR shall broadcast publicity announcements for the Student Union, and any other information requested by the Student Government.
- (7) Funds for the operation of WYUR shall be obtained by allocation in the annual budget by the YSU, and by advertisements, as the Governing Board and the YSU feel necessary.

Article VIII

Publications

Section 1

- (1) The official undergraduate newspaper of Yeshiva College shall be The Commentator, which shall be published every month, subject to the discretion of the Governing Board.
- (2) The bylaws of the Commentator shall be written by the Board of Directors and must be made physically available in the Office of Student Life, and digitally available on the Commentator Website.
- (3) The Commentator shall have no Faculty Advisor.
- (4) The outgoing Governing Board of The Commentator shall elect the next year's Governing Board at the end of the academic year, subject to approval of the outgoing YSU.
- (5) The Governing Board of The Commentator alone shall determine the editorial policies of the newspaper and shall be responsible for its content.
- (6) The YSU President may sit in on all meetings of the Governing Board of The Commentator.

Section 2

- (1) The official senior yearbook of the undergraduate male students of Yeshiva University shall be Masmid.
- (2) The Editor-in-Chief of Masmid shall be a senior chosen at the end of his junior year by the incoming Senior Class Representative
- (3) The Editor-in-Chief of Masmid shall choose his own staff, the Governing Board to be approved by the Senior Class Representative.
- (4) The Senior Class Representative may attend all meetings of the Governing Board of Masmid.
- (5) Funds for the publication of Masmid shall be obtained by allocation in the annual budget by the YSU, and any moneymaking projects the Governing Board deems necessary, with the approval of the YSU and the Senior Class Representative.

Article IX

Committees

Section 1

- (1) All committees that serve the entire Student Body shall be under the auspices of the General Assembly.
- (2) All committee chairmen shall be appointed by the YSU President with the approval of a majority of the General Assembly, with the exception of committees under the auspices of the YCSA, SYMSSC, and SOY.
- (3) The committee chairmen of the YCSA, SYMSSC, and SOY shall be each appointed by the President of the Association or Council under the auspices of which he shall serve.

- (4) All committee members shall be nominated by the committee chairmen and shall be approved by a majority of the General Assembly, with the exception of committees under the auspices of the YCSA, SYMSSC and SOY.
- (5) All YCSA, SYMSSC, and SOY committee members shall be nominated by the committee chairmen and shall be approved by a majority of the Association or Council under the auspices of which they shall serve.
- (6) Special committees may be appointed as the YSU President shall see fit with the approval of the General Assembly.
- (7) Special committees may be appointed as the Presidents of YCSA, SYMSSC, SOY, shall see fit with the approval of the Association or Council under the auspices of which they shall serve.
- (8) YCSA, SYMSSC, and SOY may not appoint a committee with the same name or purpose as a committee under the auspices of the General Assembly, unless approved by a majority of the General Assembly.

Article X

Clubs

Section 1

- (1) Within the first month of each semester, the YSU Vice President of Clubs shall designate and publicize a period of at least one week for the submission of petitions for new clubs.
- (2) Clubs may operate under the auspices of any appropriate Student Government Association or Council.
- (3) Any group of students wishing to form a club affiliated with the Student Government shall submit to the YSU Vice President of Clubs a petition to that effect containing the name of the proposed club, a statement of its purpose and goals, the specific Student Government Association or Council under whose auspices it seeks to operate, not less than twenty signatures of students in good standing, and the signature of a Faculty Advisor. The YSU Vice President of Clubs shall present the petition to the General Assembly at the following meeting. A signatory of the petition shall be present to answer questions regarding the proposed club.
- (4) A majority vote of the General Assembly shall be necessary to establish the club with full rights and privileges.
- (5) At the first meeting of the new club, the members of the club shall nominate and elect officers.

Section 2

- (1) Any student in good standing may join any club affiliated with the Student Government.
- (2) By November 15, and upon subsequent request by the YSU Vice President of Clubs, or the Association or Council under whose auspices it operates, the President of each club shall submit to the Vice President of the appropriate Student Government Association or Council a list of the members of that club.
- (3) Each club shall choose its own method for electing or appointing club officers, and shall inform the Vice President of the Student Government Association or Council under whose auspices it operates in writing of its election procedures and governing guidelines.

Section 3

- (1) In order for a club to be eligible for funding, it must present to the Vice President of the Student Government Association or Council under whose auspices it operates lists of its current board, current members, and proposed events and activities, as well as an itemized budget request.
- (2) YSU, YCSA, SYMSSC, and SOY shall each have full discretion over funding for clubs under their auspices, shall evaluate at the beginning of each semester the amount of funding to be delivered to each club, and may, at any time, add or deduct from the amount of funding to be delivered to each club.

Section 4

- (1) In order that a club need not reapply for affiliation with Student Government at the beginning of each academic year, it shall organize at least two events each year, and shall at all times have at least ten members, have a Faculty Advisor, and follow the regulations set forth by the General Assembly.
- (2) If a club does not meet these requirements, a majority vote of the General Assembly shall be required to dissolve the club.

Section 5

- (1) Any group wishing to sponsor a specific activity not within the program of existing recognized organizations may petition for recognition limited to the duration of the activity, providing that the members follow all established regulations for recognized organizations.

Article XI**Student Court****Section 1**

- (1) The judicial powers of the Student Body shall, unless otherwise demarcated in this Constitution, be vested in the Student Court.
- (2) The Student Court shall consist of a Chief Justice, who must be a senior, and who shall preside over all Student Court meetings and cases tried before the bench, and write the Student Court Official Reports; four Justices, two of whom must be seniors, and two of whom must be juniors; and a Justice Pro-Tempore, who must be at least a sophomore, and who shall keep records of all proceedings, including minutes of all trials, but will not sit on the bench of the Student Court, unless required to under Section 3, paragraph 1 of this Article.
- (3) The YSU President shall nominate all Justices and the Justice Pro-Tempore at the first meeting of the new General Assembly, subject to approval by a majority of the General Assembly, to be voted upon at the first meeting of the General Assembly.
- (4) A four-fifths vote of the General Assembly shall be required to remove any justice from the Student Court.

Section 2

- (1) The Student Court shall have jurisdiction over disputes with regard to the interpretation of the Student Government Constitution or its By-Laws; the determination of the legitimate holder of Student Government positions, or other positions subject to Student Government oversight; all student activities sponsored by the Student Government; all Yeshiva University undergraduate male students as spectators at all Yeshiva University athletic events, both home and away; all Yeshiva

University undergraduate male students violating rules and/or regulations established by the Student Government or the administration concerning extracurricular activities; any formal charges of negligence, incompetence, or malfeasance brought against any Student Government official, or holder of another position subject to Student Government oversight; and appeals in any case involving suspension or expulsion.

- (2) The Student Court shall have the power to enforce its subpoenas by means of disciplinary action against those who fail to appear.

Section 3

- (1) A quorum of the Student Court, which is necessary for all case trials and meetings, shall consist of the five Justices of the Student Court, or, in the absence of any one Justice, the other four Justices with the Justice Pro-Tempore.
- (2) Upon reception of a suit filed, the Student Court must, by majority vote of the Justices, within 5 days, beginning with the day filed, decide whether to hear the case. Once the Student Court decides to hear the case, it must do so within 12 days from the day filed. The Justices shall meet privately and release a majority opinion, in writing, within 3 days after the case has been heard.
- (3) The opinion of the court shall be given to the defendant, and a copy shall be retained on record.
- (4) All trials of the Student Court shall be considered open unless a closed trial is requested either by the Chief Justice or the defendant. Public notification of each open trial shall be posted at least 2 days prior to the trial.
- (5) Minutes shall be kept on record, but shall be considered confidential with the exception of their release for counseling purposes, their release to the Student Court upon the request of the Student Court for internal or later trial purposes, their release to the public upon the request of the defendant, or their release to the public by unanimous vote of the Student Court or Executive Council.
- (6) The Student Court shall, in all cases, accept written briefs as it deems appropriate from external parties.
- (7) Either party may appeal if new evidence is found, whereupon the Chief Justice shall decide whether to hear the case, as delineated in paragraph 2 of this Section.

Section 4

- (1) The Student Court shall hold at least one non-trial meeting per semester to review any actions taken by the court since the last meeting and to produce and make public a Student Court Official Report that must contain a summation of any actions taken by the Student Court, and any rulings of the Student Court, including the opinions themselves and commentary on them.

Article XII

Debts and Contracts

Section 1

- (1) The Student Government shall have no right to levy any dues upon any of its members for any reason.
- (2) The Student Government may sponsor a moneymaking project for any charity it sees fit.

Article XIII Amendments

Section 1

- (1) The General Assembly shall establish a standing committee to deal with proposals for constitutional amendments, to be called the Amendments Committee.
- (2) The committee shall convene a Constitutional Amendments Convention each semester with the purpose of raising any potential amendments to the Student Government Constitution. All students shall have the opportunity to state opinions with regard to specifics of the Student Government Constitution, as well as to propose their own amendments.
- (3) The General Assembly shall vote upon final proposals for amendments at least one week prior to the General Student Body Amendment Vote. All amendments approved by a majority vote of the General Assembly shall be presented to the Student Body prior to or at the General Amendment Vote.
- (4) There shall be a General Student Body Amendment Votes held each semester, unless no amendments have been proposed. The fall semester vote must take place within the two weeks prior to Reading Week. The spring semester vote shall be incorporated into the General Election.
- (5) Ratification of amendments shall be by three-fifths of votes cast by the Student Body during the Amendment Vote, excluding blanks.
- (6) Any amendments to this Constitution shall not violate campus or University rules.

Section 2

- (1) The original body of this Constitution shall remain unedited and unchanged in any manner. All changes to the Constitution shall be addenda to the Constitution. As a notice of the amendment, an asterisk may be placed in the point of amendment. On any point of contradiction, the amended text shall supersede the original text.

Article XIV Ratification

Section 1

- (1) At the time of ratification of the amendments proposed above, the elected YSU Vice President, YSU Vice President, YSU Secretary and YSU Treasurer shall become the YSU President, YSU Vice President of Clubs, and YSU Vice President of Class Affairs. The elected Senior, Junior, Sophomore and Freshman Class Presidents shall become the YSU Class Representatives serving under the YSU Vice President of Class. The elected SOY Secretary, and the Presidents of the SBMPSC, IBCSC and JSSSC shall serve as the Representatives of MYP, SBMP, IBC and SBMP. The YCSA and SYMSSC serve as elected.
- (2) This Constitution shall be ratified by a three-fifths vote of the Student Body, and, upon such ratification, shall be binding upon the Student Body.

- Exhibit F -

Constitution



*Stern College for Women Student Council
Yeshiva University Beren Campus*

STERN COLLEGE FOR WOMEN
CONSTITUTION OF THE STERN COLLEGE FOR WOMEN STUDENT COUNCIL
(SCWSC)

ARTICLE 1 - NAME

The name of this council shall be Stern College for Women Student Council (SCWSC).

ARTICLE 2 - AIMS

Section 1

The Stern College for Women Student Council will maintain and enhance the communal aspects of Stern College for Women in accordance with the Halachic standards of Yeshiva University.

Section 2

The aims of this organization shall be as follows:

- A. To express the opinions of the students of Stern College for Women upon matters affecting them.
- B. To act as a liaison between the administration, faculty, and students.
- C. To coordinate extra-curricular activities with the approved student clubs.

ARTICLE 3 - MEMBERSHIP

Section 1

All undergraduate students of Stern College for Women may be elected members of this student council. Students must be in good academic standing (3.0 GPA or above) as well as good standing with the university with regards to non-academic performance on campus.

Section 2

The Student Council will consist of the Executive Board.

Section 3

A class representative will be elected with the general elections and will organize committees.

ARTICLE 4 - THE EXECUTIVE BOARD

Section 1

The Executive Board of the Stern College for Women Student Council shall consist of a president, vice president of clubs, vice president of academic affairs, public relations secretary, and treasurer.

- A. Each member of the Executive Board will oversee a designated number of clubs depending on the total number of clubs.

Section 2

No student may be a member of the Executive Board of SCWSC while holding any of the following positions: Chief Editor of The Observer or yearbook, a Resident Advisor, executive officer of TAC or Sy Syms, student manager of WYUR, SCWSC club president, Under Secretary General or Secretary General of Model United Nations, Student Life Committee Co-Chair.

ARTICLE 5 - POWERS AND DUTIES

Section 1 - The President

- A. The President of SCWSC shall be a member of the incoming Senior class as of the first day of the academic year following spring elections.
- B. Duties
 - a. It shall be the duty of the President to preside over all meetings of the Student Council.
 - i. The council will meet once, weekly. The president will report on those meetings to the Office of Student life or another.
 - b. The President shall represent the Student Council whenever necessary, and shall serve as an ex-officio member of all committees of the Student Council.
 - c. The President shall have the power to call special meetings.
 - d. The President shall meet with the presidents of the Torah Activities Council, Sy Syms Student Council and, the Office of Student Life or another, on a weekly basis regarding campus and council issues.
 - e. The President shall meet with Club Presidents and Class Presidents at least twice a semester.
 - f. The President is responsible for delegating the supervision of all classes, clubs, publications, and honor societies to whoever she deems appropriate.
 - i. All club heads must meet with their SCWSC liason at least 2 times per academic semester.

Section 2 - The Vice President of Clubs

- A. The Vice President of Clubs of SCWSC shall be a member of the incoming Junior or Senior class as of the first day of the academic year following spring elections.
- B. Duties
 - a. The Vice President of Clubs shall assume the chair and execute the duties of the President's office in the absence of the President.
 - b. The Vice President of Clubs is responsible for overseeing all non-academic student organizations and must assign one member of the executive board to function as a liaison to each club.
 - c. The Vice President of Clubs must ensure that the event request form is up to date and frequently checked.
 - d. The Vice President of Clubs will keep a list of how many events, and of what kind, each respective non-academic club runs each semester.

Section 3 - The Vice President of Academic Affairs

- A. The Vice President of Academic Affairs of SCWSC shall be a member of the incoming Junior or Senior class as of the first day of the academic year following spring elections.
- B. Duties
 - a. The Vice President of Academic Affairs shall serve as the liaison for all academic clubs on campus.
 - b. The Vice President of Academic Affairs will keep a list of how many events and of what kind each academic club runs each semester.
 - c. The Vice President of Academic Affairs will work with the Student Life Committee to serve as a liaison to the Deans regarding student input on academic affairs.

Section 4- The Public Relations Secretary

- A. The Public Relations Secretary of SCWSC shall be a member of the incoming Junior or Senior class as of the first day of the academic year following spring elections.
- B. Duties
 - a. The Public Relations Secretary is responsible for maintaining and updating all social media accounts of Stern College for Women Student Council, including but not limited to Facebook and Snapchat.
 - b. The Public Relations Secretary is responsible for the maintenance and upkeep of the Stern College for Women Student Council events calendar bulletin board.
 - c. The Public Relations Secretary is responsible for marketing all Stern College for Women Student Council events, including but not limited to flyer making and circulation.

Section 5- The Treasurer

- A. The Treasurer of SCWSC shall be a member of the incoming Junior or Senior class as of the first day of the academic year following spring electrons.
- B. Duties
 - a. The Treasurer of the Student Council shall take charge of the funds of the Council.
 - b. The Treasurer shall meet with the overseeing staff, be it the Office of Student Life or another, regarding the council finances regularly.
 - c. The Treasure must submit a weekly report of spending per club to the President.
 - d. The allocation of funds are up to the discretion of the President and Treasurer.
 - e. The Treasurer must collect all documents verifying the use of all funds.
 - f. The Treasurer shall require an itemized budget from each chartered club or organization to be submitted with each event request.
 - g. The Treasurer shall maintain a budget for the regulation of the expenditures of the Student Council in the following manner:
 - i. At the first meeting of the Executive Board each year, a financial account of the preceding year shall be submitted thereafter, at the first meeting of each month the expenditure and balance shall be presented.
 - ii. No extra budget expenditures shall be made without the consent of the Executive Board.

Article 6- RESPONSIBILITIES OF THE EXECUTIVE BOARD**Section 1**

- a) The Executive Board shall be a policy formulating body with the power to initiate legislation and transact business.
- b) The Executive Board shall have the power to charter clubs, organization, societies, publications, and honor societies as specified in the constitution.
- c) All Executive Board members must be in attendance at Orientation for both the Fall and Spring Semesters.
 - a. Members may request permission for absence if necessary.

- d) All Executive Board members must be present at Stern College for Women Student Council-run shabbatons including but not limited to YUNite and Beren Unite or the equivalent.
- e) All Executive Board members must be present at SCWSC run events such as Welcome Back events, Chagiga's, and two events a semester per club that they serve as a liaison for.
- f) Each member of the Executive Board must serve as a co-chair for one campus or University wide event.
- g) Executive Board members must create a weekly Shabbat rotation schedule so that there is at least one member of the Executive Board present each Shabbat on campus.
- h) The Executive Board may appoint all committees not otherwise provided for in the Constitution. Final decisions will be made by the Student Council Presidents.
 - a. The procedure for selecting committee members is as follows: at the beginning of each academic year it should be publicized that those students interested in activities should fill out the appropriate forms and file them with the respective committee heads. Each committee head will review the applications and submit them to the Office of Student Life or another.

The Executive Board will discuss the applications and make final decision.

- i) The Executive Board must approve the activities of all clubs, classes, organizations, publications, and honor societies.
 - a. Any publication and written literature must be approved.
 - b. Any publication and written literature must publicize Student Council sponsorship.
 - c. Guidelines for branding must be followed by all sponsored publications.
- j) The Executive Board shall meet once a week.
- k) The Executive Board shall meet once a month with the overseeing office.
- l) The Council President shall meet once a week with the Office of Student Life or another along with the other council presidents on the Beren Campus.

Article 7 - MEETINGS

Section 1

The Executive Board shall hold open meetings at a fixed time and place not less than once every six weeks. In addition, the President may call extra meetings at the written request of ten or more members of the body.

Quorum must be present for meetings to take place.

Section 2

All issues that arise at a Student Council meeting shall be voted upon only by those members of the Student Council present at the meeting. There will be no alternate delegates to represent absent members. An issue may be brought up for a vote upon the consent of the majority of the

aforementioned members. The current council president casts the deciding vote in the event of a tie.

Section 3

In the event that an Executive Board member is repeatedly absent from or late to meetings, she must submit an acceptable excuse to the Executive Board or face impeachment.

Section 4

Student Council must have a meeting with all club presidents, publication editors, and committee chairpersons at least once a semester.

ARTICLE 8 – REFERENDUM

Section 1

- A. Upon request of 25% of the attending student body, petitions may be presented to appeal Student Council rulings.
- B. 75% of the total student body must agree for the results of the referendum to be considered binding.

ARTICLE 9 – IMPEACHMENT

Section 1- Executive Board

- a) Impeachment charges may be brought against any member of the Executive Board by consent of a majority of the Executive Board members, or a petition signed by a majority of the student body.
- b) The officer facing charges has the right to request a written explanation for the cause of impeachment.
- c) The President of the Student Council will call a meeting of the student body within ten days of her impeachment charges, and the accused has the right to make a statement in her defense. (In the event that the President is the one to be impeached, the Vice President should take charge.)
- d) At the meeting, the President will read the charges. If affirmatively voted on by at least two thirds of the attending student body, a date shall be set for trial by the Executive Board concerning the officer.
- e) The accused is removed from office upon the vote of two thirds of the Executive Board.

Section 2- Class and Club Boards

- a) Impeachment charges may be brought against a member of a class board or a member of a club board by consent of a majority of the board or of the members of the class or club.
- b) A vote of two thirds of the class members or club members is required to remove the board member from office.

ARTICLE 10 – ELECTIONS OF THE EXECUTIVE BOARD OF THE STUDENT COUNCIL AND CLASS BOARDS

Section 1 - SCWSC Executive Board

- A. The President, Vice President of Clubs, Vice President of Academic Affairs, Public Relations Secretary, and Treasurer of the Student Council of Stern College for Women shall be elected by ballot by the entire student body of this college.
- B. Graduating seniors may vote for and sign only the petitions of the Executive Board.

Section 2 - Executive Board Requirements

In order to run for a Executive Board, one must fulfill the following criteria:

- A. At least two weeks prior to elections, a notice of the election shall be posted on the Student Council bulletin board.
- B. Class status for a candidate running for Student Council Executive Board shall be determined by the official class listing of the Office of the Registrar.
- C. Each candidate must submit a nomination list of 200 names for President of Student Council and 150 names for Executive Board. Upon completion, it is handed to the election coordinator(s) for approval by the Academic Deans, Office of Student Life or another.
- D. All prospective candidates for office in the Student Council must have had some record of service or leadership, e.g. officer of chartered club, resident advisor, editor of The Observer etc.
- E. She must be attending the college full time during her term and live in university housing and in good academic and university standing. (The student may not be on probation of any kind within the university.)
- F. The eligibility of each candidate shall be considered for approval by the Executive Board of the Student Council and the Office of Student Life or another.

Section 3- Class Board Requirements

In order to run for a Class Board, one must fulfill the following criteria:

- A. Each candidate must be a member of the class for which she is running.
- B. Class status for a candidate running for a Class Board shall be determined by the official class listing of the Office of the Registrar.
- C. All candidates must complete official SCWSC petition forms.
- D. Each candidate must submit a nomination list of 75 names for President of a class board, and 50 names for class board. Upon completion, it is handed to the election coordinator(s).
- E. She must be attending the college full time during her term and live in university housing and in good academic and university standing. (The student may not be on probation of any kind within the university.)

Section 4 - Canvassing Committee

- A. The Canvassing Committee shall be formed at least two weeks before the election is organized and be comprised of graduating seniors who have been involved on campus.
- B. The Canvassing Committee shall publicize all information about the elections including available positions, rules and regulations, and election timeline.
- C. The Canvassing Committee shall be the point people for any election related questions and responsible for updating and communicating with all potential candidates.

Section 5 - Rules and Regulations

- D. Any member of the student body who desires to become a candidate for an office shall submit her name to the President of Student Council and the Office of Student Life or another at least three days before election bids are scheduled to be confirmed.
- E. Each candidate must be in good academic standing, not on probation of any kind within the university, and have a GPA of at least a 3.0 and no tentative grades. However, students not meeting that requirement may petition the Executive Board for special consideration.
- F. If an elected officer or senior becomes a member of another class while still serving her term, she shall complete her elected term unless her previous class opposes. In the event of opposition to a Class Board member, a special election shall be held. In the the event of opposition to a senator an immediate appointment shall be made.
- G. Graduating seniors may vote for and sign only the petitions of the Executive Board.
- H. Elections shall be held by the first Thursday in May unless this date conflicts with vacation, in which case the Executive Board shall determine the date of elections. The presidential debate shall be conducted by the Student Council president and Election coordinator(s).
- I. The results of the elections shall be posted in four prominent locations no later than midnight after the closing of election polls.
 - 1. The Student Council President Elect shall preside at the last Student Council meeting of the year.
 - 2. The term for office for an Executive Board member of the Student Council shall be for a period of one academic year.
 - 3. A student may be elected for the same office for more than one term.
- J. Executive Board candidate may spend at most \$75.00, and each Class Board candidate may spend at most \$50.00
- K. No student on probation may run for an office.
- L. No student may run for an office is she will graduate before May of the year in which she will serve her term.
- M. Members of the Executive Board and Class Presidents may not chair any clubs, committees, or organization, but they may be members.

Section 6- Campaigning

- A. At least three days prior to elections shall be designated for campaigning.
- B. During campaigning, each candidate for the Executive Board of the Student Council shall present a speech at a time and place designated by the current Student Council President.
- C. Candidates may not give out any items to students.
- D. No signs may exceed eight and a half by fourteen inches.
- E. All signs must be approved by the election coordinator(s).
- F. Candidates may use their personal social media outlets (such as Facebook, Instagram, Snapchat, Twitter et al) for campaigning purposes.

Section 7 - Voting

- A. Voting polls shall sent to each current student's Yeshiva University email address on the morning of the vote.
- B. Voting shall be by secret ballot.
- C. There shall be no voting by absentee ballot.
- D. There shall be no voting by proxy.
- E. The votes shall be counted by the automated election system. Result notification shall be sent to the Office of Student Life or another and the election coordinator(s) who will disseminate the information.
- F. In the event of a tie, re-voting shall take place within three days of the election. No co-positions will be allowed.
- G. An incomplete ballot will be counted.
- H. The ballot count shall not be revealed.
- I. Write-in ballots shall be accepted. This candidate may not be declared the winner unless she meets all previously stated qualifications.

Section 8 - Publication of Voting Results

- A. The Canvassing Committee shall contact all candidates with the election results after receiving them from the Office of Student Life or another.
- B. The Canvassing Committee shall then send notifications to the student body with the election results.

ARTICLE 12- AMENDMENTS

The Amendment Process

- A. In order to amend the constitution, a petition with 100 signatures from the student body must be submitted to the President.
- B. The amendment must then be approved by three fifths of the Executive Board.
- C. Upon approval, the amendment must be approved by three fourths of the voting student body in a special election called by the President

ARTICLE 13-RATIFICATION

Two thirds of the ballots cast by the voting student body must approve the constitution in order for it to be ratified.

BY LAWS

ARTICLE 1 - ELECTION OF CLASS OFFICERS

Section 1

- A. Class elections for the Sophomore, Junior, and Senior boards shall be held the same day as elections of the Executive Board.
- B. The elections shall be conducted under the supervision of the Student Council election coordinator(s).
- C. Elections of the incoming Freshman class officers shall be held within one month of the beginning of the next academic year.

Section 2

- A. Class officers (President Vice President Treasurer, Secretary) shall be installed at the official Student Council Installation.

- B. Class officers must have at least a 3.0 GPA and must be attending class full time during their term of office and be in good standing with the University.
- C. Voting procedures shall be the same as those outlined for the Executive Board.

ARTICLE 2 - CLUBS

- A. The charters of organizations and clubs must be obtained from a Student Council Executive Board Secretary. All organizations must embody the Halachic tradition and must adhere to the policies of the Student Council. The form of the charter is as follows:
 - 1) The Student Council of Stem College for Women hereby charters the Club Society/Organization for a period of one year commencing and conducting in compliance with regulations accompanying the charter.
 - 2) Each charter shall be filed with the Secretary of the Student Council.
 - 3) Applications for renewal of charters shall be made at the end of the Spring semester or at the start of the Fall semester with budgetary requirements listed.
 - 4) A report of the year's activities of each club/society/organization shall be filed with the Secretary at the end of each semester.
 - 5) An oral or written report of each club's activities shall be given at Student Council meetings.
 - 6) No new organization shall be chartered unless a minimum of 25 persons submit a written request to the Student Council.
 - 7) If the charter of a club/organization/society is not renewed, the credits or deficits of it shall be assumed by the Student Council and the organization shall be declared non-existent.
 - 8) No member of the student body may hold more than two key positions (i.e. President of two clubs).

ARTICLE 3- STUDENT LIFE COMMITTEE

Section 1

- A. The Student Life Committee is the official liaison between the students and the administration regarding academic affairs.
- B. The selection will be done by an application and interview process and voted on by the current sitting Student Life Committee Chairs.
- C. The positions open are as follows:

One representative from Freshman class

Two representatives from Sophomore class

Three representations from Junior class

Three representatives from Senior Class

In addition there must be at least one member from each one of the four categories on the SCW requirement sheet.

Examples:

- A. Sy Syms, Speech Pathology, Speech and Drama, Math, Foreign Language and Computer Science,
- B. Humanities

- C. Social Sciences
- D. Natural Sciences
- E. The Freshman class representative shall be selected in the Fall during Freshman class board elections.

- Exhibit G -

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKYU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

AFFIDAVIT OF CHAIM NISSEL

Chaim Nissel, of full age, being duly sworn, deposes and says

1. I am the Vice Provost for Students and University Dean of Students at Yeshiva University.
2. As the Dean of Students I have first-hand knowledge of the requirements for students in Yeshiva's undergraduate program.
3. Yeshiva was recently ranked #76 in the United States among national universities and has high expectations for students in their secular courses.
4. Yeshiva also requires all students to engage in intense Torah studies.
5. Approximately 80% of Yeshiva undergraduates begin their undergraduate studies with a year of intense Torah study at an affiliated school in Israel.
6. Throughout their time as undergraduates, all students have to take religious studies. On average, women study Torah-related subjects at least one hour per day. Depending upon their course of study, men average two to five and a half hours per day.

7. Yeshiva carefully structures undergraduate life to instill Torah values in its students.
8. All of Yeshiva's presidents have been Orthodox Jews and many, including the current president, have been ordained rabbis.
9. Yeshiva's employee handbook directs employees to "bring wisdom to life by combining the finest, contemporary, academic education with the timeless teachings of Torah." The relevant portion of the Employee Handbook is attached as **Exhibit 1**.
10. As at most post-high school yeshivas and Jewish seminaries, the University's undergraduate campuses are sex-segregated.
11. Male and female students have their own campuses with many of their own student leadership organizations.
12. Yeshiva students are asked to dress in a manner consistent with the ideals of Yeshiva University.
13. This is generally understood to mean that undergraduate male students are encouraged to wear a yarmulke or other head covering, while undergraduate women are encouraged to wear modest dress.
14. We do not discipline students for failing to comply, but such failures can be a teaching moment.
15. Synagogues are located throughout both the men's and women's campuses so that students may participate in the regular prayers and other religious services required by Jewish law.
16. Yeshiva faithfully observes, and asks undergraduates to observe, Orthodox Jewish laws throughout campus life.

17. Its offices, libraries, and other facilities are closed on Shabbat and Jewish holidays, and it prepares and serves only kosher food in its dining facilities.

18. Undergraduate dorms are also governed by Torah values.

19. Male and female undergraduates live in separate dormitories and may not visit each other's living spaces.

20. Men may live on campus only if they are enrolled in one of the Jewish studies divisions and enrolled for at least 12 credits each semester or are a full-time "semicha" (or seminary) student.

21. Students are expected to live in accordance with halachic norms and Torah ideals.

22. All dormitories are governed by a policy of public Shabbat observance.

23. Elevators are set to run automatically and electronic appliances may be confiscated if used in blatant violation of the rules of Shabbat, and the students involved may be subject to disciplinary action.

24. Yeshiva has long sought to "[p]romote a Jewish community that champions Torah Umadda, love for humankind, and support for the State of Israel" and to "enabl[e] communities to turn to Yeshiva for guidance on contemporary halachic and hashkafic matters." Pathways to Our Future, The Strategic Plan for Yeshiva University (2016-2020) at 2, 12.

25. A true and correct copy of the document entitled "Pathways to Our Future" is attached as **Exhibit 2**.

26. Yeshiva's mission is embodied in its commitment to *Torah Umadda*—"harmoniously combin[ing] the best of modern culture with the learning and the spirit of Torah." Yeshiva College, Mission and History, available at <https://www.yu.edu/yeshiva-college/mission-history>.

27. A true and correct copy of the University webpage at the foregoing link is attached as **Exhibit 3**.

28. My responsibilities as Dean of Students include overseeing Yeshiva's Office of Student Life, which manages all student clubs, events, and campus activities—including Shabbat and other Jewish holiday events.

29. When students want official University recognition for a club, they must first seek approval of Yeshiva's student government leaders.

30. To participate on both undergraduate campuses, students proposing a club must get approval from the student governments on each campus.

31. In making their decisions, student leaders on both campuses are charged with upholding Yeshiva's religious values.

32. Elected leaders on the men's campus are charged to "maintain the religious atmosphere on campus." *Id.* at 8. Men's Constitution, art. III § 6(3).

33. A true and correct copy of the relevant portions of the student government constitution for the men's campus is attached as **Exhibit 4**.

34. The Women's Student Council can only authorize a club charter if it "embod[ies] the Halachic tradition." Women's Constitution, art. II A.'

35. A true and correct copy of the relevant portions of the student government constitution for the women's campus is attached as **Exhibit 5**.

36. To ensure compliance with Torah values, the decisions of student government leaders are subject to review by the Office of Student Life.

37. Because students know that club recognition is ultimately contingent on University approval, they will frequently seek club recognition from the Office of Student Life at the same time they propose it to student government leaders,

38. If a proposed club brought to the Office's attention raises especially complex issues, the Director of Student Life and I will discuss the approval.

39. Our discussions can cover a wide range of issues including whether the club is duplicative of existing groups, whether its activities could put students at risk or expose the University to liability, and whether the club comports with the University's religious mission and identity.

40. On particularly difficult issues, especially those affecting Yeshiva's religious mission, the Director and I may consult with Yeshiva's religious leadership and other senior administrators.

41. During my time at Yeshiva, the University has denied recognition to various clubs.

42. For example, it has denied recognition for a shooting club based on liability concerns and public perception.

43. It has denied recognition for the Jewish fraternity AEPi. Although Yeshiva appreciates the fraternity's commitment to certain Jewish values, other aspects of fraternity life were considered inconsistent with Yeshiva's religious atmosphere and identity.

44. The University also denied recognition to a gaming club because it creates an appearance that is at odds with Torah values. I also recall the University denying recognition to a gambling club.

45. Just as official recognition for clubs must be approved by the Office of Student Life, any events held by clubs after they are recognized must also be approved in advance by the University.

46. For the last several years, Yeshiva has engaged in regular discussions with LGBTQ students about how to help them feel more welcomed and supported on campus.

47. These discussions have included requests from students for Yeshiva to approve a club called “YU Pride Alliance.”

48. As a result of these discussions, the University has taken significant steps in response to student concerns.

49. Yeshiva has established a team of administrators, psychologists, and rabbanim to create policies promoting the undergraduate university’s commitment to Torah and commitment to each other.

50. Yeshiva has reaffirmed its longstanding policies against harassment or discrimination; updated sensitivity training to include sexual orientation and gender identity; and added a clinician to its counseling center with specific LGBTQ+ experience to provide a safe space for LGBTQ students.

51. In or around September 2020, University Officials issues a statement on “Fostering an Inclusive Community” that detailed these and other efforts.

52. A true and correct copy of that letter is attached as Exhibit 6 to Plaintiff’s complaint.

53. After consulting with its *Roshei Yeshiva* (“senior rabbis”) and with educational and mental health professionals, Yeshiva decided not to approve the proposed YU Pride Alliance because it was not consistent with Yeshiva’s mission and religious identity, and the request to have LGBTQ-focused programs and meetings could already be met through existing clubs.

54. I was not personally involved in making the decision.

55. As Plaintiffs acknowledge at paragraph 43 of their complaint, I relayed to them that I “needed to speak to more senior administrators.”

56. Given the religious ramifications of their request, this was not a decision I had authority to make on my own.

57. My only role was to communicate the decision to the students as it was conveyed to me.

58. Yeshiva has for many years allowed events on LGBTQ issues. I have been and remain a supporter of these events and an LGBTQ ally.

59. Approximately ten years ago, I attended one of Yeshiva’s first ever events on identifying as LGBTQ in an Orthodox environment.

60. Yeshiva has also allowed clubs that explore tolerance and diversity issues respecting LGBTQ individuals, though the clubs have often discontinued due to their memberships lapsing after interested students graduate.

61. Currently, the Jewish Activism Club thrives on campus and has LGBTQ issues as part of its mission.

62. Over the past year, the University has approved the following events discussing issues related to LGBTQ sensitivity: (1) counseling center training from a Fordham University psychologist on LGBTQ issues; (2) a discussion on what helps and hurts on LGBTQ issues and mental health with Dr. Sarah Gluck (an LGBTQ psychologist) sponsored by the Jewish Activism Club; (3) an event on “sensitivity and specificity when discussing LGBTQ+ topics” put on by the Jewish Activism Club; and (4) a library book talk on “Before Trans: Three Gender Stories from Nineteenth-Century France.”

63. I am personally supportive of these events, and I am confident that Yeshiva's administration is interested in continued, good-faith dialogue with students engaged with LGBTQ issues to explore activities and events that could receive University approval.

64. I have also written personal letters of recommendation for various members of YU Pride Alliance, including some of the Plaintiffs, at their request. I have continued to do so after this lawsuit was filed. Yeshiva has treated every student with respect—one Plaintiff, for example, was a student council president, another was editor-in-chief of the student newspaper, while at least two have had their pictures appear in University publications.

65. I am happy to help our LGBTQ students and see them succeed in their educational and vocational endeavors, just as I help any student I can.

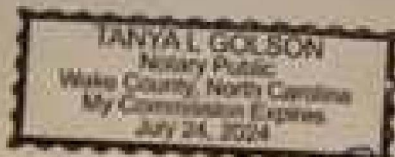
WHEREFORE, Plaintiffs' motion for preliminary injunction should be denied and their case dismissed.

Date: 5-25-2021

C. Shind, P.Y.D.

Dr. Chaim Nossel
Vice Provost for Student Affairs
University Dean of Students
Yeshiva University

Sworn to before me on this 28 day of May 2021



Tanya L. Golson
Tanya L. Golson

- Exhibit H -

Fostering an Inclusive Community

Yeshiva University is wholly committed to and guided by Halacha and Torah values. These direct our every effort in establishing a caring campus community that is supportive of all its members.

To that end, a team of administrators, psychologists and rabbanim spent four months meeting with individual students and alumni representing diverse constituencies, student leaders, Roshei Yeshiva, inclusion experts and members of other faith-based organizations before the Coronavirus paused their activities. Through these conversations, we have gained perspective, awareness and sensitivity to the unique experiences of diverse groups within Yeshiva University and the Orthodox community, and fully appreciate the importance of understanding, inclusion and acceptance of all students.

Today, we are announcing concrete additional steps to ensure that our undergraduate campus environments continue to be supportive of all our students, with the goal of fostering an inclusive community of belonging. While this will be part of a larger, ongoing, campus-wide effort to identify educational and support programs for all those who feel marginalized, our initial initiatives will focus on increased support for our students who have raised concerns regarding sexual orientation and gender identity.

As such, we will be taking the following steps to further enhance our efforts related to the request for additional support, services and a club including:

- Yeshiva University has long-standing policies that prohibit any form of harassment or discrimination against students on the basis of protected classifications, including race, gender, national origin, sexual orientation or gender identity. We reaffirm our current policies that prohibit any form of harassment or discrimination against students on the basis of protected classifications.
- We will be updating our diversity, inclusion and sensitivity training to be focused on our diverse student groups, including sexual orientation and gender identity. An initial training for administrators will take place within the coming semester. Following this, we will develop training for faculty, staff and students.
- Yeshiva University's distinguished Counseling Center will continue to address all our students' needs. It will enhance its services by ensuring that there is a clinician on staff with specific LGBTQ+ experience.
- Within the coming semester, the University will appoint a point person to oversee a Warm Line that will be available for any member of the Yeshiva University community who would like to discuss and/or report any concerns pertaining to non-inclusive behavior, such as harassment, bullying or inappropriate comments.
- The message of Torah on this issue is nuanced, both accepting each individual with love and affirming its timeless prescriptions. While students will of course socialize in gatherings they see fit, forming a new club as requested under the auspices of YU will cloud this nuanced message.
- In order to continue to explore ways of bringing about greater awareness and acceptance, our next step will be to create a space for students, faculty and Roshei Yeshiva to continue this conversation. The insights of these conversations will then help guide educational platforms that will nurture a more compassionate, textured and understanding community in the years to come.

We are very thankful to everyone who participated in helping form these initiatives. We have been deeply touched by the frankness and openness of all of the conversations that have been a part of this process. It has been inspirational to see how the YU community is committed to Torah and committed to each other, and this gives us great optimism that we can all work together—students, student leaders, faculty and Roshei Yeshiva—to further enhance our Yeshiva's undergraduate culture of belonging.

Dr. Yael Muskat, Director of the Counseling Center

Rabbi Yaakov Neuburger, Rosh Yeshiva, Rabbi Isaac Elchanan Theological Seminary (RIETS)

Dr. Rona Novick, Dean of the Azrieli Graduate School of Jewish Education and Administration

Dr. David Pelcovitz, Gwendolyn and Joseph Straus Chair in Psychology and Jewish Education at the Azrieli Graduate School of Jewish Education and Administration

- Exhibit I -

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

YU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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[REDACTED]

PRELIMINARY STATEMENT

Yeshiva University is the nation's flagship Jewish university rooted in Torah values. Its commitment to preserving Torah tradition across generations hearkens back to G-d's command to Joshua upon Moses' death: "This book of the Torah shall not leave your mouth; you shall meditate therein day and night, in order that you observe to do all that is written in it" Tanach, Nevi'im, Yehosua (Joshua) 1:8. For nearly 125 years, Yeshiva has participated in this now-millennia-old tradition of passing Torah values to each new generation.

The Torah values Yeshiva seeks to uphold include nuanced views on how the Jewish faithful should respond to LGBTQ-related questions in light of the Torah's commands regarding sexual behavior and "lov[ing] your neighbor as yourself." Tanach, Torah, Vayikra (Leviticus) 19:18. Yeshiva has taken great care to harmonize these religious mandates. Recently, this effort has led to extensive dialogue with undergraduate LGBTQ students; reemphasis on antidiscrimination policies and protections; updated diversity, inclusion, and sensitivity training; and enhanced support services through a clinician with specific LGBTQ experience. Yeshiva remains committed to helping LGBTQ students feel more welcomed on campus in ways that reflect Torah values. These developments are the result not of crisis conditions that could justify the emergency relief sought here, but of thorough, thoughtful, and ongoing dialogue between Yeshiva and its undergraduate students.

But for Plaintiffs, Yeshiva's Torah-based response is not enough. They want the Court to compel Yeshiva to recognize an official student club, the YU Pride Alliance, where students can pursue *their* mission without regard for Yeshiva's understanding of Torah values. But all student groups on campus are subject to Yeshiva's oversight, and here, Yeshiva has concluded that hosting a student club called "YU Pride Alliance," as described by Plaintiffs and as understood by the culture at large, is not consistent with Torah values.

This case is about whether Yeshiva or the secular courts get to shape Yeshiva's religious environment. The law is straightforward: a healthy separation of church (or synagogue) and state precludes civil courts from adjudicating internal religious disputes. Thus, the New York City

Human Rights Law (“NYCHRL”), on which Plaintiffs stake their claims, expressly exempts any “religious corporation incorporated under the education law.” That’s Yeshiva University. And the First Amendment compels the same result. Applying the NYCHRL to force Yeshiva to place its stamp of approval on the Pride Alliance against its own religious convictions would render the law unconstitutional. The NYCHRL exempts religious organizations specifically to avoid that outcome. Constitutional avoidance principles require the same result. That is enough for this Court to deny Plaintiffs’ motion and let Yeshiva and its students continue their good-faith dialogue over how best to move forward consistent with Torah values.

FACTUAL BACKGROUND

Yeshiva’s Religious Character

Founded in 1897 as “The Rabbi Isaac Elchanan Theological Seminary Association,” Yeshiva University was formed “to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” Sher Aff. Ex.1 at 26 (1897 Certificate of Incorporation). Firmly within a 3,000 year tradition of rabbinic teaching, Yeshiva University today embraces this heritage through its commitment to *Torah Umadda*—“harmoniously combin[ing] the best of modern culture with the learning and the spirit of Torah.” Nissel Aff. Ex.3 at 2 (2020 Mission Statement) (quoting Dr. Bernard Revel, Yeshiva’s first president). Indeed, *Torah Umadda* is present on every official Yeshiva document as part of Yeshiva’s seal:¹



¹ The writing at the top of the seal is Hebrew for “Yeshivat R. Yitzchak Elchanan” (the Hebrew name for Yeshiva’s affiliated rabbinic seminary, which shares a campus, and is deeply integrated, with Yeshiva’s undergraduate programs). The writing in the middle is Hebrew for “Torah Umaddah.”

As a center of religious Torah studies *and* a nationally-ranked academic institution, the combination of *Torah* and *Madda* (“secular studies”) defines daily life at Yeshiva. Berman Aff. ¶¶ 3-4. Over 80% of Yeshiva undergraduates begin their Yeshiva experience with a year abroad in the University’s Israel program, where they are often engaged full time in intense Torah studies at yeshivot and seminaries in Israel. Nissel Aff. ¶ 5; *see also* [Guide to Israel Schools | Yeshiva University \(yu.edu\)](#). On the men’s campus, students spend two to nearly six hours a day studying Torah. Nissel Aff. ¶ 6; *see also* [Jewish Living and Learning | Yeshiva University \(yu.edu\)](#). Women must take two Jewish studies courses each semester, which meet twice a week for a total of five hours. At the same time, the University is a world-renowned center of secular academic studies—most recently ranked by the U.S. News & World Report as #76 among national universities. [2021 Best National University Rankings | U.S. News & World Report \(https://www.usnews.com\)](#).

Yeshiva carefully structures undergraduate life to instill Torah values in its students. All of Yeshiva’s presidents have been Orthodox Jews and many, including the current president, have been ordained rabbis. Yeshiva’s employee handbook directs employees to “bring wisdom to life by combining the finest, contemporary, academic education with the timeless teachings of Torah.” Nissel Aff. Ex.1 at 9 (Employee Handbook). As at most post-high school yeshivas and Jewish seminaries, the University’s undergraduate campuses are sex-segregated. Nissel Aff. ¶ 11. Indeed, male and female students have their own campuses with many of their own student leadership organizations. Nissel Aff. ¶ 11; *see also* Nissel Aff. Ex.4 and Ex.5 (male and female student councils).

The Rabbi Isaac Elchanan Theological Seminary (“RIETS”), one of the nation’s largest Orthodox rabbinical seminaries, is housed on the Yeshiva men’s campus and is intertwined with the University’s undergraduate programs. Yeshiva (originally named RIETS) started as a membership corporation. Over time, the seminary became a division within the University. *See* Sher Aff. Ex.1 at 26; *see also* Doc. 16. Consistent with New York law, Yeshiva eventually was “continued” as an education corporation, while, a few years later, RIETS was separated and also incorporated as an educational corporation. *See id.* In practice, they remain highly integrated. They

have the same Executive Officers, partial overlap in their boards of trustees, and an express affiliation that, among other things, allows undergraduates to take courses in the Seminary and vice-versa. *See* Berman Aff. ¶ 6. RIETS faculty also provide much of the undergraduates' Torah studies. *Id.*

Synagogues are located throughout both the men's and women's campuses so that students may participate in the regular prayers and other religious services required by Jewish law. Yeshiva faithfully observes, and asks undergraduates to observe, Orthodox Jewish laws throughout campus life. Its offices and classes are closed on Shabbat and Jewish holidays and it prepares and serves only kosher food in its dining facilities. Nissel ¶ 17. Undergraduate dorms are also governed by Torah values. Male and female undergraduates live in separate dormitories. Nissel Aff. ¶ 19. Men may live on campus only if they are "enrolled in one of the Jewish studies divisions and enrolled for at least 12 credits each semester or are a full-time 'semicha' (or seminary) student." Nissel Aff. ¶ 20; [Men's Housing | Yeshiva University \(yu.edu\)](#) ("Eligibility"). They must agree "to live in accordance with halachic [Jewish law] norms and Torah ideals." Nissel Aff. ¶ 21. All dormitories are governed by a policy of public Shabbat observance. Nissel Aff. ¶ 22; *see also* [Women's Housing | Yeshiva University \(yu.edu\)](#). Elevators are set to run automatically and electronic appliances may be confiscated if used in blatant violation of the rules of Shabbat, and the students involved may be "subject to disciplinary action." Nissel Aff. ¶ 23

Yeshiva has long sought to "[p]romote a Jewish community that champions Torah Umadda, love for humankind, and support for the State of Israel" and to "enabl[e] communities to turn to Yeshiva for guidance on contemporary halachic and hashkafic matters." Nissel Aff. ¶ 24; Nissel Aff. Ex.2 at 2, 12.

Plaintiffs' Recognition of Yeshiva's Religious Character

Plaintiffs admit that Yeshiva is deeply religious. One supporting declaration states, "I love Torah learning and came to YU to further my religious growth *just like any other student who chooses YU.*" Doc. 25 ¶ 9 (Jane Doe affidavit) (emphasis added). Plaintiff Miller states that "YU was a religious community for me too." Doc. 23 ¶ 9. Events requested by Plaintiffs include

LGBTQ “shabbatons,” or LGBTQ programming as part of celebrating the Sabbath. *See, e.g., id.* ¶ 21; Doc. 24 ¶ 32. Even Plaintiffs’ critiques of Yeshiva are rooted in Yeshiva’s religious views. Plaintiff Weinreich, for example, “published an article in one of the student newspapers” criticizing Yeshiva for its *religious* approach to LGBTQ issues. Doc. 22 ¶ 16 (citing <https://yucommentator.org/2019/09/walking-the-walk-of-empathy>). And Plaintiff Anonymous sought anonymity because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. For Plaintiffs, Yeshiva’s religiosity is a feature, not a bug.

Yeshiva’s Corporate Charter

Yeshiva’s corporate status has evolved since 1897, with many amendments to expand its academic offerings, change its corporate name, and increase its number of trustees. *See generally* Sher Aff. Ex.1. Revisions to the Education Law in 1963 confirmed that absent “the consent of the commissioner of education,” membership corporations had to be incorporated under the Education Law. Sher Aff. Ex.2 at 4, 1963 N.Y. Laws 2406-2408 (enacted April 23, 1963). Consistent with the Education Law, Yeshiva “continued” the University in 1967 as “an educational corporation under the Education Law” in 1967. Doc. 14.² RIETS followed suit by separately incorporating “as an educational corporation” in 1970. Doc. 16. The general requirement to incorporate as an education corporation remains today. *See* N.Y. Educ. Law § 216. Thus, neither Yeshiva nor RIETS has ever been a “religious corporation” within the meaning of the New York Religious Corporations Law. N.Y. Religious Corporations Law § 2. But despite New York’s compelled classification, both institutions have always *functioned* as religious entities. While

² Plaintiffs date this amendment to 1969. The font is difficult to read, but the document is actually dated 1967. *See* Doc. 14. This is confirmed by the only amendment Yeshiva made to its corporate charter in 1969. *See* Sher Ex.1 at 13 (June 27, 1969 charter amendment, discussing “1967 amendment”).

nondenominational and nonsectarian in admitting students from any Jewish or other faith tradition, Yeshiva's entire undergraduate program is designed to encourage all students to embrace Torah-based Jewish beliefs. *See* Berman Aff. ¶ 7.

Decision Not To Approve Pride Alliance

In its effort to “establish[] a caring campus community that is supportive of all its members,” Yeshiva is “wholly committed to and guided by Halacha and Torah values.” Doc. 11. To that end, it has long drawn a distinction between undergraduates “socializ[ing] in gatherings as they see fit” and putting its seal of approval on clubs that appear not consistent with Torah values. *Id.*; *see also* Nissel Aff. ¶¶ 7, 18, 36, 44.

Official club recognition (or revocation) starts with Yeshiva's Student Government. *See* Nissel Ex.4 (Male Student Government Constitution, art. V § 1(c), (i)); Nissel Ex.5 (Women's Student Government Constitution art. VI, § 1(b)). The Student Government is specifically tasked by Yeshiva to uphold Torah values and “enrich the religious atmosphere on campus.” *See, e.g.*, Nissel Ex.4 at 2 (Men's Constitution, “Preamble”); *see also* Nissel Ex.5 at 2 (Women's Constitution, art. II § 1). Indeed, every elected male student leader is charged to “maintain the religious atmosphere on campus.” Nissel Ex.4 at 8. Men's Constitution, art. III § 6(3). Similarly, the Women's Student Council can only authorize a club charter if it “embod[ies] the Halachic tradition.” Nissel Ex.5 at 10 (Women's Constitution, art. II A). These decisions are also subject to review by Yeshiva's Director of Student Life, who is responsible for ensuring that club approvals comply with Yeshiva's religious values and other standards. Nissel Aff. ¶¶ 36, 38. On questions affecting Torah values, the Director of Student Life may confer with other senior officials. Nissel Aff. ¶ 40. Even after a club has been approved, all of its activities and speakers must be approved via the same process to help provide a student experience in an environment steeped in Torah values. Nissel Aff. ¶ 45.

This is the same process that has been followed with respect to Pride Alliance and all other groups. Specific to the Pride Alliance, the University has decided—conferring with its *Roshei Yeshiva* (“senior rabbis”)—that it cannot put its imprimatur on an organization that appears not

consistent with Torah values. Nissel Aff. ¶ 53; Doc. 11. Plaintiffs acknowledge that Yeshiva’s “religious tenets and foundations” are the basis for this decision. *See, e.g.*, Doc. 28 at 7 (quoting Doc. 12 at 1); *see also id.* (“‘timeless prescriptions’ in the Torah” prohibit Yeshiva from approving Pride Alliance) (citation omitted); Doc. 22 ¶ 30 (Yeshiva’s Chief Human Resource Officer “impl[ie]d that the proposed club . . . was . . . religiously prohibited”). In a recent YouTube interview, Plaintiff Meisels agreed that “they said this forthrightly. The reason why they will reject a club is because it clouds the nuance of the Torah.” [Plaintiff Meisels YouTube Statement at 18:10](#).

Yeshiva’s decision not to recognize YU Pride Alliance is consistent with how it has treated other students groups based on their appearance of being not consistent with Torah values. For example, Yeshiva has declined to approve the Jewish “AEPi” fraternity. Nissel Aff. ¶ 43. Although Yeshiva appreciates the fraternity’s commitment to certain Jewish values, it has concluded that other aspects of fraternity life are not consistent with Yeshiva’s Torah values. Nissel Aff. ¶ 43. Similarly, Yeshiva declined to approve proposed gaming and gambling clubs. Nissel Aff. ¶ 44.

While Yeshiva cannot approve the proposed YU Pride Alliance in its current form, Yeshiva’s commitment to its students has led it to take multiple, public steps to support students who identify as LGBTQ. For example, Yeshiva has established “a team of administrators, psychologists and rabbanim” to create policies promoting the undergraduate university’s “commit[ment] to Torah and commit[ment] to each other.” Doc. 11. These policies have included “reaffirm[ing]” Yeshiva’s longstanding policies against “harassment or discrimination”; updating sensitivity training to include sexual orientation and gender identity; adding a clinician in Yeshiva’s counseling center “with specific LGBTQ+ experience”; and creating support groups that allow a safe space for LGBTQ students to gather in the counseling center. Yeshiva remains committed to ongoing dialogue toward the creation of activities and events that promote inclusivity and are consistent with Torah values. Nissel ¶ 50.

Following its *Torah Umadda* commitment, Yeshiva has also provided Plaintiffs multiple avenues to explore LGBTQ issues within a Torah framework. Plaintiffs acknowledge that Yeshiva’s Office of Student Life would allow “a club addressing tolerance” (Doc. 28 at 6), and

University officials have encouraged Plaintiffs to advocate for social issues important to LGBTQ people through the Jewish Activism Club (*id.* at 8); *see also* Doc. 27 ¶ 6 (affidavit of Jewish Activism Club’s president, explaining that “one” of the group’s “goals . . . is to give representation and visibility to the LGBTQ+ community at YU”). Indeed, within the past year, Yeshiva has held at least four events on LGBTQ issues, including: (1) counseling center training from a Fordham University psychologist on LGBTQ issues; (2) a discussion on what helps and hurts on LGBTQ issues and mental health with Dr. Sarah Gluck sponsored by the Jewish Activism Club; (3) an event on “sensitivity and specificity when discussing LGBTQ+ topics” put on by the Jewish Activism Club; and (4) a library book talk on “Before Trans: Three Gender Stories from Nineteenth-Century France.” Nissel Aff. ¶ 62.

Plaintiffs are candid as to what more they seek to accomplish through a YU Pride Alliance. They want Yeshiva to “send[] a clear message” that Plaintiffs’ own views of Judaism on human sexuality “belong at YU.” Doc. 28 at 5, 9. Plaintiff Meisel has confirmed that the lawsuit’s goal is to force “cultural changes” at Yeshiva. [Plaintiff Meisels YouTube Statement at 26:22](#). Plaintiffs want Yeshiva to “make a statement.” *Id.* And they hope that “an establishment of a club really could change things” at Yeshiva, including changing the “people who are against the movement in the student body.” *Id.*

Yeshiva’s senior administrators, faculty, rabbis, and student body of course love and welcome LGBTQ students. And the University is similarly committed to seeing all its students, including its LGBTQ students, succeed. Nissel Aff. ¶¶ 63-65. Yeshiva thus is committed to continuing this conversation with its students within the context of Torah values.

ARGUMENT

Preliminary injunctions must be issued “cautiously and in accordance with appropriate procedural safeguards.” (*Uniformed Firefighters Assn. of Greater New York v City of New York*, 79 NY2d 236, 241 [1992]). Thus, a party requesting such relief must demonstrate “a clear right to relief, a balancing of equities in their favor and irreparable harm if the injunction is not granted.” (*Danae Art Intl. Inc. v. Stallone*, 557 NYS2d 338, 339 [1st Dept 1990]). *See also* (106 & 108

Charles LLC v. Hohn, 946 NYS2d 165, 166 [1st Dept 2012] (“Because plaintiff’s motion seeks an order mandating specific conduct, plaintiff must show a clear right to relief.”)). Here, this standard cannot be met, because all factors weigh decidedly in Yeshiva’s favor. Plaintiffs’ motion for preliminary injunction must be denied.

I. Plaintiffs cannot show a clear right to relief.

Plaintiffs cannot meet their burden to show a “clear right to relief” for two reasons: *First*, Yeshiva is exempt from the NYCHRL’s public accommodation provisions because, as a “religious corporation incorporated under the education law,” it is “distinctly private.” N.Y.C. Admin. Code § 8-102. *Second*, construing the NYCHRL otherwise would lead to constitutional problems—violating the principle of constitutional avoidance. If the NYCHRL applies here, Plaintiffs’ claims are forbidden by the First Amendment. The Free Exercise, Establishment, Free Speech, and Assembly Clauses all protect Yeshiva University’s freedom to carry out its religious mission and form the next generation of students according to its own religious beliefs, free from government interference.

A. Plaintiffs have failed to state a claim under the NYCHRL.

1. The public accommodation provisions do not apply to religious organizations.

Plaintiffs have sued Yeshiva as a “place or provider of public accommodation.” N.Y.C. Admin. Code § 8-107(4); *see also* Compl. ¶¶ 142-156; Doc. 28 at 11. But the NYCHRL’s definition of “place or provider of public accommodation” deliberately excludes “distinctly private” organizations. N.Y.C. Admin. Code § 8-102. Religious corporations expressly fall within this exclusion—and not only those incorporated under New York’s Religious Corporations Law. *See id.* Rather, the NYCHRL explicitly states that “a religious corporation incorporated under the education law” is “distinctly private.” *Id.* “A plain reading of the statute reveals that the exemption” “is absolute and not subject to limitation.” (*Gifford v Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 707 NYS2d 722, 723-724 [3d Dept 2000]). It also accords with both the NYCHRL’s “legislative intent” and “the construction of the statute adopted by other appellate courts.” *Id.*

(citing cases); *see also* N.Y.C. Admin. Code § 8-107(12) (protecting religious schools even outside of the public accommodations context).

In short, because Yeshiva is “a religious corporation incorporated under the education law,” it is distinctly private” and not subject to the NYCHRL’s public accommodations provisions.

2. Yeshiva University is a religious organization.

Plaintiffs’ claims turn on Yeshiva being a place of *public* accommodation. It’s not, and that’s fatal. Yeshiva is a “religious corporation incorporated under the education law,” making it “distinctly private” under the NYCHRL.

a. Religious status is based on overall character, not corporate form.

When assessing whether an organization is religious under the NYCHRL, “courts engage in a robust analysis of the facts that arguably demonstrate the religious character of the organization and its work.” (*Jing Zhang v Jenzabar, Inc.*, 2015 WL 1475793, *9 [ED NY Mar. 30, 2015, No. 12-CV-2988]). There is no “particular test or measure to define a religious organization.” *Id.* Factors to consider include evidence of the organization’s “founding,” “key documents purporting to represent [its] religious nature,” its “public presentation,” and whether “by the time” of the relevant events, the organization has “evolved” such that it is religious in nature. *See id.* at *9-11. Focusing on function means that the “corporation’s certificate of incorporation” is not dispositive; “the actual practices of the organization” are what count. (*Watt Samakki Dhammikaram, Inc. v Thenjitto*, 631 NYS2d 229, 231 [Sup Ct, Kings County 1995]). Courts can be led astray if they myopically let one document gloss over a religious organization’s functions. (*Kittinger v Churchill*, 292 NYS 35, 46-47 [Sup Ct, Erie County 1936], *aff’d*, 292 NYS 51 [4th Dept 1936]) (“Although the Churchill Evangelistic Association, Inc., has the form of a stock trading corporation, it is patent that it is ... a religious society.”). By focusing on function, a court can assess the organization “as it was intended to be, and actually is.” *Id.* at 48.

This function-based approach is required by the U.S. Constitution. The U.S. Supreme Court has long held that even “independent organization[s]” possess “full, entire, and practical freedom for all forms of religious belief and practice.” (*Watson v Jones*, 80 US 679, 724-728 [1871]). This

is because a religious organization's chosen legal form "is more or less intimately connected [to its] religious views" and understanding of "ecclesiastical government." *Id.* at 726. "Fear of potential liability" cannot be allowed to drive how a religious organization forms and operates. (*Corp. of Presiding Bishop v Amos*, 483 US 327, 336 [1987]). Accordingly, the "definition and explanation" a religious organization provides of its religious functions "is important"; the nation's religious diversity precludes judges from "hav[ing] a complete understanding and appreciation of . . . a particular role in every religious tradition." (*Our Lady of Guadalupe Sch. v Morrissey-Berru*, 140 S Ct 2049, 2066 [2020]; *see also Amos*, 483 US at 341) (Brennan, J., concurring) (First Amendment guarantees religious organizations freedom to "define their own doctrines, resolve their own disputes, and run their own institutions.").

b. Yeshiva's overall character is deeply religious.

Yeshiva's functions confirm it is deeply religious. All undergraduates are strongly encouraged to begin their Yeshiva experience with intensive religious studies in Israel, with over 80% doing so for University credit. On campus, students spend one to nearly six hours per day in Torah study with rabbis or other religious educators—a requirement that is facilitated by Yeshiva being home to one of the nation's largest Orthodox seminaries (RIETS); students living on campus agree "to live in accordance with halachic [Jewish law] norms and Torah ideals"; Yeshiva complies fully with the laws of Shabbat and Kashrut and encourages students to do the same; campuses, dorms, and prayers are sex-segregated consistent with Torah law and tradition; student government officers are charged to help "maintain the religious atmosphere on campus"; and all student activities are subject to University approval for religious compliance. (*Supra* 2-7). For Yeshiva, Judaism is not a matter of intellectual curiosity. It is the heart of what Yeshiva is.

Plaintiffs admit that Yeshiva is renowned for its religious character. Plaintiff Miller states that "YU was a religious community for [him] too." Doc. 23 ¶ 9. Declarant Jane Doe acknowledges that "any . . . student who chooses YU" does so because they "love Torah learning and came to YU to further [their] religious growth." Doc. 25 ¶ 9. [REDACTED]

[REDACTED]

[REDACTED]

see also Doc. 26 ¶ 16 (Emma Doe affidavit, claiming that “Being a part of the YU community is such a big thing in the Jewish community . . .”).

Moreover, Plaintiffs unapologetically seek to change Yeshiva’s Torah-based understanding of LGBTQ issues. This is why Plaintiff Weinreich published an article asking students to “stop either pretending or being under the delusion that any of the dominant issues are halachic.” Doc. 22 ¶ 16 (citing <https://perma.cc/JWC9-9VDC>). This is why Plaintiffs want Pride Alliance to be allowed to host “shabbaton” events on Yeshiva’s premises. See, e.g., Doc. 23 ¶ 21; Doc. 24 ¶ 32. And it is why Plaintiffs ask this Court to force Yeshiva to approve the Pride Alliance: Doing so will force Yeshiva to “make a *statement*,” which “could really change things” at Yeshiva, including the minds of “people who are against the movement in the student body.” [Plaintiff Meisels YouTube Statement at 26:22](#) (emphasis added). Plaintiffs disagree with Yeshiva’s view that “the proposed club . . . was somehow religiously prohibited.” Doc. 22 ¶ 30. And they think Yeshiva’s “forthright[.]” “reason why they will reject a club”—i.e., that “it clouds the nuance of the Torah”—is simply wrong. [Plaintiff Meisels YouTube Statement at 18:10](#). None of this makes any sense if Yeshiva is non-religious.

Despite this overwhelming and undisputed evidence, Plaintiffs claim that two stray documents—from 1967 and 1995—negate Yeshiva’s deeply religious character. Neither does.

1967 amendment to certificate of incorporation. Plaintiffs claim that Yeshiva’s 1967 amended certificate of incorporation shows that Yeshiva is not religious. Doc. 28 at 15. It shows that, in 1967, Yeshiva modified its corporate status from “membership corporation under the laws of the State of New York” to “educational corporation under the Education Law of the State of New York.” Doc. 14. And in 1970, RIETS was separately incorporated under the Education Law as well. Doc. 16. This did not make Yeshiva non-religious.

First, corporate status does not determine religious character. (*Supra* 10-11) (citing *Watt* and *Kittinger*). Concluding otherwise would violate the First Amendment. (*Supra* 11) (citing *Watson*, *Amos*, and *Our Lady*). In any event, Plaintiffs’ view leads to obviously wrong results. On Plaintiffs’

reasoning, not even Yeshiva's affiliated *rabbinical seminary* would be religious, because, like Yeshiva itself, RIETS is currently incorporated "as an educational corporation" and before 1970 was a "membership corporation." Doc. 16; Sher Aff. Ex.1 at 26. Function is the proper analysis here, and Yeshiva's functions are infused with religious exercise.

Second, the 1963 revision to the Education Law confirmed that, absent contrary written approval, all colleges, universities, and other higher educational institutions *must* incorporate as educational corporations. Sher Aff. Ex.2. It therefore cannot be the law that a corporation is "religious" only when incorporated under the Religious Corporations Law. That would be inconsistent with every New York corporate law case cited above. It would also render meaningless the NYCHRL's specific exemption for "any religious corporation incorporated under the education law." NYC Admin. Code § 8-102. Plaintiffs offer no authority to rewrite the NYCHRL's definition of public accommodation or upend decades of New York corporate law.

1995 "fact sheet." Plaintiffs also point to a 1995 "fact sheet" addressing "the gay student clubs" at some of Yeshiva's graduate schools. Doc. 6 at 2. But this "fact" sheet does not override Yeshiva's religious character for three reasons:

First, whatever advice Yeshiva leaders were given nearly three decades ago, it does not change the fact that—long before 1995 and continuing ever since—Yeshiva has always been a deeply religious institution. Berman Aff. ¶¶ 2-4. While nondenominational in the sense that it welcomes students of all faiths, Yeshiva does so for the purpose of teaching them Judaism. And the 1995 "fact" sheet itself repeatedly confirms that Yeshiva "has not, by virtue of any of its actions, abandoned moral principles"; that Yeshiva "make[s] a unique and vital contribution to the Jewish community and society at large" by preserving the integration of its rabbinical training into university life; and that Yeshiva "makes every effort to . . . remain true to the history and traditions of the institution," such as in keeping kosher and observing Shabbat. Doc. 6 at 3-5. A function-focused analysis must situate the 1995 "fact" sheet within Yeshiva's 124-year institutional religious history and 3,000-year-old religious tradition—neither of which could be, or ever has been, trumped by a PR "fact" sheet.

Second, the 1995 “fact” sheet distinguishes Yeshiva’s graduate schools from its undergraduate and seminary programs, a distinction that aligns with Yeshiva’s religious beliefs and practices. The purpose of the undergraduate and seminary programs is to help students grow in their observance of the Torah and to enable them to take Torah into their chosen professions. Berman Aff. ¶¶ 4, 7. All undergraduate students spend hours each day studying Torah. Nissel Aff. ¶ 6. And all of campus life is designed to imbue Torah values in its students. Indeed, as Plaintiffs and their declarants admit, spiritual formation is why students choose to attend Yeshiva—usually after spending a full gap year in Israel studying Torah full time. Nissel Aff. ¶ 5. While Yeshiva’s graduate schools are also structured to enable religious observance, their emphasis shifts from religious formation to greater professional development. Berman Aff. ¶ 8. The University’s decision to allow at the graduate level what it does not at the undergraduate level reflects its mission to form students’ faith during their most impressionable years. Berman Aff. ¶¶ 7-8.

Third, while there is no evidence that Yeshiva has ever retreated from the religious mission of its undergraduate program for any reason, including to get public funding (as Plaintiffs allege), it is undisputed that Yeshiva *today* is deeply religious. Under the NYCHRL, what counts is whether an organization is religious at the time of the events giving rise to the cause of action. *See Jenzabar*, 2015 WL 1475793, at *11 (under NYCHRL, “[n]othing prohibits an entity from evolving in such a way as to affect its status as a religious organization.”) (*Kroth v Congregation Kadisha*, 105 Misc. 2d 904, 910 [Sup Ct, NY County 1980]) (organization can “metamorphose[] into a de facto religious corporation”). Plaintiffs do not dispute that Yeshiva’s decision not to approve of Pride Alliance has *always* been a religious decision. Berman Aff. ¶ 11; Nissel ¶ 53; *supra* 7. Plaintiffs may disagree with that decision, but it simply is “not within the judicial function and judicial competence to inquire whether [Plaintiffs] or [Yeshiva] more correctly perceive[] the commands of their common faith. Courts are not arbiters of scriptural interpretation.” (*Thomas v Review Bd. of Indiana*, 450 US 707, 716 [1981]).

Yeshiva’s receipt of public aid does not change the analysis. Plaintiffs argue that, in applying for state and federal funding, Yeshiva has often represented itself as not being a “religious

corporation” and as being “nondenominational” and “nonsectarian.” *See, e.g.*, Doc. 28 at 15-16. But none of these statements is inconsistent with Yeshiva’s status as a religious organization. Consistent with the strictures of the Education Law, *supra* 5, Yeshiva is not incorporated under the Religious Corporations Law, but under the Education Law. Moreover, Yeshiva accepts students from all Jewish denominations, and indeed from all faiths, making it both nondenominational and nonsectarian.³

None of this precludes Yeshiva from being a religious institution with a religious mission. Indeed, the NYCHRL’s public accommodations provisions expressly recognize that an organization incorporated under the Education Law can still be “religious.” N.Y.C. Admin. Code § 8-102. Nor does it disqualify Yeshiva from receiving public funding. The U.S. Supreme Court has twice held recently that religious organizations cannot be denied generally available funding based on their religious status. (*Espinoza*, 140 S Ct at 2259; *Trinity Lutheran Church of Columbia, Inc. v Comer*, 137 S Ct 2012, 2021 [2017]). Reflecting this reality, the DASNY bond that Plaintiffs refer to (Doc. 28 at 16 n.9) makes clear that its use restriction “shall not prohibit the free exercise of any religion.” Sher Aff. Ex.3 at 108. Plaintiffs’ argument that Yeshiva forfeited its religious identity by applying for public funding is simply wrong.

B. Plaintiffs’ reading of the NYCHRL would violate the First Amendment.

A plain reading of the NYCHRL’s exemption for religious corporations avoids constitutional conflict. By contrast, ignoring the exemption would make the NYCHRL’s public accommodation provisions unconstitutional.

1. Plaintiffs’ NYCHRL claims violate religious autonomy.

The First Amendment ensures religious organizations can “define their own doctrines, resolve their own disputes, and run their own institutions.” *Amos*, 483 US at 341 (Brennan, J., concurring);

³ Many churches refer to themselves as “nondenominational” despite their obvious religiosity. And the U.S. Supreme Court has held that “sectarian” as used in funding restrictions is “code for Catholic” and a term “born of bigotry.” (*See Espinoza v Montana Dept. of Revenue*, 140 S Ct 2246 [2020]; *Mitchell v Helms*, 530 US 793, 828-829 [2000].) Moreover, Judaism is not a “sect” in any sense of the word.

see also *Our Lady*, 140 S Ct at 2060 (holding that religious schools possess a “sphere” of “autonomy” to make “internal management decisions that are essential to the institution’s central mission”). Therefore, a civil court cannot “intrude for the benefit of one segment of a [religious organization] the power of the state.” (*Kedroff v St. Nicholas Cathedral of Russian Orthodox Church*, 344 US 94, 119 [1952]). Yet Plaintiffs’ claims require exactly that.

If the Court were to accept Plaintiffs’ NYCHRL construction, then it would have to tell Yeshiva how to construe and apply its religious mission and values when deciding to approve a club. Indeed, Plaintiffs admit this goal. (*Supra* 8). But “the First Amendment has struck the balance” already. (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC*, 565 US 171, 196 [2012]). The right and the duty to decide those religious questions belongs to Yeshiva “alone.” *Id.* at 195.

2. Plaintiffs’ NYCHRL claims violate the Free Exercise Clause.

Plaintiffs wrongly claim that the NYCHRL satisfies the Free Exercise Clause simply because it is not targeted toward religious beliefs or crafted “‘because of religious motivation.’” Doc. 28 at 19.⁴ But the “Free Exercise Clause is not limited to acts motivated by religious hostility.” (*Cent. Rabbinical Congress v New York City Dept. of Health & Mental Hygiene*, 763 F3d 183, 197 [2d Cir. 2014]) (cleaned up). Rather, “Government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny ... whenever they treat *any* comparable secular activity more favorably than religious exercise.” (*Tandon v Newsom*, 141 S Ct 1294, 1296 [2021]). With the NYCHRL, that is clearly the case.

Here, for example, it is undisputed that the NYCHRL exempts “distinctly private” clubs and benevolent orders. (*Gifford*, 707 NYS2d at 723-724). Similarly, in instances where the NYCHRL

⁴ Plaintiffs also claim that Yeshiva giving its imprimatur to the Pride Alliance “does not burden [its] religious exercise at all.” Doc. 28 at 19. But that claim is undermined by one of their own cases. See *Georgetown Univ.*, 536 A.2d at 5 (recognizing a student club on a religious campus “carr[ies] an intangible ‘endorsement’”). Forcing Yeshiva to “make a statement” contrary to Yeshiva’s understanding of the Torah is precisely what Plaintiffs want. See, e.g., [Plaintiff Meisels YouTube Statement at 26:22](#).

applies to private entities, it exempts some religious activities but not others. (*See, e.g.*, NY Admin. Code § 8-107(12)). These distinctions alone, to say nothing of the NYCHRL’s other exemptions, require strict scrutiny under *Tandon*. And Plaintiffs’ desired goal—forcing Yeshiva to make “cultural changes” to its religious environment and “make a **statement**” (*supra* 8) (emphasis added)—cannot satisfy what strict scrutiny requires: a compelling governmental interest pursued in the least-restrictive way. “The 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.” (*Obergefell v. Hodges*, 576 US 644, 679-80 [2015]).

3. Plaintiffs’ NYCHRL claims violate the Free Speech Clause.

The Free Speech Clause prohibits compelling a private party “to be an instrument for fostering public adherence to an ideological point of view.” (*Wooley v Maynard*, 430 US 705, 715 [1977]).

Here, this is exactly what Plaintiffs want. They admit—both in their briefing and in public interviews—that the point of this lawsuit is to force “cultural changes” onto Yeshiva and send a different “statement” than the one Yeshiva’s Torah values produce. (*Supra* 8). The First Amendment prohibits courts from imposing “what shall be orthodox in . . . religion . . . or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.” (*W. Virginia Bd. of Educ. v Barnette*, 319 US 624, 642 [1943]). (*See also Hurley v Irish-American Gay, Lesbian & Bisexual Group*, 515 US 557, 579 [1995]) (government “is not free to interfere with speech for no better reason than promoting an approved **message** or discouraging a disfavored one, however enlightened either purpose may strike the government”) (emphasis added).

4. Plaintiffs’ NYCHRL claims violate the Assembly Clause.

The Assembly Clause protects the freedom of private organizations to form their members in ways of life that are “indispensable to the effective and intelligent use of the processes of popular government.” (*See Thomas v Collins*, 323 US 516, 532 [1945]). This freedom includes the right of religious organizations to “educat[e] and form[.]” the next generation according to their particular

tradition's religious vision. (*Our Lady*, 140 S Ct at 2055; *Obergefell*, 576 US at 679-80). The freedom of assembly protects the right of distinct religious communities to unite in witness against the "hydraulic insistence on conformity to majoritarian standards." (*Wisconsin v Yoder*, 406 US 206, 217 [1972]).

Here, Plaintiffs seek to employ secular judicial power to turn Yeshiva away from its 3,000-year-old religious tradition toward Plaintiffs' preferred religious message. But "our constitutional tradition" flatly forbids such an infringement. *See Thomas*, 323 US at 531-532.

II. Plaintiffs are not suffering irreparable harm.

Plaintiffs here cannot claim *any* legal injury due to Yeshiva's decision to withhold its stamp of approval, let alone *irreparable* injury, because the NYCHRL expressly exempts Yeshiva from any obligation. (*See Dodd v Middletown Lodge (Elks Club) No. 1097*, 264 AD2d 706, 706, 695 NYS2d 115, [2d Dept 1999]) (where law "exclude[d] benevolent organizations, . . . plaintiff was not even 'colorably aggrieved'"). There cannot be irreparable harm when Plaintiffs do not even have a claim to vindicate.

Moreover, Plaintiffs need to "clearly demonstrate[] the necessity and urgency for the relief in advance of trial, including . . . irreparable harm." *Mindel by Mindel v Educational Testing Service*, 559 NYS2d 95, 98 [1st Dept. 1990]. Here there is plainly no urgency. Plaintiffs themselves speak of a years-long history regarding these issues. Moreover, three of the named Plaintiffs are now alumni—meaning that they could not join Pride Alliance even if it were approved, because all student groups are limited to current students. And Yeshiva has treated every student with respect—one Plaintiff, for example, was a student council president, another was editor-in-chief of the student newspaper, while at least two have had their pictures appear in University publications. *Nissel Aff.* ¶ 64. Moreover, Plaintiffs attended a religious university, at least in part, *because* it is religious. The fact that they have a religious disagreement with Yeshiva cannot create irreparable harm.

III. The balance of equities favors protecting Yeshiva University's religious identity.

If Yeshiva University is forced to violate its 3,000-year old understanding of Torah, “for even [a] minimal period[] of time,” it will be irreparably harmed. (*Tandon*, 141 S Ct at 1297) (loss of free-exercise rights “for even minimal periods of time” constitutes irreparable harm). Indeed, the public interest favors applying statutes as written, consistently protecting constitutional rights, avoiding constitutional conflicts with important statutes like the NYCHRL, and letting religious groups decide for themselves how best to live out their faith. (*Trump v Trump*, 69 Misc. 3d 285, 298, 128 NYS3d 801, 813-814 [Sup Ct, Dutchess County 2020]) (“balancing of the equities” precluded injunction against book publisher because it would operate as a prior restraint in violation of First Amendment rights). All those public interests will be harmed if an injunction is entered.

CONCLUSION

As required by the First Amendment, the NYCHRL's *public* accommodation provisions were never intended to let courts reach inside a “distinctly private” organization like Yeshiva to resolve a sensitive religious dispute. Yeshiva is not a movie theater or a grocery store; it is a university rooted in Torah values with a mission to continuously convey its faith on to the next generation. Violating the separation of synagogue and state by telling Yeshiva it cannot follow this 3,000-year-old tradition not only creates an avoidable constitutional conflict between the NYCHRL and the First Amendment—it is counterproductive. A court-imposed resolution would inevitably provoke religious defensiveness, rather than encourage the compassion and respect necessary to building consensus. Torah provides a path for Yeshiva to convey its own religious views, which includes loving and respecting all its students. Plaintiffs' motion for a preliminary injunction should thus be denied not only to comply with the NYCHRL and the First Amendment, but also to ensure that Yeshiva and its students can continue working together to find common ground within the Torah values that guide them all.

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

By: /s/ Brian M. Sher

Brian M. Sher
Samantha R. Montrose
Kenneth Abeyratne
120 Broadway, 14th Floor
New York, New York 10271
Telephone: 212-980-9600
Facsimile: 212-980-9291
Email: bsher@kbrlaw.com
smontrose@kbrlaw.com
kabeyratne@kbrlaw.com

Eric S. Baxter
William J. Haun
**pro hac vice* admission pending
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave. NW, Suite 400
Washington, DC 20006
Telephone: 202-955-0095
Facsimile: 202-955-0090
Email: ebaxter@becketlaw.org
whaun@becketlaw.org

Attorneys for Defendants

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Defendants' Memorandum Of Law In Opposition To Plaintiffs' Motion For Preliminary Injunction has 6,801 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

/s/ Brian M. Sher

- Exhibit J -

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

----- X

YU PRIDE ALLIANCE, et al.,

Plaintiffs,

Index No.: 154010/2021

Kotler, J.

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

----- X

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

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Defendants' motion to dismiss Plaintiffs' complaint, with the exception of an inapt argument to dismiss Defendant Vice Provost Nissel, treads the same flawed ground as their opposition to Plaintiffs' preliminary injunction motion. Defendants concede that the complaint adequately alleges that Defendants Yeshiva University ("YU") and President Berman refused to recognize Plaintiffs' LGBTQ student organization because of sexual orientation and gender. Defendants also do not dispute that Section 8-107(4) of the New York City Human Rights Law ("NYCHRL") prohibits educational institutions from denying students equal access to "facilities, accommodations, advantages or privileges of any kind" because they are members of a protected class.

Instead, Defendants stake their entire motion on the theory that YU is not a place or provider of public accommodation, but is instead a "religious corporation" exempt from the NYCHRL. Defendants' argument fails on every level. First, Plaintiffs allege sufficient facts in their detailed, 31-page, 156-paragraph complaint to establish that YU—a private educational institution incorporated under the New York Education Law for 50 years—*is* a provider of public accommodation for purposes of stating a cognizable discrimination claim under Section 8-107(4). This ends the inquiry at the motion-to-dismiss stage. Second, it is well-settled that whether an entity is a public accommodation is a question of fact, not amenable to resolution on a motion to dismiss. Third, Defendants fail to carry their burden to establish conclusively as a matter of law that YU is a "religious corporation," which New York law defines as a place of worship or religious observance. Yeshiva is a large research university with 3,000 undergraduates; it is not a private place of worship. YU supports its claim to be a "religious corporation" by listing the various ways that Judaism is a part of life at YU. Plaintiffs do not dispute this. Plaintiffs and Defendants agree that YU's Jewish character is to be celebrated. But

YU remains a public accommodation, subject to the same laws as other educational institutions offering undergraduate degrees to college students and training them to enter myriad professional and employment fields in New York City and beyond.

At this early stage of the litigation, the Court must accept as true all facts alleged in the complaint regarding YU's status as a public accommodation, draw all reasonable inferences in Plaintiffs' favor, and grant Defendants' motion only if they conclusively establish their defense that YU is a "religious corporation" as a matter of law. Defendants cannot meet this heavy burden. Plaintiffs have adequately alleged that YU is an educational institution covered by the public accommodation protections of the NYCHRL, and that YU has improperly denied Plaintiffs equal access to its advantages and facilities because of sexual orientation and gender, thereby stating a cognizable cause of action. Defendants' motion to dismiss must be denied.

I. FACTS

Plaintiffs are the YU Pride Alliance, the University's unofficial student group for LGBTQ students and their allies, and current and former YU student members of the group. ¶¶ 1, 8-12.¹ YU has repeatedly refused to recognize the Pride Alliance as an official student organization because the University does not want an LGBTQ student group to operate on campus with the same privileges and advantages as other student groups. ¶¶ 2, 41-116.

YU recognizes 116 undergraduate student clubs that reflect the vast interests of its student body—spanning categories such as "Art," "Business," "Health and Wellness," "Sports and Fitness," and "Politics and Activism." ¶¶ 26-27. Defendants have denied Plaintiffs access to numerous advantages, services, facilities, and privileges that YU provides to these 116 recognized groups. ¶ 140. Plaintiffs may not hold meetings on campus and must travel off-

¹ All references to "¶ __" refer to the Complaint, Dkt. 1.

campus for meetings; they receive no funding and have had to fundraise from outside sources; they are not listed on YU's student group list; and they are not invited to the annual club fairs for new students. ¶ 120.

Yeshiva's unequal treatment has harmed Plaintiffs significantly. Without a club, Plaintiffs have been deprived a safe space to create a community of people facing these same challenges and experiences as LGBTQ Jewish individuals at YU, causing feelings of fear, isolation, and rejection. *Id.* They have also been deprived of the ability to access formal organizational spaces that facilitate student success by enabling students to develop leadership, civic engagement skills, and peer mentoring networks. ¶ 123.

II. LEGAL STANDARD

“On a CPLR 3211 motion to dismiss, the court will ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.’” *Nonnon v. City of New York*, 9 N.Y.3d 825, 827 (2007) (quoting *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994)). Where the complaint, so construed in Plaintiffs' favor, establishes a cognizable cause of action, a motion to dismiss under CPLR 3211(a)(7) based on documentary evidence submitted by Defendants “will seldom if ever warrant the relief the defendant seeks unless such evidence conclusively establishes that plaintiff has no cause of action.” *Basis Yield Alpha Fund (Master) v. Goldman Sachs Grp., Inc.*, 115 A.D.3d 128, 134 (1st Dep't 2014) (cleaned up) (quoting *Rovello v. Orogino Realty Co.*, 40 N.Y.2d 633, 636 (1976)).

A motion under CPLR 3211(a)(1) asserting that an action is barred by documentary evidence faces a similarly high bar and may be granted “only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v. Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314, 326 (2002).

III. PLAINTIFFS HAVE SUFFICIENTLY PLEADED THAT YU IS A PUBLIC ACCOMMODATION UNDER SECTION 8-102 OF THE NYCHRL

Plaintiffs allege that YU is a private educational institution, a category which the NYCHRL has recognized as a place or provider of public accommodation for 30 years. In 1991, the City Council established that “[t]he term ‘place or provider of public accommodation’ would now include both public and private educational institutions.” Report of the Committee on General Welfare on Local Law 39, Section-by-Section Analysis, at 4 (1991) (“Local Law 39 Committee Report”), <http://www.antibiaslaw.com/sites/default/files/all/LL39CommitteeReport.pdf>. This covers *all* educational institutions, including “colleges, universities,” and “all other educational facilities.” N.Y.C. Admin. Code § 8-102. This expansion of the NYCHRL was based on the City’s “independent and overriding interest in routing out discrimination from its schools.” Local Law 39 Committee Report at 4.

Plaintiffs allege the following facts which establish that YU is an educational institution and therefore a public accommodation covered by Section 8-102 of the NYCHRL:

- YU is a private research university in New York City that enrolls more than 3,000 undergraduate students and “offer[s] a unique dual curriculum comprising Jewish studies and liberal arts and sciences courses.” ¶ 1.
- YU has been registered with the New York State Department of State’s Division of Corporations as a domestic not-for-profit corporation, subject to the New York Education Law, since December 15, 1969. ¶¶ 13, 20.
- Fifty years ago, YU elected to register as a non-sectarian corporation to benefit from government funding unavailable to entities organized as religious corporations. Since then, it has received hundreds of millions of dollars in New York State funds and benefits. ¶ 5.
- YU has obtained millions of dollars in tax-exempt bond financing through the Dormitory Authority of the State of New York (“DASNY”). In 2011, YU issued a \$90 million bond through the DASNY. DASNY prohibits bond issuers from using these funds for a religious purpose. ¶ 23.
- YU describes itself as “the country’s oldest and most comprehensive institution combining Jewish scholarship with academic excellence and achievement in the

liberal arts and sciences, medicine, law, business, social work, psychology, Jewish studies, education, and research.” ¶ 24.

- YU’s official “Non-Discrimination and Anti-Harassment Policy & Complaint Procedures” document recognizes as unlawful and prohibits discrimination “based on . . . sex . . . sexual orientation, [and] gender identity and expression.” ¶ 127.
- YU’s “Undergraduate Student Bill of Rights and Responsibilities” states that “[s]tudents who are otherwise qualified have the right to participate fully in the University community without discrimination as defined by federal, state, and local law,” claiming no exemption from the NYCHRL. ¶ 129.
- The same document includes provisions that allow students to “organize and join clubs and participate in events in all cases in accordance with applicable rules and procedures.” ¶ 129; *see also* ¶¶ 131-41.

Taken together, these detailed allegations establish that YU is a private educational institution that meets the definition of a public accommodation under Section 8-102, easily meeting the threshold of stating a “cognizable legal theory.” *Nonnon*, 9 N.Y.3d at 827.

IV. DEFENDANTS FAIL TO CARRY THEIR HEAVY BURDEN AT THE MOTION TO DISMISS STAGE

Defendants cannot overcome Plaintiffs’ well-pleaded allegations that YU is a public accommodation under the NYCHRL. Defendants neither utterly refute these allegations nor establish conclusively as a matter of law that YU is an exempt “religious corporation,” as CPLR 3211(a)(1) and (a)(7) require for them to establish a defense through documentary evidence at the motion to dismiss stage.

A. Defendants Identify No Document Conclusively Establishing That They Are a Religious Corporation Exempt from Section 8-102

Defendants’ motion to dismiss on the grounds that they are an exempt “religious corporation” fails for a simple reason: none of the documents they submit with their motion refute the complaint’s allegations that YU is a public accommodation, or conclusively establish that YU is “a religious corporation incorporated under the education law or the religious corporation law that is deemed to be in its nature distinctly private” and therefore exempt from

the NYCHRL's definition of a public accommodation. *See* N.Y.C. Admin. Code § 8-102.

Instead, the documents confirm the complaint's allegations that YU is an educational institution covered by Section 8-102. They are:

- Articles of Incorporation and Charter Amendments establishing YU's status as an "educational corporation under the Education Law" since 1969. Dkt. 73 at 15; *accord* ¶¶ 13, 20.
- YU's DASNY bond financing, which states the funds "shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity of any religious denomination." Dkt. 75 at 108; *accord* ¶ 23.
- Affidavits from Defendants Berman and Nissel, which state ways that Judaism is a part of life at YU but do not speak to its corporate status. Dkts. 77, 83.²
- An Employee Handbook that includes a message from former President Richard Joel calling YU "one of North America's premier centers of academic achievement." Dkt. 78 at 3.
- YU's 2016-2020 Strategic Plan that sets forth five primary strategic goals focused on advancing YU's academics, professional development, research, and community engagement. Dkt. 79 at 2.
- The "Mission and History" section of YU's website, which states YU's "commitment to academic excellence in Jewish and secular studies." Dkt. 80 at 3; *accord* ¶ 1.
- Undergraduate Student Council Constitutions that set forth the rules for recognition of student clubs. Dkts. 81-82.

Unable to "utterly refute" the allegations in the complaint or "conclusively establish[] [their] defense as a matter of law," *Goshen*, 98 N.Y.2d at 326, Defendants cannot prevail.

² In any event, "[a]ffidavits are not documentary evidence and are not appropriate proof on a CPLR 3211(a)(1) motion to dismiss." *Johnson v. Asberry*, 190 A.D.3d 491, 492 (1st Dep't 2021).

B. Defendants Ask the Court to Decide a Question of Fact Not Amenable to Resolution on a Motion to Dismiss

Lacking conclusive evidence of their status as a religious corporation, Defendants ask the Court to conduct a fact-laden, “function-based” analysis to determine whether YU is a public accommodation. Dkt. 71 at 9-14. This request ignores the First Department’s clear teaching that “the question of whether a facility is such a place or provider of public accommodation is ordinarily an issue of fact that cannot be determined on a motion to dismiss.” *Carmelengo v. Phoenix Houses of N.Y., Inc.*, 54 A.D.3d 652, 652 (1st Dep’t 2008). Indeed, courts engage in rigorous factual analysis to determine whether an organization is a public accommodation. *Matter of U.S. Power Squadrons v. State Human Rights Appeal Bd.*, 59 N.Y.2d 401, 412-13 (1983) (to determine whether a boating organization was a “distinctly private” entity or a covered place of public accommodation, factfinder analyzed multiple issues about its practices and operations); *see also Matter of Castle Hill Beach Club v. Arbury*, 2 N.Y.2d 596, 604 (1957) (beach club is a public accommodation because patrons “were not limited to any geographical area” or by “occupational category,” “age group,” or “social or economic status”). The First Department’s guidance that “whether a facility is such a place or provider of public accommodation is ordinarily an issue of fact” is particularly well-taken here, since Plaintiffs’ well-pleaded complaint states a cognizable cause of action, and there is no need for the Court to engage in further fact-finding at this time.

C. YU Is Not a “Religious Corporation” Under Section 8-102

Given its fact-intensive nature, a decision on the merits of whether YU is a public accommodation would therefore convert Defendants’ motion to dismiss into a motion for summary judgment under CPLR 3211(c). *See* Siegel N.Y. Prac. § 265 (6th ed. June 2021).

Defendants have not requested this treatment from the Court.³ Even if the Court is nonetheless inclined to reach this issue, YU's proffered evidence fails to establish—much less conclusively—that it is an exempt religious corporation under Section 8-102. Defendants' proposed "religious character" test has no basis in law, and were the Court to apply it, YU would still not qualify as a religious corporation on the evidence submitted.

1. NYCHRL Exemptions Are Narrowly Construed

As an educational institution, YU is covered by the NYCHRL's public accommodations provision, which was "designed as a law enforcement tool with no tolerance for discrimination in public life." Committee Report of the Governmental Affairs Division, Proposed Introductory Bill No. 805-A (March 8, 2016). Consistent with that broad purpose, the NYCHRL provides exemptions to its public accommodations law for *only* "distinctly private" clubs, which include certain small clubs and "religious corporation[s] incorporated under the education law or religious corporation law." N.Y.C. Admin. Code § 8-102.

The language "distinctly private" is intentionally narrow. *Kiwanis Club of Great Neck, Inc. v Bd. of Trustees of Kiwanis Int'l*, 52 A.D.2d 906, 914 n.5 (2d Dep't 1976) (discussing statute's inclusion of word "distinctly" in definition of "private" clubs).

The NYCHRL specifically instructs courts that "[e]xceptions 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). Courts must construe the NYCHRL

³ As the Court is aware, before the Court converts a CPLR 3211(a) motion into a summary judgment motion, it must give "adequate notice to the parties." CPLR 3211(c); *Kelly Masonry Corp. v. Presbyterian Hosp. in City of N.Y.*, 160 A.D.2d 192, 193 (1st Dep't 1990). If the Court wishes to decide the merits of YU's status as a public accommodation, a question of fact, Plaintiffs are entitled to receive notice in order to give them an opportunity to respond to Defendants' documentary evidence with their own evidence.

“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) (cleaned up). Thus, the Court must evaluate YU’s claim for an exemption within (1) the statute’s command that it be interpreted expansively to prevent discrimination; (2) the law’s express rule of narrow construction of exemptions; and (3) the plain language of Section 8-102 that the exemption only applies to a “distinctly private” club or like entity. The burden of proving this exemption applies lies squarely with the party seeking it. *D’Amico v. Commodities Exch., Inc.*, 235 A.D.2d 313, 315 (1st Dep’t 1997). YU not only fails this burden, it never even mentions the statutory framework.

2. YU Is Not Organized as a “Religious Corporation”

YU attempts to style itself as an exempt “religious corporation” to avoid the mandates of the NYCHRL. But YU concedes it is not organized under New York law as a “religious corporation.” YU is an educational institution and is legally organized accordingly. Dkt. 73 at 15 (“[YU] is hereby continued as an educational corporation under the Education Law.”). YU’s claim that it is an exempt religious corporation, although not legally organized as such under New York law, fails.

3. Even Adopting YU’s “Functional” Approach, YU Is Not Exempt

YU wrongly urges the Court to exempt it as a “religious corporation” (although it is not one) and adopt a novel “religious character” test. Dkt. 71 at 9-11. YU then claims to be an exempt “religious organization”—a category that does not exist in the NYCHRL’s public accommodation law. Even applying YU’s invented test, however, YU is still not exempt.

YU’s purpose is not to serve as a “religious corporation” under the Religious Corporations Law (“RCL”). YU is a large research university, not a place of worship or religious observance. Section 8-102(11)’s exemption for “religious corporations” refers to

houses of worship, as defined in the RCL, N.Y. Relig. Corp. Law § 2 (defining a “religious corporation” as a “corporation created for religious purposes”). The purpose of a “religious corporation” is “to meet for divine worship or other religious observances.” *Id.*

The structure of the RCL confirms that a “religious corporation” refers specifically to meeting places for worship and religious observance. The overwhelming majority of the law (Articles 3-24) describes rules specific to the incorporation of “churches” associated with various denominations and religions. *Id.* §§ 40-489. The law’s provisions for Jewish religious corporations refer to “Jewish congregation[s],” *e.g., id.* §§ 195, 207, i.e., “a group of people who have come together in a religious building for worship or prayer.”⁴ That is not YU.

The New York Court of Appeals has held that the term “religious corporation” means places of worship only: “Section 2 of the Religious Corporations Law defines a religious corporation to be a corporation organized for religious purposes. We are not much the wiser for this definition, but an examination of the statute shows that its provisions are devoted to the organization and government of the various denominational churches.” *In re Watson’s Estate*, 171 N.Y. 256, 259-64 (1902). The vague “religious purpose” test proposed by Defendants, untethered to any definition of what actually constitutes a religious corporation, ignores the clear meaning of the term in the RCL.

Defendants wrongly suggest that YU is an exempt “religious corporation under the education law.” YU is not organized as a religious corporation under any law. Even if the Court were to analyze whether YU qualified as a “religious corporation under the education law”—a term Defendants do not attempt to even define—the analysis would still compel the conclusion that YU is not one.

⁴ <https://dictionary.cambridge.org/us/dictionary/english/congregation>.

First, despite staking their entire opposition on a claimed exemption under Section 8-102, Defendants overlook that the Supreme Court examined Section 8-102's exemption in *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1 (1988) ("*NYSCA III*") and recognized that the meaning of "religious corporation" in Section 8-102 is found in the RCL—and not the Education Law. *Id.* at 16–17 ("New York State law indicates" that "religious corporations are unique" because they receive "special treatment" under a "separate body of legislation."); *N.Y. State Club Ass'n v. City of N.Y.*, 118 A.D.2d 392, 395 (1st Dep't 1986) ("It is not without significance that religious corporations are subject to a distinct body of law, the Religious Corporations Law."); *see also* Nancy Kornblum, *Redefining the Private Club*, 36 Wash. U. J. Urb. & Contemp. L. 249, 251 n.15 (1989) (*NYSCA III* "cited N.Y. Relig. Corp. Law § 2, which defines religious corporations as those created for purposes of group worship or religious observance").

Second, although the Education Law does not define the term "religious corporation," its definition of a "religious or denominational educational institution"—its closest analogue to "religious corporation"—accords with the RCL and does *not* include YU. *See* Educ. Law § 313(2)(b) ("[A]n educational institution which is operated, supervised or controlled by a religious or denominational organization and which has certified to the state commissioner of education that it is a religious or denominational educational institution.").

YU is not operated or controlled by a house of worship, nor is it registered with the Commissioner of Education as a religious institution. YU has no claim that it is a "religious corporation under the education law" under Section 8-102.

Defendants' cases confirm YU is not a religious corporation. Defendants' sparse case law examines small religious entities incorporated under statutes other than the RCL and

concludes they are religious corporations *because* their purpose is to be places of worship or religious observance. *Watt Samakki Dhammikaram, Inc. v. Thenjitto*, 631 N.Y.S.2d 229, 231 (Sup. Ct. Kings Cnty. 1995) (“temple/residence” that “advance[s] the religious interests and serve[s] the Cambodian and Buddhist population in Brooklyn” is a religious corporation); *Kroth v. Congregation Kadisha, Sons of Israel*, 105 Misc. 2d 904, 911 (Sup. Ct. N.Y. Cnty. 1980) (synagogue incorporated as a mutual benefit society is de facto religious corporation because it “acted exclusively as a synagogue” and “trustees[] held it out to be a religious corporation”); *Kittinger v. Churchill*, 292 N.Y.S. 35, 46-47 (Sup. Ct. Erie Cnty. 1936) (stock corporation formed for sole purpose of facilitating Reverend engaging in “evangelistic work” is religious corporation).⁵ Unlike these entities, YU is not a house of worship. *None* of these cases concerns a corporation incorporated under the education law, let alone one remotely comparable to a large research university like YU.

YU’s separation from RIETS illustrates that YU is not a religious corporation. YU argues that it was “compelled” by changes to New York Law for “membership corporations” to re-organize as an educational corporation in 1969, implying that, but for this statutory change, YU would exist as a “religious corporation.” YU has its facts wrong. YU’s own documents make clear that it re-organized itself in 1969 to formally separate RIETS, the religious seminary,

⁵ Defendants’ citation to *Jing Zhang v. Jenzabar, Inc.*, No. 12 Civ. 2988, 2015 WL 1475793 (E.D.N.Y. Mar. 30, 2015) is inapposite—*Jing Zhang* interprets Section 8-107(12) and does not even mention Section 8-102. *Id.* at *9-11. Defendants do not argue for a Section 8-107(12) exemption and acknowledge it does not apply in the public accommodations context. Dkt. 71 at 8. Because Section 8-107(12) applies to housing, employment, and admissions only, it uses very different language than Section 8-102 to define exempt institutions. Rather than exempting “religious corporations,” it exempts “religious or denominational institution[s] or organization[s] or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization.” N.Y.C. Admin. Code § 8-107(12).

from YU, which now awards only secular degrees. *See* Dkt. 73 at 13 (“deleting [YU’s] authorization” to award six degrees in “Hebrew Literature” and “religious education”); *Id.* at 14 (establishing RIETS under separate charter to award same six degrees). Indeed, the Charter Amendment establishing YU as a separate corporation does not mention religion except to state that religion should play *no role* in its governance: “[p]ersons of every religious denomination shall be equally eligible to offices and appointments” at YU. *Id.* at 15, ¶ 8.

Back in 1995, YU’s lawyers advised YU in the clearest possible terms that the argument it urges today in this motion was baseless: “The attorneys firmly believe that 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 University’s legal status as a nondenominational institution.” Dkt. 6 at 4.

4. The NYCHRL’s Legislative History Confirms It Covers YU

The NYCHRL’s public accommodations protections are intentionally broad: they ensure equal access to “advantages or privileges of any kind” where “extended, offered, sold or otherwise made available.” N.Y.C. Admin. Code § 8-102(11). As part of full participation in campus life, YU extends and makes available to student organizations many significant “advantages” and “privileges,” including use of campus space, advertising, funding, and participation in student fairs. The statute’s purpose is only effectuated by the Alliance’s inclusion.

Section 8-102 protects professional development opportunities. The City Council expanded the NYCHRL’s public accommodations protections to “eliminate discrimination in clubs that are not distinctly private” based on its “compelling interest in providing its citizens . . . a fair and equal opportunity to participate in the business and professional life of the city” so that they “may be unfettered in availing themselves of employment opportunities.” Local Law 63 at

1 (1984); *see also* *NYSCA III*, 487 U.S. at 16 (“The City Council [] limited the Law’s coverage to large clubs and excluded smaller clubs, benevolent orders, and religious corporations because the latter associations have not been identified in testimony before the Council as places where business activity is prevalent.” (cleaned up)).

YU prepares students for professional life. YU’s 2016-2020 Strategic Plan, submitted by Defendants, demonstrates that preparing students for professional life is essential to YU’s mission: “YU prides itself on preparing students for success in the lives they lead and the careers they build.” Dkt. 79 at 4. It establishes as its first “Strategic Priority” to “Enhance Student Success and Wellbeing—Academic, Professional and Personal,” and implement this priority by “[c]reat[ing] individualized and integrated academic . . . and career/professional programs.” *Id.* at 2-4. Exempting YU from the NYCHRL’s public accommodations provision would flout the City Council’s intent to ensure historically marginalized groups have access to equal educational and professional opportunities, and to target segregation and subordination within the market and public life.

YU’s statutory reading would eviscerate the NYCHRL. YU’s suggestion that a large university educating thousands of students can “self-exempt” from the NYCHRL’s public accommodations protections by claiming to be a “religious corporation,” although not organized as such and not a place of worship, would gut those protections. The statute *has* an exemption related to the religious mission of an organization in Section 8-107(12), which allows limited “religiously motivated discrimination exclusively” in housing, employment, and admissions. Elizabeth Sepper, *The Role of Religion in State Public Accommodations Laws*, 60 St. Louis Univ. L.J. 531, 655-56 (2016). This religious exemption, generally understood to permit preferences in favor of co-religionists, stands in “contrast” to Section 8-102, which permits no

such exemption for “religiously motivated discrimination.” *Id.* No parallel exemption exists in the NYCHRL’s public accommodations provision. If the legislature had intended to allow a broad “religiously motivated” discrimination exemption in the public accommodations section, it knew how to create one. But it did not.

5. Defendants’ Rejection of a Fraternity and Gaming Clubs Is Nothing Like Their Rejection of the Pride Alliance

Defendants’ rejection of the AEPi fraternity and gaming and gambling clubs, which they claim are “consistent” with their rejection of the Pride Alliance, Dkt. 71 at 6, in fact draw a stark contrast that reveals their discrimination against Plaintiffs. Defendants rejected the fraternity and gaming clubs because of the clubs’ *conduct*—“fraternity life” (partying) and “gaming” that did not accord with the YU’s values. Dkt. 77 ¶¶ 43-44. Here, however, Defendants do not articulate any objection to the Pride Alliance’s proposed conduct—hosting speakers and building a safe space for students to meet and support each other. ¶¶ 43, 45, 94. They object instead to the sexual orientation and gender identity of its members and mission.

6. The Constitutional Avoidance Canon Has No Role Here

Defendants’ invocation of the constitutional avoidance canon—another legal concept they fail to define—to argue that the Court should interpret Section 8-102 to exempt them from the definition of a public accommodation to avoid constitutional issues, Dkt. 71 at 7, is entirely misplaced. The canon “is a tool for choosing between competing plausible interpretations of a statutory text” where one interpretation “raises serious constitutional doubts.” *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005). But, as set forth above, Defendants’ interpretation that YU is a “religious corporation” under Section 8-102(11) is not a plausible one. And, as set forth below, requiring Defendants to comply with the law raises no constitutional doubts—much less serious ones.

V. YU HAS NO FIRST AMENDMENT RIGHT TO CONTINUE TO VIOLATE THE NYCHRL

The Court must apply rational basis review to Defendants' First Amendment arguments, under which a city law is presumptively constitutional unless "the city could not reasonably believe" that the law furthered a legitimate government interest. *NYSCA III*, 487 U.S. at 16 (applying rational basis review to constitutional challenge to Section 8-102). The test applies to each of Defendants' cursory First Amendment challenges, whether facial or as applied. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1128 (2019).

Defendants' claim that the NYCHRL's anti-discrimination provisions generally violate the Free Exercise Clause fails. In the case of a Free Exercise challenge, a law is valid when it is neutral and generally applicable. *Emp. Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 878 (1990). Because the NYCHRL is a neutral law of general applicability, it cannot violate the Free Exercise Clause unless there is no rational basis for the statute. Here, the rational basis is clear. The NYCHRL prohibits discrimination based on protected characteristics, such as gender and sexual orientation, in places of public accommodation, to promote full participation in public life and the economy for all New Yorkers. "[T]he 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).'" *Cath. Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 521 (2006) (quoting *Smith*, 494 U.S. at 879). The NYCHRL is such a law; it is valid and applicable to Defendants.⁶

⁶ Defendants erroneously claim strict scrutiny applies to their Free Exercise challenge rather than rational basis. Perplexingly, Defendants claim Section 8-102's exemption for "distinctly

Under the applicable standard, a party “can only succeed in a facial challenge by establishing that no set of circumstances exists under which the [law] would be valid, i.e., that the law is unconstitutional in all of its applications.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (cleaned up). Of course, that is not the case here. Far from unconstitutional in all applications, the Supreme Court has already held that at least one of the challenged exemptions is valid. *See NYSCA III*, 487 U.S. at 16 (Section 8-102 valid as written).

Defendants’ remaining First Amendment arguments all fail.

First, recognizing a student club is not compelled speech for YU. As a major university preparing students for professional, business, and public life, YU provides a range of privileges and advantages to its students, including resources for student organizations based on common interests. Defendants do not claim that recognizing any of these organizations commits them to being “instrument[s] for fostering public adherence to an ideological point of view.” Dkt. 71 at 16. Nor could they. The Supreme Court has cited approvingly to its decision in *NYSCA III* that the NYCHRL “compelled access to the benefit [of membership in a private club and] did not trespass on the organization’s message itself.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 580 (1995). Here too, equal treatment of the Pride Alliance to YU’s 100+ other clubs does not imply YU’s approval of any particular club’s point of view.

private” clubs—including religious corporations—and Section 8-107(12)’s protection of religious principles violate the Free Exercise Clause by favoring secular activity, even as both provisions protect *religious* activity. *See* Dkt. 71 at 15-16. Unlike *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), where California limited religious gatherings more strictly than secular gatherings, the NYCHRL is *less* restrictive towards religious corporations—it exempts religious corporations from compliance with certain provisions that govern secular institutions. N.Y.C. Admin. Code §§ 8-102, 8-107(12). Defendants have no Free Exercise claim, and strict scrutiny does not apply.

Defendants' only other "free speech" argument is a convoluted complaint that Plaintiff Meisels expressed in an interview that she hoped an LGBTQ club would foster a more inclusive YU. Plaintiff Meisels' comments to a reporter are irrelevant to YU's legal obligation to recognize the Pride Alliance under the NYCHRL—and whether that recognition ultimately creates "cultural change" at YU does not affect that obligation.

Second, Defendants' free assembly rights are not implicated here. Defendants do not identify any legal basis for their assertion that refusing to recognize a student club violates YU's constitutionally protected right of assembly. Defendants cite *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020) and *Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972)—neither case even references the Assembly Clause, much less establishes a right under it to deny students equal access to a university's benefits. Defendants' claim that Plaintiffs are attempting to "turn" YU "toward Plaintiffs' preferred religious message," Dkt. 71 at 17, is not only incorrect, it is also entirely unrelated to Defendants' right to assemble.

Finally, Defendants' offhand invocation of the "religious autonomy" case law has no application here. The United States Constitution does not prove an independent right to "religious autonomy." Rather, as Defendants' cited cases show, the Supreme Court has recognized that a "ministerial exception" applies to protect religious institutions from employment discrimination claims based on an employee's non-adherence to the employer's religion. *See, e.g., Our Lady*, 140 S. Ct. at 2060. This protection is not implicated by Plaintiffs' claims.

VI. PLAINTIFFS ALLEGE SUFFICIENT FACTS TO STATE A CLAIM THAT DEFENDANT NISSEL IS LIABLE TO PLAINTIFFS

Plaintiffs have sufficiently alleged that Defendant Nissel is individually liable to Plaintiffs for his violation of Sections 8-107(4)(a)(1) and (2).

A. Plaintiffs Allege That Defendant Nissel Denied Recognition of the YU Pride Alliance and Its Predecessor in Violation of Section 8-107(4)(a)(1).

Plaintiffs allege that Defendant Nissel is an agent and employee of Yeshiva University, a provider of public accommodation under Section 8-102. ¶¶ 13, 14 (Nissel “has been employed as the Vice Provost of Student Affairs from August 2020 to the present,” “was previously employed as the University Dean of Students from 2012 to August 2020,” and is also “the University’s Title IX Coordinator.”). As such, he is subject to the provisions of Section 8-107(4).

Plaintiffs further allege that on at least two occasions, Nissel refused, withheld from, or denied Plaintiffs the full and equal enjoyment, on equal terms and conditions, of the accommodations, advantages, services, facilities, and privileges available to Yeshiva University students. Specifically, Plaintiffs allege that, in or around late February 2019, Defendant Nissel denied the formation of an LGBTQ club. ¶ 50 (Nissel “verbally informed Plaintiff Miller that an LGBTQ club would not be allowed to form, stating, in sum and substance, that while a club addressing general student tolerance on campus would be allowed, a club specifically addressing LGBTQ inclusion would not.”) Plaintiffs further allege that one year later, Defendant Nissel withheld approval of the YU Pride Alliance’s club application until it was too late for the club to be approved. ¶¶ 90-91. Plaintiffs allege that on each occasion, Nissel’s decision was based on Plaintiffs’ real or perceived gender identity or sexual orientation. ¶ 117. Thus, Nissel’s conduct—as pled in the Complaint—constitutes impermissible denials of equal access to a public accommodation under Section 8-107(4)(a)(1). ¶¶ 145, 148, 152, 156.

Nissel’s affidavit in support of Defendants’ motion, which attempts to distance Nissel from his own decisions, is entitled to no weight at this stage. Factual affidavits by a defendant generally may not be considered on a motion to dismiss under CPLR 3211(a)(1) or (7). *Johnson*,

190 A.D.3d at 492 (“Affidavits are not documentary evidence and are not appropriate proof on a CPLR 3211(a)(1) motion to dismiss); *Basis Yield Alpha Fund (Master)*, 115 A.D.3d at 134 (documentary evidence “seldom if ever” considered on CPLR 3211(a)(7) motion “unless such evidence conclusively establishes that plaintiff has no cause of action” (cleaned up)); *see also Miglino v. Bally Total Fitness of Greater New York, Inc.*, 20 N.Y.3d 342, 351 (2013) (declining to consider party affidavits at the motion-to-dismiss stage).

Even if the Court converts Defendants’ CPLR 3211(a) motion to a motion for summary judgment under CPLR 3211(c) for the purpose of considering Nissel’s affidavit, *Rovello*, 40 N.Y.2d at 636 (requiring conversion of motion from CPLR 3211(a) to CPLR 3211(c) to consider defendants’ affidavit), the affidavit *supports* Plaintiffs’ allegation that Nissel denied approval of the YU Pride Alliance. Nissel admits that his responsibilities include “overseeing Yeshiva’s Office of Student life, which manages all student clubs,” Nissel Aff. ¶ 28, and that he and the Director of Student Life “discuss the approval” of proposed clubs that raise “especially complex issues.” *Id.* ¶ 37. Plaintiffs allege that precisely such a discussion occurred in February 2020 prior to when Nissel withheld approval of the YU Pride Alliance. ¶¶ 90-91. Tellingly, Nissel’s affidavit is silent on this exercise of his oversight of the YU Pride Alliance’s club application. Plaintiffs have alleged more than sufficient facts to state a claim against Nissel under Section 8-107(4)(a)(1) for his ongoing role in refusing and withholding official recognition from the YU Pride Alliance.

If the Court nonetheless finds that the Complaint alleges insufficient facts to state a claim that Defendant Nissel committed discrimination in violation of Section 8-107(4)(a)(1), Plaintiffs respectfully request the Court’s leave to amend the Complaint to cure any perceived deficiencies and to state a separate cause of action against Defendant Nissel for aiding and abetting in

Defendant Yeshiva University's denial of a public accommodation to Plaintiffs pursuant to N.Y.C. Admin. Code § 8-107(6). *See Artis v. Random House, Inc.*, 34 Misc. 3d 858, 868 (Sup. Ct. N.Y. Cnty. 2011) (separate Section 8-107(6) aiding and abetting claim against defendants who "excused and acquiesced in the racial and sexual harassment of plaintiff").

B. Plaintiffs Allege That Defendant Nissel Repeatedly Stated to Plaintiffs that YU Pride Alliance and Its Predecessor Club Would Not Be Officially Recognized

In addition to repeatedly denying Plaintiffs' requests to form an LGBTQ club, Plaintiffs allege that Defendant Nissel further violated Section 8-107(4)(a)(2) by stating to Plaintiffs and at least one other YU student that Defendants had denied, and would continue to deny, official recognition to an LGBTQ club.

Under Subsection (a)(2), Defendant Nissel may not "make any declaration" that the "accommodations, advantages, facilities and privileges of" Yeshiva University "shall be refused, withheld from or denied to any person on account of . . . gender [or] sexual orientation." N.Y.C. Admin. Code § 8-107(4)(a)(2)(a). Plaintiffs allege that Defendant Nissel declared on multiple occasions that YU would not permit an LGBTQ club because of its LGBTQ status. *See* ¶ 50 ("Defendant Nissel verbally informed Plaintiff Miller that an LGBTQ club would not be allowed to form . . . :"), ¶¶ 90-91 (Nissel refused to give YU Pride Alliance a timely answer on club approval, constructively denying the club), ¶ 112 (Nissel informed a YU student that YU had decided not to approve the YU Pride Alliance). Indeed, Nissel stated in his own affidavit that his role "was to communicate the decisions to the students." Nissel Aff. ¶ 57. Plaintiffs allege a cognizable cause of action that Nissel repeatedly declared that an LGBTQ student organization could not receive formal recognition from YU, in violation of Section 8-107(4)(a)(2).

C. Nissel's Purported Lack of Authority Is Irrelevant

Defendant Nissel now claims that he “lacked authority” to approve the YU Pride Alliance. Defendant Nissel’s statement is incredible because he is and was a highly senior administrator at YU, acting as Vice Provost or Dean at all applicable times. In any event, Section 8-107(4) does not require that an agent or employee have any particular “authority” or “decision-making” power to be liable for discrimination in withholding or denying equal access to a public accommodation, and Defendants cite no cases for this proposition. The statute states simply that:

It shall be an unlawful discriminatory practice for any person who is the . . . agent or employee of any or provider of public accommodation: (1) Because of any person's actual or perceived . . . gender . . . sexual orientation . . . 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.

Here, Plaintiffs allege that Nissel repeatedly refused and withheld official recognition of an LGBTQ student club, because of Plaintiffs’ actual or perceived gender or sexual orientation.

None of Defendants’ citations are to the contrary. In each cited case, all of which examine employment discrimination claims, the court looked to a defendant employee’s supervisory responsibilities (or lack thereof) to determine the employee’s liability to a co-employee for employment discrimination. *See Palmer v. Cook*, Index No. 718697/2018, 2019 WL 3686889, at *4 (Sup. Ct. Queens Cnty. Aug. 5, 2019) (“NYCHRL extends liability to co-employees under limited circumstances . . . for an employer’s discriminatory practices” against another employee, per established multi-part test determining imputed liability on employment discrimination claims); *Priore v. New York Yankees*, 307 A.D.2d 67, 74 (2003) (“[Section 8-107(1)(a)] includes fellow employees under the tent of liability, but only where they act . . . in

some agency or supervisory capacity.”); *Mitra v. State Bank of India*, No. 03 Civ. 6331, 2005 WL 2143144, at *3 (S.D.N.Y. Sept. 6, 2005).

These cases interpreting New York State and City employment discrimination provisions have no bearing on the individual liability of an agent or employee of a provider of a *public accommodation* under Section 8-107(4). Plaintiffs squarely alleges that Defendant Nissel violated these obligations through his conduct alleged in the Complaint. Acting as Vice Provost and Dean, he repeatedly withheld official recognition from the YU Pride Alliance, and publicly stated that the YU Pride Alliance would not be recognized because of its LGBTQ status.

Defendants’ motion should be denied in its entirety.

Date: June 17, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld
Marissa Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
Telephone: (212) 763-5000
Fax: (212) 763-5001

Attorneys for Plaintiffs

Diane L. Houk, *Of Counsel*

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

----- X

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Plaintiffs' Memorandum of Law in Further Support of Preliminary Injunction has 6,992 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

Date: June 17, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld

Marissa Benavides

Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
Telephone: (212) 763-5000
Fax: (212) 763-5001

Attorneys for Plaintiffs

Diane L. Houk, *Of Counsel*

- Exhibit K -

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

Decision/Order as to Seqs. 2&3
Interim Order as to Seq. 6
PART 8

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

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

INDEX NO. 154010/2021

MOT. DATE

MOT. SEQ. NO. 2, 3 and 6

- v -

YESHIVA UNIVERSITY, VICE PROVOST CHAIM
 NISSEL and PRESIDENT ARI BERMAN

The following papers were read on this motion to/for _____
 Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
 Notice of Cross-Motion/Answering Affidavits — Exhibits
 Replying Affidavits

ECFS DOC No(s). _____
 ECFS DOC No(s). _____
 ECFS DOC No(s). _____

The year is 2021. Defendant is a school that refuses to formally recognize an LGBTQ organization. But the defendant is not just any school. Defendant is Yeshiva University, 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. Plaintiffs are the student organization wishing to obtain formal recognition, namely YU Pride Alliance, and both named former students and an anonymous current student. The remaining defendants are Vice Provost Chaim Nissel and President Ari Berman of Yeshiva.

There are three motions pending before the court. In motion sequence 2, plaintiffs seek an order restraining the defendants 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. Plaintiffs further seek an order granting YU Pride Alliance “the full and equal accommodations, advantages, facilities, and privileges of Yeshiva University, because of the actual or perceived sexual orientation or gender of the YU Pride Alliance’s members, and/or the YU Pride Alliance’s status, mission and/or activities on behalf of LGBTQ students.” Defendants oppose that motion.

In motion sequence 3, defendants move for leave to file certain documents in their opposition to plaintiffs’ motion for a preliminary injunction under seal, or alternatively leave to submit said documents in unredacted form to the court for *in camera* review. There is no opposition to that motion.

Finally, in motion sequence 6, defendants move to dismiss this action. They argue that plaintiff’s claims are untenable under the New York City Human Rights Law, N.Y.C. Admin Code § 8-101, *et seq.*, (the “NYCHRL”) because Yeshiva falls within an exception to its application. Defendants further argue

Dated: 8/18/21


 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

that if the NYCHRL applies to them, such application is unconstitutional. Finally, defendants separately move for dismissal of the claims against Nissel on the grounds that he is not a decision-maker, but rather, a messenger. Plaintiffs oppose that motion.

For the reasons that follow, the motion for a preliminary injunction is denied, the motion for leave to file under seal is denied without prejudice to renewal, and the motion to dismiss is converted to one for summary judgment pursuant to CPLR § 3212.

Background

Yeshiva enrolls more than 3,000 undergraduate students at Yeshiva College, Stern College for Women, the Sy Syms School of Business, the Katz School of Science and Health, and the S. Daniel Abraham Program in Israel. Yeshiva describes itself as a “deeply religious” university, to wit, all students are required to engage in religious studies, its campuses are sex-segregated, synagogues are located throughout both the men’s and women’s campuses so that students may pray and participate in other religious services, students must observe Orthodox Jewish laws and undergraduate dorms are governed by Torah values. Indeed, plaintiffs concede Yeshiva’s deeply religious character in their pleadings.

Relevant to this court’s inquiry, plaintiffs allege that Yeshiva “is registered as an educational corporation, rather than a religious one” and is therefore eligible to receive certain New York State funding as a result.

Meanwhile, plaintiffs allege that Yeshiva has formally recognized 116 undergraduate student clubs as of the Fall 2020 semester. These clubs range from special-interest groups “as diverse as poetry and private equity, video games and the outdoors, and College Democrats and College Republicans, as well as across broad categories such as “Art,” “Business,” “Health and Wellness,” “Sports and Fitness,” and “Politics and Activism.” Yeshiva further recognizes several cultural and affinity groups for students such as the Sephardic Club, YU Europeans, and the International Club.

To form a club at Yeshiva, students must submit an application in accordance with the procedures of Yeshiva’s campuses where the students wish to have the club. This process delegates approval of student clubs to Yeshiva’s student governments at each campus, but Yeshiva retains ultimate authority to override the decision of the student governments and accept or reject a club.

Plaintiffs further allege that Yeshiva has denied formal recognition to undergraduate LGBTQ organizations for more than a decade: “[o]ne of the first public iterations of an LGBTQ club at [Yeshiva], the “Tolerance Club,” officially formed in 2009.” In 2009, the Tolerance Club held an event called “Being Gay in the Modern Orthodox World”, where students complained about “the school’s atmosphere of silence surrounding issues of LGBTQ identity”. Shortly after that event, plaintiffs allege that the Tolerance Club disbanded due to “significant pressure it faced from the [Yeshiva] administration”.

In Spring 2019, Yeshiva refused to recognize a gay/straight alliance aptly called The Gay-Straight Alliance. This organization was proposed by several of the plaintiffs to school officials including defendant Nissel. On or about February 3, 2019, several Yeshiva students submitted a formal application to the Student Council presidents for club approval of a gay/straight alliance. In the application, the stated purpose of the club was “to provide a safe space for students to meet, support each other, and talk about issues related to the intersection of sexual orientation and Jewish identity.”

On February 5, 2019, plaintiff Miller and other students met with defendant Nissel to discuss the gay/straight alliance’s application. During this meeting, Nissel allegedly told the students that such a group would be allowed to form “as long as it was not called “Gay Straight Alliance” and did not include the terms “LGBT,” “queer,” or “gay” in the title”.

On February 13, 2019, the students proposed to defendant Nissel that the gay/straight alliance be called "Ahava" (the Hebrew word for "love"). In response, defendant Nissel sent a description of the "Jewish Activism Club," which mentioned LGBTQ inclusion along with numerous other topics in its mission statement, and indicated that the two overlapped and therefore there was no need for a gay/straight alliance. Thereafter, plaintiff Miller held further fruitless meetings with Yeshiva administrators in an effort to obtain recognition of the gay/straight alliance.

In April 2019, plaintiff Meisels invited New York State Assembly Member Deborah Glick to speak on campus about her experience as an LGBTQ legislator. Yeshiva's Office for Student Life ("OSL") approved the event. Plaintiffs further allege:

However, during the planning process for the event, members of the YU administration variously informed Plaintiff Meisels that (1) they did not want her to host the event and provide a space for LGBTQ students to complain to Assembly Member Glick about their experience on campus; and (2) if the event did take place, it could not focus on LGBTQ issues. After Plaintiff Meisels negotiated with the OSL, the OSL allowed the event to move forward under the title, "Overcoming Adversity: Minority Representation in NY Politics." The event was held on May 2, 2019.

In September 2019, plaintiff YU Pride Alliance was formed. The unofficial club was announced at a march held on September 15, 2019 in which plaintiff Meisels along with several other Yeshiva students, alumni and other supporters participated. The march, titled the "We, Too, Are YU" march, ended at one of Yeshiva's campuses.

Plaintiffs further allege, upon information and belief, that in response to YU Pride Alliance's formation and attempt to seek formal recognition by Yeshiva, Yeshiva convened a panel tasked with "fostering initiatives to address matters of inclusion, including LGBTQ-related issues." Plaintiffs complaint that this panel "required the members of the YU Pride Alliance to justify the need for an LGBTQ student club to a degree never required of another student group seeking approval." At a December 3, 2019 meeting between members of YU Pride Alliance including plaintiffs Meisels and Weinreich, and Yeshiva's Senior Vice President Josh Joseph, the latter urged the former to abandon their efforts to form an LGBTQ club because he and defendant Berman believed that some Yeshiva administration officials' views and the YU Pride Alliance members' views were likely to be "irreconcilable."

On January 30, 2020, YU Pride Alliance submitted a formal application to the Yeshiva Student Union, the student governing body charged with approving or denying applications in the first instance. YU Pride Alliance's mission statement is as follows:

The Yeshiva University Alliance is a group of undergraduate YU students hoping to provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented. Conversation is at the heart of our community, in order to foster awareness and sensitivity to the unique experiences of being a LGBTQ+ person in YU and the Orthodox community, and to advocate for their unconditional inclusion and acceptance. Our space will promote open dialogue for all, regardless of religious views and political affiliations. We ask students to be cognizant and respectful of the beliefs, experiences, and backgrounds of everyone in attendance at our functions. At our events, please do not express assumptions about or hostility towards any person or organization.

On or about February 9, 2020, the Student Council Presidents abstained from voting on YU Pride Alliance's application, leaving the matter to Yeshiva administration to decide. This decision was set forth in an email to the Yeshiva student body which allegedly read in part as follows:

The decision about a club focusing on LGBTQ+ matters at Yeshiva University is too complex and nuanced to be voted on by Student Council Presidents. We are not administrators, we are not rabbis, and we are not subject matter experts.

Plaintiffs claim, upon information and believe, that the student governing body had never before abstained from voting on a club application. Meanwhile, by on or around February 9, 2020, plaintiffs claim that all other new club applicants for the Spring 2020 semester received a decision regarding approval or denial of the club, except for the YU Pride Alliance.

On or about February 9, 2020, plaintiff Weinreich filed a discrimination complaint with YU about the YU Alliance's Spring 2020 club's application for official status. On or about February 27, 2020, plaintiff Weinreich learned that Yeshiva had determined that no action was required in response to his discrimination complaint since no official determination regarding YU Pride Alliance's status had been rendered.

According to plaintiffs, Yeshiva never made a decision as to whether it would formally recognize the YU Pride Alliance during the Spring 2020 semester. Plaintiffs assert that the lack of recognition prohibits them from participating in club fairs, fundraise to support its events, and the use of university facilities, including virtual facilities provided by Yeshiva during the ongoing COVID-19 pandemic.

In September 2020, plaintiffs again applied for official club status for the Fall 2020 semester. In a statement emailed to the Yeshiva student body, Yeshiva officials stated that as policy that Yeshiva would not recognize LGBTQ clubs on campus. The statement, which has been provided to the court, explained:

The message of Torah on this issue is nuanced, both accepting each individual with love and affirming its timeless prescriptions. While students will of course socialize in gatherings they see fit, forming a new club as requested under the auspices of YU will cloud this nuanced message.

The statement further promised that Yeshiva would "create a space for students, faculty and Roshei Yeshiva to" "continue to explore ways of bringing about greater awareness and acceptance", update its "diversity, inclusion and sensitivity training to be focused on [Yeshiva's] diverse student groups, including sexual orientation and gender identity" and Yeshiva's "distinguished Counseling Center will continue to address all of [its] students' needs" and "enhance its services by ensuring that there is a clinician on staff with specific LGBTQ+ experience." The statement was signed by Dr. Yael Muskat, Rabbi Yaakov Neuburger, Dr. Rona Novick, and Dr. David Pelcovitz.

On September 29, 2020, members of the YU Pride Alliance attended a YU Inclusion Panel with defendant Nissel, Rosh Yeshiva Yaakov Neuburger, Dean Rona Novick, Counseling Center Director Yael Muskat, and Professor David Pelcovitz. Plaintiffs claim in that meeting that Rosh Yeshiva Neuburger stated

making an LGBTQ club formal would "cloud" the issues being considered and sacrifice real accomplishment. He then said that a conversation about holding events could be held in the future, but that YU would not commit to having any substantive discussion about what event guidelines could look like without having actual proposed events in hand.

Plaintiffs claim that Yeshiva's refusal to formally recognize YU Pride Alliance as a club is unlawful discrimination based on sex, sexual orientation, and gender identity and expression in violation of both Yeshiva policy and the NYCHRL. Specifically, plaintiffs assert that Yeshiva is a provider of public accommodation and the NYCHRL prohibits such providers from denying "full and equal enjoyment" of those "accommodations, advantages, services, facilities, or privileges" due to gender and sexual orientation (Admin Code § 8-107[4], [20]). Plaintiffs assert four causes of action: three claims for violation of

Admin Code § 8-107(4) and one for violation of Admin Code § 8-107(20). Plaintiffs seek declaratory and injunctive relief as well as money damages including punitive damages, attorneys fees and costs.

Discussion

The court will first consider the motion for a preliminary injunction. A preliminary injunction is a drastic remedy and should not be granted unless plaintiff can demonstrate "a clear right" to such relief (*City of New York v. 330 Continental, LLC*, 60 AD3d 226 [1st Dept 2009]). On a motion for preliminary injunctive relief, plaintiff must demonstrate a likelihood of success on the merits, irreparable injury absent the granting of the preliminary injunction, and a balancing of the equities in its favor (see *Aetna Ins. Co. v. Capasso*, 75 NY2d 860 [1990]; see also *1234 Broadway LLC v. West Side SRO Law Project*, 86 AD3d 18 [1st Dept 2011]). Here, plaintiffs have not met their heavy burden.

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 NY-CHRL, 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 educa-**

tion 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.)

Based upon this statutory framework, the court finds that plaintiffs have failed to demonstrate a likelihood of success on the merits for the reasons that follows. The NYCHRL expressly excludes "a religious corporation incorporated under the education law" as a place or provider of public accommodation. Yeshiva asserts both in opposition to the motion for a preliminary injunction as well as in support of its motion to dismiss 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.

The court notes that plaintiffs do separately allege that Yeshiva has violated its own policies, which would be subject to a CPLR Article 78-style analysis of whether the determination to withhold formal recognition of YU Pride Alliance was irrational, arbitrary or capricious. This argument presents its own issues, however, notably with timeliness and the four-month statute of limitations applicable to such challenges, which the court does not pass on at this juncture.

On reply, plaintiffs argue that Yeshiva cannot be classified as a religious corporation because it is a research university with a \$500 million endowment and 3,000 undergraduates who receive training for "an array of secular employment and business opportunities." The court disagrees. Plaintiffs urge the court to narrowly construe the public accommodation exception under Admin Code § 8-102 as only applying to "distinctly private" small clubs and religious corporations. This reading of the Administrative Code is contrary to the plain language of the statute. While exceptions to the NYCHRL should be narrowly construed (NYCHRL § 8-130[b]) and the NYCHRL should be construed broadly in favor of plaintiffs (*Bennett v. v. Health Mgmt. Sys., Inc.*, 92 AD3d 29, 34 [1st Dept 2011]), plaintiff's interpretation would have this court entirely reject the exception and/or ascribe a meaning to the term "distinctly" contrary to how that term is normally used. Indeed, this court views the Legislature's use of the term "distinctly" as employed to differentiate between places or providers of public accommodation and places or providers of private accommodation such as religious corporations incorporated under the education law or the religious corporation law.

Plaintiffs further cite a 102-year old case (*McKaine v. Drake Bus. Sch.*, 107 Misc. 241 [1st Dep't 1919]) applying Civil Rights Law § 40 which is inapplicable since this statute has no bearing on the clear, unambiguous language of the specific statute upon which this lawsuit is based. Otherwise, plaintiffs point to Yeshiva's IRS filings and Undergraduate Bill of Student Rights, which falls woefully short of its burden of showing that Yeshiva is outside the carve-out of the NYCHRL's application to places of public accommodation.

The court further finds that the injunctive relief plaintiffs seek would not maintain the status quo, another factor militating in favor of denial of their motion. Plaintiffs allege that Yeshiva's refusal to formally recognize an LGBTQ organization has been ongoing for over a decade. The relief plaintiffs seek would change that status quo. In fact, the relief plaintiffs seek via preliminary injunction is part of the ultimate relief they seek in this action. This factor also weighs against plaintiffs.

Accordingly, the motion for a preliminary injunction must be denied. In light of this result, the court declines to consider the parties' arguments as to whether Yeshiva should be exempted as a religious corporation based upon its religious character as moot to the application for a preliminary injunction.

Defendants' motion for leave to file its unredacted memorandum of law in opposition to plaintiff's motion for a preliminary injunction under seal is denied as moot, since the motion has been decided in

Yeshiva's favor without the need for an unredacted version of its memo. This denial is without prejudice to seeking leave to file the same subject matter under seal or for *in camera* review. Such an application should be brought via order to show cause so that it can be promptly considered by the court in tandem with any relevant applications pending in this action.

Finally, defendants move to dismiss the complaint. Plaintiffs point out that defendants' motion is based upon many facts and proof which goes beyond the scope of an ordinary motion to dismiss. The court agrees. This case is ripe for summary adjudication. Accordingly, the court converts the motion to dismiss to one for summary judgment on notice to the parties (CPLR § 3211[c]).

The court will grant the parties an opportunity to file surreplies to motion sequence 6 as follows: plaintiffs to file and serve a surreply on or before September 17, 2021; defendant to file and serve a surreply on or before October 15, 2021.

The parties are directed to appear for oral argument on October 19, 2021 at 12pm via Microsoft Teams. Invitations to the Teams meeting will be sent to counsel of record on NYSCEF. Any person or party who wishes to participate/observe the oral argument may request a meeting invitation by sending an email to Steven Carney, Part 8 Clerk, at SCARNEY@nycourts.gov.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that motion sequence 2 is denied; and it is further

ORDERED that motion sequence 3 is denied as moot without prejudice to renewal; and it is further

ORDERED that motion sequence 6 is converted to a motion for summary judgment pursuant to CPLR § 3211(c). Plaintiffs to file and serve a surreply on or before September 17, 2021; defendant to file and serve a surreply on or before October 15, 2021.

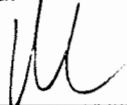
The parties are directed to appear for oral argument on motion sequence 6 on October 19, 2021 at 12pm via Microsoft Teams. Invitations to the Teams meeting will be sent to counsel of record on NYSCEF. Any person or party who wishes to participate/observe the oral argument may request a meeting invitation by sending an email to Steven Carney, Part 8 Clerk, at SCARNEY@nycourts.gov.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated:

8/18/21
New York, New York

So Ordered:



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

- Exhibit L -

-----X

-----X

1 of 10

My Observations as a YU Student Leader of the Challenges Facing LGBT YU Students

4. I was elected President of the Yeshiva College Student Association (“YCSA”) in 2018 and I served in that role for the 2018-2019 school year. I was a Vice President in student government for the 2017-2018 school year.

5. As President of YCSA, the focus of my tenure was LGBTQ issues on campus. To address the status of LGBTQ students on campus, I met with President Rabbi Dr. Ari Berman three times, University Dean of Students Dr. Chaim Nissel over five times, had multiple meetings with University administrators including Senior Vice President Josh Joseph and Rabbi Menachem Penner, and held many conversations with campus stakeholders including a board member and fellow campus leaders. Here are articles detailing some of my efforts.¹

6. At the beginning of my 2018-2019 term as YCSA President, I became more aware of the ubiquitous and pervasive hardships faced by LGBTQ students on our campus. Many faced rejection and isolation from family, friends, and their faith, even struggling to find self-acceptance. LGBTQ students on campus felt isolated and excluded, and did not feel as though they were wanted members of the YU campus community. As a student leader and an LGBTQ person myself, the unique challenges faced by the LGBTQ student community resonated with me.

7. During my tenure, I met with LGBTQ students to better understand their experiences and struggles on campus and within their broader social situations. I found that students faced isolation and rejection on many levels. On an individual level, students felt uncomfortable in their own skin and fearful of accepting the reality of their identities. Students who were closeted spoke about the feelings of isolation that accompanied living with a secret

¹ <https://yucommentator.org/2019/11/former-student-leaders-detail-past-efforts-for-lgbtq-inclusion/>;
<https://momentmag.com/enough-is-enough-yeshiva-university-students-protest-lgbtq-discrimination-on-campus/>.

that could dramatically alter the trajectory of their social and religious lives. On a social level, students expressed feeling isolated and rejected from their families, communities, and peer groups. Familial tensions faced by LGBTQ YU students manifested themselves in many ways, from parents who saw reparative therapy as a viable solution to parents who, unsure of how to respond to their children, resorted to estrangement. In addition, students felt rejected from their faith, unable to envision themselves as a part of their future Jewish communities. Many LGBTQ students struggled with the perception that there was something “wrong” with them, which was only reinforced by YU faculty statements that legitimized reparative therapy and YU’s silencing of discussions around their identities.

The Pressing Need for an LGBTQ Student Club at YU

8. Through my work as YCSA President, it became clear that LGBTQ students looked for, and often needed, YU to provide the community and acceptance they could not find elsewhere. There was an urgent need for a student organization dedicated to creating a safe space for LGBTQ students and their allies at YU. An LGBTQ-oriented club would provide a much-needed space of automatic shared acceptance and provide LGBTQ students the path to formally build a community based on their shared experiences.

9. At that time (and still today), there was no recognized student organization for LGBTQ students. Because of this lack of student organization for LGBTQ-identifying individuals, my experience at YU was profoundly and negatively impacted. It felt invalidating for the university to single out for exclusion the social group to which I belonged. In many ways, YU was a religious community for me too; the administration’s persistent rejection of an LGBTQ club made me feel ostracized and unwanted from both my undergraduate community and more broadly, from my faith community.

10. On a campus comprised of close to 1000 men, I was aware of only 3 LGBTQ men before I began my tenure as President of Student Government, a symptom of the pervasive homophobia on campus. This environment created by YU made it more difficult for students like me to accept and embrace their sexual orientations.

11. As YCSA President, part of my responsibilities was to oversee club event approvals. I observed how other groups based on social and political identities fostered community and a sense of belonging on campus. For example, the Sephardic Club created events for students who identify with the Sephardic community. An International Club existed for students from other countries to similarly find community. For example, a large group of Venezuelan students at YU were able to attend events such as a panel held on “Venezuela in Crisis.”

12. The University’s rejection of a formal club reinforced the stigmas on campus against LGBTQ students. The administration’s actions communicated to all students that there was something wrong with being LGBTQ and that their existence within a Jewish community as publicly-identifying members of the LGBTQ community was unwelcome.

YU Refused to Recognize the Gay-Straight Alliance Club Formed in 2018-2019

13. Beginning in or around early November 2018 and continuing through the spring 2019 semester, I, along with two other Student Council Presidents, had a series of meetings with Dr. Chaim Nissel, University Dean of Students, to discuss ways to make LGBTQ students feel more welcome on campus. We proposed to Dean Nissel the creation of an official Gay-Straight Alliance club (“GSA”) and other steps to create a safe atmosphere for LGBTQ students on campus. Organizing LGBTQ-themed events and speakers on campus faced disproportionate censorship and delays. As such, we requested a clear set of guidelines that

would arbitrate which events and speakers would and would not be welcome on campus. To these requests, Dean Nissel repeatedly responded that he needed to speak to more senior administrators.

14. On or about February 3, 2019, several students submitted a formal application for an official GSA club to YU, in accordance with the procedures for club recognition. In the application, the stated purpose of the club was “to provide a safe place for students to meet, support each other, and talk about issues related to the intersection of sexual orientation and Jewish identity.”

15. On or about February 4, 2019, I went to YU’s General Counsel’s office and spoke with Esther K. Sasson, Associate General Counsel, regarding whether Yeshiva was legally allowed to prevent the formation of an LGBTQ club on campus. Ms. Sasson declined to answer my question and directed me to speak with the Office of Student Life.

16. In or around February 2019, I, along with several other students, met with Dean Nissel to discuss the GSA’s club application. During the meeting, Dean Nissel initially expressed that the GSA would be allowed to form, if it did not include the terms “LGBT” or “gay” in the title.

17. In or around early to mid-February of 2019, the GSA application was approved by the Student Council Presidents, which is the necessary step to recognition as an official student club. However, the YU Administration chose to overrule the student government decision.

18. In response to an email sent on February 14, 2019 where we attempted to follow up on the status of our application for the GSA, Dean Nissel informed us that there was a “Jewish Activism Club” on campus, forwarding a blurb about the club that stated “The Jewish Activism Club aims to educate students about topics such as: Racism in the Jewish community,

Women's issues, LGBTQ inclusion, destigmatizing marginalized groups, and more!!!” Dean Nissel stated in his email that “it looks like this new club will provide the space you are hoping to create,” implying that the existence of the Jewish Activism Club negated the need for a GSA. YU’s claim that LGBTQ students did not need their own club because another club engaged in advocacy for people of color, women, LGBTQ people, and other marginalized groups was nonsensical. In any event, there were plenty of student clubs with complimentary missions—such as the YU Israel Club and YUPAC, which works “on Yeshiva University campuses to build a strong U.S.-Israel relationship by running events and lobbying our congressional representatives.” Similarly, there is both a Yeshiva Activities Society (YAS), a club which organizes fun events for students and had proposed events such as “glow in the dark dodgeball, pizza making, movie night”) and a Spikeball Club (the two clubs actually co-organized a Spikeball tournament in Central Park) and the Classic Movie Club (which offers movie nights).

19. Dean Nissel’s rejection of the GSA club in this email was the University’s chosen method of rejecting the GSA. Reinforcing this rejection, in late February 2019, Dean Nissel told me that while a club addressing tolerance in general on campus would be allowed, a club specifically addressing LGBTQ inclusion would not. From that point on, it was clear that the GSA was denied; for example, the GSA did not appear in the comprehensive list of students’ clubs on the school’s website.

20. After receiving Dean Nissel’s email, I emailed YU President Rabbi Dr. Ari Berman to arrange a meeting to discuss why the administration had rejected the GSA’s application. During our meeting, held on April 15, 2019, President Berman neglected to address our specific concerns about why the GSA had been rejected, if a club could exist, or the criteria for LGBTQ events on campus. No conclusions were ever reached as to who would

make these decisions, the time frame for the decisions, and what the criteria should be for future LGBTQ-themed events. Instead, President Berman focused the discussion on the need for further “dialogue.” In a subsequent email, President Berman directed me to take my concerns to the Office of Student Life.

21. When YU rejected the GSA, it communicated again a hostility against LGBTQ students. I was also extremely disappointed because we as students would not be able to pursue potential events that required the recognition of the GSA, such as an LGBTQ “shabbaton,” meaning a weekend on campus with focused speakers and community building oriented around the LGBTQ community. The Sephardic Club, which is a Jewish ethnic group, hosts a Sephardic shabbaton on campus with great success, and I had hoped their success would be emulated in a weekend focused on LGBTQ community building.

22. My unsuccessful efforts to convince YU to recognize the GSA in 2018-2019 consumed a great deal of my time during those years. I met repeatedly with administrators of diverse portfolios including the University Vice President, Dean of the University’s Rabbinical School, and the Director of Housing, and spent many hours working to get the GSA approved by the administration. Because I was spending so much time on these activities to secure GSA approval, my attention and energy were diverted from goals for myself in other areas. As President of Student Government, I had an ambitious agenda that I could not fully realize due to my focus on the need to secure YU’s recognition of LGBTQ students’ rights. This most notably included initiating a lending library of required school readings to alleviate the financial strain imposed on students and creating summer opportunities for students to participate in cultural and educational activities around New York. Beyond student

government, my focus on requesting that YU allow an LGBTQ club also took away time from my other priorities including my schoolwork and my thesis research.

23. In response to my many emails and requests for a definite timeframe and plan of action to create an LGBTQ student club, I was repeatedly told by YU administrators that there needed to be student “dialogue” about the request. A fellow student council president and I even attempted to organize said “dialogue.” We successfully recruited 14 students of diverse backgrounds to participate in a focused discussion on the LGBTQ experience on campus and in the broader Orthodox Jewish Community. However, President Berman informed us that our plan failed to meet his vision for a dialogue event, and declined to agree to send a representative from his office to the event.

24. YU administrators consistently evaded granting the club approval. To take one example from 2019, a senior YU administrator told me via email that instead of planning a meeting with community stakeholders about concrete next steps to forming a club, we had to (again) discuss the need for an official LGBTQ group on campus. In his email, he said “there are many assumptions on this fundamental question on all sides of the various concerns, passions and issues. Ubt [sic] have we ever spent time trying to state them? All of them? Further – there are at least two ways we can understand the why’s: a. Why do we care about these topics? B. Why are we discussing them? Lishma /practical?” This was a typical response from the administration to the request for a student club for LGBTQ students—to propose endless discussions that resulted in no progress or concrete change.

25. Similarly, administrators such as Dean Nissel and Rabbi Penner informed me that the decision about approving the GSA was not their decision to make, but rather belonged to unnamed higher authority figures in the administration. When I consulted with the highest-

ranked administrator (namely the university president), I was redirected to the Office of Student Life, which absolved themselves of decision-making authority. This was a cyclical process of ambiguity and deferral of decision-making responsibility.

2019-2020: My Additional Efforts to Convince YU to Recognize LGBTQ Students

26. On May 8, 2020, I expressed to the University office of HR (Renee R. Coker, Sr. Director, Talent Management/HR Partners & Title IX Officer) that I wanted to file a discrimination complaint against YU for actions taken against LGBTQ students, specifically based on YU's repeated rejection of the formation of an LGBTQ group on campus. In response, I was told that it would be futile to file a complaint because the University had already issued a decision on February 24, 2020 in response to another student's complaint about the discriminatory denial of an LGBTQ club, in which it denied the complaint.

27. Almost two full years have gone by since the completion of my tenure as President of Student Government, and no progress has been made towards approving a club. In 2019-2020, an LGBTQ club (the YU Pride Alliance) was denied approval once again. That same year, students also voted to reject the inclusion of an anti-discrimination amendment to the YU student constitution.


28. I continued to communicate with YU administrators such as Provost Botman and Vice President Joseph about the needs of LGBTQ undergraduate students, both in the spring of 2020 and even after I graduated in May 2020. These efforts also failed to lead to an approval of an LGBTQ club.

29. Despite my efforts and the efforts of many others to gain recognition for an LGBTQ student organization, YU in many ways was a hostile place for LGBTQ students when

I was there.² With an LGBTQ club being rejected repeatedly from YU administrators to the public censorship of LGBTQ speakers and events, I left the university with tremendous frustration and disappointment. I am participating in this lawsuit so that the YU administration treats future YU students who identify as LGBTQ and their allies in a lawful manner, and with dignity and support.


AMITAI MILLER

Sworn to before me this 26 day of April, 2021


NOTARY PUBLIC ANGELICA SILVA
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires On
May 20, 2027



² <https://yucommentator.org/2018/10/yeshiva-university-model-un-united-nations-topic-paper-sexual-minorities/>

- Exhibit M -

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

AFFIDAVIT OF JANE DOE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

JANE DOE, being duly sworn, states that the following is true under the penalty of perjury:

1. I am a member of the student organization Yeshiva University (“YU”) Pride Alliance, a Plaintiff in this case. I submit this affidavit in support of Plaintiff YU Pride Alliance’s request for a preliminary injunction.

2. I am a full-time student in good standing at Yeshiva University.

The Status of LGBTQ Students on YU’s Campus and the Need for a Student Club

3. I began my undergraduate career at YU’s United States campus in August 2018.

4. There has been no recognized student organization for LGBTQ students during the entirety of my enrollment at YU.

5. At YU, the climate for LGBTQ students is unwelcoming, with most students afraid to come out to their classmates, professors, and administrators. Whenever an LGBTQ topic comes up in class, both the professors and the students assume that the conversation is about “them,” people other than those of us in attendance, and not us, the students in the class. When I came to YU, I was just starting to come to terms with my own LGBTQ identity and had no available resources on campus. The Counseling Center’s website didn’t mention anything about LGBTQ identity, and there were no clubs that I could turn to for support. In my classes, teachers would talk about dating and marriage in a heteronormative way that made me feel alienated and afraid. When I started at YU and was asked questions about my future, I could not picture any future at all that fit my identity as a LGBTQ religious Jewish woman.

6. I had no way of finding a group of people on campus who were struggling with similar identity issues or finding a source of much-needed support. Up until the second semester of my sophomore year, I thought I was the only religious queer person on campus and that I was alone. It was a painful and isolating experience. I was not out to anyone when I first arrived on campus, and I was still closeted to my friends and family. I needed a support system to turn to during my process of coming out, but I couldn’t find one. I struggled immensely during my first year at YU and considered transferring to another school many times, but in the end decided to stay and try to make the school better for other students instead of leaving to find a more welcoming school for myself.

7. Because there is no official LGBTQ club, I have felt isolated and unsupported by my university. I still have not come out to most of my professors because I don’t know how my LGBTQ identity will be received. I fear that I will not be offered certain opportunities from YU if I were to come out, such as a job opportunities or acceptance to religious-based graduate

schools. It is for these reasons that I am submitting this statement to the Court using the name Jane Doe instead of my real name.

8. There is a pressing need for a student club on campus because without official, easily-accessible resources and a way to find other students in a similar situation, students at YU like me have nowhere to turn. There is an unofficial LGBTQ WhatsApp group as a stand-in for a community, but there is no easy way for a student to find out about it. If a student is lucky, they will stumble upon someone who will mention it to them and they will find a way to contact the community. But students at YU are afraid to come out to their peers, let alone their professors, and LGBTQ students often never connect with each other, even when they are in the same classes. Mental illness and distress are prevalent among LGBTQ students at YU because they feel totally alone. I have witnessed so many—too many—LGBTQ students at YU take a leave of absence because of YU's hostile climate for LGBTQ students. I have personally dealt with the mental health emergency of an LGBTQ student at YU. It was yet another heartbreaking example of the immense emotional toll that being LGBTQ at YU has on a student without a community and resources. YU students need an official club to find a space to meet others like them, feel less alone, and get the support they need to successfully continue their college careers.

9. I have felt that the University not approving the club has led to continued hurtful conversations on campus. I have heard students discuss the YU Pride Alliance not being approved and say that Alliance members should just leave YU and go to a secular institution where they can find others like them. But YU is my school, it is where my friends are and where I have built meaningful relationships with many faculty members and professors. I also came to YU because I wanted a religious education with a quality secular education that will provide a pathway for me to go on to graduate school. I came to YU excited to continue learning Jewish

law and Jewish texts. I love Torah learning and came to YU to further my religious growth just like any other student who chooses YU. I should not have to leave the school that I chose for so many reasons just to find a supportive space for an identity I didn't choose.

My Efforts to Gain Formal Recognition for the YU Pride Alliance

10. I first became involved in LGBTQ activism on campus in Spring 2019.
11. I joined the YU Pride Alliance in September 2019 when it was formed.
12. I was involved in attempts to hold meetings with YU administrators, and I participated in many meetings between LGBTQ students and administrators with the goal of advocating for recognition of an official LGBTQ club on campus. I also worked with other official clubs on campus to hold LGBTQ-themed events on campus, which was very difficult and was met with significant and frustrating opposition from some students and the administration.
13. The YU Pride Alliance is an unofficial group of LGBTQ students and allies with a President, Vice President, and a board. YU students apply for board member positions: the President and Vice President are chosen by the outgoing President, and the board is chosen by the outgoing board. The YU Pride Alliance does not maintain a membership list to maintain anonymity because of student fears of repercussions. Instead, there are three WhatsApp groups for LGBTQ students to get support from their peers: a general undergraduate student group, a group for transgender/nonbinary students, and an asexual group. Combined, these groups have over 20 participants. We also have other students who have not joined the groups but attend our events.

December 3, 2019: Senior Vice President Joseph Discourages Official LGBTQ Club

14. On December 3, 2019, I and the entire YU Pride Alliance board met with YU Senior Vice President Josh Joseph.

15. Vice President Joseph met with us in his capacity as the leader of the Inclusion Panel, a panel of rabbis and educators convened by YU President Dr. Ari Berman around Fall 2019 who had been tasked with fostering initiatives to address matters of inclusion, including LGBTQ-related issues.

16. After spending a significant time preparing for this meeting with a group of students, establishing talking points and creating a strategy, I was dismayed to find that Vice President Joseph was not interested in discussing the club, but instead tried to divert our focus to other things. It was very frustrating that our time was being wasted, the time we spent preparing to meet and the meeting time itself.

17. The meeting ended without any indication from Vice President Joseph or Yeshiva University that there existed any way for the YU Alliance to be recognized as an official club.

January 2020: YU Pride Alliance Submits a Club Application to the Yeshiva Student Union

18. On or about January 30, 2020, the YU Alliance board members completed the “Club Application Spring 2020” application form on behalf of Plaintiff YU Pride Alliance, the other board members, and myself, and submitted it to the Yeshiva Student Council, the student governing body charged with approving or denying applications in the first instance.

February 2020: Yeshiva Student Council Refuses to Vote on YU Alliance Club Application

19. On February 9, 2020, the YU Student Council Presidents emailed a statement to the YU student body stating that they had abstained from voting on whether or not to approve the

YU Pride Alliance as an official student club.¹ They sent the matter of our approval up to the YU administration to decide.

20. On or about February 11, 2020, Molly Meisels, along with the other members of the YU Alliance, drafted and sent an email on behalf of the Alliance and its board members, including me, to Vice President Joseph requesting that a decision regarding the club's status be rendered by the next day so that the club determine they would be able to participate in the Wilf club fair, which was scheduled for February 12, 2020 on the Wilf campus.

21. The YU Pride Alliance did not receive any response from Vice President Joseph or any member of the administration.

22. The YU Pride Alliance was never recognized as an official student club and did not function as a recognized student club for the Spring 2020 semester. We could not meet on campus, we did not have access to funding for student events, and we were not able to advertise our events to students using official YU channels. Our plan was to re-apply for the Fall 2020 semester and try again.

September 3, 2020: Yeshiva University Communicates Refusal to Allow LGBTQ Student Clubs

23. On September 3, 2020, the YU Pride Alliance submitted the "Club Application Fall 2020" application to the YU Student Council.

24. That same day, Yeshiva University administrators sent a statement to the university community, titled "Fostering an Inclusive Community." The statement, sent by the YU administration, was signed by Dr. Yael Muskat, Rabbi Yaakov Neuburger, Dr. Rona Novick, and Dr. David Pelcovitz.

¹ <https://yucommentator.org/2020/02/student-council-abstains-from-lgbtq-club-vote-leaving-decision-to-yu-administration/>

25. In the statement, buried beneath several promises to create a more inclusive environment for LGBTQ students, the YU administration denied the application of the YU Pride Alliance to form a club.

26. In the statement, Yeshiva University stated: “The message of Torah on this issue is nuanced, both accepting each individual with love and affirming its timeless prescriptions. While students will of course socialize in gatherings they see fit, forming a new club as requested under the auspices of YU will cloud this nuanced message.”

27. The administration was extremely vague; it did not explain which nuances of the Torah on LGBTQ issues are at odds with the existence of our student club.

28. What was clear to the YU Pride Alliance Board and the whole YU community was that YU would not recognize an official student club. As the student newspaper reported, “The statement also revealed that YU will not approve an LGBTQ club, a decision passed to administrators in February.”²

September 29, 2020: Yeshiva University Continues Its Message of Denial

29. On September 29, 2020, I and other members of the YU Pride Alliance board attended a virtual video meeting with the “YU Inclusion Panel,” including Defendant Nissel, Rosh Yeshiva Yaakov Neuburger, Dean Rona Novick, Counseling Center Director Yael Muskat, and Professor David Pelcovitz in a further attempt to receive official guidance from Defendant Yeshiva University on how the YU Alliance could be approved as a club and be allowed to hold official events.

30. At this meeting, I and other Pride Alliance board members again expressed the importance to LGBTQ students having a club, holding public events, and having public conversations about LGBTQ issues. One board member presented an academic journal article

² <https://yucommentator.org/2020/09/yu-announces-new-lgbtq-inclusivity-policies-denies-lgbtq-club-formation/>

showing the elevated suicide risk among LGBTQ students and how LGBTQ student groups lower that risk because they help address prejudice and social stigma and provide a safe space for LGBTQ students to form community. A true and correct copy of the journal article is attached hereto as Exhibit 1.

31. At one point, a Pride Alliance board member directly asked the Panel members what led to YU's decision not to recognize the YU Pride Alliance as a student club. The board member also pointed out that YU made that decision without ever holding an official meeting with the YU Pride Alliance to discuss its intent to deny the club or provide YU Pride Alliance an opportunity to respond.

32. Rosh Yeshiva Neuburger reiterated that making an LGBTQ club formal would "cloud" the issues being considered. He then said that the conversation about holding LGBTQ events could be held in the future, but would not commit to having any substantial discussion about what event guidelines could look like without having actual proposed events in front of him.

33. I understood Rosh Yeshiva Neuburger's response to be another attempt to delay the establishment of formal rules, policies, or procedures that would allow the YU Pride Alliance to host events or otherwise engage in official club activities.

34. At one point, a student stated in the Zoom meeting's chat window that they would not give up on an official LGBTQ club so long as it is an imperative under pikuach nefesh, the principle in Jewish law that the preservation of human life overrides virtually all Jewish laws. Dean Novick replied that the YU Pride Alliance did not necessarily need to give up, but as a pragmatic person, she recognizes that if she is unable to move in one direction, she likes to think of other productive actions. I and the YU Pride Alliance board members understood Dean

Novick's comment as further evidence that YU does not ever intend to approve the YU Pride Alliance as an official club and will instead require YU Pride Alliance members to engage in unofficial activities only.

Effect of Yeshiva University's Continued Discouragement of the YU Pride Alliance

35. Because the YU Pride Alliance does not have official club status, we cannot participate in campus life or provide resources to students in the way that official clubs at YU can.

36. For example, during my time at YU, the Active Minds Club has hosted a yearly event titled Stomp Out the Stigma, where students share their experiences with mental health challenges and mental illness to increase mental health awareness and show other students dealing with similar challenges that they are not alone. Every year I've attended this event I wondered how powerful it would be to have a similar event where LGBTQ+ students could share their stories about being LGBTQ+ in an Orthodox Jewish school and community, and through this show other LGBTQ+ students that they are not alone.

37. Because the Alliance is not an official club, I have had to organize and attend all Alliance activities at off-campus locations since unofficial clubs are not allowed to use campus space for events. Not only did these events require me to travel off-campus, they also reinforced YU's message that I was not welcome on campus as an LGBTQ student. I have had difficulty publicizing and learning about LGBTQ events because the YU Pride Alliance is not allowed to publicize events through YU-approved channels. The Alliance and I must also work much harder than official clubs to inform interested students of our existence because we are not listed on YU's list of official student clubs and are not allowed to have a table or booth at student club fairs. The Alliance has to spend time requesting funding from and coordinating with an outside

organization, Jewish Queer Youth, which takes away time from actually working on the events themselves.

38. For example, in Fall 2020, because the YU Pride Alliance was not an approved organization, it was forced to organize two events under the name of other official clubs and use those organizations' funding for the events. Because we did not have a recognized club and could only have a YU-sponsored event through these alternative channels, we had to work with clubs whose focus is not LGBTQ support, and we were met with many challenges and difficulties along the way.

39. Through the Jewish Activism Club (focused on advocating for social change) and Active Minds Club (focused on mental health), members of the Pride Alliance organized an event with psychologist Dr. Sara Gluck titled "LGBTQ and Mental Health." In December 2020, some members of the YU Pride Alliance also worked with the Dean's office to host a faculty-sponsored virtual panel of LGBTQ students and alumni in discussion. The faculty sponsor of the event, Dr. Jenny Isaacs, had to negotiate extensively with Dean Nissel to get the event approved, and only received approval two weeks before the event was scheduled to occur.

40. After the event was approved, YU Pride Alliance members posted flyers around campus and a YU faculty member publicized the event using the email listserv. I, other YU Pride Alliance members, and other students observed YU rabbis removing the flyers advertising the panel from different places we had posted them on campus.

41. In other instances, we were forced to host YU Pride Alliance events without any support, which hampered our ability to do the best work we can do. We had to put in much more effort to advertise, had to reach out to outside organizations for support, and had to hope that

social media and word of mouth were enough to reach the vulnerable students who desperately need a supportive space.

42. One event we organized was a socially-distanced meet-and-greet in a Washington Heights park, in the same neighborhood as YU's campus. Because we could not use YU facilities, we had to host our event at a location that wasn't as close to YU as we would have wanted, meaning that students had to dedicate around 20 minutes to walk to the event instead of going somewhere convenient and nearby.

43. We have also held several remote "Coffee and Catch Up" events for students in order to create some community for LGBTQ students and give them a space to discuss pressing topics in a supportive environment, such as combining a religious and LGBTQ identity and dealing with added stress around exam season. Because we are not an official student club, we do not have access to a YU-licensed unlimited Zoom account. Instead, we use the account of a different organization unaffiliated with YU, Jewish Queer Youth, to host Zoom meetings, but there have been concerns expressed by some board members about confidentiality when using an outside organization's account.

44. None of these activities have been an adequate substitute for a recognized club.

45. Further, all of the time and energy that we have had to put in to seek for official club approval, efforts that no other student group has had to put in for a club, could have been put into programming, creating more crucial events, and resources for LGBTQ students at YU.

No Approval Forthcoming

46. Based on Defendants' September 3, 2020 denial of the YU Pride Alliance and the Inclusion Panel's September 29, 2020 meeting with YU Pride Alliance board, I am of the belief

and understanding that any further applications for the YU Pride Alliance to receive official student club status will not be approved.

Harm to Me and Other LGBTQ Students

47. My unsuccessful efforts to convince YU to recognize the YU Pride Alliance from 2019 to the present have consumed a great deal of my time at YU. I filled out applications, met with administrators, head rabbis, and psychologists, reached out and petitioned to the Student Councils, and spent many hours working to get the YU Pride Alliance approved by the administration. Because I was spending so much time on these activities, my attention and energy were diverted from other activities, such as studying for my classes and exams, participating in other clubs, preparing my applications for graduate school, applying for summer internships, and building and maintaining relationships with my friends and family.

48. I feel mentally and emotionally exhausted from having to tell and re-tell different YU administrators why having a safe and supportive space for LGBTQ students is important to me. I feel like the administration asks me to meet with rabbis and share my personal story, which is draining and difficult, and then it takes no action after I share my experience. This is beyond disappointing and has taken a toll on me.

49. I am deeply frustrated and hurt by YU administrators' ongoing public denial of an official LGBTQ student club while they provide private reassurances to me that they care about the needs of LGBTQ students and are willing to have a reasonable conversation about those needs. I feel frustrated that YU administrators have repeatedly attempted to dissuade me from continuing to seek official club status. I also feel hurt that I have told YU administrators of the importance of an official LGBTQ club for my mental health and the mental health of all LGBTQ students on campus, but they still have not approved an LGBTQ club.

Urgency of Request

50. I and other LGBTQ students have spent years trying to negotiate and work with the YU administration in good faith to gain recognition of our student club. We are practically no closer today than we were two years ago. With YU's most recent official denial of the Alliance in September 2020, we actually feel farther away. Each semester that passes, another group of LGBTQ students and their allies are deprived of the benefits of the Club. We ask the Court to order YU to follow the law and allow our club to exist on campus.

51. If our club is permitted to form for the 2021-2022 year, some of the events we are planning and/or would like to hold include: an official campus welcoming event; several LGBTQ-related speaker events; book club meetings to discuss books with LGBTQ relevant themes, movie nights, a personal conversation with a parent of an LGBTQ child, an event with a LGBTQ-specialized therapist about coping skills, and moderated discussions of LGBTQ issues with focus groups.


Jane Doe (Apr 26, 2021 16:18 EDT)

JANE DOE

Sworn to before me this
26th day of April, 2021


NOTARY PUBLIC

AVANIK A SHARDA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01SH6365179
Qualified in Kings County
My Commission Expires 10-02-2021

- Exhibit N -

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

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

Plaintiffs,

-against-

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

Defendants.

Index No.: 154010/2021
Kotler, J.

Mot. Seq. No. 6

**MEMORANDUM OF LAW IN FURTHER OPPOSITION
TO DEFENDANTS' CONVERTED MOTION FOR SUMMARY JUDGMENT**

Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

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**THE COURT SHOULD DENY SUMMARY JUDGMENT BECAUSE YESHIVA
UNIVERSITY IS NOT A “RELIGIOUS CORPORATION”**

Defendants’ converted summary judgment motion should be denied because: (1) Defendants fail to establish a prima facie case entitling them to judgment as a matter of law that Defendant Yeshiva University (“YU”) is an exempt “religious corporation” under Section 8-102 of the New York City Human Rights Law (“NYCHRL”); (2) the plain text of Section 8-102 and its legislative history establish that YU—a New York educational corporation—is not a “religious corporation”; (3) the legislative intent of the provision would be eviscerated by exempting YU; (4) YU’s own corporate history and self-presentation prove it is not a “religious corporation”; (5) if the Court applies YU’s invented “functional” test to define YU’s corporate status, summary judgment is premature because Plaintiffs lack sufficient discovery and; (6) even on the current limited record, some of which is newly before the Court on this sur-reply brief, genuine factual disputes predominate.

YU’s bid to evade the City’s Human Rights Law is shocking because it is so long-settled that universities may not deny resources to students because of their sexual orientation. At YU, LGBTQ students may attend the University, but they may not form a student organization and they may not use its classrooms, meeting places, bulletin boards, email lists, Zoom links and other resources for their student organization’s activities—because of their sexual orientation. The NYCHRL requires “full and equal enjoyment, on equal terms and conditions,” not second-class status. Over fifty law professors at YU’s renowned Cardozo School of Law agree that YU’s “unacceptable treatment of our LGBTQ+ students” is “wrong and unlawful.” Ex. 31. In 1987, the D.C. Court of Appeals held, under D.C.’s Human Rights Law, that Georgetown University, another elite research university with a “cherished religious heritage,” must give its LGBTQ student group access to the same facilities as other student

groups. *Gay Rights Coal. Of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1 (D.C. 1987).

Thirty-four years later, YU seeks to turn New York City's Human Rights Law, the strongest in the nation, into a backwater, concocting a sweeping exemption for itself that lacks any basis in the statute and that the City Council did not intend. YU is not a "religious corporation" by any stretch of the imagination.

I. YU IS AN EDUCATIONAL CORPORATION ORGANIZED "EXCLUSIVELY" FOR EDUCATIONAL PURPOSES AND NOT A "RELIGIOUS CORPORATION"

YU has not met its burden to make a *prima facie* showing that it is entitled to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issues of fact that it is an exempt "religious corporation" under Section 8-102 of the NYCHRL. YU is not a religious corporation. It is an educational one. No New York court has ever held that an educational corporation incorporated under the Education Law is actually a "religious corporation." YU would be the first.

YU is incorporated as an "educational corporation under the Education Law." Ex. 1 ¶ 1. Its Certificate of Incorporation states that it is "organized and operated *exclusively* for educational purposes," and states no religious purpose or governance whatsoever. *Id.* ¶¶ 8-9 (emphasis added). These facts are fatal to YU's claim to be a "religious corporation." *See Matter of Lueken*, 97 Misc.2d 201, 203 (N.Y. Sup. Ct. Queens Cnty. 1978) ("In determining what kind of corporation is presently proposed, it is incumbent upon [the Court] to make this evaluation based on the purposes set forth in the certificate of incorporation.").

A. YU Is Not a "Religious Corporation" Under New York Law

The straightforward language of the NYCHRL requires that to be exempt as a "religious corporation," an entity must be organized as one. "[W]hen the statutory language is

clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used.” *People v. Pabon*, 28 N.Y.3d 147, 152 (2016) (citations omitted). Because YU is not incorporated as a “religious corporation,” it is not exempt.

1. A “Religious Corporation” is an Entity Created for Religious Purposes, Which YU Is Not.

To be a “religious corporation,” an entity must be a “corporation created for religious purposes.” RCL § 2. The Religious Corporations Law (“RCL”) – the statute laying out the “[legal] rules for the governance of religious bodies,” *Venigalla v. Nori*, 11 N.Y.3d 55, 61 (2008)—is the only place where the term “religious corporation” is defined in New York law.¹ The RCL identifies two types of “religious corporations”: an “incorporated church” and “unincorporated church.” RCL § 2. Both are “created to enable its members to meet for divine worship or other religious observances.” *Id.* The RCL’s definition of a “religious corporation” applies whether the term is used in the NYCHRL or any other statute.² 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). The RCL’s examples of types of religious corporations—synagogues, mosques, and churches—are instructive: they confirm that a “religious corporation” is a legal entity created for the purpose of worship or religious observance. See *In re Watson’s Estate*, 171 N.Y. 256, 259 (1902) (“Section 2 of the [RCL] defines a religious corporation to be a corporation organized for religious purposes. We are not much the wiser for this definition, but

¹ The RCL establishes rules for formation and governance of religious corporations, such as certificates of incorporation, qualification of voters, and powers of trustees. It enumerates more than twenty different types of religious corporations, all places of worship—e.g., various Christian churches, “churches affiliated with the Islamic faith,” and synagogues. RCL §§ 40-489.

² The NYCHRL intentionally uses the term “corporation,” making clear that the statute refers to a legal entity. Corporation, Black’s Law Dictionary (“An entity . . . established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up.”).

an examination of the statute shows that its provisions are devoted to the organization and government of the various denominational churches.”).³

2. YU Is Incorporated Exclusively for Educational Purposes.

YU’s Certificate of Incorporation creates an “educational corporation” whose purpose is to operate “exclusively for educational purposes.” New York courts rely heavily on the language in certificates of incorporation defining the corporation’s purpose to determine whether a corporation is legally organized as a “religious corporation.” The Second Department has held that a Hindu Temple incorporated under the Not-for-Profit Corporations Law (“N-CPL”) is a de facto “religious corporation” because it is “a place of worship” whose certificate “states that it is a religious corporation formed to promote the philosophy of Bhagvad Gita” and includes “the signature of a Justice of the Supreme Court,” a requirement for incorporating under the RCL. *Temple-Ashram v. Satyanandji*, 84 A.D.3d 1158, 1160 (2d Dep’t 2011) (cleaned up); *see also Agudist Council of Greater N.Y. 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”). YU’s stated exclusive educational purpose in its incorporating documents disposes of its claim to be a de facto “religious corporation.”

YU’s charter also requires no religious governance of its affairs, even though “there is, as a rule, denominational control of the temporalities of religious corporations.” 92

³ The City’s lawyers at the time this statute went into effect also defined “religious corporation” under Section 8-102 solely by reference to the RCL’s definition, explaining to the New York Court of Appeals that “a religious corporation would be either ‘an incorporated church created to enable its members to meet for divine worship or religious observances,’ or ‘an incorporated congregation, society, or other assemblage, accustomed to meet for the same purpose.’” Ex. 18 at 18.

N.Y. Jur. 2d Religious Organizations § 23. Under YU’s Certificate of Incorporation, “[p]ersons of every religious denomination shall be equally eligible to offices and appointments.” Ex. 1 ¶ 8. Its bylaws contain no rules of religious governance at all. *See* Ex. 2. YU does not require that its trustees, officers, administrative leaders, faculty or students be of a religious faith.⁴ The Court’s inquiry should end here: YU is an educational corporation that operates “exclusively for educational purposes”; it is not incorporated as a “religious corporation,” and it has no legally required religious governance or control. It qualifies for no exemption.

3. YU Is Not a “Religious Corporation” Under Any Body of Law.

Defendants point to the language in Section 8-102 that exempts “religious corporations” incorporated under either the RCL *or* the Education Law to argue that YU somehow qualifies as a de facto “religious corporation” because it is organized under the Education Law. But this argument fails because whatever statute it is incorporated under, YU is still organized “exclusively” for educational purposes.

Corporations incorporated under statutes other than the RCL may be de facto “religious corporations” under New York law, but only if they satisfy the definition of a “religious corporation” *under the Religious Corporations Law* based on their corporate purpose in their governance documents. For example, in *Temple-Ashram*, the Second Department held that a Hindu Temple incorporated under the N-CPL “may be considered 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

⁴ No religious organization has any role in hiring or firing YU Trustees or officials. Students also are not subject to any religious observation requirements. They are not required to attend or take part in religious services, Ex. 10 52:5-53:15; they are not required to wear religious garments, *id.* 75:2-6; and they are not required to maintain religious restrictions on what they eat, *id.* 77:23-78:5.

Religious Corporations Law and the N-PCL.” *Temple-Ashram*, 84 A.D.3d at 1160 (emphasis added).

Defendants’ cited cases follow the same analysis: “the plaintiff corporation [incorporated under the N-PCL] was established primarily for religious purposes, continues to operate as such, and thus falls within the ambit of the Religious Corporations Law” because it was a “*temple/residence*” established, under its certificate of incorporation, “for the study of Buddhism.” *Watt Samakki Dhammikaram, Inc. v. Thenjitto*, 631 N.Y.S.2d 229, 231 (Sup. Ct. Kings Cnty. 1995) (emphasis in original); *see also Kroth v. Congregation Kadisha, Sons of Israel*, 105 Misc. 2d 904, 910 (Sup. Ct. N.Y. Cnty. 1980) (“[S]ince, if unincorporated, [the corporation, a synagogue] could now only be incorporated under the Religious Corporations Law, that statute is applicable to its governance”). Thus, for a corporation incorporated under the Education Law—like YU—to qualify as a de facto “religious corporation,” it must still meet the RCL’s definition of a “religious corporation”: a legal entity created for the purpose of worship or religious observance. YU fails to qualify because it is created “exclusively” for educational purposes.

B. YU Has Never Claimed to be a “Religious Corporation” Until this Lawsuit

YU invented the idea that it is a “religious corporation” under Section 8-102 of the NYCHRL for purposes of defending this lawsuit, hunting for a safe harbor from the City’s anti-discrimination laws. YU’s corporate history and its decades of consistent representations to local, state and federal government confirm what is obvious from the face of its corporate documents: it is an educational corporation formed for educational purposes.

The University’s *own attorneys* from Weil Gotshal & Manges, “special counsel engaged to review this issue,” concluded in 1995 “after an exhaustive review of the ordinance and applicable case law,” that the University’s governance documents and representations about

its corporate status precluded it from seeking a religious exemption from the NYCHRL as a “religious corporation”: “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 University’s legal status as a nondenominational institution.” Ex. 3 at 3. That remains as true today as it was then.

1. YU’s Corporate History Belies Its Baseless Claim to Be a “Religious Corporation.”

In 1967, YU legally transformed itself from a corporation with a religious purpose in its charter, comprised of both a secular academic program and a seminary ordaining future rabbis) to a corporation with an exclusively educational purpose granting only secular degrees, separately incorporated from the seminary.

YU was first incorporated in 1897 as the Rabbi Isaac Elchanan Theological Seminary (“RIETS”) under the Membership Corporations Law. The corporation’s purpose was the “promotion of the study of Talmud and assistance in educating the preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” Ex. 4. In 1945, that corporation’s name changed to “Yeshiva University.” Ex. 6.

In 1967, YU petitioned the Board of Regents to amend and restate its Charter to become an educational corporation under the Education Law because:

[T]he original purpose of the corporation as stated in [the 1897 Certificate of Incorporation] is no longer applicable or appropriate in light of the degree granting schools and divisions comprising the University and its present corporate activities in connection therewith. The membership association which was originally formed under the designation of Rabbi Isaac Elchanan Theological Seminary Association has long since ceased to function as an association or part of the University.

Ex. 7 at 4.

Also in 1967, YU formally split from its seminary, RIETS, which in turn incorporated separately. After the split, RIETS retained a religious purpose clause,⁵ but YU did not. YU became a corporation “organized and operated *exclusively* for educational purposes.” Ex. 1 ¶ 9 (emphasis added). The Regents approved these requests as “long overdue,” noting that the original charter “has been amended from time to time for and on behalf of the Education Department to reflect the expansion of this institution into a complex university.” Exs. 8-9.

In 1969, YU again changed its Certificate of Incorporation, this time to eliminate “Religious Education” degrees from its charter to be “consistent with its present corporate organization and operation.” Ex. 7. YU clarified that “[i]t is also desired to effectuate the foregoing change to clarify the corporate status of the University as a non-denominational institution of higher education.” *Id.* at 5-6. YU testified that the corporation’s “non-denominational” status “is true” today. Ex. 10 at 105:9-15. YU’s current corporate purpose and structure are not products of happenstance; they reflect a considered choice to become an educational corporation with an exclusively educational purpose to qualify for public funding.⁶

2. YU Publicly Represents and Reports that it is a Non-Sectarian Educational Corporation.

a. YU Reports to the New York State Attorney General.

In 2018, to obtain an exemption from reporting as a charitable organization, YU informed the New York State Attorney General’s Office that it was an “educational institution,”

⁵ 1970: “The purposes are to prepare students for the rabbinate and to issue the traditional Certificate of Ordination in connection therewith.” Ex. 5.

⁶ According to the scholarship of a current YU professor, YU split from RIETS in 1967 “to reconstitute itself as formally ‘nonsectarian’ in order to comply with the [New York Constitution’s] provision that public money not be used to ‘aid schools under the control and direction of any religious denomination or in which any denominational tenet.’” Ex. 11. An Emory law professor—and YU alumnus—writes that this corporate reorganization bars YU from seeking a religious exemption under the NYCHRL: “It is a secularly chartered but religiously affiliated institution, a status . . . unprotected by the rights granted to religious institutions.” Ex. 12.

and not an organization “incorporated under the religious corporations law or . . . with a religious purpose or [] operated, supervised or controlled by or in connection with a religious organization.” Ex. 13.

Schedule E (Form CHAR410, CHAR410-A or CHAR410-R) Must be attached to form CHAR410, CHAR410-A or CHAR410-R		Request for Registration Exemption for Charitable Organizations New York State Department of Law (Office of the Attorney General) Charities Bureau - Registration Section 120 Broadway New York, NY 10271 www.charitiesnys.com		Open to Public Inspection
Full Name of Organization Yeshiva University		Fed. employer ID no. (EIN) 13-1624225	NY State registration no. 44-10-46	
If your organization is not claiming exemption from registration under either or both Article 7-A or the EPTL, do not complete Schedule E and do not submit a blank Schedule E. An exemption request that is not accompanied by all required documentation as listed below and in CHAR410, CHAR410-A or CHAR410-R Part D (Attachments) will not be considered. Do not request exemptions that cannot be supported by the documentation required. An exemption request has not been granted unless you receive a letter confirming your organization's exemption.				
Indicate whether you are claiming an exemption from the EPTL or Article 7-A or both. Complete the corresponding exemption request questions.				
EPTL <input type="checkbox"/> ⇔ Complete Part I (EPTL), skip Part II (Article 7-A). Article 7-A <input type="checkbox"/> ⇔ Complete Part II (Article 7-A), skip Part I (EPTL). Both EPTL and Article 7-A <input checked="" type="checkbox"/> ⇔ Complete Part I (EPTL) and Part II (Article 7-A). If you complete one but not both exemption request parts, your organization may be exempted under only one law and registered under the other law, in which case your organization would be required to file annually with the Charities Bureau.				
Part I: EPTL Exemption Request				
Registration exemption claim (check all that apply)		Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)		
<input type="checkbox"/> 1. Organization is not charitable		None		
<input type="checkbox"/> 2. Organization does not conduct activity in NY State		If your organization lists a New York address in either question 3 (Mailing address) or question 4 (Principal NYS address) of CHAR410, CHAR410-A or CHAR410-R Part A, attach a detailed explanation of why the organization has a New York address but claims not to conduct activity in NY State		
<input type="checkbox"/> 3. Organization is a government agency or is controlled by a government agency		For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency and either: • a copy of the letter from the Charities Bureau confirming the government agency exemption of that other organization, or • a copy of the government agency's charter and , if applicable, IRS tax exemption determination letter		
<input type="checkbox"/> 4. Organization reports annually to either the U.S. Congress or the NY State Legislature		Attach a copy of either: • the most recent annual report filed with the U.S. Congress or the NY State Legislature, as the case may be; or • a letter from such legislative body confirming that your organization reports annually to it		
<input type="checkbox"/> 5. Organization is 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		• Attach a copy of listing in official denominational directory (for example, "Blue Directory"), if applicable; and • For organizations operated, supervised or controlled by or in connection with another organization that is exempt from registration as religious, attach a description of the relationship between your organization and that other organization and either: - a copy of the letter from the Charities Bureau confirming the religious exemption of that other organization, or - a copy of that other organization's certificate of incorporation, by-laws, trust agreement and/or other organizational document and amendments, and , if applicable, IRS tax exemption determination letter		
<input checked="" type="checkbox"/> 6. Organization is an educational institution, museum or library incorporated under the NY State Education Law or by special act		None		

YU testified that its Director of Tax & Compliance, Alan Kluger, registered YU as an educational corporation, and not a “religious corporation,” because “it would be difficult”

to produce documents showing its entitlement to this religious exemption and did not know whether any such documents existed. Ex. 10 at 109:5-16:22.

b. YU Reports to New York State.

In 2011, YU received \$90 million in bond financing from New York State to build classrooms and dormitories. Ex. 10 at 167:3-68:11. To receive that money, it represented that: “The University is an independent, coeducational, nonsectarian, not for profit institution of higher education.” Ex. 14 at YU01251. Although the funding was partially for classrooms, YU “agree[d] that . . . the Project or any portion thereof will not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination.” *Id.* at YU01301.

c. YU Reports to Federal and Local Agencies.

In a funding application submitted to the U.S. Department of Homeland Security, YU checked a box that it was a “Not For Profit” entity and not a “Sectarian Entity.” Ex. 15.

Grant Application		Homeland Security Non Profit Grant	
Project No HS21-1471-E00	Grantee Name Yeshiva University	04/22/2021	
Project Title: FY2021 NSGP-UA			
Contacts Mr. Paul Murtha Director Of Security 500 West 185Th Street New York, NY 10033 Phone:846-592-4480, Ext:8200 Fax: Email:pmurtha@yu.edu Mr. Cristobal Hiraldo Physical Security Manager 500 West 185Th Street New York, NY 10033 Phone:212-960-5221, Ext:5481 Fax:212-960-0072 Email:hiraldo@yu.edu Ronald Nahum Director of Finance and Administration 500 W 185th St New York, NY 10033 Phone:846-592-4002, Ext: Fax: Email:rnahum@yu.edu Randy Apfelbaum Director of University Operations 500 West 185th Street New York, NY 10033 Phone:846-592-4113, Ext: Fax: Email:randy.apfelbaum@yu.edu		Project Start: 10/01/2021 Project End: 09/30/2024 Project Period Years 3 Months 0 Submission Date 04/15/2021 EIN: 13-1624225 Municipality No: Dun & Bradstreet No: 071036636 Charities Registration No: <input checked="" type="checkbox"/> Not For Profit <input type="checkbox"/> Sectarian Entity County: New York Region: New York City	
		BUDGET SUMMARY Grant Funds: \$150,000.00 100.00% Matching Funds: \$0.00 0.00% Total Funds: \$150,000.00	

Similarly, in an application to the City of New York for funding, it described itself as “a community-based not-for-profit corporation or other public service organization.”

Ex. 16.

C. YU Wrongly Seeks Summary Judgment That It Is a “Religious Corporation” Based on Its Religious Identity and Activities Rather Than its Legal Status

Defendants never define a “religious corporation”; their argument rests on an impressionistic, imprecise use of the legal term in order to sweep YU under it. Defendants sometimes incorrectly characterize the exemption as one for “religious organizations” rather than “religious corporations.” Defendants claim there is “no particular test or measure to define a religious organization,” Dkt. 71 at 9 (cleaned up), just that it be an “organization that has religious functions, regardless of form,” Dkt. 107 at 7. A hazy suggestion that one look to an entity’s “functions” is all that Defendants offer. But that result flouts the term’s plain meaning. A “religious corporation” is a *legal status* under New York law. YU does not have it.

YU asks the Court to interpret the word “religious” in “religious corporation” as an adjective, such as one might say that someone was a “religious person.” But the plain language of the statute is clear that it requires the legal corporate status of a “religious corporation.” YU also urges the Court to disregard the statute’s plain meaning and deem it a “religious corporation” based on its religious identity. Accepting that the University has a Jewish identity, and that Judaism is deeply important to the University’s existence and activities, it is still not a “religious corporation” as the law requires. The NYCHRL’s exemption does not extend to religiously-identified or religiously-affiliated organizations: it is by its own terms limited *only* to “religious corporations.”

Naarim v. Kunda, 801 N.Y.S.2d 237 (Table), 2005 WL 1355143 (N.Y. Sup. Ct. Kings Cnty. 2005) illustrates the point. There, the court held that the fact that a summer camp

provides “boys with a summer vacation in a religious, spiritual atmosphere” does not make it a religious corporation because “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.” *Id.* at *2 (cleaned up). Just so here. YU’s claim that its undergraduate campus has a religious atmosphere or identity is irrelevant. Its lack of religious corporate status precludes it from being a “religious corporation.”

YU asks to be deemed a “religious corporation” based on how it “functions,” although that test exists nowhere in law and violates the NYCHRL’s rules of statutory construction that it be “liberally and independently construed with the aim of making it the most progressive in the nation.” *Farrugia v. North Shore Univ. Hosp.*, 820 N.Y.S.2d 718, 724 (N.Y. Sup. Ct. N.Y. Cnty. 2006). Critically, “[e]xceptions 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). Defendants do the opposite, exploding a narrow exemption into an unlimited one.

Section 8-102’s use of the term “religious corporation” is not accidental or superfluous. Courts have therefore strictly construed the statute’s exemptions based on the enumerated corporate forms, particularly since it is couched as absolute exemption. *See Gifford v. Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 272 A.D.2d 721, 722-23 (3d Dep’t 2000) (“A plain reading of the statute reveals that the exemption for organizations formed pursuant to the Benevolent Orders Law is absolute and not subject to limitation. This interpretation accords with the legislative intent behind the amendment deeming religious corporations and benevolent

orders to be ‘distinctly private.’”).⁷ Conversely, an entity such as YU that lacks the corporate form specified in the statute cannot be exempt.

II. PERMITTING YU TO SELF-EXEMPT AS A “RELIGIOUS CORPORATION” SUBVERTS THE LEGISLATIVE INTENT TO OUTLAW DISCRIMINATION BY PLACES OR PROVIDERS OF PUBLIC ACCOMMODATION

YU’s expansive, textually unmoored definition of a “religious corporation” would violate the City Council’s explicit intent in passing the 1984 law: to expand protections against discrimination in public accommodations.

As the Court correctly noted in its August 18, 2021 Decision & Order, Section 8-102 differentiates between places or providers of “public accommodation” and places or providers of “private accommodation.” Dkt. 117 at 6. When it passed the statute in 1984, the Council sought to increase public accommodations protections to include *more* providers and places on the public side of the line, and exempt only a limited group of three “distinctly private” membership-based entities. “When resolving a question of statutory interpretation, the primary consideration is to ascertain and give effect to the legislature’s intent.” *People v. Schneider*, 37 N.Y.3d 187, 196 (2021); *see also Lubonty v. U.S. Bank. N.A.*, 34 N.Y.3d 250, 255 (2019) (“In a manner consistent with the text, we may look to the purpose of the enactment and the objectives of the legislature.”). Section 8-102’s legislative history demonstrates that the Council intended to cover a public-facing educational corporation, such as YU, as a public accommodation.

⁷ The Supreme Court specifically cited the “unique” corporate nature of “religious corporations”—to which “the State has extended special treatment in the law” and which “continue[] to be treated in a separate body of legislation”—as a basis for upholding the law from a challenge by private club owners. *See N.Y. State Club Ass’n, Inc. v. City of N.Y.*, 487 U.S. 1, 16-17 (1988).

A. The City Council Intended Section 8-102's Exceptions for "Distinctly Private" Clubs, Benevolent Corporations, and Religious Corporation—Not A Public-Facing Research University Like YU

1. The Council Amended the Law in 1984 to Include More, Not Fewer, Entities as Public.

Before 1984, the NYCHRL prohibited discrimination in any “place of public accommodation,” but it exempted “private” clubs. Ex. 36. In 1984, the City Council amended the law to bring “private clubs that are determined to be sufficiently ‘public’ in nature” within the law’s protections. *N.Y. State Club Ass'n*, 487 U.S. at 5. The goal was to target the City’s remaining private men’s clubs that refused to admit women and other traditionally excluded groups such as Jews, since their ongoing exclusion from these clubs harmed their employment, professional and business advancement. Ex. 19 § 1 (Local Law 63 (1984)); Ex. 17.

The 1984 amendment exempted small, “distinctly private” clubs (with fewer than 400 members), not serving meals, and not open to the public for any purpose. N.Y.C. Admin. Code § 8-102(9) (1984). In addition, the amendment stated that “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 corporations law” “shall be deemed to be in its nature *distinctly private*.” *Id.* (emphasis added).

The three “distinctly private” entities exempted by the Council—small private clubs, benevolent corporations, and religious corporations—shared important characteristics: (1) they were private; (2) they were membership organizations; and (3) they were not places of business, professional, or employment opportunity. The City Council exempted these entities because they did not pose a barrier to the advancement of “women and minorities”: “Because small clubs, benevolent orders and religious corporations have not been identified in testimony

before the Council as places where business activity is prevalent, the Council has determined not to apply the requirements of this local law to such organizations.” Ex. 19; *see* Ex. 18 at 18.

The City Council “recognize[d] the interest in private association asserted by club members,” but found that “the public interest in equal opportunity” outweighed that interest. Ex. 19. In balancing private associational rights with this important public interest, the Council found that only truly (“distinctly”) private, “family-like” membership groups deserved protection to discriminate in their membership, while larger, public-facing entities with market interactions did not: “To have their privacy protected, clubs must function as extension of members’ homes and not as extension of their business. Racial prejudice will not be permitted to infect channels under the guise of privacy.” Ex. 20 at 4. Then-Mayor Koch and Council President Bellamy explained that the exception is limited to private groups coming together for strictly private purposes: “We all agree that distinctly private clubs that are strictly social, religious or fraternal in nature are not at issue.” Ex. 21; *see also* Ex. 22.

2. The Council Did Not Intend to Create a Broad Religious Exemption from Section 8-102.

The legislative history contains no evidence that the Council intended to broadly exempt large religiously-affiliated corporations—universities, hospitals, or any other organization—from the definition of a public accommodation. To the contrary, the history shows a commitment to expand the law into more and more domains. Accordingly, the statute must be interpreted as it reads: as exempting three enumerated private places (clubs, religious corporations, and benevolent corporations), rather than as a religious exemption *per se*.

The Council was fully aware of how to carve out a broader religious exemption that is not limited to “religious corporations,” and it did so elsewhere at Section 8-107(12). In 8-107(12), the Council allowed a wider array of religious organizations, whether or not

incorporated as “religious corporations,” to claim exemptions in matters of employment, sales, housing rentals, and admissions, areas of public life where organizations might legitimately seek to favor co-religionists. The Council chose the narrower term “religious corporation” for the public accommodations provision, evidencing its determination that discrimination in providing facilities to the public was almost entirely prohibited. The Court is bound to observe and effectuate the distinction intended by the Council: “religious corporations” can seek to exclude themselves from the public accommodations provision, but simply religiously-affiliated or identified entities may not. YU’s undergraduate college has a Jewish religious identity, campus culture, and community, but it is not a “religious corporation” exempt from the law that covers every other university in New York City.

The Council’s intent carving out a narrow exemption would be undermined by allowing YU to claim it is a “religious corporation.” Defendants do not point to a shred of evidence in the legislative record that the Council intended to exempt a public-facing university serving thousands of students, funded almost entirely by public monies, when it narrowly exempted three enumerated private, membership organizations.

B. The Council Intended Universities Such as YU to Be Covered Places or Providers of Public Accommodation

It is undisputed that Section 8-102 includes all universities in New York City as places or providers of public accommodation. *See* Ex. 23 at 39 (“The term ‘place or provider of public accommodation’ would now include both public and private educational institutions” based on the City’s “independent and overriding interest in routing out discrimination from its schools.”). Students who attend universities and colleges are “members of the public,” using these institutions as places of public accommodation. *See PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690 (2001). *PGA Tour* makes clear that students are a university’s public, notwithstanding

that they have applied to attend the university. *See id.* (professional golf tour was public accommodation, even though only highly skilled golfers who had won preliminary competitions were permitted to compete). Once open to the public, there is no right to maintain a caste system within a university that differentiates the benefits provided to students because of sexual orientation. The Council’s decision to include all universities and colleges in Section 8-102 further confirms that YU is a covered public accommodation and the 5,000 students who attend the schools and college making up YU are its public.

1. YU is A Public-Facing Institution, Not a “Distinctly Private” Membership Entity.

On the spectrum of public to private, YU is distinctly public and completely unlike the “distinctly private” entities the Council excluded from the law.⁸ YU has invited the public—its students—to receive educational services in order to prepare them to be citizens and workers in the world. It is a public-facing entity, large in size, and it holds itself open to the public. It bears no resemblance to the small, intimate, membership associations that the Council exempted

a. YU’s Public-Facing Mission

YU’s mission is to educate its student and community so they may positively influence the broader society and world at large:

- Our students learn and go forth, as both educated and ethical people, to share their own talents and wisdom with society.

⁸ The Council required that the exempt entity be not just private, but meet the higher bar of “distinctly private.” In interpreting the parallel language in the State Human Rights Law, the Court of Appeals explained that to be “distinctly private” does not “refer simply to private clubs or establishments closed to the public but uses more restrictive language excluding from the statute’s provisions only clubs which are ‘distinctly private.’ We construe it strictly to promote its purposes.” *U.S. Power Squadrons v. State Human Rights Appeal Bd.*, 59 N.Y.2d 401, 412 (1983).

- Our University serves as a platform to bring Yeshiva's collective wisdom to the world through our community outreach, publications, seminars and broad range of academic programs.

Ex. 24; *see* Ex. 33.

YU's Strategic Plan focuses on "infus[ing] our unique mission into a dynamically growing changing market and achiev[ing] a global impact." Ex. 25 at YU00932.

b. YU's Professional Opportunities

YU is laser focused on the employment opportunities and professional advancement of its students, echoing Section 8-102's central concern: that "all persons . . . have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of employment opportunities." Ex. 19. YU prides itself on "preparing students for success in the lives they lead and the careers they build." Ex. 25 at YU00932. YU's undergraduate campus regularly brings employers to campus to "recruit students." Ex. 10 at 84:22-24. It hosts "nights for accountants," and "other corporate entities come to campus." *Id.* at 84:24-85:2. It has a robust career center, *id.* at 84, which touts graduates' employment in several industries—accounting, finance, education, technology, medicine/research, real estate—all essential parts of New York City's business and professional life. <https://www.yu.edu/sgc/outcomes>; *see* Ex. 26.

And that is to say nothing of YU's graduate schools, like Cardozo Law School, the Ferkauf Graduate School of Psychology, and Wurzweiler School of Social Work, whose very purpose is to train students to join specific professions. *See, e.g.,* <https://cardozo.yu.edu/about> ("Cardozo Law School . . . has innovative programs that prepare you to succeed in your legal career. Our location in New York City—a global hub of business, culture, and the law—offers unparalleled options and opportunities."). YU is a place where students are prepared for

professions and employment.⁹ *Cf.* Ex. 19 (exempting religious corporations that “have not been identified in testimony before the Council as places where business activity is prevalent.”).

c. YU’s Community Engagement

YU holds its campuses open to New York City’s broader public in myriad contexts. This year, it applied for \$10 million in state funding to build a pedestrian plaza on Amsterdam Avenue to “provide a needed space for respite and community gathering in Washington Heights.” Ex. 27. It is meant to be “an open plaza for the community” at “the heart of the [undergraduate] campus.” Ex. 10 at 182:20-84:11. YU also submitted a Community Project Funding Request to Congress this year, seeking \$1 million to renovate “Weissberg Commons,” a YU building containing “a multipurpose events space” currently used for “both academic and public-facing events” and “community-facing activities,” including by the local community board, local public school students, and as a community vaccination hub open to the public. *See id.*; Ex. 28 at YU01158. In its application, YU touted how “the project will significantly contribute to the overall benefit of the Washington Heights community.” *Id.*

Because the University is a paradigmatically public-facing institution, it would be entirely contrary to the Council’s intent in exempting “distinctly private” entities if YU was excluded.

⁹ Defendants’ claim to be a “religious corporation” rests entirely on the Jewish identity or activities of its undergraduate colleges. *See* Dkt. 71. Defendants have cherry-picked its three undergraduate schools out of the eleven constituent undergraduate and graduate schools that comprise the University. Ex. 10 at 22:7-21. Defendants’ analysis entirely ignores its graduate schools, all part of the corporation too, where President Berman attests that “the focus shifts to professional training and academic research,” and which “are not structured with the same religious environment.” Dkt. 83 ¶ 8. Defendants’ exclusive reliance on the undergraduate college’s “religious character” not only ignores that “religious corporation” refers to corporate form; it also pretends that more than half of YU does not exist.

III. SUMMARY JUDGMENT IS PREMATURE AND DEFENDANTS HAVE FAILED TO CARRY THEIR BURDEN TO SHOW NO TRIABLE ISSUES OF FACT EXIST

A. Summary Judgment for Defendants Is Premature Because Plaintiffs Have Not Conducted Sufficient Discovery into YU's Claimed "Functional" Religious Status

Even disregarding YU's chosen corporate form and "exclusively educational purpose," and applying Defendants' unbounded functional test—even though no authority, including the authority Defendants cite, says "functions" determine corporate status—summary judgment is premature because Plaintiffs have not had the chance to conduct critical discovery into YU's assertions.

First, Plaintiffs have not yet had the opportunity to depose Defendants Vice Provost Chaim Nissel and President Ari Berman.¹⁰ Defendants stake their entire claim that YU is a "religious corporation" on facts asserted in the affidavits of these two party-witnesses. They cite Nissel and Berman more than 40 times in their moving brief on the converted motion. *See* Dkt. 71 at 2-13. Summary judgment is premature under CPLR 3212(f) where "facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant." *Global Minerals & Metals Corp. v. Holme*, 35 A.D.3d 93, 103 (1st Dep't 2006). Nissel and Berman's affidavits provide essentially no documentary or other support for the statements they make therein; the only way to understand the factual basis for their assertions is to depose them. *See Bodden v. Stouall*, 907 N.Y.S.2d 98 (Table), 2009 WL 5731183, at *4 (N.Y. Sup. Ct. Bronx Cnty. 2009) (summary judgment premature before

¹⁰ The Court permitted discovery because "Yeshiva directly put into controversy its religious nature by arguing that it was a religious corporation and pointing to facts and evidence which went beyond the scope of a CPLR § 3211 motion," Dkt. 149, at 1. Plaintiffs served notices for Berman's and Nissel's depositions on August 24, 2021, and filed a motion to compel their depositions, which is fully submitted as of November 8, 2021, and currently pending. *See* Dkts. 151, 167 (Mot. Seq. 9).

depositions of party-witnesses whose affidavits gave “skeletal accounts”). Facts essential to justify opposition to Defendants’ claim that YU’s “functions” make it a religious corporation—should the Court adopt that erroneous test—are in the exclusive possession of Defendants, making summary judgment on that basis premature.

Second, information obtained in other requested discovery is also highly likely to create triable issues of fact about YU’s religious “functions.” However, much of that discovery remains outstanding. To date, the only witness deposed was the University’s corporate representative, who was unable to answer many questions that relate to Defendants’ “functional” test,¹¹ and responded “I don’t know” 75 times during his deposition. Defendants have also blocked other important discovery: they have refused to provide responsive documents about YU’s funding from religious sources (Ex. 34); they have ignored Plaintiffs’ document deficiency notice demanding unredacted production of improperly redacted Form 990, DASNY Bond Issue, and Self-Study Report (Ex. 35); and they have moved to quash a third-party production regarding Defendants’ potential religious representations to the New York State Commission on Independent Colleges and Universities. Dkt. 159.

B. Defendants Have Not Met Their Burden on Summary Judgment

Even on the current limited record, triable issues of fact preclude summary judgment as a matter of law that YU “functions” as a religious corporation for the purpose of the public accommodation definition of the NYCHRL. In *Brown v. St. John’s University*, No. 08 Civ. 2218, 2010 WL 11627391, at *9-10 (E.D.N.Y. June 28, 2010), the court analyzed whether summary judgment was appropriate in favor of St. John’s University, a large, Catholic-affiliated

¹¹ Ex. 10 at 57:24-58:3; 65:6-12; 82:24-83:2; 116:5-11; 209:20-25; 108:17-109:4; 133:20-24; 135:7-15; 137:2-8; 161:9-22; 176:25-177:11; 201:10-14; 203:20-23; 78:18-21; 80:20-81:4; 83:18-20; 57:24-58:3; 138:6-8; 48:6-15, 51:23-52:4.

research university in New York City, on the ground that it was an exempt “religious organization” under Title III of the Americans with Disabilities Act (“ADA”), which prohibits private entities from discriminating against people with disabilities in public accommodations. 42 U.S.C. § 1218(a).¹² The court was asked to determine whether St. John’s was exempt under the ADA’s exception for a “religious organization,” and applied a multi-factor test examining the institution’s mission, curriculum, corporate governance, and operation. *Brown*, 2010 WL 11627391, at *12. The court denied summary judgment to St. John’s, concluding that it could not find based on the current record that St. John’s was entitled to the religious exemption set forth in the statute as a matter of law.

The same factors that the *Brown* court found sufficient to create issues of fact also preclude summary judgment for YU in this case using its own preferred “functional” analysis. YU does not require that its trustees, officers, administrative leaders, faculty or students be of a religious faith. There is no required religious observance for students. The university’s mission statement foregrounds the pursuit of wisdom and professional development. YU’s charter documents grant it the authority to award 22 degrees—all of which are secular degrees, unlike RIETS, which exclusively ordains rabbis. *See* Exs. 29-30.

At minimum, these facts create triable issues of fact that preclude summary judgment as a matter of law that YU “functions” as a religious corporation within the meaning of the public accommodation definition of the NYCHRL.

¹² The ADA exempts “religious organizations or entities controlled by religious organizations, including places of worship” from its public accommodation provisions, while the NYCHRL more narrowly exempts “religious corporations incorporated under the education law and the religious corporation law. *Compare* 42 U.S.C. § 12187, *with* N.Y.C. Admin. Code § 8-102. The ADA exemption for “religious organizations” is “very broad, encompassing a wide variety of situations.” 28 C.F.R. Pt. 36, App. B (2007).

IV. YU HAS NO FIRST AMENDMENT DEFENSE

Applying Section 8-102 of the NYCHRL to YU does not violate Defendants' First Amendment rights. It is a neutral law of general applicability, and the Council's intent to prohibit discrimination in places of public accommodation provides a rational basis for its enactment. *See Cath. Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 521 (2006).

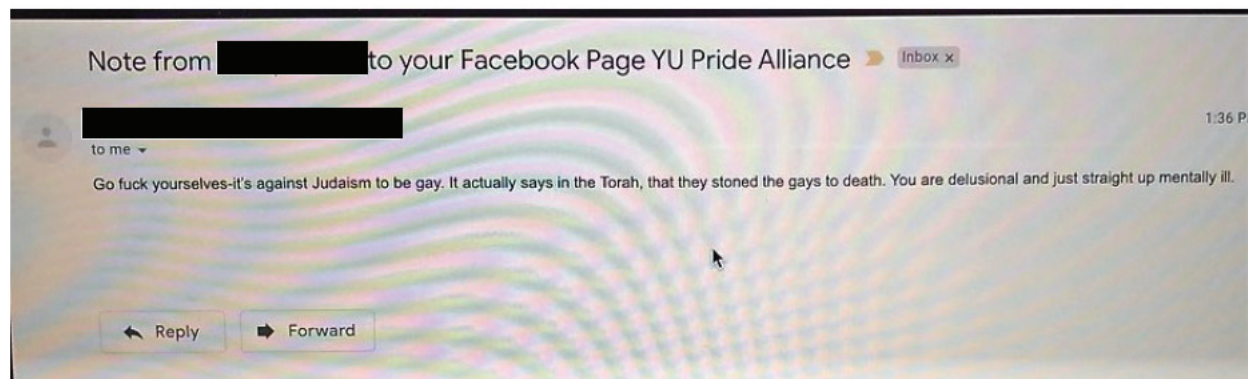
V. YU'S DISCRIMINATION HARMS LGBTQ STUDENTS BY DENYING THEM EQUAL RESOURCES AND OPPORTUNITIES AND BY STIGMATIZING THEM

On a tangible level, YU's conduct hinders LGBTQ students "in their academic and professional pursuits, which has broad-reaching implications for college choice, matriculation, and student success." Ex. 32 at 9.

But the NYCHRL's purpose is not just to remedy such exclusion from the market and professional, employment, and economic sectors, but also to target segregation and subordination within public accommodations. "[P]rejudice, intolerance, bigotry, and discrimination . . . threaten the rights and proper privileges of [the City's] inhabitants." N.Y.C. Admin. Code § 8-101. Since the Civil Rights movement of the 1950-60s, courts have recognized that disfavored groups may be included but not fully accepted, subordinated rather than completely excluded, and the resultant harm to people's dignity and participation. YU's conduct towards its LGBTQ students is reminiscent of restaurants and other public accommodations earlier in America's history which served Black people, but only in certain departments in the store, or only for take-out not sit-down meals. *Bell v. Maryland*, 378 U.S. 226, 271-76 (1964) (Douglas, J., concurring) (compiling sit-in cases in which store managers testified that their establishments served Black people in all departments except lunch counters).

Right now, LGBTQ students at YU receive less than full and equal participation in public life. YU's repeated claim that it values LGBTQ students even while it engages in

blatant discrimination against them rings hollow. By denying Plaintiffs the same resources and benefits provided to all other students, YU sends the stigmatizing message to the entire YU community that LGBTQ people are unwelcome and unequal. As this hateful Facebook message sent recently to the YU Pride Alliance shows, YU's position may embolden others to reject and devalue Plaintiffs, LGBTQ people, and their allies. The NYCHRL protects students in all the City's universities from unequal treatment, including students at YU.



CONCLUSION

For the reasons stated above, the Court should deny summary judgment to Defendants.

Dated: December 17, 2021
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

/s/ Katherine Rosenfeld
Katherine Rosenfeld
Marissa Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiffs

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Plaintiffs' Memorandum of Law in Further Support of Preliminary Injunction has 6,915 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

Date: December 17, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld

Marissa Benavides

Max Selver

600 Fifth Avenue, 10th Floor

New York, New York 10020

Telephone: (212) 763-5000

Fax: (212) 763-5001

Attorneys for Plaintiffs

- Exhibit O -

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

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

Plaintiffs,

-against-

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

Defendants.

Index No.: 154010/2021

Hon. Kotler, J.

Motion Seq. No. 6

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

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<i>Naarim v. Kunda,</i> 801 N.Y.S.2d 237 (Table), 2005 WL 1355143 (N.Y. Sup. Ct. Kings Cnty. 2005)	15

<i>People v. Carroll</i> , 93 N.Y.2d 564 (1999)	7
<i>People v. Pabon</i> , 28 N.Y.3d 147 (2016)	6
<i>People v. Schneider</i> , 37 N.Y.3d 187 (2021)	16
<i>PGA Tour, Inc. v. Martin</i> , 532 U.S. 661 (2001)	19
<i>Scheiber v. St. John's Univ.</i> , 84 N.Y.2d 120 (1994)	3
<i>Temple-Ashram v. Satyanandji</i> , 84 A.D.3d 1158 (2d Dep't 2011)	8, 9
<i>U.S. Power Squadrons v. State Human Rights Appeal Bd.</i> , 59 N.Y.2d 401 (1983)	20
<i>Venigalla v. Nori</i> , 11 N.Y.3d 55 (2008)	6
<i>Watt Samakki Dhammikaram, Inc. v. Thenjitto</i> , 631 N.Y.S.2d 229 (Sup. Ct. Kings Cnty. 1995)	9
<i>Zuckerman v. N.Y.C.</i> , 49 N.Y.2d 557 (1980)	2

STATUTES

N.Y. Relig. Corp. Law § 23	8
N.Y.C. Admin. Code § 8	15, 17, 23
NYCHRL § 8	<i>passim</i>

RULES

C.P.L.R. § 3212	1, 2
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**PLAINTIFFS ARE ENTITLED TO PARTIAL SUMMMARY JUDGMENT
THAT YESHIVA UNIVERSITY IS NOT A “RELIGIOUS CORPORATION”**

Yeshiva University (“YU”) is not an exempt “religious corporation” under Section 8-102 of the New York City Human Rights Law (“NYCHRL”). Partial summary judgment as a matter of law is warranted pursuant to C.P.L.R. § 3212(e) because: (1) there is no genuine dispute of material fact that, under the plain text and legislative history of Section 8-102, Yeshiva University—a New York educational corporation organized “exclusively for educational purposes”—is not a “religious corporation”; (2) the legislative intent of the public accommodations provision would be eviscerated by exempting YU; and (3) YU’s own corporate history and self-presentation demonstrate it is not a religious corporation.

**PLAINTIFFS FILE THIS CASE SEEKING EQUAL
TREATMENT FOR LGBTQ STUDENTS AT YU**

Plaintiffs are an unofficial LGBTQ student organization and four current and former students at YU. YU has repeatedly refused to recognize the YU Pride Alliance as an official student organization because of its LGBTQ status. Compl., Dkt. 1, ¶¶ 2, 41-116. YU has denied recognition and benefits to Plaintiffs that it provides to other students, solely because of Plaintiffs’ sexual orientation and gender identity. YU provides significant tangible benefits to recognized student groups so they may function, which YU has denied the Pride Alliance and its members, including: the use of classrooms and campus facilities to host meetings and events; the ability to bring speakers of their choice to campus; use bulletin boards, email listservs, and the student event calendar to promote activities; the receipt of funding from student councils; inclusion on the YU’s club list; and access to YU’s premium Zoom account during the pandemic.¹

¹ Ex. 38 ¶¶ 35-42 (reviewing benefits of club recognition); Ex. 39 art. IX §§ I(A)(vii) III(A)(vii), & V(A)(ix) (describing clubs’ funding); Ex. 40 art. III § 5 (same).

Plaintiffs commenced this action on April 26, 2021, bringing claims for discrimination under the NYCHRL's public accommodations provision. YU moved to dismiss the complaint, a motion now converted to summary judgment by the Court, Dkt. 117, on the ground that it is not a covered place or provider of public accommodation under N.Y.C. Admin. Code § 8-102. Instead, YU claims it is an exempt "religious corporation." Plaintiffs now cross-move for partial summary judgment that YU is not a "religious corporation" as matter of law.

**LEGAL STANDARD ENTITLING PLAINTIFFS
TO PARTIAL SUMMARY JUDGMENT**

Summary judgment is proper where, upon the court's examination of all the documents submitted in connection with a summary judgment motion, it appears that no material and triable issue of fact is presented. C.P.L.R. § 3212(b) ("The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."); *see also Alvarez. v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). If the moving party makes a prima facie showing of entitlement to summary judgment as a matter of law, the burden shifts to the opposing party to produce admissible evidence sufficient to establish the existence of material issues of fact. *Ferluckaj v. Goldman Sachs & Co.*, 12 N.Y.3d 316, 320 (2009); *Alvarez*, 68 N.Y.2d at 324; *Zuckerman v. N.Y.C.*, 49 N.Y.2d 557, 562 (1980). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a summary judgment motion. *Zuckerman*, 49 N.Y.2d at 562. The Court need not resolve all issues in the case in order to grant summary judgment. "[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." C.P.L.R. § 3212(e).

**YU'S CORPORATE STATUS IS A LEGAL QUESTION AMENABLE
TO RESOLUTION ON SUMMARY JUDGMENT**

Whether YU is an exempt “religious corporation” is a legal question, requiring interpretation of the term “religious corporation” in its statutory context. *See Scheiber v. St. John's Univ.*, 84 N.Y.2d 120, 126 (1994) (“[W]e view an exemption for a religious employer in its statutory context in order to ascertain the intent of the legislature”). Legal questions of statutory interpretation, such as the meaning of the term “religious corporation” in Section 8-102, are well-suited to resolution at summary judgment. “Summary judgment on a question of law involving statutory interpretation is appropriate where no facts material and necessary to the determination of that question are in dispute.” *See Matter of Rotunda Realty Corp. v. Tax Comm'n of the City of N.Y.*, 2016 N.Y. Slip Op 31205(U), 2016 WL 348372, at *4 (N.Y. Sup. Ct. N.Y. Cnty. 2016); *Hertz Corp. v. Corcoran*, 137 Misc. 2d 403 (N.Y. Sup. Ct. N.Y. Cnty. 1987).

The Court should grant partial summary judgment to Plaintiffs since there are no genuine or material issues of fact that YU is not a “religious corporation.”

**KEY UNDISPUTED FACTS DEMONSTRATING
THAT YU IS NOT A RELIGIOUS CORPORATION**

The key facts entitling Plaintiffs to partial summary judgment that YU is not a “religious corporation” are undisputed.

Fact	Evidence	Status
YU is incorporated as an educational corporation under the Education Law.	Ex. 1 ¶ 1 (1967 Certificate of Incorporation)	Undisputed
YU's Certificate of Incorporation states that it is organized “exclusively for educational purposes.”	Ex. 1 ¶ 9	Undisputed
People of all religious faiths are equally entitled to hold offices and appointments at YU.	Ex. 1. ¶ 8	Undisputed

YU's Certificate of Incorporation and bylaws state no religious rules of governance.	Exs. 1-2	Undisputed
YU does not require its Trustees, President, administrators, faculty, or students to be of a specific religious faith.	Exs. 1-2; Ex. 10 at 138:6-139:25	Undisputed
YU chose to register itself in 2018 with the New York State Attorney General's Office as an educational corporation, not a religious corporation.	Ex. 13	Undisputed
YU legally transformed itself in 1967 from (1) a corporation with a religious purpose, comprised up of both a secular academic program <i>and</i> RIETS (its seminary ordaining future rabbis), to (2) a corporation with an exclusively educational purpose granting only secular degrees, and separately incorporated from RIETS, which continued to ordain rabbis.	Exs. 1, 4-5, 7-10, 29	Undisputed

These undisputed facts entitle Plaintiffs to summary judgment that YU is not a “religious corporation.”

**THE NYCHRL’S EXCEPTION FOR “RELIGIOUS CORPORATIONS”
IS NARROWLY DRAFTED AND MUST BE NARROWLY CONSTRUED**

Under the NYCHRL, places or providers of public accommodations may not deny “the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges” because of sexual orientation or gender identity. N.Y.C. Admin. Code § 8-107-4a(1)(a). The NYCHRL expansively defines public accommodations to include “providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind.” *Id.* § 8-102. Under New York law, a public accommodation includes both public and private universities. The Council included all universities as public accommodations based on New York City’s “overriding interest in routing out discrimination from its schools.” Ex. 23.

Only three membership-based entities are narrowly exempted from this definition as “distinctly private” in their nature and thus not “public” accommodations: (1) a private club with less than 400 members that provides no meals and no services to non-members, (2) a benevolent corporation (such as the Freemasons) incorporated or described under the benevolent corporations law or (3) a “religious corporation” incorporated under the Religious Corporations law (“RCL”) or the Education Law. *See id.* YU claims here to be exempt as a “religious corporation.”

The NYCHRL’s rules of construction require it to be “liberally and independently construed with the aim of making it the most progressive in the nation.” *Farrugia v. North Shore Univ. Hosp.*, 820 N.Y.S.2d 718, 724 (N.Y. Sup. Ct. N.Y. Cnty. 2006). Critically, the statute requires that “[e]xceptions 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). The legislative intent of this provision is for courts to “develop[] [] an independent body of jurisprudence . . . that is maximally protective of civil rights in all circumstances.” Ex. 37.

I. YU IS AN EDUCATIONAL CORPORATION ORGANIZED “EXCLUSIVELY” FOR EDUCATIONAL PURPOSES AND NOT A “RELIGIOUS CORPORATION”

There is no genuine dispute of material fact: YU is not an exempt “religious corporation” under Section 8-102. It is an educational corporation. No New York court has ever held that an educational corporation incorporated under the Education Law is actually a “religious corporation.” YU would be the first.

YU is incorporated as an “educational corporation under the Education Law.” Ex. 1 ¶ 1 (Dep. Ex. 8). Its Certificate of Incorporation states that it is “organized and operated *exclusively* for educational purposes,” and states no religious purpose or governance whatsoever.

Id. ¶¶ 8-9 (emphasis added). These undisputed facts are fatal to YU’s claim to be a “religious corporation.” *See Matter of Lueken*, 97 Misc.2d 201, 203 (N.Y. Sup. Ct. Queens Cnty. 1978) (“In determining what kind of corporation is presently proposed, it is incumbent upon [the Court] to make this evaluation based on the purposes set forth in the certificate of incorporation.”).

A. YU Is Not a “Religious Corporation” Under New York Law

The straightforward language of the NYCHRL requires that to be exempt as a “religious corporation,” an entity must be organized as one. “[W]hen the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used.” *People v. Pabon*, 28 N.Y.3d 147, 152 (2016) (citations omitted). Because YU is not incorporated as a “religious corporation,” it is not exempt.

1. A “Religious Corporation” is an Entity Created for Religious Purposes, Which YU Is Not

To be a “religious corporation,” an entity must be a “corporation created for religious purposes.” RCL § 2. The Religious Corporations Law (“RCL”) – the statute laying out the “[legal] rules for the governance of religious bodies,” *Venigalla v. Nori*, 11 N.Y.3d 55, 61 (2008) – is the only place where the term “religious corporation” is defined in New York law.² The RCL identifies two types of “religious corporations”: an “incorporated church” and “unincorporated church.” RCL § 2. Both are “created to enable its members to meet for divine worship or other religious observances.” *Id.* The RCL’s definition of a “religious corporation”

² The RCL establishes rules for formation and governance of religious corporations, such as certificates of incorporation, qualification of voters, and powers of trustees. It enumerates more than twenty different types of religious corporations, all places of worship—e.g., various Christian churches, “churches affiliated with the Islamic faith,” and synagogues. RCL §§ 40-489.

applies whether the term is used in the NYCHRL or any other statute.³ 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). The RCL’s examples of types of religious corporations—synagogues, mosques, and churches—are instructive: they confirm that a “religious corporation” is a legal entity created for the purpose of worship or religious observance. See *In re Watson’s Estate*, 171 N.Y. 256, 259 (1902) (“Section 2 of the [RCL] defines a religious corporation to be a corporation organized for religious purposes. We are not much the wiser for this definition, but an examination of the statute shows that its provisions are devoted to the organization and government of the various denominational churches.”).⁴

2. YU Is Incorporated Exclusively for Educational Purposes

YU’s Certificate of Incorporation creates an “educational corporation” whose purpose is to operate “exclusively for educational purposes.” New York courts rely heavily on the language in certificates of incorporation defining the corporation’s purpose to determine whether a corporation is legally organized as a “religious corporation.” The Second Department has held that a Hindu Temple incorporated under the Not-for-Profit Corporations Law (“N-CPL”) is a de facto “religious corporation” because it is “a place of worship” whose certificate “states that it is a religious corporation formed to promote the philosophy of Bhagvad Gita” and includes “the signature of a Justice of the Supreme Court,” a requirement for incorporating under

³ The NYCHRL intentionally uses the term “corporation,” making clear that the statute refers to a legal entity. Corporation, Black’s Law Dictionary (“An entity . . . established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up.”).

⁴ The City of New York’s lawyers also defined “religious corporation” under Section 8-102 solely by reference to the RCL’s definition, explaining in amicus to the Supreme Court in support of the amendment that “a religious corporation would be either ‘an incorporated church created to enable its members to meet for divine worship or religious observances,’ or ‘an incorporated congregation, society, or other assemblage, accustomed to meet for the same purpose.’” Ex. 18 at 18.

the RCL. *Temple-Ashram v. Satyanandji*, 84 A.D.3d 1158, 1160 (2d Dep’t 2011) (cleaned up); *see also Agudist Council of Greater N.Y. 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”). YU’s stated exclusive educational purpose in its incorporating documents disposes of its claim to be a de facto “religious corporation”

YU’s charter also requires no religious governance of its affairs, even though “there is, as a rule, denominational control of the temporalities of religious corporations.” 92 N.Y. Jur. 2d Religious Organizations § 23. Under YU’s Certificate of Incorporation, “[p]ersons of every religious denomination shall be equally eligible to offices and appointments.” Ex. 1 ¶ 8. Its bylaws contain no rules of religious governance at all. *See* Ex. 2. YU does not require that its trustees, officers, administrative leaders, faculty or students be of a religious faith.⁵ The Court’s inquiry should end here: YU is an educational corporation that operates “exclusively for educational purposes”; it is not legally organized as a “religious corporation,” and it has no legally required religious governance or control. It therefore qualifies for no exemption for “religious corporations.”

3. YU Is Not a “Religious Corporation” Under Any Body of Law

Defendants point to the language in Section 8-102 that exempts “religious corporations” incorporated under either the RCL *or* the Education Law to argue that YU

⁵ No religious organization has any role in hiring or firing YU Trustees or officials. Students also are not subject to any religious observation requirements. They are not required to attend or take part in religious services, Ex. 10 52:5-53:15; they are not required to wear religious garments, *id.* 75:2-6; and they are not required to maintain religious restrictions on what they eat, *id.* 77:23-78:5.

somehow qualifies as a de facto “religious corporation” because it is organized under the Education Law. But this argument fails because whatever statute it is incorporated under, YU is still organized “exclusively” for educational purposes.

Corporations incorporated under statutes other than the RCL may be de facto “religious corporations” under New York law, but only if they satisfy the definition of a “religious corporation” *under the Religious Corporations Law* based on their corporate purpose in their governance documents. For example, in *Temple-Ashram*, the Second Department held that a Hindu Temple incorporated under the N-CPL “may be considered 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.” *Temple-Ashram*, 84 A.D.3d at 1160 (emphasis added).

Defendants’ cited cases follow the same analysis: “the plaintiff corporation [incorporated under the N-PCL] was established primarily for religious purposes, continues to operate as such, and thus falls within the ambit of the Religious Corporations Law” because it was a “*temple/residence*” established, under its certificate of incorporation, “for the study of Buddhism.” *Watt Samakki Dhammikaram, Inc. v. Thenjitto*, 631 N.Y.S.2d 229, 231 (Sup. Ct. Kings Cnty. 1995) (emphasis in original); *see also Kroth v. Congregation Kadisha, Sons of Israel*, 105 Misc. 2d 904, 910 (Sup. Ct. N.Y. Cnty. 1980) (“[S]ince, if unincorporated, [the corporation, a synagogue] could now only be incorporated under the Religious Corporations Law, that statute is applicable to its governance”). Thus, for a corporation incorporated under the Education Law—like YU—to qualify as a de facto “religious corporation,” it must still meet the RCL’s definition of a “religious corporation”: a legal entity created for the purpose of

worship or religious observance. YU fails to qualify because it is a legal entity created “exclusively” for educational purposes.

B. YU Has Never Claimed to be a “Religious Corporation” Until this Lawsuit

YU invented the idea that it is a “religious corporation” under Section 8-102 of the NYCHRL for purposes of defending this lawsuit, hunting for a safe harbor from the City’s anti-discrimination laws. YU’s corporate history and its decades of consistent representations to local, state and federal government confirm what is obvious from the face of its corporate documents: it is an educational corporation formed for educational purposes.

The University’s *own attorneys* from Weil Gotshal & Manges, “special counsel engaged to review this issue,” concluded in 1995 “after an exhaustive review of the ordinance and applicable case law,” that the University’s governance documents and representations about its corporate status precluded it from seeking a religious exemption from the NYCHRL as a “religious corporation”: “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 University’s legal status as a nondenominational institution.” Ex. 3 at 3. That remains as true today as it was then.

1. YU’s Corporate History Belies Its Baseless Claim to Be a “Religious Corporation”

In 1967, YU legally transformed itself from a corporation with a religious purpose in its charter, comprised of both a secular academic program and a seminary ordaining future rabbis, to a corporation with an exclusively educational purpose granting only secular degrees, separately incorporated from the seminary.

YU was first incorporated in 1897 as the Rabbi Isaac Elchanan Theological Seminary (“RIETS”) under the Membership Corporations Law. The corporation’s purpose was

the “promotion of the study of Talmud and assistance in educating the preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” Ex. 4. In 1945, that corporation’s name changed to “Yeshiva University.” Ex. 6.

In 1967, YU petitioned the Board of Regents to amend and restate its Charter to become an educational corporation under the Education Law because:

[T]he original purpose of the corporation as stated in [the 1897 Certificate of Incorporation] is no longer applicable or appropriate in light of the degree granting schools and divisions comprising the University and its present corporate activities in connection therewith. The membership association which was originally formed under the designation of Rabbi Isaac Elchanan Theological Seminary Association has long since ceased to function as an association or part of the University.

Ex. 7 at 4.

Also in 1967, YU formally split from its seminary, RIETS, which in turn incorporated separately. After the split, RIETS retained a religious purpose clause,⁶ but YU did not. YU became a corporation “organized and operated *exclusively* for educational purposes.” Ex. 1 ¶ 9 (emphasis added). The Board of Regents approved these requests as “long overdue,” noting that the original charter “has been amended from time to time for and on behalf of the Education Department to reflect the expansion of this institution into a complex university.” Exs. 8-9.

In 1969, YU again changed its Certificate of Incorporation, this time to eliminate “Religious Education” degrees from its charter to be “consistent with its present corporate organization and operation.” Ex. 7. YU clarified that “[i]t is also desired to effectuate the foregoing change to clarify the corporate status of the University as a non-denominational

⁶ 1970: “The purposes are to prepare students for the rabbinate and to issue the traditional Certificate of Ordination in connection therewith.” Ex. 5.

institution of higher education.” *Id.* at 5-6. YU testified that the corporation’s “non-denominational” status “is true” today. Ex. 10 at 105:9-15. YU’s current corporate purpose and structure are not products of happenstance; they reflect a considered choice to become an educational corporation with an exclusively educational purpose to qualify for public funding.⁷

2. YU Publicly Represents and Reports that it is a Non-Sectarian Educational Corporation

a. YU Reports to New York State to Qualify For a \$90 Million Bond

In 2011, YU received \$90 million in bond financing from New York State to build classrooms and dormitories. Ex. 10 at 167:3-68:11. To receive that money, it represented that: “The University is an independent, coeducational, nonsectarian, not for profit institution of higher education.” Ex. 14 at YU01251. Although the funding was partially for classrooms, YU “agree[d] that . . . the Project or any portion thereof will not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination.” *Id.* at YU01301.

b. YU Reports to the New York State Attorney General

In 2018, to obtain an exemption from reporting as a charitable organization, YU informed the New York State Attorney General’s Office that it was an “educational institution,” and not an organization “incorporated under the religious corporations law or . . . with a religious purpose or [] operated, supervised or controlled by or in connection with a religious organization.” Ex. 13. YU testified that its Director of Tax & Compliance, Alan Kluger,

⁷ According to the scholarship of a current YU professor, YU split from RIETS in 1967 “to reconstitute itself as formally ‘nonsectarian’ in order to comply with the [New York Constitution’s] provision that public money not be used to ‘aid schools under the control and direction of any religious denomination or in which any denominational tenet.’” Ex. 11. An Emory law professor—and YU alumnus—writes that this corporate reorganization bars YU from seeking a religious exemption under the NYCHRL: “It is a secularly chartered but religiously affiliated institution, a status . . . unprotected by the rights granted to religious institutions.” Ex. 12.

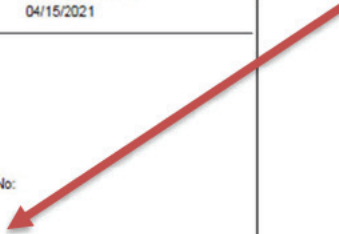
registered YU as an educational corporation, and not a “religious corporation,” because “it would be difficult” to produce documents showing its entitlement to this religious exemption and did not know whether any such documents existed. Ex. 10 at 109:5-16:22.

Schedule E (Form CHAR410, CHAR410-A or CHAR410-R) Must be attached to form CHAR410, CHAR410-A or CHAR410-R		Request for Registration Exemption for Charitable Organizations New York State Department of Law (Office of the Attorney General) Charities Bureau - Registration Section 120 Broadway New York, NY 10271 www.charitiesnys.com		Open to Public Inspection
Full Name of Organization Yeshiva University		Fed. employer ID no. (EIN) 13-1624225	NY State registration no. 44-10-46	
<p>If your organization is not claiming exemption from registration under either or both Article 7-A or the EPTL, do not complete Schedule E and do not submit a blank Schedule E. An exemption request that is not accompanied by <u>all</u> required documentation as listed below and in CHAR410, CHAR410-A or CHAR410-R Part D (Attachments) will not be considered. Do not request exemptions that cannot be supported by the documentation required. An exemption request has not been granted unless you receive a letter confirming your organization's exemption.</p> <p>Indicate whether you are claiming an exemption from the EPTL or Article 7-A or both. Complete the corresponding exemption request questions.</p> <p>EPTL <input type="checkbox"/> ⇔ Complete Part I (EPTL), skip Part II (Article 7-A).</p> <p>Article 7-A <input type="checkbox"/> ⇔ Complete Part II (Article 7-A), skip Part I (EPTL).</p> <p>Both EPTL and Article 7-A <input checked="" type="checkbox"/> ⇔ Complete Part I (EPTL) and Part II (Article 7-A). If you complete one but not both exemption request parts, your organization may be exempted under only one law and registered under the other law, in which case your organization would be required to file annually with the Charities Bureau.</p>				
Part I: EPTL Exemption Request				
Registration exemption claim (check all that apply)		Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)		
<input type="checkbox"/> 1. Organization is not charitable		None		
<input type="checkbox"/> 2. Organization does not conduct activity in NY State		If your organization lists a New York address in either question 3 (Mailing address) or question 4 (Principal NYS address) of CHAR410, CHAR410-A or CHAR410-R Part A, attach a detailed explanation of why the organization has a New York address but claims not to conduct activity in NY State		
<input type="checkbox"/> 3. Organization is a government agency or is controlled by a government agency		For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency and either: • a copy of the letter from the Charities Bureau confirming the government agency exemption of that other organization, or • a copy of the government agency's charter and , if applicable, IRS tax exemption determination letter		
<input type="checkbox"/> 4. Organization reports annually to either the U.S. Congress or the NY State Legislature		Attach a copy of either: • the most recent annual report filed with the U.S. Congress or the NY State Legislature, as the case may be; or • a letter from such legislative body confirming that your organization reports annually to it		
<input type="checkbox"/> 5. Organization is 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		• Attach a copy of listing in official denominational directory (for example, "Blue Directory"), if applicable; and • For organizations operated, supervised or controlled by or in connection with another organization that is exempt from registration as religious, attach a description of the relationship between your organization and that other organization and either: - a copy of the letter from the Charities Bureau confirming the religious exemption of that other organization, or - a copy of that other organization's certificate of incorporation, by-laws, trust agreement and/or other organizational document and amendments, and , if applicable, IRS tax exemption determination letter		
<input checked="" type="checkbox"/> 6. Organization is an educational institution, museum or library incorporated under the NY State Education Law or by special act		None		

c. YU Reports to Federal and Local Agencies

In a funding application submitted to the U.S. Department of Homeland Security, YU checked a box defining itself as a “Not For Profit” entity and not a “Sectarian Entity.” Ex. 15.

Grant Application		Homeland Security Non Profit Grant	
Project No HS21-1471-E00	Grantee Name Yeshiva University	04/22/2021	
Project Title: FY2021 NSGP-UA			
Contacts Mr. Paul Murtha Director Of Security 500 West 185Th Street New York, NY 10033 Phone:846-592-4480, Ext:6200 Fax: Email:murtha@yu.edu Mr. Cristobal Hiraldo Physical Security Manager 500 West 185Th Street New York, NY 10033 Phone:212-960-5221, Ext:5481 Fax:212-960-0072 Email:hiraldo@yu.edu Ronald Nahum Director of Finance and Administration 500 W 185th St New York, NY 10033 Phone:846-592-4002, Ext: Fax: Email:nahum@yu.edu Randy Apfelbaum Director of University Operations 500 West 185th Street New York, NY 10033 Phone:846-592-4113, Ext: Fax: Email:randy.apfelbaum@yu.edu		Project Start: 10/01/2021 Project End: 09/30/2024 Project Period: Years 3 Months 0 Submission Date: 04/15/2021 EIN: 13-1624225 Municipality No: Dun & Bradstreet No: 071036636 Charities Registration No: <input checked="" type="checkbox"/> Not For Profit <input type="checkbox"/> Sectarian Entity County: New York Region: New York City BUDGET SUMMARY Grant Funds: \$150,000.00 100.00% Matching Funds: \$0.00 0.00% Total Funds: \$150,000.00	



Similarly, in an application to the City of New York for funding, it described itself as “a community-based not-for-profit corporation or other public service organization.” Ex. 16.

C. YU Wrong Claims It Is a “Religious Corporation” Based on Its Religious Identity and Activities Rather Than its Legal Status

YU asks the Court to interpret the word “religious” in “religious corporation” as an adjective, such as one might say that someone was a “religious person.” But the plain language of the statute is clear that it requires the legal corporate status of a “religious corporation.” YU also urges the Court to disregard the statute’s plain meaning and deem it a

“religious corporation” based on its religious identity. YU also urges the Court to deem it a “religious corporation” based on its religious identity, but that does not make it a “religious corporation” as the law requires.

Naarim v. Kunda, 801 N.Y.S.2d 237 (Table), 2005 WL 1355143 (N.Y. Sup. Ct. Kings Cnty. 2005) illustrates the point. There, the court held that the fact that a summer camp provides “boys with a summer vacation in a religious, spiritual atmosphere” does not make it a religious corporation because “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.” *Id.* at *2 (cleaned up). Just so here. YU’s claim that its undergraduate campus has a religious atmosphere or identity is irrelevant. Its lack of religious corporate status precludes it from being a “religious corporation.”

Section 8-102’s use of the term “religious corporation” is not accidental or superfluous. Courts have therefore strictly construed the statute’s exemptions based on the enumerated corporate forms, particularly since it is couched as absolute exemption. *See Gifford v. Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 272 A.D.2d 721, 722-23 (3d Dep’t 2000) (“A plain reading of the statute reveals that the exemption for organizations formed pursuant to the Benevolent Orders Law is absolute and not subject to limitation. This interpretation accords with the legislative intent behind the amendment deeming religious corporations and benevolent orders to be ‘distinctly private.’”).⁸ Conversely, an entity such as YU that lacks the corporate form specified in the statute cannot be exempt.

⁸ The Supreme Court specifically cited the “unique” corporate nature of “religious corporations”—to which “the State has extended special treatment in the law” and which “continue[] to be treated in a separate body of legislation”—as a basis for upholding the law from a challenge by private club owners in 1988. *See N.Y. State Club Ass’n, Inc. v. City of N.Y.*, 487 U.S. 1, 16-17 (1988).

II. PERMITTING YU TO SELF-EXEMPT AS A “RELIGIOUS CORPORATION” SUBVERTS THE LEGISLATIVE INTENT TO OUTLAW DISCRIMINATION BY PLACES OR PROVIDERS OF PUBLIC ACCOMMODATION

YU’s expansive, textually unmoored definition of a “religious corporation” would violate the City Council’s explicit intent in passing the 1984 law: to expand protections against discrimination in public accommodations.

As the Court correctly noted in its August 18, 2021 Decision & Order, Section 8-102 differentiates between places or providers of “public accommodation” and places or providers of “private accommodation.” Dkt. 117 at 6. When it passed the statute in 1984, the Council sought to increase public accommodations protections to include *more* providers and places on the public side of the line, and exempt only a limited group of three “distinctly private” membership-based entities. “When resolving a question of statutory interpretation, the primary consideration is to ascertain and give effect to the legislature’s intent.” *People v. Schneider*, 37 N.Y.3d 187, 196 (2021); *see also Lubonty v. U.S. Bank. N.A.*, 34 N.Y.3d 250, 255 (2019) (“In a manner consistent with the text, we may look to the purpose of the enactment and the objectives of the legislature.”). Section 8-102’s legislative history demonstrates that the Council intended to cover a public-facing educational corporation, such as YU, as a public accommodation.

A. The City Council Intended Section 8-102’s Exceptions for “Distinctly Private” Clubs, Benevolent Corporations, and Religious Corporation– Not A Public-Facing Research University Like YU

1. The Council Amended the Law in 1984 to Include More, Not Fewer, Entities as Public

Before 1984, the NYCHRL prohibited discrimination in any “place of public accommodation,” but it exempted “private” clubs. Ex. 36. In 1984, the City Council amended the law to bring “private clubs that are determined to be sufficiently ‘public’ in nature” within the law’s protections. *N.Y. State Club Ass’n*, 487 U.S. at 5. The goal was to target the remaining

private men's clubs in New York City that refused to admit women and other traditionally excluded groups such as Jews, since their ongoing exclusion from these clubs harmed their employment, professional and business advancement. Ex. 19 § 1 (Local Law 63 (1984)); Ex. 17.

The 1984 amendment exempted small, “distinctly private” clubs (with fewer than 400 members), not serving meals, and not open to the public for any purpose. N.Y.C. Admin. Code § 8-102(9) (1984). In addition, the amendment stated that “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 corporations law” “shall be deemed to be in its nature *distinctly private*.” *Id.* (emphasis added).

The three “distinctly private” entities exempted by the Council—small private clubs, benevolent corporations, and religious corporations—shared important characteristics: (1) they were private; (2) they were membership organizations; and (3) they were not places of business, professional, or employment opportunity. The City Council exempted these entities because they did not pose a barrier to the advancement of “women and minorities”: “Because small clubs, benevolent orders and religious corporations have not been identified in testimony before the Council as places where business activity is prevalent, the Council has determined not to apply the requirements of this local law to such organizations.” Ex. 19; *see* Ex. 18 at 18.

The City Council “recognize[d] the interest in private association asserted by club members,” but found that “the public interest in equal opportunity” outweighed that interest. Ex. 19. In balancing private associational rights with this important public interest, the Council found that only truly (“distinctly”) private, “family-like” membership groups deserved protection to discriminate in their membership, while larger, public-facing entities with market interactions

characteristics did not: “To have their privacy protected, clubs must function as extension of members’ homes and not as extension of their business. Racial prejudice will not be permitted to infect channels under the guise of privacy” Ex. 20 at 4. Then-Mayor Koch and Council President Bellamy explained that the exception is limited to private groups coming together for strictly private purposes: “We all agree that distinctly private clubs that are strictly social, religious or fraternal in nature are not at issue.” Ex. 21; *see also* Ex. 22.

2. The Council Did Not Intend to Create a Broad Religious Exemption from Section 8-102

The legislative history contains no evidence that the Council intended to broadly exempt large religiously-affiliated corporations—universities, hospitals, or any other organization—from the definition of a public accommodation. To the contrary, the history shows a commitment to expand the law into more and more domains. Accordingly, the statute must be interpreted as it reads: as exempting three enumerated private places (clubs, religious corporations, and benevolent corporations), rather than as a religious exemption *per se*.

The Council was fully aware of how to carve out a broader religious exemption that is not limited to “religious corporations,” and it did so elsewhere at Section 8-107(12). In 8-107(12), the Council allowed a wider array of religious organizations, whether or not incorporated as “religious corporations,” to claim exemptions in matters of employment, sales, housing rentals, and admissions, areas of public life where organizations might legitimately seek to favor co-religionists. The Council chose the narrower term “religious corporation” for the public accommodations provision, evidencing its determination that discrimination in providing facilities to the public was almost entirely prohibited. The Court is bound to observe and effectuate the distinction intended by the Council: “religious corporations” can seek to exclude themselves from the public accommodations provision, but simply religiously-affiliated or

identified entities may not. YU's undergraduate college has a Jewish religious identity, campus culture, and community, but it is not a "religious corporation" exempt from the law that covers every other university in New York City.

The Council's intent carving out a narrow exemption would be undermined by allowing YU to claim it is a "religious corporation." Defendants do not point to a shred of evidence in the legislative record that the Council intended to exempt a public-facing university serving thousands of students, funded almost entirely by public monies, when it narrowly exempted three enumerated private, membership organizations.

B. The Council Intended Universities Such as YU to Be Covered Places or Providers of Public Accommodation

It is undisputed that Section 8-102 includes all universities in New York City as places or providers of public accommodation. *See* Ex. 23 at 39 ("The term 'place or provider of public accommodation' would now include both public and private educational institutions" based on the City's "independent and overriding interest in routing out discrimination from its schools."). Students who attend universities and colleges are "members of the public," using these institutions as places of public accommodation. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690 (2001). *PGA Tour* makes clear that students are a university's public, notwithstanding that they have applied to attend the university. *See id.* (professional golf tour was public accommodation, even though only highly skilled golfers who had won preliminary competitions were permitted to compete). Once open to the public, there is no right to maintain a caste system within a university that differentiates the benefits provided to some students from others because of sexual orientation. The Council's decision to include all universities and colleges in Section 8-102 further confirms that YU is a covered public accommodation and the 5,000 students who attend the schools and college making up YU are its public.

1. YU is A Public-Facing Institution, Not a “Distinctly Private” Membership Entity

On the spectrum of public to private, YU is distinctly public and completely unlike the “distinctly private” entities the Council excluded from the law.⁹ YU has invited the public—its students—to receive educational services in order to prepare them to be citizens and workers in the world. It is a public-facing entity, large in size, and it holds itself open to the public. It bears no resemblance to the small, intimate, membership associations that the Council exempted

a. YU’s Public-Facing Mission

YU’s mission is to educate its student and community so they may positively influence the broader society and world at large:

- Our students learn and go forth, as both educated and ethical people, to share their own talents and wisdom with society.
- Our University serves as a platform to bring Yeshiva’s collective wisdom to the world through our community outreach, publications, seminars and broad range of academic programs.

Ex. 24; *see* Ex. 33.

YU’s Strategic Plan focuses on “infus[ing] our unique mission into a dynamically growing changing market and achiev[ing] a global impact.” Ex. 25 at YU00932.

⁹ The Council required that the exempt entity be not just private, but meet the higher bar of “distinctly private.” In interpreting the parallel language in the State Human Rights Law, the Court of Appeals explained that to be “distinctly private” does not “refer simply to private clubs or establishments closed to the public but uses more restrictive language excluding from the statute’s provisions only clubs which are ‘distinctly private.’ We construe it strictly to promote its purposes.” *U.S. Power Squadrons v. State Human Rights Appeal Bd.*, 59 N.Y.2d 401, 412 (1983).

b. YU's Professional Opportunities

YU is laser focused on the employment opportunities and professional advancement of its students, echoing Section 8-102's central concern: that "all persons . . . have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of employment opportunities." Ex. 19. YU prides itself on "preparing students for success in the lives they lead and the careers they build." Ex. 25 at YU00932. YU's undergraduate campus regularly brings employers to campus to "recruit students." Ex. 10 at 84:22-24. It hosts "nights for accountants," and "other corporate entities come to campus." *Id.* at 84:24-85:2. YU has a robust career center, *id.* at 84, which touts graduates' employment in several industries—accounting, finance, education, technology, medicine/research, real estate—all essential parts of New York City's business and professional life. <https://www.yu.edu/sgc/outcomes>; *see* Ex. 26.

And that is to say nothing of YU's graduate schools, like Cardozo Law School, the Ferkauf Graduate School of Psychology, and Wurzweiler School of Social Work, whose very purpose is to train students to join specific professions. *See, e.g.*, <https://cardozo.yu.edu/about> ("Cardozo Law School . . . has innovative programs that prepare you to succeed in your legal career. Our location in New York City—a global hub of business, culture, and the law—offers unparalleled options and opportunities."). YU is a place where students are prepared for professions and employment.¹⁰ *Cf.* Ex. 19 (exempting religious corporations that "have not been identified in testimony before the Council as places where business activity is prevalent.").

¹⁰ Defendants' claim to be a "religious corporation" rests entirely on the Jewish identity or activities of its undergraduate colleges. *See* Dkt. 71. Defendants have cherry-picked its three undergraduate schools out of the nine constituent colleges and graduate schools that comprise the University. Ex. 10 at 22:7-21. Defendants' analysis ignores its graduate schools, all part of the corporation too, where President Berman attests that "the focus shifts to professional training and academic research," and which "are not structured with the same religious environment."

c. YU's Community Engagement

YU holds its campuses open to New York City's broader public in myriad contexts. This year, it applied for \$10 million in state funding to build a pedestrian plaza on Amsterdam Avenue to "provide a needed space for respite and community gathering in Washington Heights." Ex. 27. It is meant to be "an open plaza for the community" at "the heart of the [undergraduate] campus." Ex. 10 at 182:20-84:11. YU also submitted a Community Project Funding Request to Congress this year, seeking \$1 million to renovate "Weissberg Commons," a YU building containing "a multipurpose events space" currently used for "both academic and public-facing events" and "community-facing activities," including by the local community board, local public school students, and as a community vaccination hub open to the public. *See id.*; Ex. 28 at YU01158. In its application, YU touted how "the project will significantly contribute to the overall benefit of the Washington Heights community." *Id.*

Because the University is a paradigmatically public-facing institution, it would be entirely contrary to the Council's intent in exempting "distinctly private" entities if YU was excluded.

III. YU'S DISCRIMINATION HARMS LGBTQ STUDENTS BY DENYING THEM EQUAL RESOURCES AND OPPORTUNITIES AND BY STIGMATIZING THEM

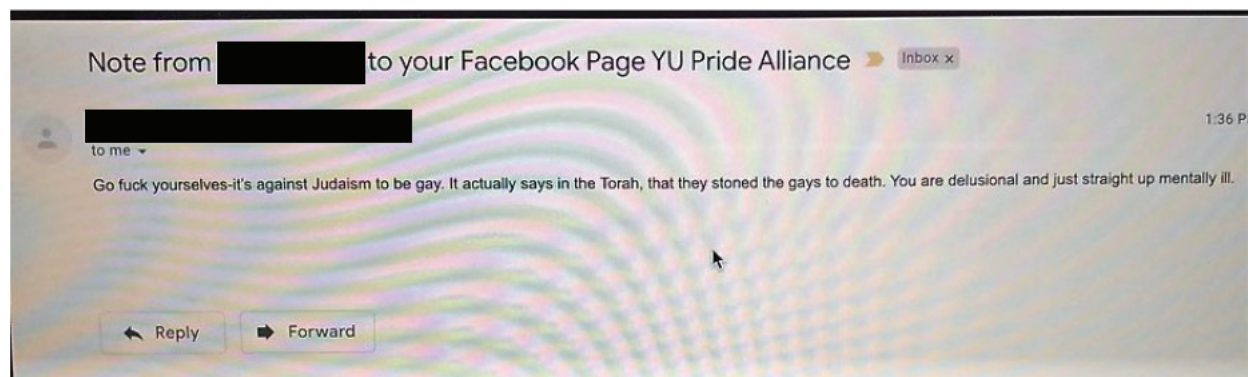
On a tangible level, YU's conduct hinders LGBTQ students "in their academic and professional pursuits, which has broad-reaching implications for college choice, matriculation, and student success." Ex. 32 at 9.

But the NYCHRL's purpose is not just to remedy such exclusion from professional, employment, and economic sectors, but also to target segregation and subordination

Dkt. 83 ¶ 8. Defendants' exclusive reliance on the undergraduate college's "religious character" not only disregards that "religious corporation" refers to corporate form; it also pretends that more than half of YU does not exist.

within public accommodations. “[P]rejudice, intolerance, bigotry, and discrimination . . . threaten the rights and proper privileges of [the City’s] inhabitants.” N.Y.C. Admin. Code § 8-101. Since the Civil Rights movement of the 1950-60s, courts have recognized that disfavored groups may be included but not fully accepted, subordinated rather than completely excluded, and the resultant harm to people’s dignity and participation. YU’s conduct towards its LGBTQ students is reminiscent of restaurants and other public accommodations earlier in America’s history which served Black people, but only in certain departments in the store, or only for take-out not sit-down meals. *Bell v. Maryland*, 378 U.S. 226, 271-76 (1964) (Douglas, J., concurring) (Appendix II) (compiling sit-in cases in which store managers testified that their establishments served Black people in all departments except lunch counters).

Right now, LGBTQ students at YU receive less than full and equal participation in public life. YU’s repeated claim that it values LGBTQ students even while it engages in blatant discrimination against them rings hollow. By denying Plaintiffs the same resources and benefits provided to all other students, YU sends the stigmatizing message to the entire YU community that LGBTQ people are unwelcome and unequal. As this hateful Facebook message sent recently to the YU Pride Alliance shows, YU’s position may embolden others to reject and devalue Plaintiffs, LGBTQ people, and their allies. The NYCHRL protects students in all the City’s universities from unequal treatment, including students at YU.



CONCLUSION

For the reasons stated above, the Court should grant partial summary judgment to Plaintiffs on the ground that YU is not an exempt “religious corporation” under Section 8-102 of the NYCHRL.

Dated: December 17, 2021
New York, New York

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

/s/

Katherine Rosenfeld
Marissa Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

Attorneys for Plaintiffs

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Plaintiffs' Memorandum of Law in Further Support of Preliminary Injunction has 6,644 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

Date: December 17, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld
Marissa Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
Telephone: (212) 763-5000
Fax: (212) 763-5001

Attorneys for Plaintiffs

- Exhibit P -

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

YU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

Motion Sequence No. 6

**DEFENDANTS' SURREPLY IN FURTHER SUPPORT OF THEIR
CONVERTED MOTION FOR SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

Plaintiffs sued Yeshiva University as a “place of public accommodation” under the New York City Human Rights Law (“NYCHRL”). But the NYCHRL exempts corporations that are (1) “incorporated under the education law” and (2) “religious.” After Yeshiva moved to dismiss on this ground, the Court converted the motion to one for summary judgment, stating it was “ripe” for adjudication. When Plaintiffs begged to first test the facts, the Court gave them time. Their plan failed, because discovery only underscored Yeshiva’s exemption. It’s indisputable that Yeshiva incorporated under the Education Law in 1967, and—as Plaintiffs put it most recently—“the University has a Jewish identity,” one that is “deeply important to [its] *existence* and *activities*.” (Emphases added.)

Trapped by their findings, Plaintiffs swapped theories. According to them, the facts are now irrelevant, as the Plaintiffs claim summary judgment for themselves as a matter of law. To plaintiffs, Yeshiva’s religiosity can be ignored, because an organization is “religious” only if organized, or eligible to be organized, under the Religious Corporations Law (RCL). And since only houses of worship are eligible, Yeshiva is not exempt. It’s a tidy theory. But it’s nowhere in the NYCHRL, which exempts a religious corporation “incorporated under the education law *or* the religious corporations law,” not one “incorporated, or eligible to be incorporated” under the RCL. Besides rendering the “education law” clause superfluous, Plaintiffs’ theory would lead to absurd results: no separately incorporated religious school could ever be exempt, including Yeshiva’s affiliated rabbinical seminary or hundreds of religious schools throughout the City.

Plaintiffs’ other theories are equally untenable. Seeking to rewrite the statute’s plain terms with legislative history, Plaintiffs insist that exempt religious corporations cannot be “public facing” or “large,” and their charters must use the magic words “religious corporation.” This is contrary to the ordinary meaning of the statute itself. That should end the case.

Even if the NYCHRL had no protection for religious corporations, the First Amendment does. Yet Plaintiffs’ response to Yeshiva’s First Amendment protections is as thin as the single sentence they devote to them. Among other things, the *Serio* case they rely on is on the ropes. The United

States Supreme Court has just ordered its reconsideration in light of *Fulton v City of Philadelphia*, a case holding 9-0 that a city's public-accommodations law could not be applied to a Catholic foster agency that, for religious reasons, could not provide foster-care certifications to same-sex couples. And even if *Serio* survives, it is inapposite.

Left with nothing else, Plaintiffs argue that, despite their own concessions of Yeshiva's "deeply important" religious identity, its Judaism is just a facade. This should not be taken seriously. Yeshiva is one of the nation's most overtly and thoroughly religious universities. The federal government knows it from Yeshiva's IRS 990. New York State and New York City know it when Yeshiva seeks their support. Students are told about it when they apply. Plaintiffs—current and former students—have admitted it. And national media touts it when discussing Yeshiva's accomplished men's basketball team. Yeshiva is a *Yeshiva*. If that is not a religious school, then there are no religious schools in New York City.

In short, the Court has been right all along: this case is "ripe for summary adjudication." And only one result can follow: Yeshiva is entitled to summary judgment.

ARGUMENT

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

The NYCHRL exempts "distinctly private" organizations, and "a religious corporation incorporated under the education law" is "deemed" to meet that standard. (N.Y.C. Admin. Code § 8-102.) Here, it is undisputed Yeshiva is incorporated under the Education Law. And Plaintiffs have conceded what discovery confirmed: Yeshiva is religious. Summary judgment must follow.

A. Yeshiva is both "incorporated under the education law" and "religious."

Yeshiva's corporate documents show it incorporated under the Education Law in 1967. (Ex. A.)¹ That is undisputed. Thus, the only remaining question is whether Yeshiva is "religious." And Plaintiffs have conceded that point too. They acknowledge that "Judaism is deeply important to the University's existence and activities," (Doc. 229 at 11), and they chose to attend Yeshiva

¹ All cited exhibits accompany the Affirmation of Eric Baxter filed with this sur-reply.

specifically because it is a “religious community,” (Doc. 23 ¶ 9), that would support their own “religious growth,” (Doc. 25 ¶ 9.) On these concessions alone, the Court could grant summary judgment.

Moreover, the undisputed evidence from discovery compels the same result.² Whether a corporation is “religious” is determined by the “purpose for which it was organized” and its every-day “functions.” (*Kittinger v Churchill*, 292 NYS 35, 41, 47 [Sup Ct, Erie County 1936].) These confirm that Yeshiva is deeply religious.

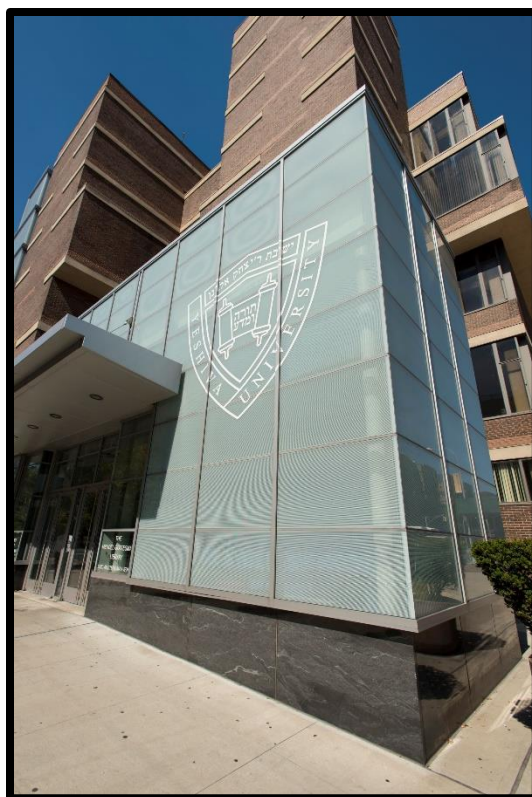
Plaintiffs do not dispute the overwhelming evidence of Yeshiva’s obvious religious purpose. Yeshiva initially was formed as “The Rabbi Isaac Elchanan Theological Seminary Association” for a *purely* religious educational purpose: “to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” (Ex. B.) Over time, Yeshiva added secular degrees, changing its name first to “The Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College” in 1926, and then to “Yeshiva University” in 1945. Yeshiva never stopped “promot[ing] the study of Talmud” or “preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” (*See, e.g.*, Ex. C (Yeshiva’s Rabbi President Berman: Yeshiva’s “specific form and structure has shifted depending on times, needs and circumstances, but the core mission has always remained the same.”); Ex. D 31:2-3 (“The mission of Yeshiva University has not changed.”).)

² Plaintiffs’ complaint that the testimony of Yeshiva’s corporate representative is inadequate is baseless. *First*, Plaintiffs have repeatedly said “[t]here is no genuine dispute of material fact” remaining. (Doc. 272 at 5; *see also* Doc. 147 at 2-3 n 1 (“[T]he Court should resolve this question using traditional principles of statutory interpretation,” with “little-to-no inquiry into Yeshiva’s religious ‘function.’”).) *Second*, Plaintiffs spent the Yeshiva deposition—which they ended early—repeatedly asking questions about “the legal organization as a religious corporation under New York law.” (Ex. D 127:22-24; *see also, e.g., id.* at 123:3-6, 124:5-6, 125:11-12, 126:14-24, 128:14-15, 129:15-21, 131, 132:3-7; 133:20-23, 136:7-11, 137:9-16, 155-156, 176:17-25, 178:18-21, 205-207; *id.* at 206:12-13 (“I feel like this question was asked like hours ago.”).) There is no reason for additional fact discovery on the purely legal question of, as Plaintiffs’ counsel put it, “how the law characterizes a corporation.” (*Id.* at 129:3-4.)

Nor do Plaintiffs dispute that Yeshiva implements this religious mission in daily life. In everything it does, Yeshiva “operates with an understanding of [its] values,” which “come from the Torah.” (Ex. D 65:14-16; *see also* Doc. 71 at 2.) These values are embraced by the University’s motto, Torah Umaddah (combining religious and secular studies), which is inscribed in Hebrew on the University’s seal, along with the name of its affiliated rabbinic seminary.



To keep this mission at the forefront of university life, the seal is prominently displayed at the campus entrance and on virtually all public-facing materials. (*See Kroth v Congregation Chebra Ukadisha Bnai Israel Mikalwarie*, 430 NYS2d 786, 790 [Sup Ct, NY County 1980] (taking judicial notice of religious “inscriptions” on “the facade”).)

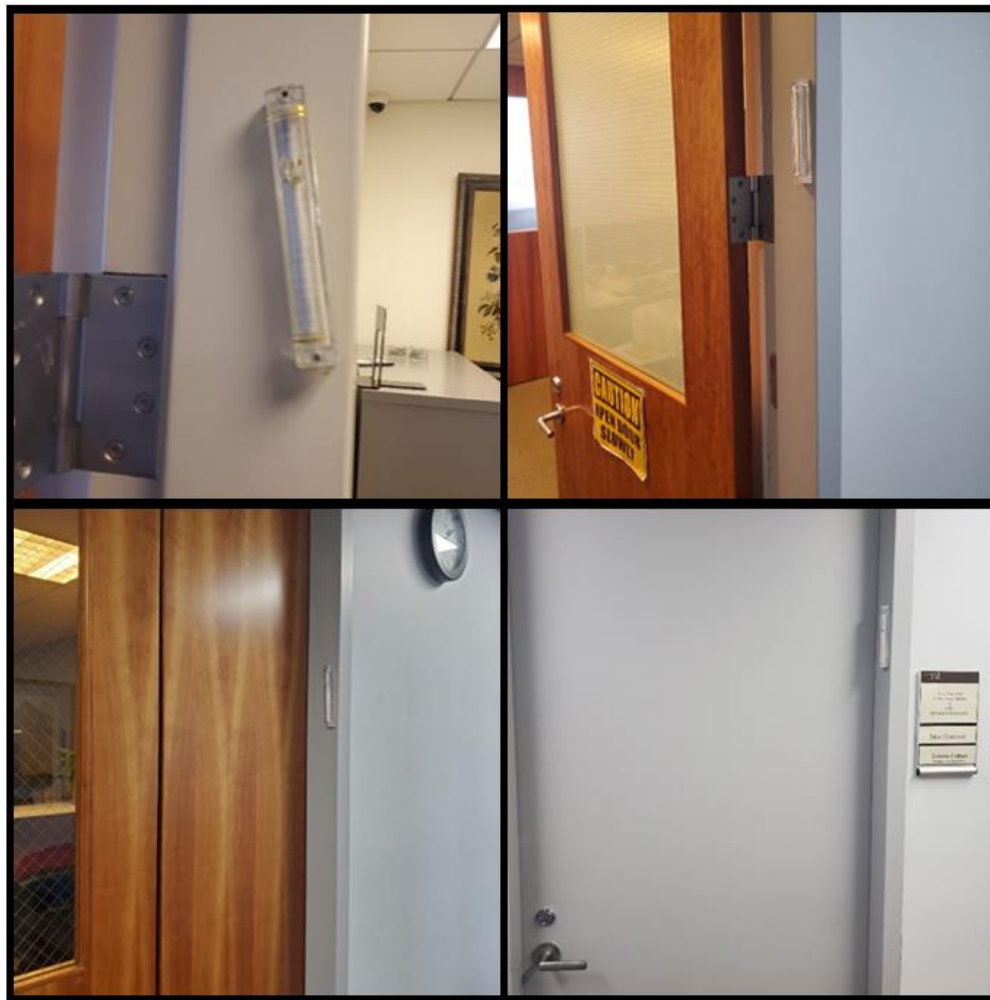


Plaintiffs do not dispute that all undergraduates are strongly encouraged to begin their Yeshiva experience with intensive religious studies in Israel, with over 80% doing so for university credit. (Doc. 55 at 3; *see also* Ex. D at 26:14-15.) They do not dispute that all male students spend one to nearly six hours per day in Torah study, and all female students have religious instruction several hours a week. (*See id.* at 7:14-19; *see also* Ex. E; Ex. F.) Nor do Plaintiffs dispute that the Rabbi Isaac Elchanan Theological Seminary (RIETS) “sits on the same campus” as the undergraduate men’s school, (Ex. D 60:13-14), or that “[t]hey don’t really separate” undergraduates and seminary students for religious instruction in the *beit midrash* or “study hall,” (*id.* 62:12-13) (pictured).



Plaintiffs further do not dispute that students living on campus agree “to live in accordance with halachic [Jewish law] norms and Torah ideals,” or that Yeshiva complies fully with the laws of Shabbat and Kashrut in its undergraduate programs and encourages students to do the same. (Doc. 55 at 4; Ex. D 138:20–139:5 (students are “told ... it’s a religious campus, orthodox on campus, prayer, kashrut, [S]habbos”); Ex. G (elevators run automatically on Sabbath; provision prohibiting use of computers/electronics on Sabbath); Ex. H (“Shabbat Programming”); Ex. I (explaining to incoming undergrads that “[e]very week is a Shabbaton” on campus, with “[t]ailored programs”).) Nor do they dispute that campuses, dorms, and prayers are sex-segregated consistent

with Torah law and tradition; that all campuses have synagogues; that all doors on campus have mezuzahs, even in administrative areas (pictured); that student government officers are charged to help “maintain the religious atmosphere on campus”; and that student activities are reviewed for religious compliance. (Doc. 71 at 2, 4-5, 10.)



Similarly, Yeshiva’s faculty handbook describes “normal work hours” on Friday (the day Shabbat begins at sundown) as ending at 2:30 PM—while “normal” hours go to 5:30 every other weekday. (See Ex. J.) As the handbook also says, “Jewish holidays are observed, and offices will be closed, when the holiday falls on a workday.” (Ex. K; *see also Yeshiva Undergraduate Academic Calendar Fall 2021*, available at <https://perma.cc/LT7N-LHU5> (noting observance of Jewish religious holidays and fast days).)

Even undergraduate programs that are not explicitly religious rest on Torah values. Yeshiva's Sy Syms Real Estate Program is described as "following in Avraham's [Biblical Abraham's] footsteps." (Ex. L.) Throughout campus, there is a wide range of "spiritual guidance and programing" advertised to all undergraduates. (Ex. M (YU03004-YU03007).) "[E]ach" student has a *mashgiach ruchani*, or "spiritual advisor[]," some of which "are also faculty." (Ex. D 8:5-7, 11; *see also* Ex. N.) As the *Wall Street Journal* recently put it when profiling the Yeshiva men's basketball team (fittingly named the Maccabees), Yeshiva "began as a school primarily for Jewish studies" and sticks to its roots." (*See* Masada Siegel, *The Kippahs on the Yeshiva University Basketball Court*, WSJ, Nov. 26, 2021, available at <https://perma.cc/KWB9-JDWA>.)



Deans of Yeshiva's Undergraduate Torah Studies Program and the Sy Syms School of Business studying the Talmud during halftime of a Maccabees game.

Notably, Plaintiffs also do not dispute that, to its most salient public—future students and their families—Yeshiva is adamant regarding "what the campus life is really about." (Ex. D 138:22-139:3.) Students from its "feeder schools" are already "coming from generally Jewish religious background[s]." (*Id.* at 55:14-15.) Still, they are advised that while "[a]nyone is eligible to apply to Yeshiva University," they must be "willing and interested" in a rigorous religious education. (*Id.* at 138:22-139:3; *see also* Ex. M (YU03007).)

Indications of Yeshiva's religious character are found everywhere on campus. Spiritual guidance resources abound. (*See, e.g.* Ex. N (Beren Campus resources).) Yeshiva hosts a collection of "more than 10,000 artifacts reflecting 5,000 years of Jewish culture, art, and history from around

the world.” (Ex. O.) There is “signage” throughout the dining halls indicating the “expect[ation]” of keeping kosher. (See Ex. D 77:17–78:2.) Campus garages are closed on the Jewish Sabbath and all Jewish holidays.



Under New York law, evaluating whether a corporation is “religious” requires “looking through the structure and determining what it actually is.” (*Kittinger*, 292 NYS at 47.) Here, “view[ing] [Yeshiva] as it was intended to be, and actually is,” (*id.* at 47-48), the undisputed, material facts establish what this Court already found: “Yeshiva University [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.” (Doc. 115 at 1.) It is, therefore, a “religious corporation incorporated under the education law” exempt from the NYCHRL’s public accommodations provisions. (N.Y.C. Admin. Code § 8-102.)

B. Plaintiffs’ reading of the NYCHRL is untenable.

Because Plaintiffs do not—and cannot—dispute the overwhelming evidence of Yeshiva’s religious character, they try rewriting the NYCHRL. Their reading pretends the language “under the Education Law” does not exist, ignores relevant case law, and distorts legislative history.

1. Plaintiffs' reading is atextual.

As this Court has held, “[Plaintiffs’] reading of the Administrative Code is contrary to the plain language of the statute.” (Doc. 115 at 6.) Plaintiffs argue that Yeshiva could only be a “religious” corporation if it incorporated under the RCL. But this reading ignores the statutory text.

The NYCHRL unambiguously provides that a “religious” corporation qualifies if it is “incorporated under the education law *or* the religious corporation law.” (N.Y.C. Admin. Code § 8-102 (emphasis added).) Plaintiffs’ contrary reading violates basic interpretive principles, so it must be rejected—again. (*See Matter of Tonis v Bd. of Regents of Univ. of State of N.Y.*, 295 NY 286, 293 [1946] (“each word used” in a statutory enumeration must be understood “to express a distinct and different idea”).)

If accepted, Plaintiffs’ argument would produce absurd results. (Doc. 229 at 3-4.) On their theory, *no* separately-incorporated religious school in New York of any faith tradition—primary, secondary, college, or university—could ever be “religious” under the NYCHRL. Even RIETS—which trains and ordains rabbis—would be treated as a “public accommodation” because it is incorporated under the Education Law. This must be rejected. (*See, e.g., McKinney’s Cons. Laws of N.Y.*, Book 1, Statutes § 145.)

Tellingly, Plaintiffs eventually concede that “[c]orporations incorporated under statutes other than the RCL”—such as the “Education Law”—“may be de facto ‘religious corporations.’” (Doc. 229 at 5.) But then they argue this is possible “only if” that corporation can “satisfy” the RCL. (*Id.*) This argument is as defective as the first, as it also robs the phrase “under the education law” of any meaning and leads to the same absurd result.

Moreover, nothing in the NYCHRL supports Plaintiffs’ RCL-only contention. None of Plaintiffs’ cited cases construe the NYCHRL or suggest that a “religious corporation incorporated under the Education Law” *must* also qualify under the RCL—they state only that houses of worship incorporated under other laws *could* be subject to the RCL. (*See Temple-Ashram v Satyanandji* 84 AD3d 1158 [2d Dept 2011] (holding that RCL *could* be applied to Hindu Temple incorporated

under Not-For-Profit Law because it otherwise qualified); *Watt Samakki Dhammikaram, Inc. v Thenjitto*, 631 NYS2d 229, 231 [Sup Ct, Kings County 1995] (same for Buddhist Temple.)

New York cases confirm that religious corporations can incorporate under various statutes. Plaintiffs' lead case, *Matter of Watson*, itself held that the Young Men's Christian Association and a missionary organization—neither incorporated under the RCL—"were created for purposes so closely allied to religion that they may be *broadly classed* as religious corporations." (171 NY 256, 260 [1902] (emphasis added); *see also In re Moses*, 123 NYS 443, 446-447 [1910] (explaining how New York tax law was modified after *Watson* to confirm this reality).) Similarly, in *Matter of Lueken*, the court held that the "Not-For-Profit Corporation Law is intended as a general incorporating statute and clearly governs 'religious corporations.'" (97 Misc 2d 201, 203 [NY Sup Ct, Queens County 1978].) The Education Law, too, contemplates religious corporations independent of the RCL. It permits not-for-profit schools, via the Not-For-Profit Corporation Law, to possess "one or more" "educational" or "religious" purposes. (*See* N.Y. Not-for-Profit Corporation Law § 102 (3-b); N.Y. Educ. Law §§ 216-a(4), (5) (the Not-For-Profit Corporation Law governs education corporations where the Education Law is silent).) In fact, outside of a "clear and unavoidable conflict between the two statutes," it was the New York Legislature's "inten[t]" that "the Not-for-Profit Corporation Law," not the RCL, "would be controlling with respect to religious corporations." (*Rector, Church Wardens and Vestrymen of St. Bartholomew's Church v Committee to Preserve St. Bartholomew's Church, Inc.*, 84 AD2d 309, 314 [1st Dept 1982].)

Finally, and for similar reasons, Plaintiffs' suggestion that a corporation can only be religious if such purpose is clearly stated "in [its] governance documents," (Doc. 229 at 5), is unavailing. This argument rests on the mistaken assumption that a clearly-defined line exists between "religious" and "educational" purposes. But New York law has long rejected this parsing. (*See Rabbi Solomon Kluger Sch., Inc. v Town of Liberty*, 351 NYS2d 563, 566-567 [Sup Ct, Sullivan County 1974] ("the education and cultivation of the Jewish Religion" is a religious function); *In re Moses*, 123 NYS at 446-447 (religious association's work of "developing and cultivating the

various physical, intellectual, and moral faculties” was “[e]ducational”).) As the U.S. Supreme Court recently said: “The religious education and formation of students is the very reason for the existence of most private religious schools.” (*Our Lady of Guadalupe Sch. v Morrissey Berru*, 140 S Ct 2049, 2055 [2020].)

As for Yeshiva, its initial charter stated an *exclusively* religious purpose (“promote the study of Talmud”). (Ex. B.) And when Yeshiva “continued” as an Educational Corporation in 1967, the amended charter confirmed that it “*is and continues to be* organized and operated exclusively for educational purposes,” indicating that the original religious education purposes carried through. (Ex. A (emphasis added).) Plaintiffs have no basis for concluding that Yeshiva’s educational purposes are now exclusively secular.

Similarly, New York courts have long rejected any suggestion that a religious purpose must be apparent from specific words in a charter—or that a stated purpose is dispositive. In *Kittinger*, for example, the charter of a stock corporation “eliminated ... any statements” showing religious intent. 292 NYS at 38. But the court held that the corporation was still, in its function, “a religious society,” upholding the “actual intent of the incorporators.” (*Id.* at 38, 48; *see also Kroth*, 430 NYS2d at 790 (identifying a religious corporation by “function,” how “those in control” understood its purposes, religious “inscriptions” on the building’s exterior, and the “subsequent history of ... its function”); *In re Religious Corps. & Assns.—Divestment of Prop.*, 784 NYS2d 923 [Sup Ct, NY County 2003] (identifying religious corporation based on its “enabling legislation, corporate purposes and activities, position on this lawsuit,” and “history”).) The same is true under New York State’s Human Rights Law. (*Scheiber v St. John’s Univ.*, 84 NY2d 120, 126 [1994] (refusing to limit “status as a religious organization” to “only an entity organized pursuant to the Religious Corporations Law”).)³ Plaintiffs’ attempt to reject this rule and impose a “magic word” test should be rejected.

³ Plaintiffs’ argument that the City’s lawyers define “religious corporation” more narrowly under the NYCHRL is unavailing. (*See* Doc. 229 at 4 n.3 (discussing City’s brief in *N.Y. State Club Assn., Inc. v City of N.Y.*, 487 US 1 [1988]); *see also* Doc. 249 (City’s brief).) The thrust of the City’s argument—and all the

2. Plaintiffs' reading upends the NYCHRL's legislative history and structure.

Plaintiffs' arguments regarding the NYCHRL's "legislative history" are also misguided. Their first argument—that "large" or "public facing" religious corporations cannot be exempt—is contradicted by the statute itself. The same sentence exempting religious corporations also exempts benevolent orders, many of which have thousands of members and many public-facing activities. (See N.Y. Benevolent Orders Law §§ 2, 7 (expressly including over 50 different benevolent orders with large memberships, including the Masons, the Knights of Columbus, the American Legion, and the Veterans of Foreign Wars).) Both religious corporations and benevolent orders are "deemed to be ... distinctly private." (N.Y.C. Admin. Code § 8-102 (emphasis added); *accord Gifford v Guilderland Lodge*, 272 AD2d 721, 722-733 [4th Dept 2000] ("the exemption ... is absolute and not subject to limitation").) Nothing about this sentence suggests a size or any other limit. Plaintiffs cannot credibly claim that a religious corporation like Yeshiva is "too large" to claim the exemption, when—in the very same sentence—much larger benevolent orders are exempted regardless of size.

Plaintiffs' second argument—that the NYCHRL did not intend to exclude "religiously-affiliated or identified entities"—also bears no resemblance to the text. (See Doc. 229 at 16.) Plaintiffs ignore that the statute gives religious institutions two layers of protection. First, the religious corporations mentioned in the definition of "public accommodation" (*i.e.*, those "incorporated under the education law or the religious corporation law") are deemed "distinctly private" and thereby categorically exempt. (N.Y.C. Admin. Code § 8-102.) Second, for other religious organizations, activities "calculated ... to promote the religious principles for which [the organization] is established or maintained" are also exempt. (See N.Y.C. Admin. Code § 8-

U.S. Supreme Court later held—was that the RCL's existence gave the City a "rational basis" for the NYCHRL's public accommodations exclusion. (See 487 US at 16.) This does not mean that the RCL encompasses the universe of religious corporations. As the City said, that basis could be "imperfect" and still be rational. (See Doc. 249 at 18.) Moreover, the City also argued that exempting religious corporations from the NYCHRL's public accommodations provisions reflected the City's intention of being "quite sensitive to the constitutional issues raised by the legislation." (*Id.*) Just so here. See *infra* Part II (Yeshiva's First Amendment protections).

107(12).) Both exemptions protect Yeshiva. But more to the point, nothing about this statutory language—and nothing in the legislative history—supports cramping the NYCHRL’s religious protections in line with Plaintiffs’ semantics (“religious corporation” vs. “religiously-affiliated entity” vs. “religiously-identified entity” vs. “large religiously-affiliated corporations”).

* * * *

As Plaintiffs themselves explain, the NYCHRL’s “goal” was to “target” “clubs that refused to admit ... traditionally excluded groups such as Jews.” (Doc. 229 at 14.) When Yeshiva began, there were many “difficulties facing American Orthodox Jewry,” including “mandatory Shabbos (Saturday) labor at the workplace, the assimilation of youth into secular American culture, and the lack of availability of Torah education.” (*In re Religious Corps.*, 784 NYS2d at 923.) Yeshiva was founded—and exists today—to serve as a renowned home for Orthodox Jews who want to study Torah and use Torah values to engage the world. (*See, e.g.*, Rabbi Norman Lamm, *Torah Umadda* 28-31, 162-163 [3d ed. 2010].) It would be tragic if an institution that sustained Jews against discrimination, and had its growth fueled by Holocaust survivors, lost the freedom to remain Jewish—because of a statute intended to combat anti-Semitism. (*Cf.* W.E.B. Du Bois, *Schools*, 13 *The Crisis* 111, 112 [1917] (“We must rally to the defense of our schools. We must repudiate this unbearable assumption of the right to kill institutions unless they conform to one narrow standard.”).)

C. Constitutional avoidance compels a ruling for Yeshiva.

The NYCHRL is clear. But even if there were ambiguity, the doctrine of constitutional avoidance would require the Court to interpret it to avoid “serious First Amendment questions.” (*NLRB v Catholic Bishop of Chicago*, 440 US 490, 504 [1979]; *see infra* II (outlining First Amendment problems).) Unless there is “clear expression” to the contrary, the statute must be interpreted to avoid an unconstitutional result. (*Id.*) There is no such expression here. By contrast, Plaintiffs’ construction would needlessly conjure a clear violation of First Amendment rights. This might explain why Plaintiffs prefer their own avoidance canon: avoid the Constitution. Their brief

gives the First Amendment just one sentence. The Court should take the hint. Plaintiffs have no response to the myriad First Amendment problems caused by their NYCHRL construction.

II. Plaintiffs' reading of the NYCHRL would violate the First Amendment.

Twisting the NYCHRL's religious exemption as Plaintiffs propose would make its public accommodation provisions unconstitutional. Citing the New York Court of Appeals' decision in *Catholic Charities of Diocese of Albany v Serio*, 7 NY3d 510 [2006], Plaintiffs' sole contrary argument is to blithely pronounce that the First Amendment does not apply to the NYCHRL. (Doc. 229 at 23.) Plaintiffs fail to mention that the U.S. Supreme Court recently ordered New York courts to reexamine (and likely overturn) *Serio* in light of *Fulton v Philadelphia*, 141 S Ct 1868 [2021]. (See *R.C. Diocese of Albany v Vullo*, 185 AD3d 11 [3d Dept 2020] (relying on *Serio* to reject religious organizations' First Amendment defenses to a New York state regulation), *and cert granted, judgment vacated sub nom. R.C. Diocese of Albany v Emami*, 142 S Ct 421 [2021] (ordering reconsideration).) A single sentence that clings to a case ordered for reconsideration by the U.S. Supreme Court is not an adequate response.

A. Plaintiffs' claims violate religious autonomy.

Under the religious autonomy doctrine,⁴ the First Amendment guarantees religious schools like Yeshiva the right to “define their own doctrines, resolve their own disputes, and run their own institutions.” (*Corp. of the Presiding Bishop v Amos*, 483 US 327, 341 [1987] (Brennan, J., concurring).) While “[t]his does not mean that religious institutions enjoy a general immunity from secular laws, ... it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission.” (*Our Lady*, 140 S Ct at 2060; *see also Kedroff v St. Nicholas Cathedral of Russian Orthodox Church*, 344 US 94, 119 [1952] (invalidating use of New York's Religious Corporations Law to override a religious decision).)

⁴ Also known as “church autonomy,” (*see, e.g., Our Lady*, 140 S Ct at 2061), the doctrine applies not just to hierarchical church organizations but to “religious institutions” more generally, including religious schools. (*Id.* at 2055.)

Plaintiffs agree that the decision not to recognize their club was a decision concerning Yeshiva's internal religious affairs, made after lengthy deliberation by Yeshiva's *Roshei Yeshiva* concerning how to maintain a religious environment on campus consistent with Torah values. (See, e.g., Doc. 1 ¶¶ 53, 58, 101, 110.) Under longstanding Supreme Court precedent, Yeshiva possesses the autonomy necessary to make this religious determination. (See, e.g., *Serbian E. Orthodox Diocese v Milivojevic*, 426 US 696, 729 [1976] (religious decisions “on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive”).)

Even assuming it's still good law, *Serio* would not cabin Yeshiva's religious autonomy. There, the New York Court of Appeals held that church autonomy was “not at issue” because the Legislature, in requiring all employers to provide contraception coverage in healthcare plans, was “merely regulat[ing] one aspect of the relationship between plaintiffs and their employees” and had “not attempted ... to ‘lend its power to one or the other side in controversies over religious authority or dogma.’” (*Serio*, 7 NY3d at 524.) But here Plaintiffs' reading would subject *all* of Yeshiva's activities to the NYCHRL's public accommodation provisions and choose Plaintiffs' preferred “cultural changes” over Yeshiva's Torah values. (See Doc. 71 at 16-17.)

Moreover, post-*Serio*, the United States Supreme Court has repeatedly emphasized that religious autonomy is much broader than what *Serio* might suggest—any “government interference with an internal [religious] decision that affects the faith and mission” is prohibited. (*Hosanna-Tabor Evangelical Lutheran Church & Sch. v EEOC*, 565 US 171, 190 [2012]; see also *Our Lady*, 140 S Ct at 2060 (“[T]he Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion.”) (cleaned up); *Kedroff*, 344 US at 116; N.Y.C. Admin. Code § 8-107(12) (providing statutory protection for internal religious affairs).) Because Yeshiva's decision indisputably concerned its internal religious affairs, religious autonomy prohibits the NYCHRL's application.

Plaintiffs' argument that religious autonomy extends no further than the ministerial exception, (Doc. 105 at 18), has also been directly refuted. (*Our Lady*, 140 S Ct at 2060-2061 (ministerial

exception just one “component” of broader religious autonomy, which is a “general principle” and not “exclusively concerned with the selection or supervision of clergy”).)

B. Plaintiffs’ claims violate the Free Exercise Clause.

If applied to Yeshiva, the NYCHRL’s public accommodation provisions would also violate the Free Exercise Clause, because they are neither neutral to religion nor generally applicable. (*Fulton*, 141 S Ct at 1876.) Any law that categorically exempts certain secular organizations from its regulatory ambit, but does not do the same for religious organizations, is not generally applicable. (*See, e.g., Tandon v Newsom*, 141 S Ct 1294, 1296 [2021].) This is true even if the law exempts *some* religious activity or organizations. (*Id.* at 1297.) A law is further not generally applicable if it contains a “formal mechanism for granting exceptions,” even if no exemptions have yet been given. (*Fulton*, 141 S Ct at 1879.)

Here, a core part of Plaintiffs’ (flawed) statutory argument is that the NYCHRL *does* make categorical exemptions—just not for religious universities like Yeshiva. (*See* Doc. 229 at 14-15 (the NYCHRL exempts “small private clubs, benevolent corporations, and religious corporations” but not all religious organizations).) Moreover, the NYCHRL expressly permits “the [Human Rights] commission” to “grant[] an exemption based on bona fide considerations of public policy” “with respect to ... gender” based claims. (N.Y.C. Admin. Code § 8-107(4)(b).) So even if Plaintiffs’ statutory arguments are right, under recent Supreme Court precedent, the NYCHRL is not neutral or generally applicable and is therefore subject to strict scrutiny. (*Fulton*, 141 S Ct at 1879.) And as previously explained, Plaintiffs’ claims fail it. (*See* Doc. 71 at 16.) Indeed, as the *Fulton* court made clear, either the existence of undisputed exceptions or a system for creating exceptions “undermines the ... contention that [a government’s] non-discrimination policies can brook no departures,” which is a requirement to satisfy strict scrutiny. (*Id.* at 1882.)

Moreover, *Fulton* explained that there is “incongruity in deeming a private religious [organization] a public accommodation” when it conducts “a customized and selective assessment that bears little resemblance to” traditional public accommodations. (*Id.* at 1880-1881.) This observation applies with full force here. Like the Catholic agency in *Fulton*, Yeshiva University

evaluates student clubs to ensure they conform to its Torah values before approval. (*See, e.g.*, Doc. 71 at 5-6.) Conflating that internal, religiously informed deliberation with the typical public accommodation has the same “incongruity.”

C. Plaintiffs’ claims violate the Free Speech and Assembly Clauses.

The Free Speech Clause prohibits compelling a private party “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.*, Doc. 229 at 24.) The Free Speech and Assembly Clauses preclude such coercion. (Doc. 71 at 16-17.)

III. Yeshiva’s religious identity has always been obvious.

Unable to refute the overwhelming evidence of Yeshiva’s religious character, Plaintiffs try claiming it’s all a facade. (Doc. 229 at 6 (“YU has never claimed to be a ‘religious corporation’ until this lawsuit.”).) In support, Plaintiffs cherry-pick outdated and irrelevant material that has never been used to govern Yeshiva University. This is a fool’s errand.

The record is replete with undisputed evidence that Yeshiva has always provided its undergraduate students with a rigorous religious education and maintained an undergraduate-campus environment that encourages religious belief and observance. *Supra* Part I. This includes Plaintiffs’ concession that “Judaism is deeply important to the University’s existence and activities.” (Doc. 229 at 11.) And as one of Plaintiffs’ own sources puts it, Yeshiva has “developed” “[m]echanisms” to ensure its “religious character would always be maintained.” (Doc. 94 at 8 (“The Men and Women of Yeshiva”).) Plaintiffs’ contrary insinuations should be rejected.

A. Yeshiva’s government forms confirm its religious mission.

Plaintiffs argue that, by identifying itself as an “educational institution” or a “not for profit” on certain government forms, or by representing that it would not use government funds for religious

purposes, Yeshiva has disavowed its religious identity. (Doc. 229 at 9-10.) This is wrong—and contradicted by undisputed evidence.

Specifically, Plaintiffs cite two government forms filled out by Yeshiva to suggest that its religious defenses are insincere. (See Doc. 229 at 8-10.) But the forms show no such thing. The first form Plaintiffs cite, the CHAR410 Schedule E, (*id.* at 9), instructs the responding party: “*Do not request exemptions that cannot be supported by the documentation required.*” (*Id.*; see also Doc. 244 at 3.) For box 5, which Plaintiffs claim Yeshiva should have checked, the satisfactory documents include only (1) an official denominational directory such as the “Blue Directory” (a listing of Christian denominations with no Jewish equivalent); or (2) documents proving that the responding entity is “operated, supervised, or controlled by” another exempt organization. But Yeshiva is an independent Orthodox Jewish university that—unlike many Christian colleges—is not governed by a separate entity in the traditional sense. It would not, for example, show “control” in the same manner as a Christian college from a hierarchical tradition. (See Ex. D 115:16-17 (“Again, the word ‘control’ in Judaism is a hard word to document.”); see also “*Halakhah*,” Routledge Encyclopedia of Philosophy (E. Craig, ed.) [1998] (modern *Halakhah* Judaism is decentralized, “where hardly any debate ends with an explicitly stated definitive conclusion”).) America’s legal traditions have long recognized every religion’s freedom to employ “corporate powers” consistent with “their own religious duties.” (*Terrett v Taylor*, 9 Cranch [13 US] 43, 49 [1815]; see also *Watson v Jones*, 13 Wall [80 US] 679, 726 [1871] (religious organizational structure “more or less intimately connected [to] religious views”).) Here, Yeshiva had every right not to select box 5 because that box’s options do not align with Yeshiva’s religious structure. Instead, Yeshiva properly chose to rely upon its “educational institution” status.

The second form Plaintiffs highlight—a state Department of Homeland Security form (Doc. 229 at 10)—raises a similar issue. There Yeshiva chose to rely on its status as a “not for profit corporation,” rather than identifying as “sectarian,” a term that does not accurately describe any Jewish organization. (See *Mitchell v Helms*, 530 US 793, 828-829 [2000] (noting the historical association of the word “sectarian” with “Catholic”); Ex. D at 139:17-22; 172:20-173:3; 174:5-6;

194:7-131.) Indeed, Yeshiva accepts students from all “different denominations of Jewish faith” and “anyone of any faith is eligible to apply,” assuming they are sincerely open to Yeshiva’s programs for religious formation. (*Id.* at 139:6-25.) Yeshiva objects to any suggestion that its own or any other branch of Judaism is properly considered a “sect.”⁵

Plaintiffs also ignore the countless government filings where Yeshiva makes its religious nature explicitly clear. Take, for example, Yeshiva’s IRS Form 990—the government filing most easily accessed by the public. Its Schedule O includes a detailed recitation of Yeshiva’s core Torah values, (*see* Ex. Q), and goes on at length about Yeshiva’s religious character:

YESHIVA UNIVERSITY IS THE WORLD'S PREMIER JEWISH INSTITUTION FOR HIGHER EDUCATION. ROOTED IN JEWISH THOUGHT AND TRADITION, IT SITS AT THE EDUCATIONAL, SPIRITUAL AND INTELLECTUAL EPICENTER OF A ROBUST GLOBAL MOVEMENT THAT IS DEDICATED TO ADVANCING THE MORAL AND MATERIAL BETTERMENT OF THE JEWISH COMMUNITY AND BROADER SOCIETY, IN THE SERVICE OF GOD.

Other filings are likewise unequivocal. For example, Yeshiva sought \$3.6 million in New York state funding to install security cameras in its pedestrian plaza, because “[g]iven the University’s preeminence as a center of Jewish learning, it is a high profile terrorist target” for “extremists [who] rail against the very existence of the Jewish state and urge acts of violence against Jews and Jewish institutions.” (Ex. R.) Yeshiva has also often discussed its religious nature in detail with New York City Council Members as it seeks government funding. (*See, e.g.*, Exs. S & T.) Yeshiva’s applications to its accrediting agency are similar. For example, Yeshiva said its “serious, in-depth program in Torah Studies amounting to a second major” is “[m]ainly what distinguishes undergraduate education at YU.” (Ex. U at 6.) Similarly, Yeshiva detailed its “Mazer Yeshiva Program, serving about 625 male undergraduates,” which mostly consists of “traditional Talmud

⁵ Plaintiffs have also discussed Yeshiva securing \$90 million in DASNY bond financing. (Doc. 229 at 10.) But DASNY’s restrictions do not prohibit aid to religious corporations. They only prohibited certain religious “use[s].” (Ex. P.) Yeshiva complied with those restrictions. (*See id.*) And in any case, those “restriction[s],” as the bond says, “shall not prohibit the free exercise of any religion.” (*Id.*)

study,” and leads “[m]any” participants to either further Jewish studies or to rabbinical ordination. (*Id.* at 10-11.) In sum, Yeshiva’s public filings consistently affirm its religious nature.

B. Yeshiva’s internal documents confirm its religious mission.

Plaintiffs’ second attempt at arguing against Yeshiva’s religious nature fares no better. They claim that a few documents, read in the worst possible light, suggest Yeshiva is faking its overtly public religious nature. Viewing these documents in context, that effort is defeated.

Plaintiffs first rely on a 1995 memo that discusses “gay student clubs” at “two *graduate* schools.” (Doc. 234 at 2 (emphasis added).) But Plaintiffs ignore that this memo specifically disclaims its relevance to the undergraduate schools at issue here: “There are no gay clubs at any of YU’s undergraduate schools, at its graduate schools in Jewish studies and Jewish education, or at its affiliated Rabbi Isaac Elchanan Theological Seminary.” (*Id.*) This follows from Yeshiva’s understanding of proper religious immersion and formation, as has already been explained. (*See, e.g.*, Doc. 55 at 13-14.) More importantly, Plaintiffs have not alleged, let alone identified any evidence, that Yeshiva ceased functioning as a religious corporation at the time of the memo.

Plaintiffs also highlight Yeshiva’s corporate charter changes in 1967 and 1969. (Doc. 229 at 7-8.) But Yeshiva’s corporate changes during that period actually confirm that Yeshiva’s religious purposes, as the documents themselves say, “continued.” *Supra* Part I.B.1. Yeshiva’s corporate changes simply reflect—along with the many other charter amendments both before and after—its gradual progression from a religious membership corporation to a religious university. (*See* Ex. D 122-123.) Memorializing this change in Yeshiva’s corporate charters in 1967 followed revisions to New York corporate law that generally required universities incorporated as membership corporations to reincorporate under the Education Law. (*See* 1963 N.Y. Laws 2406-2408 (enacted April 23, 1963); *see also* Doc. 71 at 4.)⁶

⁶ Moreover, then-applicable case law suggested that governments could withhold public funds from “sectarian” schools. (*See, e.g., Comm. for Pub. Ed. & Relig. Lib. v Nyquist*, 413 US 756, 771 [1973].) The Supreme Court has now confirmed this rule violates the Free Exercise Clause. (*See Espinoza v Mont. Dept of Revenue*, 140 S Ct 2246 [2020]; *Trinity Lutheran Church of Columbia, Inc. v Comer*, 137 S Ct 2012 [2017].) Under current law then, New York’s “sectarian” prohibitions cannot be justified. So even assuming

Nor do Plaintiffs get any mileage out of misconstruing language from Yeshiva's 1969 and 1967 petitions to the Board of Regents. (*See* Doc. 229 at 7.) The 1967 petition—by which Yeshiva “continued” from a membership corporation to an education corporation—did not suggest Yeshiva abandoned its religious purposes. It simply explained why its status *as a membership corporation* no longer made sense: “in light of the degree granting divisions and schools comprising the University,” the “membership association” that originally formed the Rabbi Isaac Elchanan Seminary had “long ceased to function as an association or as part of the University.” (Doc. 228 at 4.) The emphasis was on the dissolution of the membership association, not the seminary itself. Indeed, the very next paragraph expressly states that “the Rabbi Isaac Elchanan Theological Seminary continued as an affiliate of the University.” (*Id.*) But rather than remaining a member-driven organization, the seminary by 1967 had become a division of the broader University, operated by Yeshiva's corporate leadership within Yeshiva's corporate structure.

Yeshiva's related request in the 1969 petition to drop some degrees was also consistent with Yeshiva's identity as a religious corporation. The degrees it sought to drop were degrees in Hebrew literature and religious education, which had been authorized by the Board under the heading of “Religious Education.” (Doc. 238 at 5). The petition merely states there was low demand for the degrees and students chose to pursue similar courses of study under other degree programs. (*Id.*)⁷

* * * *

Plaintiffs' attempt to show Yeshiva is no longer religious rests on randomly selected forms and obscure memoranda—all construed without the context that Plaintiffs concede: “Judaism is deeply important to the University's existence and activities.” (Doc. 229 at 11.) New York law has long

Plaintiffs' theory—that Yeshiva structured itself to highlight its robust secular education—is correct, Yeshiva cannot be faulted for protecting its students' rights to receive government funding against unconstitutional funding restrictions.

⁷ Contrary to Plaintiffs' suggestion that Yeshiva's Board is not religious, Yeshiva's Board operates “like many things in Judaism”—by tradition. (Ex. D 45:16-17.) The Board “officially operates” by “a tradition” of ensuring new members are committed to Yeshiva's Jewish mission. (*See id.* at 45:16-20; *see also id.* at 40:8-12.) In addition to the Board, overseeing this tradition of *halakah* Judaism at Yeshiva are the “*Roshei Yeshiva*,” or senior rabbis, who are “very large influencers on campus” with “hundreds of students” learning Torah from them annually. (*Id.* at 60:22-61:3; *see also id.* at 65:14-17.)

refused to “suffer” pedantic formalism over “view[ing] the association as it was intended to be, and actually is.” (*Kittinger*, 292 NYS at 47-48.) The Court should do the same here.

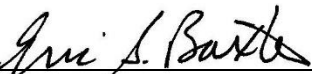
CONCLUSION

For all the foregoing reasons, Yeshiva’s converted motion for summary judgment should be granted, Plaintiffs’ cross-motion for summary judgment should be denied, and the case should be dismissed.

Date: January 20, 2022

Respectfully submitted,

THE BECKET FUND
FOR RELIGIOUS LIBERTY

By: 

Eric S. Baxter (*pro hac vice*)

William J. Haun (*pro hac vice*)

Abigail E. Smith

1919 Pennsylvania Ave. NW, Suite 400

Washington, DC 20006

Telephone: 202-955-0095

Facsimile: 202-955-0090

Email: ebaxter@becketlaw.org

whaun@becketlaw.org

asmith@becketlaw.org

David Bloom

Samantha R. Montrose

Kenneth Abeyratne

Kaufman Borgeest & Ryan LLP

120 Broadway, 14th Floor

New York, New York 10271

Telephone: 212-980-9600

Facsimile: 212-980-9291

Email: dbloom@kbrlaw.com

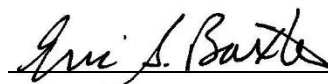
smontrose@kbrlaw.com

kabeyratne@kbrlaw.com

Attorneys for Defendants

CERTIFICATION

Pursuant to the Court's December 9, 2021 Order limiting the parties' surreply papers to 7,000 words (Doc. 179), undersigned counsel hereby certifies that the above *Surreply in Further Support of Defendants' Converted Motion for Summary Judgment* has 6,868 words including picture captions and pictured text, but exclusive of the brief caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).


Eric S. Baxter

- Exhibit Q -

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

YU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

Motion Sequence No. 6

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY
JUDGMENT**

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PRELIMINARY STATEMENT

In a Janusian feat, Plaintiffs simultaneously maintain that factual disputes preclude summary judgment on the scope of the religious exemption to the New York City Human Rights Law (“NYCHRL”), *see* (Doc. 229 at 20-22), and that there is no genuine dispute of material fact on the exact same issue—so long as it is resolved in their favor. (Doc. 272 at 1.) Yeshiva agrees that the scope of the NYCHRL’s exemption for corporations that are (1) “incorporated under the education law” and (2) “religious” is a question of law. Yeshiva also agrees that the matter is “ripe” for summary adjudication. But both the law and the undisputed facts require the same conclusion: as a religious corporation incorporated under the Education Law, it is Yeshiva that is entitled to summary judgment as exempt from the NYCHRL.

Plaintiffs’ request for summary judgment in their own favor is baseless. It contradicts the NYCHRL’s ordinary meaning, contorts its legislative history, disregards longstanding New York case law, and ignores Yeshiva’s First Amendment defenses.

To Plaintiffs, Yeshiva’s religiosity can be ignored, because an organization is “religious” only if organized, or eligible to be organized, under the Religious Corporations Law (RCL). And since only houses of worship are eligible, Yeshiva is not exempt. It’s a tidy theory. But it’s nowhere in the NYCHRL, which exempts a religious corporation “incorporated under the education law *or* the religious corporations law,” not one “incorporated, or eligible to be incorporated” under the RCL. Besides rendering the “education law” clause superfluous, Plaintiffs’ theory would lead to absurd results: no separately incorporated religious school could ever be exempt, including Yeshiva’s affiliated rabbinical seminary or hundreds of religious schools throughout the City.

Plaintiffs’ other theories are equally untenable. Seeking to rewrite the statute’s plain terms with legislative history, Plaintiffs insist that exempt religious corporations cannot be “public facing” or “large,” and their charters must use the magic words “religious corporation.” This is contrary to the ordinary meaning of the statute itself. That should end the case.

Even if the NYCHRL had no protection for religious corporations, the First Amendment does. On this score, Plaintiffs’ brief doesn’t even mention the First Amendment. But the canon of

constitutional avoidance doesn't mean "avoid discussing the Constitution," it means avoid violating it. Plaintiffs' total failure to address Yeshiva's First Amendment defenses is reason enough to deny them summary judgment and grant it for Yeshiva.

Left with nothing else, Plaintiffs argue that, despite their own concessions of Yeshiva's "deeply important" religious identity, its Judaism is just a facade. This should not be taken seriously. Yeshiva is a *Yeshiva*—and Plaintiffs themselves admit it. If that is not a religious school, then there are no religious schools in New York City.

In short, the Court has been right all along: this case is "ripe for summary adjudication." And only one result can follow. Yeshiva is entitled to summary judgment.

BACKGROUND

Despite admitting that Yeshiva is "wholly committed to and guided by Halacha and Torah values," (Doc. 11; Compl. ¶ 98), Plaintiffs sued Yeshiva because they disagree with *how* Yeshiva applies its Torah values. Specifically, Plaintiffs brought claims under the NYCHRL after a panel of Yeshiva's rabbis and educators declined to officially recognize their club, YU Pride Alliance, because they determined that doing so would not be consistent with the University's Torah values. (Compl. ¶¶ 53, 58, 62-71, 98, 103; *see also* Doc. 71 at 5-6.) Plaintiffs acknowledge that this was a Torah-based decision. (*See* Doc. 71 at 6.) But they invoked the civil courts anyway because, as Plaintiffs say, they want to force "cultural changes" at Yeshiva. (*Id.* at 7.)

This Court denied Plaintiffs' requested preliminary injunction, aimed at forcing Yeshiva to immediately violate its Torah values. (*See* Doc. 115.) "Yeshiva University," the Court said, 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." (*Id.* at 1.) And the NYCHRL categorically exempts from its public accommodations provisions "religious corporation[s] incorporated under the education law." (N.Y.C. Admin. Code § 8-102.) As such, Plaintiffs were not likely to succeed on the merits of their claims—all of which apply only to public accommodations. (Doc. 115 at 6-7.) Plaintiffs' construction of the NYCHRL, the Court held, "is contrary to the plain language of the statute." (*Id.* at 6.) And their attempt to suggest that Yeshiva

isn't really religious fell "woefully short." (*Id.*) Concluding that this case was "ripe for summary adjudication," (*id.* at 7), the Court converted Yeshiva's motion to dismiss (Doc. 71) into one for summary judgment and directed the parties to file their final briefs.

"Within days," Plaintiffs demanded that the Court delay summary adjudication and order discovery. (Doc. 273 at 2.) Plaintiffs requested 46 categories of documents from Yeshiva—along with issuing multiple third-party subpoenas, noticing three depositions, and filing multiple FOIL requests. (*See* Doc. 167 ¶ 3 & Doc. 139 ¶ 13.) They also took the deposition of Yeshiva's corporate representative, which they ended early, after repeatedly asking about the legal meaning of a "religious corporation" under the NYCHRL instead of focusing on the facts. (Ex. D 129:3-4; *see also, e.g., id.* at 123:3-6, 124:5-6, 125:11-12, 126:14-24, 127:22-24, 128:14-15, 129:15-21, 131, 132:3-7; 133:20-23, 136:7-11, 137:9-16, 155-156, 176:17-25, 178:18-21, 205-207; *id.* at 206:12-13 ("I feel like this question was asked like hours ago.").)

Per the Court's order, following this extensive discovery, Plaintiffs and Yeshiva both filed sur-replies regarding Yeshiva's converted motion for summary judgment. Plaintiffs also filed their own motion for summary judgment, which—like Yeshiva's motion—seeks summary judgment on whether Yeshiva is a "religious corporation incorporated under the education law," and thereby exempt from the NYHRL's public accommodations provisions. (N.Y.C. Admin. Code. § 8-102.) If Yeshiva is exempt, that ends this case in favor of all defendants. As Yeshiva already explained, the First Amendment requires that claims impacting internal religious affairs be resolved at a case's outset. (Doc. 71 at 8 n 2.) And this Court already recognized that this issue "is one of pure law," (Doc. 149 at 2), "ripe for summary adjudication," (Doc. 115 at 7.) Summary judgment is therefore proper—and Yeshiva should receive it.

ARGUMENT

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

The NYCHRL exempts "distinctly private" organizations, and "a religious corporation incorporated under the education law" is "deemed" to meet that standard. (N.Y.C. Admin. Code § 8-102.) Here, it is undisputed Yeshiva is incorporated under the Education Law. And Plaintiffs

have conceded what discovery confirmed: Yeshiva is religious. Summary judgment must follow for Yeshiva and its officers.

A. Yeshiva is both “incorporated under the education law” and “religious.”

Yeshiva’s corporate documents show it incorporated under the Education Law in 1967. (Ex. A.)¹ That is undisputed. Thus, the only remaining question is whether Yeshiva is “religious.” And Plaintiffs have conceded that point too. They acknowledge that “Judaism is deeply important to the University’s existence and activities,” (Doc. 229 at 11), and they chose to attend Yeshiva specifically because it is a “religious community,” (Doc. 23 ¶ 9), that would support their own “religious growth,” (Doc. 25 ¶ 9.) On these concessions alone, the Court could grant summary judgment.

Moreover, the undisputed evidence from discovery compels the same result. Whether a corporation is “religious” is determined by the “purpose for which it was organized” and its every-day “functions.” (*Kittinger v Churchill*, 292 NYS 35, 41, 47 [Sup Ct, Erie County 1936].) These confirm that Yeshiva is deeply religious.

Plaintiffs do not dispute the overwhelming evidence of Yeshiva’s obvious religious purpose. Yeshiva initially was formed as “The Rabbi Isaac Elchanan Theological Seminary Association” for a *purely* religious educational purpose: “to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” (Ex. B.) Over time, Yeshiva added secular degrees, changing its name first to “The Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College” in 1926, and then to “Yeshiva University” in 1945. Yeshiva never stopped “promot[ing] the study of Talmud” or “preparing students of the Hebrew faith for the Hebrew Orthodox ministry.” (*See, e.g.*, Ex. C (Yeshiva’s Rabbi President Berman: Yeshiva’s “specific form and structure has shifted depending on times, needs and circumstances, but the core mission has always remained the same.”); Ex. D 31:2-3 (“The mission of Yeshiva University has not changed.”).)

¹ All cited exhibits accompany the Affirmation of Eric Baxter, filed with this opposition.

Nor do Plaintiffs dispute that Yeshiva implements this religious mission in daily life. In everything it does, Yeshiva “operates with an understanding of [its] values,” which “come from the Torah.” (Ex. D 65:14-16; *see also* Doc. 71 at 2.) These values are embraced by the University’s motto, Torah Umaddah (combining religious and secular studies), which is inscribed in Hebrew on the University’s seal, along with the name of its affiliated rabbinic seminary.



To keep this mission at the forefront of university life, the seal is prominently displayed at the campus entrance and on virtually all public-facing materials. (*See Kroth v Congregation Chebra Ukadisha Bnai Israel Mikalwarie*, 430 NYS2d 786, 790 [Sup Ct, NY County 1980] (taking judicial notice of religious “inscriptions” on “the facade”).)

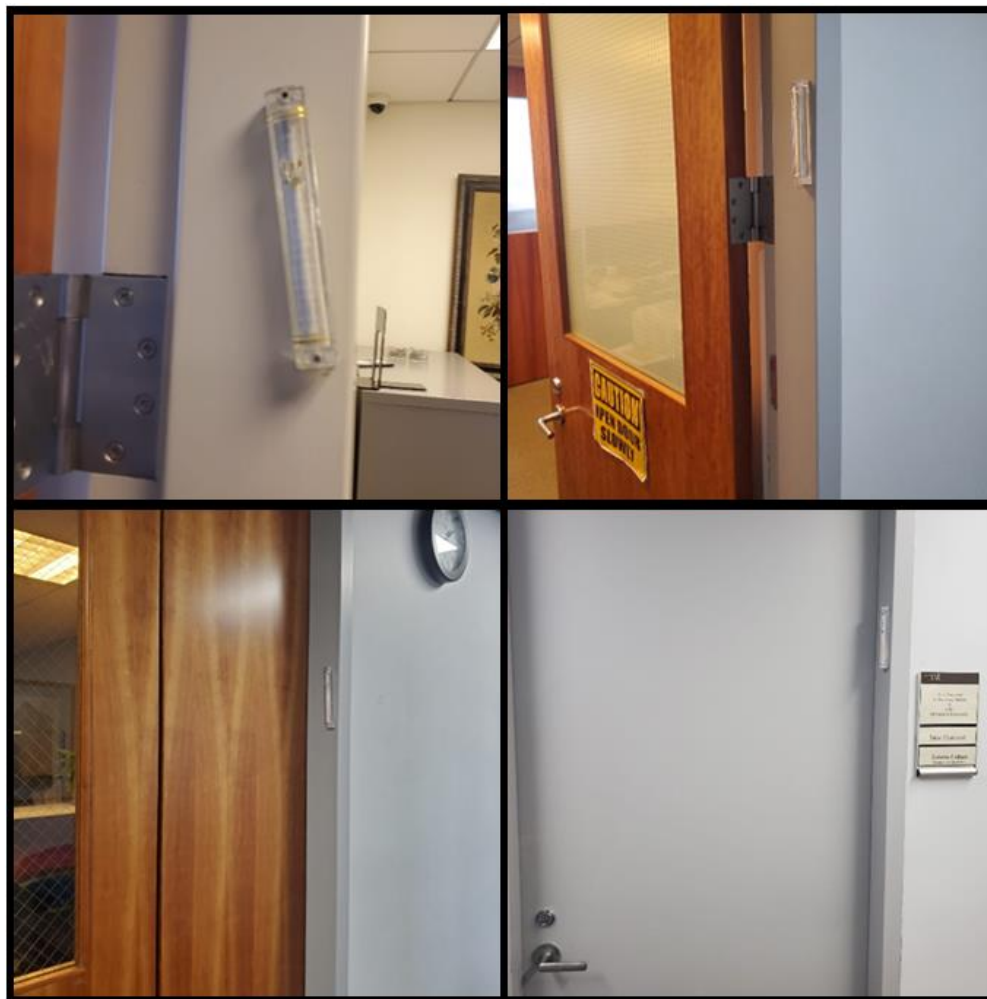


Plaintiffs do not dispute that all undergraduates are strongly encouraged to begin their Yeshiva experience with intensive religious studies in Israel, with over 80% doing so for university credit. (Doc. 55 at 3; *see also* Ex. D at 26:14-15.) They do not dispute that all male students spend one to nearly six hours per day in Torah study, and all female students have religious instruction several hours a week. (*See id.* at 7:14-19; *see also* Ex. E; Ex. F.) Nor do Plaintiffs dispute that the Rabbi Isaac Elchanan Theological Seminary (RIETS) “sits on the same campus” as the undergraduate men’s school, (Ex. D 60:13-14), or that “[t]hey don’t really separate” undergraduates and seminary students for religious instruction in the *beit midrash* or “study hall,” (*id.* 62:12-13) (pictured).



Plaintiffs further do not dispute that students living on campus agree “to live in accordance with halachic [Jewish law] norms and Torah ideals,” or that Yeshiva complies fully with the laws of Shabbat and Kashrut in its undergraduate programs and encourages students to do the same. (Doc. 55 at 4; Ex. D 138:20–139:5 (students are “told ... it’s a religious campus, orthodox on campus, prayer, kashrut, [S]habbos”); Ex. G (elevators run automatically on Sabbath; provision prohibiting use of computers/electronics on Sabbath); Ex. H (“Shabbat Programming”); Ex. I (explaining to incoming undergrads that “[e]very week is a Shabbaton” on campus, with “[t]ailored programs”).) Nor do they dispute that campuses, dorms, and prayers are sex-segregated consistent with Torah law and tradition; that all campuses have synagogues; that all doors on campus have

mezuzahs, even in administrative areas (pictured); that student government officers are charged to help “maintain the religious atmosphere on campus”; and that student activities are reviewed for religious compliance. (Doc. 71 at 2, 4-5, 10.)



Similarly, Yeshiva’s faculty handbook describes “normal work hours” on Friday (the day Shabbat begins at sundown) as ending at 2:30 PM—while “normal” hours go to 5:30 every other weekday. (See Ex. J.) As the handbook also says, “Jewish holidays are observed, and offices will be closed, when the holiday falls on a workday.” (Ex. K; see also *Yeshiva Undergraduate Academic Calendar Fall 2021*, available at <https://perma.cc/LT7N-LHU5> (noting observance of Jewish religious holidays and fast days).)

Even undergraduate programs that are not explicitly religious rest on Torah values. Yeshiva's Sy Syms Real Estate Program is described as "following in Avraham's [Biblical Abraham's] footsteps." (Ex. L.) Throughout campus, there is a wide range of "spiritual guidance and programing" advertised to all undergraduates. (Ex. M (YU03004-YU03007).) "[E]ach" student has a *mashgiach ruchani*, or "spiritual advisor[]," some of which "are also faculty." (Ex. D 8:5-7, 11; *see also* Ex. N.) As the *Wall Street Journal* recently put it when profiling the Yeshiva men's basketball team (fittingly named the Maccabees), Yeshiva "began as a school primarily for Jewish studies" and "sticks to its roots." (*See* Masada Siegel, *The Kippahs on the Yeshiva University Basketball Court*, WSJ, Nov. 26, 2021, available at <https://perma.cc/KWB9-JDWA>.)



Deans of Yeshiva's Undergraduate Torah Studies Program and the Sy Syms School of Business studying *Torah* on the sidelines of a Maccabees game during halftime.

Notably, Plaintiffs also do not dispute that, to its most salient public—future students and their families—Yeshiva is adamant regarding "what the campus life is really about." (Ex. D 138:22-139:3.) Students from its "feeder schools" are already "coming from generally Jewish religious background[s]." (*Id.* at 55:14-15.) Still, they are advised that while "[a]nyone is eligible to apply to Yeshiva University," they must be "willing and interested" in a rigorous religious education. (*Id.* at 138:22-139:3; *see also* Ex. M (YU03007).)

Indications of Yeshiva's religious character are found everywhere on campus. Spiritual guidance resources abound. (*See, e.g.* Ex. N (Beren Campus resources).) Yeshiva hosts a collection

of “more than 10,000 artifacts reflecting 5,000 years of Jewish culture, art, and history from around the world.” (Ex. O.) There is “signage” throughout the dining halls indicating the “expect[ation]” of keeping kosher. (*See* Ex. D 77:17–78:2.) Campus garages are closed on both the Jewish Sabbath and all Jewish holidays.



Under New York law, evaluating whether a corporation is “religious” requires “looking through the structure and determining what it actually is.” (*Kittinger*, 292 NYS at 47.) Here, “view[ing] [Yeshiva] as it was intended to be, and actually is,” (*id.* at 47-48), the undisputed, material facts establish what this Court already found: “Yeshiva University [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.” (Doc. 115 at 1.) It is, therefore, a “religious corporation incorporated under the education law” exempt from the NYCHRL’s public accommodations provisions. (N.Y.C. Admin. Code § 8-102.)

B. Plaintiffs’ reading of the NYCHRL is untenable.

Because Plaintiffs do not—and cannot—dispute the overwhelming evidence of Yeshiva’s religious character, they try rewriting the NYCHRL. Their reading pretends the language “under the Education Law” does not exist, ignores relevant case law, and distorts legislative history.

1. Plaintiffs' reading is atextual.

As this Court has held, “[Plaintiffs’] reading of the Administrative Code is contrary to the plain language of the statute.” (Doc. 115 at 6.) Plaintiffs argue that Yeshiva could only be a “religious” corporation if it incorporated under the RCL. But this reading ignores the statutory text.

The NYCHRL unambiguously provides that a “religious” corporation qualifies if it is “incorporated under the education law *or* the religious corporation law.” (N.Y.C. Admin. Code § 8-102 (emphasis added).) Plaintiffs’ contrary reading violates basic interpretive principles, so it must be rejected—again. (*See Matter of Tonis v Bd. of Regents of Univ. of State of N.Y.*, 295 NY 286, 293 [1946] (“each word used” in a statutory enumeration must be understood “to express a distinct and different idea”).)

If accepted, Plaintiffs’ argument would produce absurd results. (Doc. 229 at 3-4.) On their theory, *no* separately-incorporated religious school in New York of any faith tradition—primary, secondary, college, or university—could ever be “religious” under the NYCHRL. Even RIETS—which trains and ordains rabbis—would be treated as a “public accommodation” because it is incorporated under the Education Law. This must be rejected. (*See, e.g., McKinney’s Cons. Laws of N.Y.*, Book 1, Statutes § 145.)

Tellingly, Plaintiffs eventually concede that “[c]orporations incorporated under statutes other than the RCL”—such as the “Education Law”—“may be de facto ‘religious corporations.’” (Doc. 272 at 9.) But then they argue this is possible “only if” that corporation can “satisfy” the RCL. (*Id.*) This argument is as defective as the first, as it also robs the phrase “under the education law” of any meaning and leads to the same absurd result.

Moreover, nothing in the NYCHRL supports Plaintiffs’ RCL-only contention. None of Plaintiffs’ cited cases construe the NYCHRL or suggest that a “religious corporation incorporated under the Education Law” *must* also qualify under the RCL—they state only that houses of worship incorporated under other laws *could* be subject to the RCL. (*See Temple-Ashram v Satyanandji* 84 AD3d 1158 [2d Dept 2011] (holding that RCL *could* be applied to Hindu Temple incorporated

under Not-For-Profit Law because it otherwise qualified); *Watt Samakki Dhammikaram, Inc. v Thenjitto*, 631 NYS2d 229, 231 [Sup Ct, Kings County 1995] (same for Buddhist Temple.)

New York cases confirm that religious corporations can incorporate under various statutes. Plaintiffs' lead case, *Matter of Watson*, itself held that the Young Men's Christian Association and a missionary organization—neither incorporated under the RCL—"were created for purposes so closely allied to religion that they may be *broadly classed* as religious corporations." (171 NY 256, 260 [1902] (emphasis added); *see also In re Moses*, 123 NYS 443, 446-447 [1910] (explaining how New York tax law was modified after *Watson* to confirm this reality).) Similarly, in *Matter of Lueken*, the court held that the "Not-For-Profit Corporation Law is intended as a general incorporating statute and clearly governs 'religious corporations.'" (97 Misc 2d 201, 203 [NY Sup Ct, Queens County 1978].) The Education Law, too, contemplates religious corporations independent of the RCL. It permits not-for-profit schools, via the Not-For-Profit Corporation Law, to possess "one or more" "educational" or "religious" purposes. (*See* N.Y. Not-for-Profit Corporation Law § 102 (3-b); N.Y. Educ. Law §§ 216-a(4), (5) (the Not-For-Profit Corporation Law governs education corporations where the Education Law is silent).) In fact, outside of a "clear and unavoidable conflict between the two statutes," it was the New York Legislature's "inten[t]" that "the Not-for-Profit Corporation Law," not the RCL, "would be controlling with respect to religious corporations." (*Rector, Church Wardens and Vestrymen of St. Bartholomew's Church v Committee to Preserve St. Bartholomew's Church, Inc.*, 84 AD2d 309, 314 [1st Dept 1982].)

Finally, and for similar reasons, Plaintiffs' suggestion that a corporation can only be religious if such purpose is clearly stated "in [its] governance documents," (Doc. 272 at 9), is unavailing. This argument rests on the mistaken assumption that a clearly defined line exists between "religious" and "educational" purposes. But New York law has long rejected this parsing. (*See Rabbi Solomon Kluger Sch., Inc. v Town of Liberty*, 351 NYS2d 563, 566-567 [Sup Ct, Sullivan County 1974] ("the education and cultivation of the Jewish Religion" is a religious function); *In re Moses*, 123 NYS at 446-447 (religious association's work of "developing and cultivating the

various physical, intellectual, and moral faculties” was “[e]ducational”).) As the U.S. Supreme Court recently said: “The religious education and formation of students is the very reason for the existence of most private religious schools.” (*Our Lady of Guadalupe Sch. v Morrissey Berru*, 140 S Ct 2049, 2055 [2020].)

As for Yeshiva, its initial charter stated an *exclusively* religious purpose (“promote the study of Talmud”). (Ex. B.) And when Yeshiva “continued” as an Educational Corporation in 1967, the amended charter confirmed that it “*is and continues to be* organized and operated exclusively for educational purposes,” indicating that the original religious education purposes carried through. (Ex. A (emphasis added).) Plaintiffs have no basis for concluding that Yeshiva’s educational purposes are now exclusively secular.

Similarly, New York courts have long rejected any suggestion that a religious purpose must be apparent from specific words in a charter—or that a stated purpose is dispositive. In *Kittinger*, for example, the charter of a stock corporation “eliminated ... any statements” showing religious intent. 292 NYS at 38. But the court held that the corporation was still, in its function, “a religious society,” upholding the “actual intent of the incorporators.” (*Id.* at 38, 48; *see also Kroth*, 430 NYS2d at 790 (identifying a religious corporation by “function,” how “those in control” understood its purposes, religious “inscriptions” on the building’s exterior, and the “subsequent history of ... its function”); *In re Religious Corps. & Assns.—Divestment of Prop.*, 784 NYS2d 923 [Sup Ct, NY County 2003] (identifying religious corporation based on its “enabling legislation, corporate purposes and activities, position on this lawsuit,” and “history”).) The same is true under New York State’s Human Rights Law. (*Scheiber v St. John’s Univ.*, 84 NY2d 120, 126 [1994] (refusing to limit “status as a religious organization” to “only an entity organized pursuant to the Religious Corporations Law”).)² Plaintiffs’ attempt to reject this rule and impose a “magic word” test should be rejected.

² Plaintiffs’ argument that the City’s lawyers define “religious corporation” more narrowly under the NYCHRL is unavailing. (*See* Doc. 229 at 4 n.3 (discussing City’s brief in *N.Y. State Club Assn., Inc. v City of N.Y.*, 487 US 1 [1988]); *see also* Doc. 249 (City’s brief).) The thrust of the City’s argument—and all the

2. Plaintiffs' reading upends the NYCHRL's legislative history and structure.

Plaintiffs' arguments regarding the NYCHRL's "legislative history" are also misguided. Their first argument—that "large" or "public facing" religious corporations cannot be exempt—is contradicted by the statute itself. The same sentence exempting religious corporations also exempts benevolent orders, many of which have thousands of members and many public-facing activities. (*See* N.Y. Benevolent Orders Law §§ 2, 7 (expressly including over 50 different benevolent orders with large memberships, including the Masons, the Knights of Columbus, the American Legion, and the Veterans of Foreign Wars).) Both religious corporations and benevolent orders are "deemed to be ... distinctly private." (N.Y.C. Admin. Code § 8-102 (emphasis added); *accord Gifford v Guilderland Lodge*, 272 AD2d 721, 722-733 [4th Dept 2000] ("the exemption ... is absolute and not subject to limitation").) Nothing about this sentence suggests a size or any other limit. Plaintiffs cannot credibly claim that a religious corporation like Yeshiva is "too large" to claim the exemption, when—in the very same sentence—much larger benevolent orders are exempted regardless of size.

Plaintiffs' second argument—that the NYCHRL did not intend to exclude "religiously-affiliated or identified entities"—also bears no resemblance to the text. (*See* Doc. 272 at 18-19.) Plaintiffs ignore that the statute gives religious institutions two layers of protection. First, the religious corporations mentioned in the definition of "public accommodation" (*i.e.*, those "incorporated under the education law or the religious corporation law") are deemed "distinctly private" and thereby categorically exempt. (N.Y.C. Admin. Code § 8-102.) Second, for other religious organizations, activities "calculated ... to promote the religious principles for which [the organization] is established or maintained" are also exempt. (*See* N.Y.C. Admin. Code § 8-

U.S. Supreme Court later held—was that the RCL's existence gave the City a "rational basis" for the NYCHRL's public accommodations exclusion. (*See* 487 US at 16.) This does not mean that the RCL encompasses the universe of religious corporations. As the City said, that basis could be "imperfect" and still be rational. (*See* Doc. 249 at 18.) Moreover, the City also argued that exempting religious corporations from the NYCHRL's public accommodations provisions reflected the City's intention of being "quite sensitive to the constitutional issues raised by the legislation." (*Id.*) Just so here. *See infra* Part I.C (Yeshiva's First Amendment protections).

107(12).) Both exemptions protect Yeshiva. But more to the point, nothing about this statutory language—and nothing in the legislative history—supports cramping the NYCHRL’s religious protections in line with Plaintiffs’ semantics (“religious corporation” vs. “religiously-affiliated entity” vs. “religiously-identified entity” vs. “large religiously-affiliated corporations”).

* * * *

As Plaintiffs themselves explain, the NYCHRL’s “goal” was to “target” “clubs ... that refused to admit ... traditionally excluded groups such as Jews.” (Doc. 272 at 16-17.) When Yeshiva began, there were many “difficulties facing American Orthodox Jewry,” including “mandatory Shabbos (Saturday) labor at the workplace, the assimilation of youth into secular American culture, and the lack of availability of Torah education.” (*In re Religious Corps.*, 784 NYS2d at 923.) Yeshiva was founded—and exists today—to serve as a renowned home for Orthodox Jews who want to study Torah and use Torah values to engage the world. (*See, e.g.*, Rabbi Norman Lamm, *Torah Umadda* 28-31, 162-163 [3d ed. 2010].) It would be tragic if an institution that sustained Jews against discrimination, and had its growth fueled by Holocaust survivors, lost the freedom to remain Jewish—because of a statute intended to combat anti-Semitism. (*Cf.* W.E.B. Du Bois, Schools, 13 *The Crisis* 111, 112 [1917] (“We must rally to the defense of our schools. We must repudiate this unbearable assumption of the right to kill institutions unless they conform to one narrow standard.”).)

C. Constitutional avoidance compels a ruling for Yeshiva.

The NYCHRL is clear. But even if there were ambiguity, the doctrine of constitutional avoidance would require the Court to interpret it to avoid “serious First Amendment questions.” (*NLRB v Catholic Bishop of Chicago*, 440 US 490, 504 [1979]; *see infra* II (outlining First Amendment problems).) Unless there is “clear expression” to the contrary, the statute must be interpreted to avoid an unconstitutional result. (*Id.*) There is no such expression here. By contrast, Plaintiffs’ construction would needlessly conjure a clear violation of First Amendment rights in violation of the text. This might explain why Plaintiffs prefer their own avoidance canon: avoid the Constitution. Their request for summary judgment has zero First Amendment discussion. The

fact that Plaintiffs have made no argument regarding Yeshiva's First Amendment defenses reinforces that they are not entitled to summary judgment, but Yeshiva is. For all the reasons detailed in Yeshiva's converted motion (Doc. 71) and in its sur-reply filed concurrently herewith, Yeshiva is entitled to summary judgment on its First Amendment defenses.

II. Yeshiva's religious identity has always been obvious.

Unable to refute the overwhelming evidence of Yeshiva's religious character, Plaintiffs try claiming it's all a facade. (Doc. 272 at 10 ("YU has never claimed to be a 'religious corporation' until this lawsuit.")) In support, Plaintiffs cherry-pick outdated and irrelevant material that has never been used to govern Yeshiva University. This is a fools' errand.

The record is replete with undisputed evidence that Yeshiva has always provided its undergraduate students with a rigorous religious education and maintained an undergraduate-campus environment that encourages religious belief and observance. *Supra* Part I. This includes Plaintiffs' concession that "Judaism is deeply important to the University's existence and activities." (Doc. 229 at 11.) And as one of Plaintiffs' own sources puts it, Yeshiva has "developed" "[m]echanisms" to ensure its "religious character would always be maintained." (Doc. 94 at 8 ("The Men and Women of Yeshiva").) Plaintiffs' contrary insinuations should be rejected.

A. Yeshiva's government forms confirm its religious mission.

Plaintiffs argue that, by identifying itself as an "educational institution" or a "not for profit" on certain government forms, or by representing that it would not use government funds for religious purposes, Yeshiva has disavowed its religious identity. (Doc. 272 at 12.) This is wrong—and contradicted by undisputed evidence.

Specifically, Plaintiffs cite two government forms filled out by Yeshiva to suggest that its religious defenses are insincere. (*See* Doc. 229 at 8-10.) But the forms show no such thing. The first form Plaintiffs cite, the CHAR410 Schedule E, (*id.* at 9), instructs the responding party: "***Do not request exemptions that cannot be supported by the documentation required.***" (*Id.*; *see also* Doc. 244 at 3.) For box 5, which Plaintiffs claim Yeshiva should have checked, the satisfactory documents include only (1) an official denominational directory such as the "Blue Directory" (a

listing of Christian denominations with no Jewish equivalent); or (2) documents proving that the responding entity is “operated, supervised, or controlled by” another exempt organization. But Yeshiva is an independent Orthodox Jewish university that—unlike many Christian colleges—is not governed by a separate entity in the traditional sense. It would not, for example, show “control” in the same manner as a Christian college from a hierarchical tradition. (*See* Ex. D 115:16-17 (“Again, the word ‘control’ in Judaism is a hard word to document.”); *see also* “*Halakhah*,” Routledge Encyclopedia of Philosophy (E. Craig, ed.) [1998] (modern *Halakhah* Judaism is decentralized, “where hardly any debate ends with an explicitly stated definitive conclusion”).) America’s legal traditions have long recognized every religion’s freedom to employ “corporate powers” consistent with “their own religious duties.” (*Terrett v Taylor*, 9 Cranch [13 US] 43, 49 [1815]; *see also* *Watson v Jones*, 13 Wall [80 US] 679, 726 [1871] (religious organizational structure “more or less intimately connected [to] religious views”).) Here, Yeshiva had every right not to select box 5 because that box’s options do not align with Yeshiva’s religious structure. Instead, Yeshiva properly chose to rely upon its “educational institution” status.

The second form Plaintiffs highlight—a state Department of Homeland Security form (Doc. 272 at 14)—raises a similar issue. There Yeshiva chose to rely on its status as a “not for profit corporation,” rather than identifying as “sectarian,” a term that does not accurately describe any Jewish organization. (*See Mitchell v Helms*, 530 US 793, 828-829 [2000] (noting the historical association of the word “sectarian” with “Catholic”); Ex. D at 139:17-22; 172:20-173:3; 174:5-6; 194:7-13l.) Indeed, Yeshiva accepts students from all “different denominations of Jewish faith” and “anyone of any faith is eligible to apply,” assuming they are sincerely open to Yeshiva’s programs for religious formation. (*Id.* at 139:6-25.) Yeshiva objects to any suggestion that its own or any other branch of Judaism is properly considered a “sect.”³

³ Plaintiffs have also discussed Yeshiva securing \$90 million in DASNY bond financing. (Doc. 272 at 12.) But DASNY’s restrictions do not prohibit aid to religious corporations. They only prohibited certain religious “use[s].” (Ex. P.) Yeshiva complied with those restrictions. (*See id.*) And in any case, those “restriction[s],” as the bond says, “shall not prohibit the free exercise of any religion.” (*Id.*)

Plaintiffs also ignore the countless government filings where Yeshiva makes its religious nature explicitly clear. Take, for example, Yeshiva's IRS Form 990—the government filing most easily accessed by the public. Its Schedule O includes a detailed recitation of Yeshiva's core Torah values, (*see* Ex. Q), and goes on at length about Yeshiva's religious character:

YESHIVA UNIVERSITY IS THE WORLD'S PREMIER JEWISH INSTITUTION FOR HIGHER EDUCATION. ROOTED IN JEWISH THOUGHT AND TRADITION, IT SITS AT THE EDUCATIONAL, SPIRITUAL AND INTELLECTUAL EPICENTER OF A ROBUST GLOBAL MOVEMENT THAT IS DEDICATED TO ADVANCING THE MORAL AND MATERIAL BETTERMENT OF THE JEWISH COMMUNITY AND BROADER SOCIETY, IN THE SERVICE OF GOD.

Other filings are likewise unequivocal. For example, Yeshiva sought \$3.6 million in New York state funding to install security cameras in its pedestrian plaza, because “[g]iven the University’s preeminence as a center of Jewish learning, it is a high profile terrorist target” for “extremists [who] rail against the very existence of the Jewish state and urge acts of violence against Jews and Jewish institutions.” (Ex. R.) Yeshiva has also often discussed its religious nature in detail with New York City Council Members as it seeks government funding. (*See, e.g.*, Exs. S & T.) Yeshiva’s applications to its accrediting agency are similar. For example, Yeshiva said its “serious, in-depth program in Torah Studies amounting to a second major” is “[m]ainly what distinguishes undergraduate education at YU.” (Ex. U at 6.) Similarly, Yeshiva detailed its “Mazer Yeshiva Program, serving about 625 male undergraduates,” which mostly consists of “traditional Talmud study,” and leads “[m]any” participants to either further Jewish studies or to rabbinical ordination. (*Id.* at 10-11.) In sum, Yeshiva’s public filings consistently affirm its religious nature.

B. Yeshiva’s internal documents confirm its religious mission.

Plaintiffs’ second attempt at arguing against Yeshiva’s religious nature fares no better. They claim that a few documents, read in the worst possible light, suggest Yeshiva is faking its overtly public religious nature. Viewing these documents in context, that effort is defeated.

Plaintiffs first rely on a 1995 memo that discusses “gay student clubs” at “two *graduate* schools.” (Doc. 234 at 2 (emphasis added).) But Plaintiffs ignore that this memo specifically disclaims its relevance to the undergraduate schools at issue here: “There are no gay clubs at any of YU’s undergraduate schools, at its graduate schools in Jewish studies and Jewish education, or at its affiliated Rabbi Isaac Elchanan Theological Seminary.” (*Id.*) This follows from Yeshiva’s understanding of proper religious immersion and formation, as has already been explained. (*See, e.g.*, Doc. 55 at 13-14.) More importantly, Plaintiffs have not alleged, let alone identified any evidence, that Yeshiva ceased functioning as a religious corporation at the time of the memo.

Plaintiffs also highlight Yeshiva’s corporate charter changes in 1967 and 1969. (Doc. 272 at 10-11.) But Yeshiva’s corporate changes during that period actually confirm that Yeshiva’s religious purposes, as the documents themselves say, “continued.” *Supra* Part I.B.1. Yeshiva’s corporate changes simply reflect—along with the many other charter amendments both before and after—its gradual progression from a religious membership corporation to a religious university. (*See* Ex. D 122-123.) Memorializing this change in Yeshiva’s corporate charters in 1967 followed revisions to New York corporate law that generally required universities incorporated as membership corporations to reincorporate under the Education Law. (*See* 1963 N.Y. Laws 2406-2408 (enacted April 23, 1963); *see also* Doc. 71 at 4.)⁴

Nor do Plaintiffs get any mileage out of misconstruing language from Yeshiva’s 1969 and 1967 petitions to the Board of Regents. (*See* Doc. 272 at 10-11.) The 1967 petition—by which Yeshiva “continued” from a membership corporation to an education corporation—did not suggest Yeshiva abandoned its religious purposes. It simply explained why its status *as a membership*

⁴ Moreover, then-applicable case law suggested that governments could withhold public funds from “sectarian” schools. (*See, e.g., Comm. for Pub. Ed. & Relig. Lib. v Nyquist*, 413 US 756, 771 [1973].) The Supreme Court has now confirmed this rule violates the Free Exercise Clause. (*See Espinoza v Mont. Dept of Revenue*, 140 S Ct 2246 [2020]; *Trinity Lutheran Church of Columbia, Inc. v Comer*, 137 S Ct 2012 [2017].) Under current law then, New York’s “sectarian” prohibitions cannot be justified. So even assuming Plaintiffs’ theory—that Yeshiva structured itself to highlight its robust secular education—is correct, Yeshiva cannot be faulted for protecting its students’ rights to receive government funding against unconstitutional funding restrictions.

corporation no longer made sense: “in light of the degree granting divisions and schools comprising the University,” the “membership association” that originally formed the Rabbi Isaac Elchanan Seminary had “long ceased to function as an association or as part of the University.” (Doc. 228 at 4.) The emphasis was on the dissolution of the membership association, not the seminary itself. Indeed, the very next paragraph expressly states that “the Rabbi Isaac Elchanan Theological Seminary continued as an affiliate of the University.” (*Id.*) But rather than remaining a member-driven organization, the seminary by 1967 had become a division of the broader University, operated by Yeshiva’s corporate leadership within Yeshiva’s corporate structure.

Yeshiva’s related request in the 1969 petition to drop some degrees was also consistent with Yeshiva’s identity as a religious corporation. The degrees it sought to drop were degrees in Hebrew literature and religious education, which had been authorized by the Board under the heading of “Religious Education.” (Doc. 238 at 5). The petition merely states there was low demand for the degrees and students chose to pursue similar courses of study under other degree programs. (*Id.*)⁵

* * * *

Plaintiffs’ attempt to show Yeshiva is no longer religious rests on randomly selected forms and obscure memoranda—all construed without the context that Plaintiffs concede: “Judaism is deeply important to the University’s existence and activities.” (Doc. 229 at 11.) New York law has long refused to “suffer” pedantic formalism over “view[ing] the association as it was intended to be, and actually is.” (*Kittinger*, 292 NYS at 47-48.) The Court should do the same here.

CONCLUSION

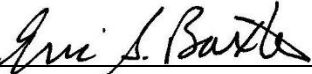
For all the foregoing reasons, Plaintiffs’ cross-motion for summary judgment should be denied, Yeshiva’s converted motion for summary judgment should be granted, and the case should be dismissed.

⁵ Contrary to Plaintiffs’ suggestion that Yeshiva’s Board is not religious, Yeshiva’s Board operates “like many things in Judaism”—by tradition. (Ex. D 45:16-17.) The Board “officially operates” by “a tradition” of ensuring new members are committed to Yeshiva’s Jewish mission. (*See id.* at 45:16-20; *see also id.* at 40:8-12.) In addition to the Board, overseeing this tradition of *halakah* Judaism at Yeshiva are the “*Roshei Yeshiva*,” or senior rabbis, who are “very large influencers on campus” with “hundreds of students” learning Torah from them annually. (*Id.* at 60:22-61:3; *see also id.* at 65:14-17.)

Date: January 20, 2022

Respectfully submitted,

THE BECKET FUND
FOR RELIGIOUS LIBERTY

By: 

Eric S. Baxter (*pro hac vice*)

William J. Haun (*pro hac vice*)

Abigail E. Smith

1919 Pennsylvania Ave. NW, Suite 400

Washington, DC 20006

Telephone: 202-955-0095

Facsimile: 202-955-0090

Email: ebaxter@becketlaw.org

whaun@becketlaw.org

asmith@becketlaw.org

David Bloom

Samantha R. Montrose

Kenneth Abeyratne

Kaufman Borgeest & Ryan LLP

120 Broadway, 14th Floor

New York, New York 10271

Telephone: 212-980-9600

Facsimile: 212-980-9291

Email: dbloom@kbrlaw.com

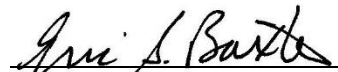
smontrose@kbrlaw.com

kabeyratne@kbrlaw.com

Attorneys for Defendants

CERTIFICATION

Pursuant to Rule 202.8-b of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Defendants' Opposition to Plaintiffs' Memorandum of Law in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment has 6,038 words, including picture captions and pictured text, but exclusive of the brief caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).


Eric S. Baxter

- Exhibit R -

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

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

Index No.: 154010/2021

Plaintiffs,

NOTICE OF APPEAL

-against-

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

Defendants.

-----X
COUNSELORS:

PLEASE TAKE NOTICE, that the defendants, **YESHIVA UNIVERSITY** and **PRESIDENT ARI BERMAN**, hereby appeal to the Appellate Division, First Department, from so much of an Order in the above-entitled action of the Honorable Lynn R. Kotler, of the Supreme Court, New York County, dated June 14, 2022 and entered in the Office of the Clerk of said Court on the 24th day of June, 2022, as denied their converted motion for summary judgment, granted plaintiffs' cross-motion for summary judgment, permanently restrained YESHIVA UNIVERSITY and PRESIDENT ARI BERMAN from refusing to officially recognize plaintiff YU Pride Alliance as a student organization and directed these defendants 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.

This Appeal is being taken from each and every part of said Order by which the defendants are aggrieved, and from the whole thereof.

Dated: New York, New York
June 24, 2022

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

Yours, etc.,

KAUFMAN BORGEEST & RYAN LLP

By: 

David Bloom, Esq.
Samantha R. Montrose, Esq.
Kenneth Abeyratne, Esq.
120 Broadway, 14th Floor
New York, New York 10271
Tel.: (212) 980-9600
dbloom@kbrlaw.com
smontrose@kbrlaw.com
kabeyratne@kbrlaw.com

Eric S. Baxter (*pro hac vice*)
William J. Huan (*pro hac vice*)
Abigail E. Smith Esq.
BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave NW, Suite 400
Washington, DC 20006-3404
Tel.: (202) 796-0209
ebaxter@becketlaw.org
whaun@becketlaw.org
asmith@becketlaw.org

Attorneys for Defendants
**YESHIVA UNIVERSITY,
VICE PROVOST CHAIM NISSEL and
PRESIDENT ARI BERMAN**

TO: VIA NYSCEF
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Attorneys for Plaintiffs
600 Fifth Avenue, 10th Floor
New York, New York 10020
Tel.: (212) 763-5000
krosenfeld@ecbawm.com

MORRISON & FOERSTER LLP
Attorneys for Non-Party
Lesbian and Gay Law Association Foundation of Greater New York
250 W. 55th Street
New York, New York 10019-9710
Tel.: (212) 336-4482
tfoudy@mofo.com

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>
YU PRIDE ALLIANCE, MOLLY MEISELS, DONIEL WEINREICH, AMITAI MILLER, and ANONYMOUS <p style="text-align: center;">- against -</p> YESHIVA UNIVERSITY, VICE PROVOST CHAIM NISSEL, and PRESIDENT ARI BERMAN		Date Notice of Appeal Filed <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div>
Case Type		Filing Type
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.		
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation
		<input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Estate Matters <input type="checkbox"/> Prisoner Discipline & Parole <input checked="" type="checkbox"/> Torts

Informational Statement - Civil

Appeal

Paper Appealed From (Check one only):

If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

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| <input type="checkbox"/> Amended Decree | <input type="checkbox"/> Determination | <input checked="" type="checkbox"/> Order | <input type="checkbox"/> Resettled Order |
| <input type="checkbox"/> Amended Judgement | <input type="checkbox"/> Finding | <input type="checkbox"/> Order & Judgment | <input type="checkbox"/> Ruling |
| <input type="checkbox"/> Amended Order | <input type="checkbox"/> Interlocutory Decree | <input type="checkbox"/> Partial Decree | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Decision | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree | |
| <input type="checkbox"/> Decree | <input type="checkbox"/> Judgment | <input type="checkbox"/> Resettled Judgment | |

Court: Supreme Court ☒County: New York ☒

Dated: 06/14/2022

Entered: 06/24/2022

Judge (name in full): Hon. Lynn R. Kotler

Index No.: 154010/2021

Stage: ☒ Interlocutory ☐ Final ☐ Post-FinalTrial: ☐ Yes ☒ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ☒ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court

County: Choose County

Judge (name in full):

Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court

County: Choose County

Judge (name in full):

Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Plaintiffs commenced this action alleging NYCHRL violations and seeking a declaratory judgment and order compelling defendants to recognize YU Pride Alliance as a student organization representing LGBTQ students and to give full and equal access to the same accommodations and advantages given to other student clubs. This is an appeal from so much of the Order of the Supreme Court, New York County, as denied defendants' converted motion for summary judgment, granted plaintiffs' cross-motion for summary judgment, permanently restrained Yeshiva University and President Ari Berman from refusing to officially recognize YU Pride Alliance as a student organization and directed these defendants to immediately grant YU Pride Alliance the full and equal accommodations, advantages, facilities and privileges afforded to all other student groups at Yeshiva University.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The issues proposed to be raised on this appeal include, but are not limited to: whether the lower court committed reversible error in finding that Yeshiva University is not a "religious corporation" within the meaning of NYCHRL; whether the lower court incorrectly denied Defendants-Appellants' converted motion for summary judgment and granted plaintiffs' cross-motion for summary judgment; whether the lower court abused its discretion by permanently restraining Defendants-Appellants from refusing to officially recognize YU Pride Alliance as a student organization and directing Defendants-Appellants to immediately grant YU Pride Alliance the full and equal accommodations, advantages, facilities and privileges afforded to all other student groups at Yeshiva University; whether the lower court's order violates Defendants-Appellants' First Amendment rights; and such other issues as may exist upon further review of the Record on Appeal.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	YU PRIDE ALLIANCE	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
2	MOLLY MEISELS	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
3	DONIEL WEINREICH	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
4	AMITAI MILLER	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
5	ANONYMOUS	Plaintiff <input type="checkbox"/>	Respondent <input type="checkbox"/>
6	YESHIVA UNIVERSITY	Defendant <input type="checkbox"/>	Appellant <input type="checkbox"/>
7	VICE PROVOST CHAIM NISSEL	Defendant <input type="checkbox"/>	None <input type="checkbox"/>
8	PRESIDENT ARI BERMAN	Defendant <input type="checkbox"/>	Appellant <input type="checkbox"/>
9	Lesbian and Gay Law Association Foundation of Greater New York	Nonparty <input type="checkbox"/>	Amicus Curiae <input type="checkbox"/>
10			
11			
12			
13			
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Informational Statement - Civil

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

Address: 600 Fifth Avenue, 10th Floor

City: New York State: New York Zip: 10020 Telephone No: (212) 763-5000

E-mail Address: krosenfeld@ecbawm.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1, 2, 3, 4, 5

Attorney/Firm Name: BECKET FUND FOR RELIGIOUS LIBERTY

Address: 1919 Pennsylvania Ave NW, Suite 400

City: Washington State: DC Zip: 20006-3404 Telephone No: (202) 796-0209

E-mail Address: ebaxter@becketlaw.org

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☒ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6, 7, 8

Attorney/Firm Name: KAUFMAN BORGEESE & RYAN LLP

Address: 120 Broadway, 14th Floor

City: New York State: New York Zip: 10271 Telephone No: (212) 980-9600

E-mail Address: dbloom@kbrlaw.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6, 7, 8

Attorney/Firm Name: MORRISON & FOERSTER LLP

Address: 250 W. 55th Street

City: New York State: New York Zip: 10019-9710 Telephone No: (212) 336-4482

E-mail Address: tfoudy@mofo.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 9

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

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

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

Index No.: 154010/2021

Plaintiffs,

NOTICE OF ENTRY

-against-

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

Defendants.
-----X

COUNSELORS:

PLEASE TAKE NOTICE, that the within is a true copy of the Order executed by
the Honorable Lynn R. Kotler of the within named court on June 14, 2022 and entered
on the 24th day of June, 2022.

Dated: New York, New York
June 24, 2022

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

Yours, etc.,

KAUFMAN BORGEEST & RYAN LLP

By: 

David Bloom, Esq.
Samantha R. Montrose, Esq.
Kenneth Abeyratne, Esq.
120 Broadway, 14th Floor
New York, New York 10271
Tel.: (212) 980-9600
dbloom@kbrlaw.com

smontrose@kbrlaw.com
kabeyratne@kbrlaw.com

Eric S. Baxter (*pro hac vice*)
William J. Huan (*pro hac vice*)
Abigail E. Smith Esq.
BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave NW, Suite 400
Washington, DC 20006-3404
Tel.: (202) 796-0209
ebaxter@becketlaw.org
whaun@becketlaw.org
asmith@becketlaw.org

Attorneys for Defendants
**YESHIVA UNIVERSITY,
VICE PROVOST CHAIM NISSEL and
PRESIDENT ARI BERMAN**

TO: VIA NYSCEF
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Attorneys for Plaintiffs
600 Fifth Avenue, 10th Floor
New York, New York 10020
Tel.: (212) 763-5000
krosenfeld@ecbawm.com

MORRISON & FOERSTER LLP
Attorneys for Non-Party
Lesbian and Gay Law Association Foundation of Greater New York
250 W. 55th Street
New York, New York 10019-9710
Tel.: (212) 336-4482
tfoudy@mofo.com

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

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

PART 8

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



J.S.C. J.S.C.
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,

DECISION/ORDER

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

Plaintiff(s),

-against-

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

Present:

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

Defendant(s).

-----X
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, <i>amicus</i> 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.

AFFIRMATION OF SERVICE

DAVID BLOOM, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following, pursuant to the penalties of perjury:

The undersigned hereby affirms that on June 24, 2022, a true and correct copy of the foregoing **Notice of Appeal, Informational Statement and Order with Notice of Entry** were served upon the following attorneys for the respective parties in this action, by NYSCEF e-filing, to:

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
Attorneys for Plaintiffs
600 Fifth Avenue, 10th Floor
New York, New York 10020
Tel.: (212) 763-5000
krosenfeld@ecbawm.com

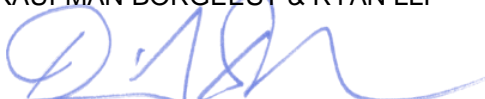
MORRISON & FOERSTER LLP
Attorneys for Non-Party
Lesbian and Gay Law Association Foundation of Greater New York
250 W. 55th Street
New York, New York 10019-9710
Tel.: (212) 336-4482
tfoudy@mofo.com

Dated: New York, New York
June 24, 2022

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

Yours, etc.,

KAUFMAN BERGEEST & RYAN LLP



By: David Bloom, Esq.
Attorneys for Defendants
**YESHIVA UNIVERSITY,
VICE PROVOST CHAIM NISSEL and
PRESIDENT ARI BERMAN**
200 Summit Lake Drive
Valhalla, New York 10595
Tel.: (914) 449-1000
KBR File No.: 811.1349

- Exhibit S -

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

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

Plaintiffs,

-against-

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

Defendants.

-----X

Index No.: 154010/2021

Plaintiffs Designate New York
County as the Place of Trial

SUMMONS

Plaintiff's Address:
c/o Emery Celli Brinckerhoff Abady
Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, NY 10020

To the above-named Defendants:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the
Complaint in this action and to serve a copy of your answer on the Plaintiffs' attorneys within 20
days after the service of this summons, exclusive of the day of service (or within 30 days after
the service is complete if this summons is not personally delivered to you within the State of
New York).

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be
entered against you by default for the relief demanded in the complaint.

Dated: April 26, 2021
New York, New York

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

By: /s/ Katherine Rosenfeld
Katherine Rosenfeld
Marissa R. Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-5000

and

Diane L. Houk, *Of Counsel*

Attorneys for Plaintiffs

TO: Yeshiva University
Office of the General Counsel
2495 Amsterdam Avenue, Belfer Hall 1001
New York, NY 10033
Tel.: (646) 592-4400
Fax: (212) 960-5346
Email: GC@yu.edu

Vice Provost Chaim Nissel
c/o Yeshiva University Office of the General Counsel

President Ari Berman
c/o Yeshiva University Office of the General Counsel

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

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

Index No.: 154010/2021

Plaintiffs,

-against-

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

Defendants.

-----X

COMPLAINT

JURY DEMAND

Plaintiffs YU Pride Alliance, Molly Meisels, Doniel Weinreich, Amitai Miller, and John Doe¹, by and through their attorneys Emery Celli Brinckerhoff Abady Ward & Maazel LLP, for their Complaint allege as follows:

PRELIMINARY STATEMENT

1. Plaintiff YU Pride Alliance is an unofficial undergraduate student organization for LGBTQ² students and their allies at Yeshiva University (“YU”). Plaintiffs Miller, Weinreich, Meisels, and Doe are four current and former YU undergraduate students. Yeshiva University is a private research university in New York City that enrolls more than 3,000 undergraduate students, and “offer[s] a unique dual curriculum comprising Jewish studies and liberal arts and sciences courses.” For years, and with increasing urgency since 2018, YU undergraduates have requested that the University approve an official LGBTQ student organization. YU has refused

¹ Throughout the Complaint, John Doe refers to Plaintiff Anonymous.

² LGBTQ refers to people who are lesbian, gay bisexual, trans, queer, or other non-cisgender or non-heterosexual identities. *What is LGBTQ*, The Lesbian, Gay, Bisexual & Transgender Community Center, <https://gaycenter.org/about/lgbtq/>.

to permit the students to form a recognized club for LGBTQ students. On three occasions in 2019 and 2020, YU denied official recognition to an undergraduate student organization seeking to form an LGBTQ student club, only because of the group's LGBTQ status, membership, and mission of fostering a safe and inclusive community for LGBTQ students. YU will not allow a student club with the term "LGBT" or "gay" in the title. There will not be a club, the administration announced in September 2020, because it would "cloud" the university's "nuanced" position on the treatment of LGBTQ students.

2. On a tangible level, YU's refusal to officially recognize the club deprives Plaintiff the YU Pride Alliance and its members of the important benefits enjoyed by YU's 116 other recognized student organizations, such as the use of campus facilities for meetings (the Alliance must meet off-campus), funding for its activities (the Alliance must fundraise outside the university for its own events, speakers, and snacks), advertising for events in student email blasts and bulletin boards (the Alliance relies on social media and word-of-mouth), and participation in club fairs for incoming students (the Alliance cannot put up a table and greet incoming students along with its peer clubs).

3. Beyond depriving students of access to these tangible benefits of student clubs, YU's refusal to recognize the YU Pride Alliance sends a stark and painful message of rejection and non-belonging to its LGBTQ students and their allies. By its acts of intentional discrimination, YU has inflicted and is continuing to inflict grave dignitary, emotional, and psychological harms on these college students, and indeed on all its students, who need belonging, safety, community, and support. An official LGBTQ student club is not only Plaintiffs' right as students, it is necessary to their health and well-being on campus. Students may feel isolated and unwelcome on campus, and do not know where to go for resources,

guidance, or camaraderie. A club will provide these students with a safe space to create a community and support each other as they navigate the challenges of being LGBTQ Jewish individuals. It will give the students access to funding and communication resources so they may hold and publicize events addressing LGBTQ issues and build relationships with other LGBTQ students and allies.

4. YU's conduct is not only damaging to its students, it is blatantly illegal under the New York City Human Rights Law. Worse, YU knows that it is. 25 years ago, YU retained a preeminent law firm to advise it on this precise issue, namely, whether the institution had to officially recognize an LGBTQ student organization. YU was advised by its lawyers that there was "no credible legal argument" to ban the student group. YU has privately acknowledged for decades that it cannot legally discriminate against LGBTQ student groups: "[YU] is subject to the human rights ordinance of the City of New York *Under this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does to other student groups,*" the University wrote in a 1995 Fact Sheet titled "Gay Student Organizations."

5. YU's legal analysis is as correct today as it was in 1995. While YU seeks to provides undergraduates with a dual curriculum of Jewish scholarship and academics,³ it is bound by the New York City Human Rights Law ("NYCHRL"), just like any other university in the City. Fifty years ago, YU elected to register as a non-sectarian corporation to benefit from government funding that was unavailable to entities organized as religious corporations. Since then, it has received hundreds of millions of dollars in New York State funds and benefits. Because it is a secular institution, it cannot pick and choose which New York City laws apply to

³ Yeshiva University, 2018 Return of Organization Exempt from Income Tax (Form 990).

it and which do not. YU is a quintessential place of public accommodation and it may not discriminate against students.

6. Plaintiffs have been waging a difficult campaign for many years to challenge YU's obstinate refusal to follow the law. Still, YU refuses to change. Most recently in September 2020, YU issued a public statement claiming to support tolerance but explicitly rejecting the existence of LGBTQ student clubs on campus.

7. Yeshiva University will not recognize an official LGBTQ student club on its campus despite students' demonstrated need, despite its own guidance and policies, despite students' patient advocacy asking it to change, and despite its obligation to do so at law. Plaintiffs bring this action to require YU to comply with the law and recognize the YU Pride Alliance as an official student club with equal club access to the University's facilities and benefits as the 116 other student clubs on campus, and for other relief to remedy YU's years of discrimination.

PARTIES

8. Plaintiff Yeshiva University Pride Alliance ("YU Pride Alliance" or "Alliance") is an unofficial group of current undergraduate students at Yeshiva University who seek to create an official student club that will provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented and foster awareness and sensitivity to the unique experience of being a LGBTQ+ person at YU and in the Orthodox community. YU Pride Alliance is comprised exclusively of full-time students in good standing at YU. YU Pride Alliance is governed by an eight-person student board. YU Pride Alliance was denied recognition as an official student club by Yeshiva University, and denied access to the privileges and resources provided to official student clubs, by the Yeshiva

University administration. YU Pride Alliance seeks recognition from Yeshiva University as a student club for the 2021-2022 academic year.

9. Plaintiff Molly Meisels is a natural person and a citizen of the State of California. They are a former student at Yeshiva University during the relevant time period until January 2021 and the former President of the YU Pride Alliance. They identify as LGBTQ and use they/her pronouns.

10. Plaintiff Doniel Weinreich is a natural person and a citizen of the State of New Jersey. He is a former full-time student at Yeshiva University during the relevant time period until May 2020. Mr. Weinreich was also a board member of the YU Pride Alliance. He is an ally of LGBTQ students and uses he/him pronouns.

11. Plaintiff Amitai Miller is a natural person and a citizen of the State of Texas. He was a student at Yeshiva University during the relevant time period until May 2020 and was Student Council President during the 2018-2019 school year. He identifies as LGBTQ and uses he/him pronouns.

12. Plaintiff John Doe is a natural person and a citizen of the State of New York. He is a current full-time student in good standing at Yeshiva University. He has been a member of the YU Pride Alliance since August 2020 and is currently serving as a member on its board. He identifies as LGBTQ and uses he/him pronouns. He seeks to participate as a member of the YU Pride Alliance as a recognized student club for the 2021-2022 academic year.

13. Defendant Yeshiva University (“Yeshiva” or “YU”) is registered with the New York State Department of State, Division of Corporations as a domestic not-for-profit corporation. It is a provider of a public accommodation as defined by § 8-102 of the Administrative Code of the City of New York (the “Code”).

14. Defendant Dr. Chaim Nissel (“Nissel”) is an employee and/or agent of Defendant Yeshiva and has been employed as the Vice Provost of Student Affairs from August 2020 to the present. Defendant Nissel was previously employed as the University Dean of Students from 2012 to August 2020. He is also the University’s Title IX Coordinator.

15. Defendant Rabbi Dr. Ari Berman (“Berman”) is an employee and/or agent of Defendant Yeshiva and is employed as its President.

JURISDICTION AND VENUE

16. This Court, as a court of general jurisdiction, has subject matter jurisdiction over and is competent to adjudicate the causes of action set forth in this Complaint.

17. This Court has jurisdiction pursuant to Article 30 of the New York State Civil Practice Laws and Rules (“CPLR”) § 3001 to grant declaratory relief and § 6001 to grant injunctive relief.

18. Venue properly lies in this Court pursuant to Article 5 of the New York Civil Practice Law and Rules, Section 503, as Defendant Yeshiva University is a resident of New York County and a substantial part of the events giving rise to the claim arose in New York County.

STATEMENT OF FACTS

19. Defendant Yeshiva University is a private, non-profit institution of higher education.

20. Defendant Yeshiva University has been incorporated as a domestic not-for-profit corporation subject to the New York Education Law since December 15, 1969.

21. Defendant Yeshiva University receives state and federal financial aid and is registered as a charitable 501(c)(3) organization.

22. Defendant Yeshiva University is eligible to receive certain financial support from New York State because it is registered as an educational corporation, rather than a religious one.

23. YU has obtained millions of dollars in tax-exempt bond financing through the Dormitory Authority of the State of New York (“DASNY”). For example, in 2011 Defendant Yeshiva University issued a \$90 million bond through the DASNY. DASNY prohibits bond issuers from using these funds for a religious purpose.

24. Founded in the late 19th century, Yeshiva describes itself as “the country’s oldest and most comprehensive institution combining Jewish scholarship with academic excellence and achievement in the liberal arts and sciences, medicine, law, business, social work, psychology, Jewish studies, education, and research.”

25. YU enrolls more than 3,000 undergraduate students at Yeshiva College, Stern College for Women, the Sy Syms School of Business, the Katz School of Science and Health, and the S. Daniel Abraham Program in Israel.

26. As of the Fall 2020 semester, YU recognized 116 undergraduate student clubs indicative of the broad interests of its student body.

27. YU’s 116 recognized student groups organize around interests and identities as diverse as poetry and private equity, video games and the outdoors, and College Democrats and College Republicans, as well as across broad categories such as “Art,” “Business,” “Health and Wellness,” “Sports and Fitness,” and “Politics and Activism.”

28. YU recognizes several cultural and affinity groups for students such as the Sephardic Club, YU Europeans, and the International Club.

29. The formal process for forming a student club is straightforward. Students may submit a club application in accordance with the procedures of the Wilf Campus, the Beren Campus, or both campuses, depending on where they seek to have a club.

30. Under Article III Section 4:3 of the Wilf Campus Undergraduate Student Body Constitution (“Wilf Constitution”), a “group of students wishing to form a club affiliated with the Student Government and Yeshiva University shall submit to the Yeshiva Student Union (“YSU”) Vice President of Clubs a petition to that effect containing the name of the proposed club, a statement of its purpose and goals, the specific Student Government Association or Council under whose auspices it seeks to operate, no fewer than twenty-five signatures of students, and the signature of a Faculty Advisor.” The Wilf Student Councils’ Club Rules and Guidelines reiterates these requirements.

31. Under the Wilf Constitution, the YSU Vice President of Clubs presents club applications to the five voting members of the student General Assembly. The student General Assembly then approves each application by a majority vote.

32. Under Article VII Section I.B of the Constitution of the Beren Campus Undergraduate Student Government Association (“Beren Constitution”), “applications for new club status shall be made [to the applicable student council] during an agreed upon two week period within the first three weeks of each academic semester.”

33. Under the Beren Constitution, “[a]fter the application process closes, the applicable council shall hold a ‘presentation day’ within the following two weeks, in which each new club seeking club status shall explain to the council what their request entails and why it should be granted.”

34. While Yeshiva University technically places approval of student clubs within the purview of the student government, that delegation of responsibility is in practice limited.

35. Yeshiva University retains the discretion and authority to override the decisions of student governments to accept or reject a student club.

36. Yeshiva University from time to time exercises its discretion to recognize or reject the student governments' recommendations with respect to the approval or denial of certain student clubs.

37. Defendant Yeshiva University has intentionally opposed and refused to recognize an undergraduate LGBTQ student organization at its constituent schools for years.⁴

38. YU denied official university recognition to an undergraduate LGBTQ student organization three times in 2019 and 2020 alone. These denials trace back more than a decade. One of the first public iterations of an LGBTQ club at YU, the "Tolerance Club," officially formed in 2009. In 2009, the Tolerance Club held an event called "Being Gay in the Modern Orthodox World" which attracted approximately 700 people from the YU community.⁵

39. At the event, YU students explained that the school's atmosphere of silence surrounding issues of LGBTQ identity was "agony" inducing and forced students to maintain silence about their own LGBTQ identities as a survival mechanism.

40. Upon information and belief, the Tolerance Club disbanded shortly after this event because of the significant pressure it faced from the YU administration.

⁴ See Carolyn J. Mooney, *Religion vs. Gay Rights – Yeshiva U. Debates Whether Recognition of Gay Groups Threatens Its Identity*, THE CHRONICLE (Nov. 16, 1994) <https://www.chronicle.com/article/Religion-vs-Gay-Rights/85236>. Many of Yeshiva University's graduate and professional schools have permitted graduate LGBTQ student groups to form. For example, the Benjamin N. Cardozo School of Law, a graduate affiliate of Yeshiva University, recognizes the law student group OUTlaw as an official LGBTQ student group. The Albert Einstein College of Medicine had also recognized an LGBTQ student group for decades prior to the College's separation from Yeshiva University in 2015. The group continues to exist at the College as "EAGBLT."

⁵ E.B. Solomont, *YU Holds Discussion on Homosexuality*, JERUSALEM REPORT (Dec. 24, 2009), <https://www.jpost.com/Jewish-World/YU-holds-discussion-on-homosexuality>.

1) SPRING 2019: YU REFUSES TO RECOGNIZE THE GAY-STRAIGHT ALLIANCE, A PRIDE ALLIANCE PREDECESSOR

41. In 2018, Plaintiff Miller was elected President of the Yeshiva College Student Association (“YCSA”) for the 2018-2019 school year.

42. In his capacity as YSCA President, Plaintiff Miller met with YU LGBTQ students to understand the difficulties they faced on campus due to their LGBTQ identities. The students described to Miller their feelings of isolation, rejection, and fear.

43. During the fall of 2018 and the spring 2019 semester, Plaintiff Miller, along with two other Student Council Presidents, met repeatedly with Defendant Nissel to discuss ways to make LGBTQ students feel more welcome on campus. Miller discussed the creation of an official GSA to host LGBTQ events and speakers on campus and create a safe atmosphere for LGBTQ students on campus.⁶ At these meetings, Nissel declined to give Miller concrete answers and said only that he needed to speak to more senior administrators.

44. In September or October 2018, Plaintiff Meisels met with Office of Student Life (“OSL”) Director Josh Weisberg and Defendant Nissel to discuss their request for the formation of an official LGBTQ student group such as a Gay Straight Alliance (“GSA”). Weisburg suggested that they instead modify an existing official student club for minority identity students called the “Diversity Club.”

45. On or about February 3, 2019, a student activist, along with several other students, submitted a formal application to the Student Council presidents for GSA club approval. In the application, the stated purpose of the club was “to provide a safe space for

⁶ Jacob Stone, *Former Student Leaders Detail Past Efforts for LGBTQ Inclusion*, YU Commentator (Nov. 24, 2019), <https://yucommentator.org/2019/11/former-student-leaders-detail-past-efforts-for-lgbtq-inclusion/>; Lilly Gelman, *Enough is Enough: Yeshiva University Students Protest LGBTQ Discrimination*, Moment Mag. (Aug. 29, 2019), <https://momentmag.com/enough-is-enough-yeshiva-university-students-protest-lgbtq-discrimination-on-campus/>.

students to meet, support each other, and talk about issues related to the intersection of sexual orientation and Jewish identity.”

46. On or about February 5, 2019, Plaintiff Miller and other students met with Defendant Nissel to discuss the GSA’s club application. During the meeting, Defendant Nissel expressed that the GSA would be allowed to form, as long as it was not called “Gay Straight Alliance” and did not include the terms “LGBT,” “queer,” or “gay” in the title. Defendant Nissel requested that the club’s description be sent to him once the club made its application.

47. On February 13, 2019, the students proposed to Defendant Nissel that the GSA Club could be called “Ahava” (the Hebrew word for “love”). In response, Defendant Nissel sent a description of the “Jewish Activism Club,” which mentioned LGBTQ inclusion along with numerous other topics in its mission statement.

48. Defendant Nissel’s email stated that the existence of the Jewish Activism Club should negate the need for a GSA.

49. In or around early to mid-February of 2019, the Student Council Presidents approved the GSA application.

50. In or around late February 2019, Defendant Nissel verbally informed Plaintiff Miller that an LGBTQ club would not be allowed to form, stating, in sum and substance, that while a club addressing general student tolerance on campus would be allowed, a club specifically addressing LGBTQ inclusion would not.

51. After receiving this rejection, Plaintiff Miller emailed Defendant President Berman to arrange a meeting to discuss why the administration had rejected the GSA’s application.

52. Plaintiff Miller met with Defendant Berman and then-Special Advisor to the President Rabbi Ari Lamm on or about April 15, 2019. At the meeting, Defendant Berman did not address Plaintiff Miller's concerns that YU had blocked the GSA. Defendant Berman focused only on his position of the need for further "dialogue." In a subsequent email, Defendant Berman directed Plaintiff Miller to take his concerns to the OSL.

53. Plaintiff Miller held many additional meetings with YU administrators during his 2018-2019 tenure as YCSA President to request approval for an official LGBTQ club, including Defendant Berman, Senior Vice President Josh Joseph, Dean Rabbi Menachem Penner, and administrators from the OSL. These administrators repeatedly requested that Plaintiff Miller articulate the need for an LGBTQ club, which he did. Yet the administrators still did not allow an LGBTQ club to be formed.

a) YU Interferes with Student Events with an LGBTQ Focus

54. In April 2019, Plaintiff Meisels invited New York State Assembly Member Deborah Glick to speak on campus about her experience as an LGBTQ legislator, and Assembly Member Glick accepted. The OSL approved the event. However, during the planning process for the event, members of the YU administration variously informed Plaintiff Meisels that (1) they did not want her to host the event and provide a space for LGBTQ students to complain to Assembly Member Glick about their experience on campus; and (2) if the event did take place, it could not focus on LGBTQ issues. After Plaintiff Meisels negotiated with the OSL, the OSL allowed the event to move forward under the title, "Overcoming Adversity: Minority Representation in NY Politics." The event was held on May 2, 2019.

2) SPRING 2020: YU REFUSES TO RECOGNIZE THE YU PRIDE ALLIANCE

a) September 2019: The YU Pride Alliance is Formed As an Unofficial Student Group for LGBTQ Students, and Faces Opposition from Yeshiva

55. On September 15, 2019, Plaintiff Meisels, along with other Yeshiva University students, alumni, and other supporters, led and participated in the “We, Too, Are YU” march. The march ended at one of Defendant Yeshiva’s campuses.

56. At the march, Plaintiff Meisels announced the formation of a new LGBTQ student group called the Yeshiva University Pride Alliance (“YU Pride Alliance”) and called on the YU administration to recognize it as an official club.

57. The founding members of the YU Pride Alliance established an eight-person board, headed by a president and vice-president. The outgoing president and vice-president select their successors, while the board members interview and select new board members. The Alliance decided not to keep track of its membership to protect students’ identities.

b) YU Convenes a Panel that Pressures Students to Justify the Need for a Club But Offers Nothing in Return

58. Upon information and belief, in or around the fall of 2019, President Berman convened a panel of rabbis and educators, led by then-Senior Vice President Josh Joseph, and tasked them with fostering initiatives to address matters of inclusion, including LGBTQ-related issues.

59. At meetings with students convened by this panel, YU administrators required the members of the YU Pride Alliance to justify the need for an LGBTQ student club to a degree never required of another student group seeking approval.

60. In response, YU Pride Alliance members repeatedly explained the many benefits to students of having an official club, including creating a physically safe space for LGBTQ

students to meet, fostering feelings of community, improving students' mental health, and encouraging productive conversation regarding LGBTQ identity and religious identity.

61. Despite the YU Pride Alliance's good-faith participation in the panel's meetings, students were not provided with information regarding what YU would do, if anything, to address the YU Pride Alliance's concerns related to LGBTQ inclusivity on campus.

c) December 3, 2019: Senior Vice President Joseph Discourages Official LGBTQ Club

62. On December 3, 2019, members of the YU Pride Alliance, including Plaintiffs Meisels and Weinreich, met with YU Senior Vice President Josh Joseph to discuss the need for an LGBTQ student group on campus.

63. At the meeting, Vice President Joseph stated that he represented the Yeshiva University administrative team, rabbis, and trustees.

64. Upon information and belief, Vice President Joseph was at all times acting at the direction of and as the agent of Defendants Yeshiva University and President Berman.

65. During the meeting, YU Pride Alliance members explicitly requested that YU approve an official LGBTQ student club.

66. YU Pride Alliance members also expressed their concerns regarding homophobia on campus, feelings of being unwelcome and physically unsafe due to their LGBTQ identities, the desire to be able to hold LGBTQ events on campus, and ways to ensure LGBTQ equality and inclusion on campus.

67. Vice President Joseph repeatedly asked YU Pride Alliance members to justify the need for an official LGBTQ student club generally, for a club with a name that indicated its relationship to LGBTQ issues, and for a club that focuses on LGBTQ issues specifically.

68. Consistent with Defendants' position that it would not allow an official, recognized LGBTQ student club to be formed, Vice President Joseph implied that the students

should abandon their efforts for an official LGBTQ club and instead join an umbrella student clubs that addressed a range of issues, only some of which relate to LGBTQ students.

69. Vice President Joseph indicated to the YU Pride Alliance members that he and Defendant Berman believed that some YU administrative officials' views and the Alliance members' views were likely to be "irreconcilable."

70. Vice President Joseph also indicated that Defendants' approach to the YU Pride Alliance and LGBTQ groups more generally was being guided in part by concerns against the clubs from "outside" parties. Joseph also intimated YU Pride Alliance should not publicly challenge Yeshiva University on this issue because it would inappropriately invite outside voices into the conversation.

71. Towards the end of the meeting, a YU Pride Alliance member asked Vice President Joseph to tell the students why the YU Pride Alliance club should not exist. Vice President Joseph stated that he could not.

d) January 30, 2020: YU Pride Alliance Submits a Club Application

72. On or about January 30, 2020, Plaintiff Meisels and the YU Pride Alliance board completed the Wilf and Beren "Club Application Spring 2020" application form on behalf of the YU Pride Alliance and submitted it to the Yeshiva Student Union, the student governing body charged with approving or denying applications in the first instance.

73. The YU Pride Alliance application satisfied the club application requirements under the Wilf and Beren Constitutions.

74. The YU Pride Alliance proposed a club name of "The YU Alliance." It set forth a paragraph-long mission statement. It identified the specific Student Councils under which it sought to operate, including the Yeshiva Student Union, the Yeshiva College Student Association, and the Stern College for Women Student Council. It included a PDF of

approximately 70 student signatures—well over the 25 required— and the signature of its faculty advisor Professor Daniel Kimmel.

75. The mission statement of the YU Pride Alliance as set forth in its Spring 2020 club application was as follows:

The Yeshiva University Alliance is a group of undergraduate YU students hoping to provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented. Conversation is at the heart of our community, in order to foster awareness and sensitivity to the unique experiences of being a LGBTQ+ person in YU and the Orthodox community, and to advocate for their unconditional inclusion and acceptance. Our space will promote open dialogue for all, regardless of religious views and political affiliations. We ask students to be cognizant and respectful of the beliefs, experiences, and backgrounds of everyone in attendance at our functions. At our events, please do not express assumptions about or hostility towards any person or organization.

76. Upon information and belief, the General Assembly reviewed the Pride Alliance's application for approval alongside all other club applications submitted for that semester.

e) February 9, 2020: Yeshiva Student Council Presidents Abstain from Voting on YU Pride Alliance Club Application

77. After the YU Pride Alliance submitted its application, on or about February 5, 2020, the Yeshiva University administration met with the Student Council Presidents to discuss the new club applications for the semester. Upon information and belief, Plaintiff YU Pride Alliance's club application was the focus of these discussions.

78. Following their meeting with the administrators, on or about February 9, 2020, the Student Council Presidents took the extraordinary step of publicly abstaining from voting on the Pride Alliance's club application.

79. Citing concerns that the club application implicated matters above their position as students, the Student Council presidents emailed a statement to the Yeshiva University

Student Body that they were abstaining from a vote on whether to grant official club status to the YU Pride Alliance and leaving the matter to the YU administration to decide.

80. The email said, “The decision about a club focusing on LBGTQ+ matters at Yeshiva University is too complex and nuanced to be voted on by Student Council Presidents. We are not administrators, we are not rabbis, and we are not subject matter experts.”

81. Upon information and belief, the General Assembly had never before abstained from voting on a club application.

82. With the General Assembly’s abstention, the decision to approve the club’s application was now the responsibility of Defendant Yeshiva University.

83. Upon information and belief, by on or around February 9, 2020, all other new club applicants for the Spring 2020 semester received a decision regarding approval or denial of the club, except for the YU Pride Alliance.

84. On or about February 9, 2020, Plaintiff Weinreich filed a discrimination complaint with YU about the YU Alliance’s Spring 2020 club’s application for official status.

85. On or about February 27, 2020 Plaintiff Weinreich was able to review a copy of YU’s decision in response to his discrimination complaint. YU concluded that no action was required at that time because no official determination regarding the club’s status had been rendered and because another club, the Jewish Activism Club, included a reference to LGBTQ issues in their mission statement. Plaintiff Weinreich was never provided with a copy of the decision and was not permitted to make a copy.

f) YU Denies the YU Pride Alliance’s Spring 2020 Club Application

86. On or about February 11, 2020 Plaintiffs Weinreich and Meisels, along with the other members of the YU Pride Alliance, sent an email to Vice President Joseph requesting that

YU render a decision on the club's application by the next day so that they would be able to participate in the Wilf club fair, which was scheduled for February 12, 2020 on the Wilf campus.

87. The YU Pride Alliance never received any response or answer to their February 11, 2020 request for a decision on the club's application, from Vice President Joseph or any member of the administration.

88. By taking no action in response to the request of the student body to resolve the club's application, Yeshiva denied the YU Pride Alliance's February 2020 application.

89. Lacking the needed approval and recognition from the administration, the YU Pride Alliance could only participate unofficially in the Wilf club fair held on February 12, 2020. Hours before the club fair began, Plaintiff Weinreich informally asked two Student Council presidents if the YU Pride Alliance could set up a table at the fair, despite having no official decision from the YU administration. Both presidents indicated that they would not stop the Pride Alliance from doing so. Alliance members hastily gathered materials and found a space at the fair to set up a table. Throughout the fair, they could not tell students that they were an official club, and they were at risk of being asked to leave at any time. Due to their unofficial status, they were unable to participate in the Beren club fair in any capacity.

90. On February 19, 2020, at the invitation of the Student Council presidents, Plaintiff Weinreich, Meisels, and other members of the YU Pride Alliance attended a meeting between the Student Council presidents and the administration, including Vice President Joseph and Defendant Nissel, to discuss the Alliance's club application.

91. At the meeting, Alliance members directly asked the YU administration if they would approve the YU Pride Alliance as an official club. Vice President Joseph and Defendant Nissel refused to give any answer or timeline.

92. The YU Pride Alliance did not function as a recognized student club for the Spring 2020 semester.

93. During the Spring 2020 semester, YU Pride Alliance members did not meet on campus prior to the coronavirus pandemic, did not have access to University funding for student events, could not advertise any events through official YU channels, and could not host LGBTQ-themed events. During the coronavirus pandemic, YU provided all recognized student groups with access to a premium Zoom account so that students could virtually meet and continue their club activities without the time and streaming limitations of free Zoom accounts; the Alliance had to borrow an account from a sympathetic non-profit group.

94. If YU had recognized the YU Pride Alliance as a student club for the spring 2020 semester, the group planned to hold meet-and-greets on campus where students could meet and discuss their identities, and invite speakers to campus to talk about being Jewish and LGBTQ.

95. Because there was no recognized student club, Meisels and other members of the YU Pride Alliance were required to fundraise from an outside donor to support their informal club events.

96. On May 8, 2020, Plaintiff Miller expressed to the University Office of Human Resources that he wanted to file a discrimination complaint against YU for actions taken against LGBTQ students, specifically based on YU's repeated rejection of the formation of an LGBTQ group on campus. In response, he was told that it would be futile to file a complaint because the University had already issued a decision on February 24, 2020 in response to another student's complaint about the discriminatory denial of an LGBTQ club, in which it denied the complaint.

3) SEPTEMBER 2020: YU AGAIN DENIES THE YU PRIDE ALLIANCE RECOGNITION AND PUBLICLY ANNOUNCES THAT IT WILL NOT RECOGNIZE LGBTQ STUDENT CLUBS

97. On September 3, 2020, despite knowing that it might be futile, the YU Pride Alliance persisted in applying again for official club status for the Fall 2020 semester.

98. That same day, Yeshiva University administrators emailed a statement dedicated to the issue of LGBTQ students at YU, titled “Fostering an Inclusive Community,” to the entire YU community. The statement was signed by Dr. Yael Muskat, Rabbi Yaakov Neuburger, Dr. Rona Novick, and Dr. David Pelcovitz.

99. In the September 3, 2020 statement, the YU administration stated as its policy that it would not recognize LGBTQ clubs on campus.

100. Tucked between various promises to make Yeshiva University more open to LGBTQ students by, for example, providing additional training, YU stated that it would not permit LGBTQ students to form an official club.

101. In the statement, Yeshiva stated: “The message of Torah on this issue is nuanced, both accepting each individual with love and affirming its timeless prescriptions. While students will of course socialize in gatherings they see fit, forming a new club as requested under the auspices of YU will cloud this nuanced message.”

102. Yeshiva’s September 3, 2020 statement was intended to convey and did convey to the YU Pride Alliance and the whole YU community that the YU Pride Alliance (and any other LGBTQ student group) would not be recognized as an official student club.

103. Upon information and belief, President Berman authorized and approved the September 3, 2020 statement.

Alliance to exist as a club. The board member also pointed out that YU made that decision without ever holding an official meeting with the YU Pride Alliance as an entity to discuss its intent to deny the club or provide YU Pride Alliance an opportunity to respond.

110. Rosh Yeshiva Neuburger reiterated that making an LGBTQ club formal would “cloud” the issues being considered and sacrifice real accomplishment. He then said that a conversation about holding events could be held in the future, but that YU would not commit to having any substantive discussion about what event guidelines could look like without having actual proposed events in hand.

111. YU Pride Alliance board members understood Rosh Yeshiva Neuburger’s response to be another attempt to delay the establishment of formal rules, policies, or procedures that would allow the YU Pride Alliance to host events or otherwise engage in club activities.

112. On December 9, 2020, a student unaffiliated with the YU Pride Alliance received a letter from Defendant Nissel regarding his prior discrimination complaint against the University for its denial of the Alliance’s club application. In the letter, Defendant Nissel confirmed that YU had decided not to approve the YU Pride Alliance as a student group.

4) YESHIVA UNIVERSITY HAS NOT CHANGED ITS OFFICIAL POSITION OF REFUSING TO RECOGNIZE OR PERMIT AN LGBTQ STUDENT ORGANIZATION

113. Defendants continue to refuse to recognize an official LGBTQ undergraduate student club at Yeshiva University.

114. Since its September 3, 2020 statement, Defendants have not publicly changed, revised, or revisited their official position that Yeshiva University will not recognize an official LGBTQ student club.

115. It is the current policy and practice of Yeshiva University not to recognize any official undergraduate club or organization for students who identify as LGBTQ.

116. Based on the foregoing, Plaintiffs YU Pride Alliance and Doe believe that YU will deny any future application for the YU Pride Alliance to receive official student club status.

5) YU'S REJECTION OF AN LGBTQ STUDENT CLUB HAS HARMED PLAINTIFFS

117. At all relevant times, Defendants have known or perceived the individual Plaintiffs and the student members of the YU Pride Alliance to be individuals who identify as LGBTQ, or to be individuals who seek to associate with other individuals who identify as LGBTQ.

118. Plaintiffs have each been harmed by Defendants' denial of the YU Pride Alliance, and its predecessor, the GSA.

119. Plaintiffs have all been negatively impacted by the lack of an official LGBTQ student group on campus during their time as undergraduate students at YU.

120. Plaintiffs may not hold meeting on campus; they must travel off-campus for meetings. They cannot choose panels and speakers on issues of its choice. They receive no funding and have had to fundraise from outside sources. During the pandemic, they did not have a premium Zoom account from YU like all other student groups. They are not listed on YU's student group list. They are not invited to the annual club fairs for new students. Plaintiffs have experienced feelings of isolation, fear, and rejection. They have felt unwelcome and unwanted on their own campus. Because they do not have a club, Plaintiffs have been deprived a safe space to create a community of people facing these same challenges as LGBTQ Jewish individuals at YU.

121. YU students have stated to Plaintiff John Doe that LGBTQ students and their allies do not have any right to “their” campus and resources, or to make YU sanction an LGBTQ club, and that instead should leave campus and withdraw from YU.

122. These deprivations and casually cruel remarks contribute to a campus environment that prevents students from having full and equal access to a successful college experience.

123. Educational institutions which provide LGBTQ students with access to recognized student groups and formal organizational spaces enable student success by allowing students to build leadership and civic engagement skillsets, develop peer and mentoring networks, and experience belonging and support.

124. Defendant’ refusal to recognize the YU Pride Alliance and its issuance of a public statement to that effect on September 3, 2020 has communicated to Plaintiffs and the broader community that it does not see Plaintiffs as equal to other students or entitled to the rights that other students enjoy.

125. Plaintiffs have expended significant time and energy trying to persuade Defendants to recognize their student organization. The individual Plaintiffs have lost opportunities to further advance their studies, engage with other clubs, participate in their own hobbies and activities, and spend time with friends and family.

126. Plaintiff YU Pride Alliance has had to divert significant club time and resources to its efforts to secure club recognition from the administration. Rather than advocating for the administration to follow the law, Plaintiff YU Pride Alliance members could have instead organized additional events to promote LGBTQ understanding and tolerance on campus; provided services and resources to LGBTQ students on campus; hosted gatherings celebrating

religious holidays; or simply bonded over books or television shows. In other words, absent Defendants' discrimination, the YU Pride Alliance could have functioned as a normal club serving the needs of LGBTQ students at YU.

a) Yeshiva's Actions Violate Its Own Policies

127. YU's official "Non-Discrimination and Anti-Harassment Policy & Complaint Procedures" document recognizes as unlawful and prohibits any discrimination "based on . . . sex . . . sexual orientation, [and] gender identity and expression."⁸

128. Defendants' refusal to approve the YU Pride Alliance as a recognized undergraduate club is unlawful discrimination based on sex, sexual orientation, and gender identity and expression in violation of this policy.

129. The Yeshiva University "Undergraduate Student Bill of Rights and Responsibilities" states that "[s]tudents who are otherwise qualified have the right to participate fully in the University community without discrimination as defined by federal, state, and local law" and to "be treated fairly with respect and dignity at all times." The same document includes provisions that allow students to "organize and join clubs and participate in events in all cases in accordance with applicable rules and procedures."⁹

130. Defendants' refusal to approve Plaintiff YU Pride Alliance as a sanctioned undergraduate club or allow Plaintiffs to organize and/or join an LGBTQ club is a violation of Plaintiffs' rights under the Undergraduate Student Bill of Rights and Responsibilities.

⁸ Yeshiva University, *Non-Discrimination and Anti-Harassment Policy & Complaint Procedures*, (Dec. 31, 2020), https://www.yu.edu/sites/default/files/inline-files/Non-Discrimination%20and%20Anti-Harassment%20Policy%20-%20TIX%20Policy%20%28December%2031%2C%202020%29%20%2800056181xA0726%29_1.pdf.

⁹ Yeshiva University, *Undergraduate Student Bill of Rights and Responsibilities, Undergraduate Student Disciplinary Procedures*, https://www.yu.edu/sites/default/files/legacy/uploadedFiles/Student_Life/Resources_and_Services/Standards_and_Policies/Updated%20Bill%20of%20Rights%2011.29.12.pdf

b) Yeshiva is Subject to, and Has Violated, the New York City Human Rights Law

131. Denying recognition and club benefits to an LGBTQ student group, such as the YU Pride Alliance, violates Defendants' obligations under the New York City Human Rights Law.

132. By denying recognition of an LGBTQ student group, such as the YU Pride Alliance, Defendants have denied Plaintiffs of the benefits of club recognition, including funding from student government and use of university facilities, which includes virtual facilities provided by YU during the COVID-19 pandemic.

133. Defendants' refusal to grant YU Pride Alliance's student club applications has also denied Plaintiffs of the social and emotional benefits of an LGBTQ student club, including the existence of an official space to find and provide mutual support, foster community, and share experiences.

134. These privileges have been granted to other approved clubs on campus.

135. This disparate treatment and the denial of these concomitant benefits to club recognition, solely based on Plaintiffs' sex, sexual orientation, or gender identity, is not only harmful to the students, but also unlawful as it amounts to a failure to provide equal access to facilities in violation of New York City laws.

136. Section 8-107(4) of the New York City administrative code prohibits providers of public accommodation from denying the "full and equal enjoyment" of those "accommodations, advantages, services, facilities, or privileges" due to a number of protected characteristics, including gender and sexual orientation.

137. Section 8-107(20) of the New York City administrative code prohibits providers of public accommodation from denying the "full and equal enjoyment" of those "accommodations, advantages, services, facilities, or privileges" due to a relationship or

association with individuals who identify with a number of protected characteristics, including gender and sexual orientation.

138. Defendant Yeshiva University is subject to the New York City Human Rights Law.

139. Denying recognition and approval of an undergraduate LGBTQ club denies Plaintiffs full and equal enjoyment of Yeshiva University's accommodations, advantages, services, facilities, and privileges.

140. The accommodations, advantages, services, facilities, and privileges that YU is denying Plaintiffs but provides in full to other recognized student clubs include, but are not limited to, the use of campus spaces and the ability to reserve campus spaces for club use; club funding to host speakers and other club-related events, to prepare event materials such as flyers and pamphlets, and to provide food and/or beverages at meetings and/or events; access to student fairs and other events at which campus organizations make themselves known to students; and official recognition on the Yeshiva University Student Clubs and Organizations website.

141. Plaintiffs have not previously filed a civil or administrative action alleging an unlawful discriminatory practice with respect to the allegations that are the subject of this Complaint.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

N.Y.C. Admin. Code § 8-107(4) – Discrimination on the Basis of Gender and Sexual Orientation in Violation of the New York City Human Rights Law (On Behalf of All Plaintiffs) (Against All Defendants)

142. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

143. Defendants are providers of a public accommodation pursuant to N.Y.C. Admin. Code § 8-102 because they are “providers, whether unlicensed or licensed, of goods, services, facilities, accommodations, advantages or privileges of any kind.”

144. Defendants know or perceive the individual Plaintiffs and student members of YU Pride Alliance to identify as LGBTQ, and know or perceive the YU Pride Alliance’s activities to be focused on LGBTQ issues and its mission to be fostering a safe and inclusive community for LGBTQ students.

145. Defendants have denied Plaintiffs equal advantages, facilities, and privileges of a public accommodation by denying their requests for the YU Pride Alliance to be an official club because of Plaintiffs’ actual or perceived gender or sexual orientation, in violation of § 8-107(4)(a)(1)(a) of the Code and have damaged Plaintiffs thereby.

SECOND CAUSE OF ACTION

N.Y.C. Admin. Code § 8-107(4) – Discrimination on the Basis of Gender and Sexual Orientation in Violation of the New York City Human Rights Law (On Behalf of Plaintiffs Meisels, Miller, and Weinreich) (Against All Defendants)

146. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

147. Defendants know or perceive Plaintiffs Meisels, Miller, and Weinreich to identify as LGBTQ.

148. Defendants have denied Plaintiffs Meisels, Miller, and Weinreich equal advantages, facilities, and privileges of a public accommodation by denying the request for the Gay-Straight Alliance to be an official club because of the actual or perceived gender or sexual orientation of Gay-Straight Alliance members, in violation of § 8-107(4)(a)(1)(a) of the Code and have damaged them thereby.

THIRD CAUSE OF ACTION**N.Y.C. Admin. Code § 8-107(4) – Discrimination on the Basis of Gender and Sexual Orientation in Violation of the New York City Human Rights Law
(On Behalf of Plaintiffs YU Pride Alliance, Meisels, and Doe)
(Against All Defendants)**

149. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

150. Defendants are providers of a public accommodation pursuant to N.Y.C. Admin. Code § 8-102 because they are “providers, whether unlicensed or licensed, of goods, services, facilities, accommodations, advantages or privileges of any kind.”

151. Defendants’ September 3, 2020 written communication to the Yeshiva University community titled “Fostering an Inclusive Community” communicated that Defendants would not allow an official LGBTQ student club or organization at Yeshiva University.

152. Defendants communicated their intent to refuse, withhold from, and/or deny to Plaintiffs the full and equal enjoyment, on equal terms and conditions, of a public accommodation, by publicly stating on September 3, 2020 that they would not allow Plaintiffs to establish an official LGBTQ student club such as YU Pride Alliance at Yeshiva University on account of gender and sexual orientation, in violation of § 8-107(4)(a)(2)(a) of the Code and have damaged Plaintiffs thereby.

FOURTH CAUSE OF ACTION**N.Y.C. Admin. Code § 8-107(20) – Discrimination on the Basis of Association in Violation of the New York City Human Rights Law
(On Behalf of All Plaintiffs)
(Against All Defendants)**

153. Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs as if fully set forth herein.

154. Defendants knew or perceived members of the YU Pride Alliance to identify as LGBTQ and knew or perceived the YU Pride Alliance's activities to be focused on LGBTQ issues and its mission to be fostering a safe and inclusive community for LGBTQ students.

155. Defendants knew or perceived that Plaintiffs, by virtue of their request for the YU Pride Alliance to receive official club approval, sought to associate with students who identify or are perceived as LGBTQ.

156. Defendants have denied Plaintiffs the advantages, facilities, and privileges of a public accommodation because of their relationship or association with individuals who identify or are perceived as LGBTQ, in violation of § 8-107(20) of the Code and have damaged them thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered against Defendants as follows:

1. Declaring that Defendants Yeshiva University, Vice Provost Chaim Nissel, and President Ari Berman violated the Plaintiffs' rights under the New York City Human Rights Law by virtue of their conduct alleged in this action and that Defendants' actions continue to cause these ongoing violations of Plaintiffs' rights;
2. Restraining Defendants Yeshiva University, Vice Provost Chaim Nissel, and President Ari Berman from continuing their unlawful refusal to (a) officially recognize the YU Pride Alliance as a student organization because of the actual or perceived sexual orientation or gender of the YU Pride Alliance's members, and/or the YU Pride Alliance's status, mission, and/or activities on behalf of

LGBTQ students and (b) grant the YU Pride Alliance the full and equal accommodations, advantages, facilities, and privileges of Yeshiva University, because of the actual or perceived sexual orientation or gender of the YU Pride Alliance's members, and/or the YU Pride Alliance's status, mission and/or activities on behalf of LGBTQ students.

3. Awarding such damages to Plaintiffs Meisels, Weinreich, Miller, and Doe as will fully compensate for injury caused by Defendants' unlawful practices;
4. Awarding punitive damages to Plaintiffs;
5. Awarding Plaintiffs reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action; and
6. Granting Plaintiffs such other further relief as may be just and proper.

Dated: April 26, 2021
New York, New York

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

By: /s/ Katherine Rosenfeld
Katherine Rosenfeld
Marissa R. Benavides
Max Selver
600 Fifth Avenue, 10th Floor
New York, NY 10020
(212) 763-5000

and

Attorneys for Plaintiffs

Diane L. Houk, *Of Counsel*

- Exhibit T -

SCHEDULE O
(Form 990 or 990-EZ)Department of the Treasury
Internal Revenue Service

Name of the organization

YESHIVA UNIVERSITY

Supplemental Information to Form 990 or 990-EZComplete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Information about Schedule O (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2018

Employer identification number

13-1624225

CORE FORM 990, PART I, LINE 6 - VOLUNTEERS

IN ADDITION TO THE BOARD MEMBERS WHO SERVE WITHOUT COMPENSATION, THE
UNIVERSITY UTILIZES MANY VOLUNTEERS IN THE CONDUCT OF ITS ACTIVITIES.
HOWEVER, IT DOES NOT TRACK THE NUMBER OF THESE ADDITIONAL VOLUNTEERS.

CORE FORM 990, PART III, LINE 1 AND LINE 3

LINE 1 - ORGANIZATION VISION AND VALUES

VISION

YESHIVA UNIVERSITY IS A UNIQUE ECOSYSTEM OF EDUCATIONAL INSTITUTIONS AND
RESOURCES THAT PREPARES THE NEXT GENERATION OF LEADERS WITH JEWISH VALUES
AND MARKET-READY SKILLS TO ACHIEVE GREAT SUCCESS IN THEIR PERSONAL AND
PROFESSIONAL LIVES, ENDOWING THEM WITH BOTH THE WILL AND WHEREWITHAL TO
TRANSFORM THE JEWISH WORLD AND BROADER SOCIETY FOR THE BETTER.

VALUES - THE FIVE TOROT

TORAT EMET

WE BELIEVE IN TRUTH, AND HUMANITY'S ABILITY TO DISCOVER IT.

THE PURSUIT OF TRUTH HAS ALWAYS BEEN THE DRIVING FORCE BEHIND ADVANCES IN
HUMAN UNDERSTANDING, FROM SOCRATES' WANDERINGS THROUGH THE STREETS OF
ATHENS TO THE INNOVATIONS OF THE INDUSTRIAL REVOLUTION. PEOPLE OF FAITH,

Schedule O (Form 990 or 990-EZ) 2018

Page **2**

Name of the organization

YESHIVA UNIVERSITY

Employer identification number

13-1624225

WHO BELIEVE IN A DIVINE AUTHOR OF CREATION, BELIEVE THAT THE ACT OF
DISCOVERY IS SACRED, WHETHER IN THE REALM OF PHILOSOPHY, PHYSICS,
ECONOMICS, OR THE STUDY OF THE HUMAN MIND. THE JEWISH PEOPLE IN
PARTICULAR AFFIRM THAT, BEGINNING WITH THE REVELATION OF THE TORAH AT
MOUNT SINAI, GOD ENTRUSTED ETERNAL TEACHINGS AND VALUES TO US THAT WE
MUST CHERISH AND STUDY DILIGENTLY ABOVE ALL ELSE FOR THEY REPRESENT THE
TERMS OF THE SPECIAL COVENANT THAT GOD MADE WITH US. ALL PEOPLE,
REGARDLESS OF THEIR FAITH OR BACKGROUND, SHOULD VALUE THE ACCUMULATION OF
KNOWLEDGE BECAUSE IT IS THE WAY TO TRUTH, AND A PREREQUISITE TO HUMAN
GROWTH.

TORAT CHAIM

WE BELIEVE IN APPLYING OUR KNOWLEDGE TO IMPACT THE WORLD AROUND US.
JEWISH THOUGHT ASSERTS THAT TRUTH IS MADE AVAILABLE TO HUMAN BEINGS NOT
SIMPLY SO THEY CAN MARVEL AT IT, BUT SO THAT THEY CAN USE IT. STUDENTS
STUDYING LITERATURE, COMPUTER SCIENCE, LAW, PSYCHOLOGY, OR ANYTHING ELSE,
ARE EXPECTED TO TAKE WHAT THEY LEARN AND IMPLEMENT IT WITHIN THEIR OWN
LIVES, AND APPLY IT TO THE REAL WORLD AROUND THEM. WHEN PEOPLE SEE A
PROBLEM THAT NEEDS ADDRESSING, THEIR RESPONSIBILITY IS TO DRAW UPON THE
TRUTHS THEY UNCOVERED DURING THEIR STUDIES IN FINDING A SOLUTION. THEY
MUST LIVE TRUTH IN THE REAL WORLD, NOT SIMPLY STUDY IT IN THE CLASSROOM.

TORAT ADAM

Schedule O (Form 990 or 990-EZ) 2018

Page 2

Name of the organization

YESHIVA UNIVERSITY

Employer identification number

13-1624225

WE BELIEVE IN THE INFINITE WORTH OF EACH AND EVERY HUMAN BEING.

JUDAIC TRADITION FIRST INTRODUCED TO THE WORLD THE RADICAL PROPOSITION

THAT EACH INDIVIDUAL IS CREATED IN THE DIVINE IMAGE, AND ACCORDINGLY

POSSESSES INCALCULABLE WORTH AND VALUE. THE UNIQUE TALENTS AND SKILLS

THAT EACH INDIVIDUAL POSSESSES ARE A REFLECTION OF THIS DIVINE IMAGE, AND

IT IS THEREFORE A SACRED TASK TO HONE AND DEVELOP THEM. THE VAST,

EXPANSIVE HUMAN DIVERSITY THAT RESULTS FROM THIS PROCESS IS NOT A

CHALLENGE, BUT A BLESSING. EACH OF US HAS OUR OWN PATH TO GREATNESS.

TORAT CHESED

WE BELIEVE IN THE RESPONSIBILITY TO REACH OUT TO OTHERS IN COMPASSION.

EVEN AS WE RECOGNIZE THE OPPORTUNITIES OF HUMAN DIVERSITY, JEWISH

TRADITION EMPHASIZES THE IMPORTANCE OF COMMON OBLIGATIONS. IN PARTICULAR,

EVERY HUMAN BEING IS GIVEN THE SAME RESPONSIBILITY TO USE THEIR UNIQUE

GIFTS IN THE SERVICE OF OTHERS; TO CARE FOR OUR FELLOW HUMAN BEINGS; TO

REACH OUT TO THEM IN THOUGHTFULNESS, KINDNESS AND SENSITIVITY, AND FORM A

CONNECTED COMMUNITY.

TORAT ZION

WE BELIEVE THAT HUMANITY'S PURPOSE IS TO TRANSFORM OUR WORLD FOR THE

BETTER AND MOVE HISTORY FORWARD. IN JEWISH THOUGHT, THE CONCEPT OF

REDEMPTION REPRESENTS THE CONVICTION THAT WHILE WE LIVE IN AN IMPERFECT

WORLD, WE HAVE A RESPONSIBILITY TO STRIVE TOWARDS ITS PERFECTION.

Schedule O (Form 990 or 990-EZ) 2018

Page 2

Name of the organization

YESHIVA UNIVERSITY

Employer identification number

13-1624225

REGARDLESS OF A PERSON'S PERSONAL CONVICTIONS ABOUT WHETHER SOCIAL PERFECTION IS ATTAINABLE OR EVEN DEFINABLE, IT IS THE ACT OF WORKING TOWARDS IT WHICH GIVES OUR LIFE MEANING AND PURPOSE. THIS COMMON STRIVING IS AN ENDEAVOR THAT BRINGS ALL OF HUMANITY TOGETHER. THE JEWISH PEOPLE'S TASK TO BUILD UP THE LAND OF ISRAEL INTO AN INSPIRING, MODEL SOCIETY REPRESENTS THIS EFFORT IN MICROCOSM. BUT IT IS PART OF A LARGER PROJECT THAT INCLUDES ALL OF HUMANKIND. IF THE ARC OF THE MORAL UNIVERSE BENDS TOWARDS JUSTICE, THEN REDEMPTION REPRESENTS OUR RESPONSIBILITY TO WORK TOGETHER IN THE SERVICE OF GOD TO MOVE HISTORY FORWARD.

YESHIVA UNIVERSITY IS THE WORLD'S PREMIER JEWISH INSTITUTION FOR HIGHER EDUCATION. ROOTED IN JEWISH THOUGHT AND TRADITION, IT SITS AT THE EDUCATIONAL, SPIRITUAL AND INTELLECTUAL EPICENTER OF A ROBUST GLOBAL MOVEMENT THAT IS DEDICATED TO ADVANCING THE MORAL AND MATERIAL BETTERMENT OF THE JEWISH COMMUNITY AND BROADER SOCIETY, IN THE SERVICE OF GOD.

CORE FORM 990, PART III, LINE 4 - PROGRAM SERVICES

FOUNDED IN THE LATE 19TH CENTURY, YESHIVA UNIVERSITY (YU) IS THE COUNTRY'S OLDEST AND MOST COMPREHENSIVE INSTITUTION COMBINING JEWISH SCHOLARSHIP WITH ACADEMIC EXCELLENCE AND ACHIEVEMENT IN THE LIBERAL ARTS AND SCIENCES, MEDICINE, LAW, BUSINESS, SOCIAL WORK, PSYCHOLOGY, JEWISH STUDIES, EDUCATION AND RESEARCH. YU REFLECTS A CENTURIES-OLD COMMITMENT TO THE ADVANCEMENT OF HUMAN KNOWLEDGE AND ETHICS. YU BRINGS TOGETHER THE HERITAGE OF WESTERN CIVILIZATION AND THE ANCIENT TRADITIONS OF JEWISH LAW AND LIFE. SINCE ITS INCEPTION, YU HAS BEEN DEDICATED TO MELDING THE ANCIENT TRADITIONS OF JEWISH LAW AND LIFE WITH THE HERITAGE OF WESTERN

- Exhibit U -

Certificate of Incorporation

STATE OF NEW YORK
City and County of New-York

ss.

We, the Undersigned, desiring to form a corporation pursuant to the provisions of the membership Corporations Law, all being of full age and two thirds being citizens of the United States and at least one a resident of the state of New York, do hereby Certify and State:

First. The particular objects for which the corporation is to be formed are to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.

64 Second. The name of the proposed corporation is The Rabbi Isaac Elchonon Theological Seminary Association

Third. The territory in which its operations are to be principally conducted is the City, County and State of New-York

Fourth. The town, village or city in which its principal office is to be located is the City of New-York in the County of New-York and State of New-York.

Fifth. The number of its directors is eleven....

YU00848

- Exhibit V -



YESHIVA UNIVERSITY
AMENDMENT OF CHARTER

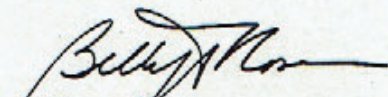
This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of July 13, 2020,


An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchanan Theological Seminary Association" on March 20, 1897; amended on March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College"; April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College"; November 16, 1945 to change the corporate name to "Yeshiva University"; amended on various occasions with the last amendment being granted on September 12, 2017 be, and the same hereby is, amended to add authority for the corporation to confer the Doctor of Occupational Therapy (O.T.D.) degree.



Granted, July 13, 2020 by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 27,163.


Chancellor


Interim President of the University and
Commissioner of Education



YESHIVA UNIVERSITY

AMENDMENT OF CHARTER

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of September 12, 2017.

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchanan Theological Seminary Association" on March 20, 1897; amended on March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College"; April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College"; November 16, 1945 to change the corporate name to "Yeshiva University"; amended on various occasions with the last amendment being granted on October 18, 2016 be, and the same hereby is, amended to authorize the corporation to confer the Master of Studies in Law (M.S.L.) degree.



Granted, September 12, 2017 by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 26,721.

Chancellor

President of the University and
Commissioner of Education



YESHIVA UNIVERSITY

AMENDMENT OF CHARTER

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of October 18, 2016.

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; amended on March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College"; April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College"; November 16, 1945 to change the corporate name to "Yeshiva University"; amended on various occasions with the last amendment being granted on June 16, 2015 be, and the same hereby is, amended to authorize the corporation to confer the Associate in Science (A.S.) degree.



Chancellor

Granted, October 18, 2016 by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 26,553.

President of the University and
Commissioner of Education

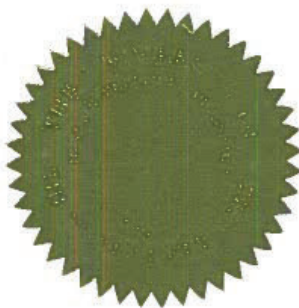


**YESHIVA UNIVERSITY
AMENDMENT OF CHARTER**

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of June 16, 2015.

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; amended on March 27, 1924, March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College," May 18, 1933, April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College," November 16, 1945 to change the corporate name to "Yeshiva University"; amended on various occasions with the last amendment being granted on May 17, 2011 be, and the same hereby is, amended to authorize the corporation to confer the Doctor of the Science of Law (J.S.D.) degree.



Granted, June 16, 2015 by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 26,309.

Chancellor

Acting Commissioner of Education



**YESHIVA UNIVERSITY
AMENDMENT OF CHARTER**

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of May 17, 2011,

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; which certificate of incorporation was amended by action of the Board of Regents on March 27, 1924, March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College," May 18, 1933, April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College," November 16, 1945 to change the corporate name to "Yeshiva University;" which absolute charter was amended by Regents action on various occasions with the last amendment being granted on July 28, 2008 be, and the same hereby is, amended to authorize the corporation to operate postsecondary degree programs registered by the State Education Department and to confer degrees approved and authorized by the Board of Regents in connection with such programs, including the degree of Master of Business Administration (M.B.A.).



Chancellor

Granted, May 17, 2011, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 25,381.

**President of the University and
Commissioner of Education**



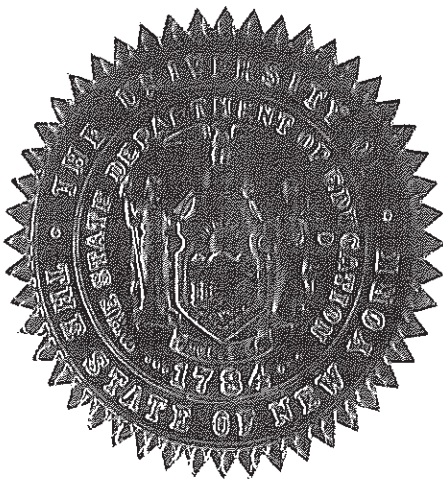
YESHIVA UNIVERSITY

AMENDMENT OF CHARTER

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of July 28, 2008,

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; which certificate of incorporation was amended by action of the Board of Regents on March 27, 1924, March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College," May 18, 1933, April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva College," November 16, 1945 to change the corporate name to "Yeshiva University;" which absolute charter was amended by Regents action on various occasions with the last amendment being granted on June 17, 2003 be, and the same hereby is, amended to authorize the corporation to confer the degree of Master of Public Health (M.P.H.).



Granted, July 28, 2008, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 24,607.

Chancellor

President of the University and
Commissioner of Education



YESHIVA UNIVERSITY
AMENDMENT OF CHARTER

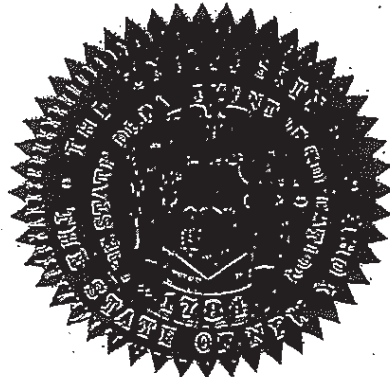
This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of June 17, 2003,

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; which certificate of incorporation was amended by action of the Board of Regents on March 27, 1924, March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (sic) Theological Seminary Association and Yeshivah College" and to add authority for the College to conduct courses in liberal arts and sciences leading to the degrees of Bachelor of Arts (B.A.) and Bachelor of Science (B.S.), May 18, 1933, April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva (sic) College" and to add authority for the College to confer the honorary degree of Doctor of Divinity (D.D.), November 16, 1945 to change the corporate name to "Yeshiva University" and to add authority for the University to confer the degrees of Bachelor of Hebrew Literature (B.H.L.), Master of Hebrew Literature (M.H.L.), Bachelor of Religious Education (B.R.E.), Master of Religious Education (M.R.E.), Master of Science (M.S.) and Doctor of Philosophy (Ph.D.), December 15, 1950, May 24, 1957, November 21, 1958, March 25, 1960, June 23, 1961, May 27, 1966, December 15, 1967, June 27, 1969, January 21, 1970, April 26, 1974, August 1, 1975, October 23, 1980 and April 21, 1998 be, and the same hereby is, amended to delete the existing language in paragraph 2 and replace it with the following:

2. The property and estate of Yeshiva University are vested in, and all of its rights, powers and privileges shall be exercised by, its board of trustees, consisting of not less than 16 nor more than 50 trustees, elected from time to time by the board of trustees. The number of trustees, their qualifications and divisions into classes, shall be fixed from time to time by bylaws of the corporation adopted and amended from time to time by the board of trustees. Trustees shall be elected for such terms of office as will result in the terms of one-fourth of their number expiring annually. Trustees whose terms expire shall be eligible for reelection, if qualified."

and to correct the spelling "Elchonon" to "Elchanan" and remove "(sic)" from all references spelled "Elchanan."



Granted, June 17, 2003, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 23,604.

Alvin J. Dumas
Chancellor

Richard P. Mills
President of the University and
Commissioner of Education



YESHIVA UNIVERSITY

AMENDMENT OF CHARTER

This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of April 21, 1998,

An application having been made by and on behalf of the trustees of the Yeshiva University, for an amendment of its charter, it was

Voted, that the absolute charter in the first instance of the Yeshiva University, located in the city, county, and state of New York, which corporation was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" on March 20, 1897; which certificate of incorporation was amended by action of the Board of Regents on March 27, 1924, March 29, 1928 to change the corporate name to "Rabbi Isaac Elchanan (*sic*) Theological Seminary Association and Yeshivah College" and to add authority for the College to conduct courses in liberal arts and sciences leading to the degrees of Bachelor of Arts (B.A.) and Bachelor of Science (B.S.), May 18, 1933, April 19, 1940 to change the corporate name to "Rabbi Isaac Elchanan Theological Seminary and Yeshiva (*sic*) College" and to add authority for the College to confer the honorary degree of Doctor of Divinity (D.D.), November 16, 1945 to change the corporate name to "Yeshiva University" and to add authority for the University to confer the degrees of Bachelor of Hebrew Literature (B.H.L.), Master of Hebrew Literature (M.H.L.), Bachelor of Religious Education (B.R.E.), Master of Religious Education (M.R.E.), Master of Science (M.S.) and Doctor of Philosophy (Ph.D.), December 15, 1950, May 24, 1957, November 21, 1958, March 25, 1960, June 23, 1961, May 27, 1966, December 15, 1967, June 27, 1969, January 21, 1970, April 26, 1974, August 1, 1975 and October 23, 1980 *bc*, and the same hereby is, amended to add authority for the University to confer through its Benjamin N. Cardozo School of Law the degree of Master of Laws (LL.M.).



Granted, April 21, 1998, by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 22,477.

Sher Ex 1 - 8

The University of the State of New York

Education

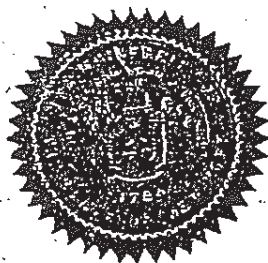


Department

Amendment to Charter

YESHIVA UNIVERSITY

THIS INSTRUMENT WITNESSETH That the Regents of The University of the State of New York have amended the charter of Yeshiva University, New York, such charter having been amended from time to time by the Board of Regents, in various respects, and having been last amended by the Regents on August 1, 1975, with respect to the number of trustees of the corporation, to authorize the corporation to award the degree of doctor of psychology (Psy. D.), in conformity with the Rules of the Board of Regents of The University of the State of New York and the Regulations of the Commissioner of Education for the registration of the program leading to such degree.



Granted October 23, 1980, by the Board of Regents for and on behalf of the State Department of Education, executed under the seal of said Department and recorder therein.
Number 18,059

William A. Gormick
Chancellor

Sam M. Ash
President of The University
and Commissioner of Education

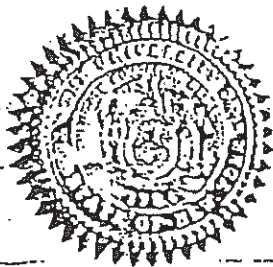


Amendment to Charter

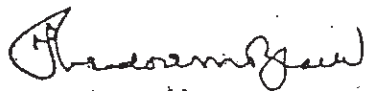
YESHIVA UNIVERSITY

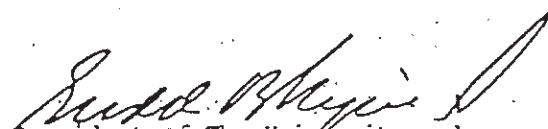
THIS INSTRUMENT WITNESSETH That the Regents of The University of the State of New York have amended the charter of Yeshiva University, New York, such charter having been amended from time to time by the Board of Regents, in various respects, and having been last amended by the Regents on April 26, 1974 to authorize the corporation to establish a school of law and award the degree of doctor of law (J.D.), by deleting paragraph 2 thereof and substituting therefor the following new paragraph 2:

"2. The property and estate of Yeshiva University are vested in, and all of its rights, powers and privileges shall be exercised by its board of trustees, consisting of not less than 16 nor more than 40 trustees, elected from time to time by the board of trustees. The number of trustees, their qualifications and divisions into classes, shall be fixed from time to time by bylaws of the corporation adopted and amended from time to time by the board of trustees. Trustees shall be elected for such office as will result in the terms of one-fourth of their number expiring annually. Trustees whose terms expire shall be eligible for reelection, if qualified."



Granted August 1, 1975 by the Board of Regents of The University of the State of New York and executed under the seal of said University and recorded as Number 15,074.


Chancellor

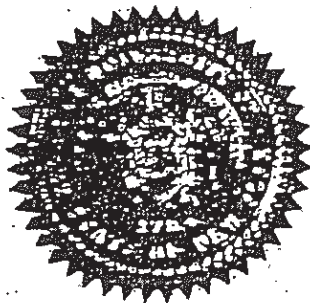

President of The University and
Commissioner of Education



Amendment to Charter

YESHIVA UNIVERSITY

THIS INSTRUMENT WITNESSETH That the Regents of The University of the State of New York have amended the charter of Yeshiva University, New York, such charter having been amended from time to time by the Board of Regents, in various respects, and having been last amended by the Regents on January 21, 1970, with respect to the degree-conferring powers of the corporation, to authorize the corporation to establish a school of law and award the degree of doctor of law (J.D.), in conformity with the Rules of the Board of Regents of The University of the State of New York and the Regulations of the Commissioner of Education for the registration of the program leading to such degree.



Granted April 26, 1974 by the Board of Regents of The University of the State of New York and executed under the seal of said University and recorded as Number 13,011.

Joseph W. McNamee
Chancellor

President of The University and
Commissioner of Education

Sher Ex 1 - 11

The

Committee of the
Education

State of New York
Department

Amendment to Charter of

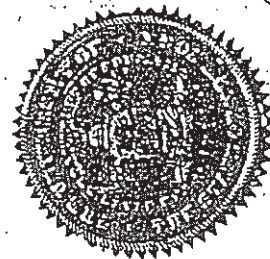
Yeshiva University

This instrument witnesseth That the Board of Regents for and on behalf of the Education

Department of the State of New York has amended the

Charter of Yeshiva University, located in the city, county and State of New York, which was granted by the Board of Regents, and amended in various respects, and having been last amended by the Regents on January 1969, by authorizing the university to confer the additional degree of Doctor of Social Welfare (D.S.W.) -- as follows:

1. By authorizing the university to confer the additional degrees of Bachelor of Education (B.Ed.) and Bachelor of Science in Education (B.S. in Ed.) in conformity with Rules of the Board of Regents of the University of the State of New York and the Regulations of the Commissioner of Education for the registration of institutions of higher education; and
2. By deleting therefrom the authorization to grant the degrees of
 Bachelor of Hebrew Literature (B.H.L.)
 Master of Hebrew Literature (M.H.L.)
 Doctor of Hebrew Literature (D.H.L.)
 Bachelor of Religious Education (B.R.E.)
 Master of Religious Education (M.R.E.)
 Doctor of Religious Education (D.R.E.)



Joseph L. Meyer
Chairman

Granted January 24, 1970 by the Board of Regents
for and on behalf of the State Education Department

executed under the seal of said Department

and recorded therein, Volume 10, 145

Richard W. Meyer
President of the University
and Commissioner of Education

The

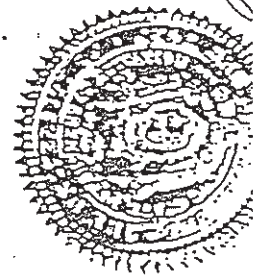


Committee of the
Education
Department
State of New York

Amendment to Charter of

Yeshiva University

This instrument witnesses, That the Board of Regents for and on behalf of the Education Department of the State of New York has amended the charter of Yeshiva University, located in the city, county, and State of New York,-- which was duly incorporated as a membership corporation under the laws of the State of New York on March 29, 1897, under the name of The Rabbi Isaac Elchanan Theological Seminary Association, such charter having been amended from time to time by the Board of Regents, in various respects having been last amended, in its entirety, on December 15, 1967, by authorizing the university to confer the additional degree of doctor of social welfare (DSW), in conformity with the Rules of the Board of Regents of the University of the State of New York and the Regulations of the Commissioner of Education for the registration of institutions of higher education.



Granted June 27, 1969 by the Board of Regents
for and on behalf of the State Education Department,
enacted under the seal of said Department
and recorded hereby. Number 9986

Joseph W. Meyer
Chairman

Mark W. Meyer
Acting President of the University
of the State of New York

The



Department of the
Education

State of New York
Department

Amendment to Charter of

Yeshiva University

This instrument witnesses: *That the Board of Regents for and on behalf of the Education Department of the State of New York has amended the*

charter of Yeshiva University, New York, -- which was duly incorporated as a membership corporation under the laws of the State of New York on March 20, 1897, under the name of The Rabbi Isaac Elchanan Theological Seminary Association, which certificate of incorporation was amended from time to time by action of the Board of Regents having been last amended on March 25, 1953, -- by deleting therefrom the authority to confer the degree of master of social service (M. S. S.), which authority was granted to the corporation through amendment of its charter by the Regents on November 21, 1953, and by substituting therefor authority to confer the degree of master of social work (M. S. W.), in conformity with the Rules of the Board of Regents and the Regulations of the Commissioner of Education for the regulation of institutions of higher education.



Granted June 23, 1961, by the Board of Regents
for and on behalf of the State Education Department,
executed under the seal of said Department

and attested therein, *July 10*

Edgar M. Cooper
Chairman

Frank G. Allen, Jr.
President of the University
and Commissioner of Education

The

University of the
City of New York
Department of
Education

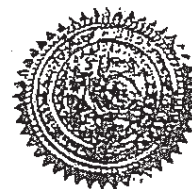
State of New York
Department of
Education

Amendment to Charter of

Yeshiva University

This instrument witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York has amended the

Charter of Yeshiva University, New York, -- which was duly incorporated as a membership corporation under the laws of the State of New York on March 30, 1897, under the name of Rabbi Isaac Elchanan Theological Seminary Association, which certificate of incorporation was amended from time to time by action of the Board of Regents, having been last amended on November 21, 1958, with respect to the degree-conferring powers of the corporation, -- by authorizing the corporation to acquire, establish and operate such hospitals, dispensaries and clinics as may be necessary or desirable in connection with the operation of the corporation's college of medicine.



John P. Thompson
Chancellor

Granted March 25, 1960 by the Board of Regents
for and on behalf of the State Education Department,
executed under the seal of said Department
and recorded through Number 97628

John P. Thompson
President of the University
and Commissioner of Education

The



University of the
Education

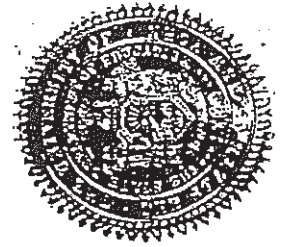
State of New York
Department

Amendment to Charter of

Yeshiva University

This instrument witnesses that the Board of Regents, for and on behalf of the Education Department of the State of New York, has amended the

charter of Yeshiva University, New York, -- which was incorporated as a membership corporation under the laws of the State of New York on March 29, 1897, under the name of Rabbi Isaac Elchanan Theological Seminary Association, which certificate of incorporation was amended from time to time by action of the Board of Regents, having been last amended on May 24, 1957, with respect to the number of trustees of the corporation, -- by authorizing the university to confer, in addition to the degrees which it has heretofore been authorized to confer, the degrees of master of arts (M.A.), master of social service (M.S.S.) and doctor of education (Ed.D.), in conformity with the Rules of the University and the Regulations of the Commissioner of Education for the registration of institutions of higher education.



John P. Thompson
Chairman

Granted November 21, 1988, by the Board of Regents
for and on behalf of the State Education Department.

and recorded under the seal of said Department

Number 7345
James E. Miller
President of Yeshiva University
and Commissioner of Education

The



University of the
Education

State of New York
Department

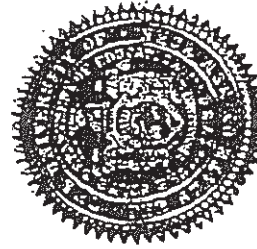
Amendment to Charter of

Yeshiva University

This instrument witnesses that the Board of Regents for and on behalf of the Education

Department of the State of New York has amended the

certificate of incorporation of Yeshiva University, New York, -- which was duly incorporated as a membership corporation under the laws of the State of New York on March 29, 1937, under the name of Rabbi Isaac Elchanan Theological Seminary Association, such certificate of incorporation having been amended by action of the Regents of the University on March 21, 1924, and again amended and the name of the corporation changed to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College by action of the Regents on March 29, 1928, and further amended by the Regents on May 18, 1935, with respect to the degree-conferring powers of the corporation, and again amended by action of the Regents on April 12, 1940, in relation to the conferring of degrees and by changing the name of the corporation to Rabbi Isaac Elchanan Theological Seminary and Yeshiva College, and further amended on November 16, 1945, by changing the corporate name of the institution to Yeshiva University and by authorizing the institution to confer the degrees of bachelor of science (B.S.) and master of science (M.S.) and doctor of philosophy (Ph.D.), and again amended by action of the Regents on December 15, 1958, by authorizing the institution to confer programs in medical and dental education, leading to the degrees of doctor of medicine (M.D.) and doctor of dental surgery (D.D.S.), respectively, and to confer said degrees in conformity with the rules of the Regents of the University and the regulations of the Commissioner of Education for the registration of institutions of higher education, -- by selecting from the original certificate of incorporation, which was filed in the Department of State on March 29, 1897, the provision contained in Paragraph Fifth of said certificate which reads: "The number of trustees of the corporation shall not exceed 25 nor be less than 5."

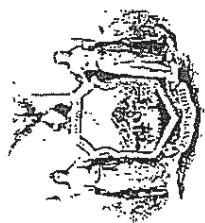


Granted May 24, 1957, by the United Regents
for and on behalf of the State Education Department,
executed under the seal of said Department
and recorded therein. Number 1094

Joseph Shans
Chairman

James E. O'Connell
President of the University
and Commissioner of Education

The



University of the
Education

State of New York
Department

Amendment to Charter of

Yeshiva University

This instrument witnesses that the Board of Regents for and on behalf

of the Education Department of the State of New York has amended the certificate of incorporation of Yeshiva University, New York, -- which was duly incorporated as a membership corporation under the laws of the State of New York on March 29, 1927, under the name of Rabbi Isaac Elchanan Theological Seminary Association, such certificate of incorporation having been amended by action of the Regents of the University on March 27, 1924, and again amended with the name of the corporation changed to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College by action of the Regents on March 29, 1928, and further amended by the Regents on May 18, 1933, with respect to the degree-conferring powers of the corporation, and again amended by action of the Regents on April 18, 1940, in relation to the conferring of degrees and by changing the name of the corporation to Rabbi Isaac Elchanan Theological Seminary and Yeshiva College, and further amended on November 16, 1945, by changing the corporate name of the institution to Yeshiva University, and by authorizing the institution to confer the degrees of Bachelor of Jewish Literature (B.J.L.), Master of Jewish Literature (M.J.L.), Doctor of religious education (D.R.E.), Master of religious education (M.R.E.), Master of science (M.Sc.), and Doctor of philosophy (Ph.D.) -- by authorizing the institution to confer programs in medical and dental education leading to the degrees of Doctor of medicine (M.D.) and Doctor of Dental Surgery (D.D.S.), respectively, and to confer said degrees in conformity with the rules of the Regents of the University and the regulations of the Commission of Education for the registration of institutions of higher education.



Granted December 14, 1953, by the Honored Regents
for and on behalf of the State Education Department,
executed under the great Seal of the Department
and recorded therein, Number 5977

William J. Wale
Chairman

Carroll A. Wale
President of the University
and Commissioner of Education

Amendment to charter of

Rabbi Isaac Elchanan Theological Seminary and Yeshiva College

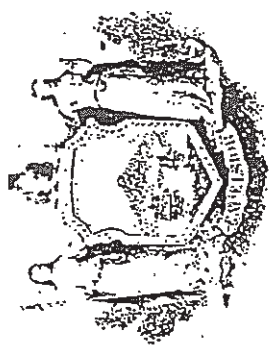
This instrument witnesses that the Regents of the University of the State of New York

have amended the certificate of incorporation of Rabbi Isaac Elchanan Theological Seminary and Yeshiva College, New York, which was duly incorporated as a membership corporation under the laws of the State of New York on March 20, 1897, under the name Rabbi Isaac Elchanan Theological Seminary Association, such certificate of incorporation having been amended by action of the Regents of the University on March 27, 1924, and again amended and the name of the corporation changed to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College by action of the Regents on March 29, 1928, and further amended by the Regents on May 18, 1933, with respect to the degree-conferring powers of the corporation, and again amended by action of the Regents on April 19, 1940, in relation to the conferring of degrees and by changing the name of the corporation to Rabbi Isaac Elchanan Theological Seminary and Yeshiva College by changing the corporate name of the institution to Yeshiva University and by authorizing it to confer the degrees of bachelor of Hebrew literature (B.H.L.), master of Hebrew literature (M.H.L.), bachelor of religious education (B.R.E.), master of religious education (M.R.E.), master of science (M.S.) and doctor of philosophy (Ph.D.) when courses leading to said degrees shall have been approved by the Education Department.

Sher Ex 1-21

Granted November 16, 1945 by the Regents of the University of the State of New York
recorded under their seal and recorded in their office. Number 5155

7100 07100



University of the

State of New York

Amendment to charter of

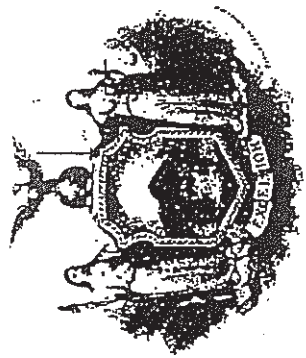
Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College

This instrument witnesseseth. That the Regents of the University of the State of New York:

have amended the certificate of incorporation of Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College - which was duly incorporated as a membership corporation under the laws of the State of New York on March 20, 1897, under the name Rabbi Isaac Elchanan Theological Seminary Association, such certificate of incorporation having been amended by action of the Regents of the University on March 27, 1924, and again amended and the name of the corporation changed to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College by action of the Regents on March 29, 1928, and further amended by the Regents on May 18, 1933, by authorizing the corporation to confer the degree of Doctor of Humane Letters (L.H.D.) and Doctor of Laws (LL.D.), honoris causa, - by authorizing the institution to confer the degree of Doctor of Divinity (D.D.), honoris causa, and by eliminating the word "Association" from its corporate name, so that hereafter the name of the corporation shall be "Rabbi Isaac Elchanan Theologica Seminary and Yeshiva College."

Sher Ex 1 - 22

(Granted April 19, 1940 by the Regents of the University of the State of New York)



University of the

State of New York

Amendment to charter of

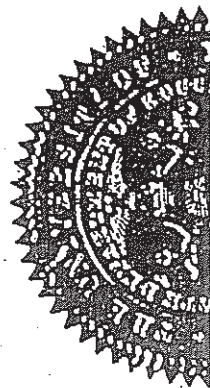
Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College

This instrument witnesseth That the Regents of the University of the State of New York:

have amended the certificate of incorporation of Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College, which was duly incorporated as a membership corporation under the laws of the State of New York on March 20, 1897, under the name Rabbi Isaac Elchanan Theological Seminary Association, (such certificate of incorporation having been amended by action of the Regents of the University on March 27, 1924, and further amended and the name of the corporation changed to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College by action of the Regents at their meeting held March 29, 1928,) by authorizing said corporation to confer the degrees of Doctor of Humane Letters, (L.H.D.), and Doctor of Laws, (LL.D.), *Honoris*

causa.

Granted May 18, 1933 by the Regents
of the University of the State of New York
recorded under their seal and recorded in their
Books Vol. 6... 1150



University of the

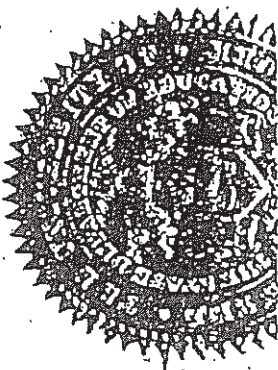
State of New York

Amendment to charter of

Rabbi Isaac Elchanan Theological Seminary Association

This instrument witnesseseth That the Regents of the University of the State of New York

Have amended the charter of Rabbi Isaac Elchanan Theological Seminary Association, New York City, which was incorporated as a membership corporation under the laws of the State of New York, March 20, 1897, and charter amended by the Regents of the University on March 27, 1924, by changing the corporate name of said corporation to Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College and by authorizing said corporation to give courses in liberal arts and sciences, leading to the degrees of Bachelor of Arts and Bachelor of Science, provided however, that such degrees shall not be conferred until the same shall have been duly registered by the State Education Department in conformity with its rules and regulations.



Granted March 29, 1928, by the Regents of the University of the State of New York, recorded under their seal and recorded in their office, Number 3763

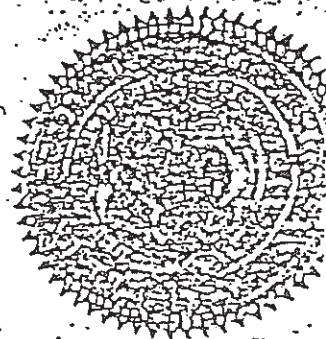
John A. ...

University of the State of New York Amendment to charter of

Rabbi Isaac Elchanan Theological Seminary,

This instrument witnesses that the Regents of the University of the State of New York

have amended the charter of Rabbi Isaac Elchanan Theological Seminary, located in the city, county and state of New York, which was incorporated as a membership corporation March 20, 1897, by authorizing such corporation to confer upon its graduates the degree of *Hebraicarum Litterarum Doctor* (Doctor of Hebrew Literature)



Chas. F. Lord

Chancellor

Granted March 27 1924 by the Regents
of the University of the State of New York
executed under their seal and recorded on their
Office Number 3340

Certificate of Incorporation.

STATE OF NEW YORK
City and County of New-York

ss.

We, the Undersigned, desiring to form a corporation pursuant to the provisions of the membership Corporations Law, all being of full age and two thirds being citizens of the United States and at least one a resident of the state of New York, do hereby Certify and State:

First. The particular objects for which the corporation is to be formed are to promote the study of Talmud and to assist in educating and preparing students of the Hebrew faith for the Hebrew Orthodox ministry.

64 Second. The name of the proposed corporation is The Rabbi Isaac Elchonen Theological Seminary Association

Third. The territory in which its operations are to be principally conducted is the City, County and State of New-York

Fourth. The town, village or city in which its principal office is to be located is the City of New-York in the County of New-York and State of New York.

Fifth. The number of its directors is eleven....

Sixth. The names and places of residence of the persons to be its directors until its first annual meeting are

NAMES	Places of residence.
Samuel Schatzkin	1 Canal Street, N.Y. City
Jehuda Solomon	134 E. Broadway, "
Asher L. Germansky	30 Canal Street, "
Max Lewis	24 Orchard Street "
David Abramovitz	5 Hester Street "
Mendel Zuckerman	162 Henry Street "
Julius Braunstein	272 E. Broadway "
Samuel Silberstein	235 Division Street "
Moses H. Bernstein	89 Division Street "
Julius D. Bernstein	71 Henry Street "
Moses M. Matlin	172 Clinton Street "

Seventh. The times for holding its annual meetings are the first Saturday
in January of each year.

State of New York,
City & County of New-York

SS.

On this

26th

day of February,

1897

before me personally came

Isidor L. Gersman, Max L. Gersman, Jacob A. Selikowitz, Mendel Gersman, Julius Bernstein, Samuel Spilberstein, David Abramowitz, Simon Selikowitz, M. A. Bernstein, Moses M. Nathan, Joseph Goldenson, Julius L. Gersman.

to me personally known to be the individuals described in and who executed the foregoing Certificate, and they severally duly acknowledged to me that they executed the same.

Abraham Rosenberg

Commissioner of Deeds
N.Y. County

Book 42 Page 148 64

Certificate of Incorporation

The Rabbi Isaac
Elchanon & Theological
Seminary Association

(A membership corporation)

I, the undersigned Justice of the
Supreme Court of the State of New York,
do hereby approve of the within certifi-

cate —
Dated at New York
this 8th day of March 1897

Wm. W. Phelps
Wm. W. Phelps Secy

STATE OF NEW YORK
OFFICE OF SECRETARY OF STATE.

FILED AND MAR 20 1897

John S. Davidson

Chief Clerk of State

In Witness Whereof, we have made and acknowledged this Certificate
this 11-th day of February 1897

Samuel Albert
Jehuda Solomon

Asher L. Gorman
Hart Lewis

Jacob H. Seligson
Isaac J. Zucker
Jacob Brownstein
Samuel Silberstein
Simon Seligson

M. Bernstein
Joseph M. Matlin
Joseph Goldenson
Isaac S. Gorman

- Exhibit W -

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

**PLAINTIFFS YU PRIDE ALLIANCE AND JOHN DOE'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Emery Celli Brinckerhoff Abady Ward & Maazel LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020
(212) 763-5000

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PRELIMINARY STATEMENT

Yeshiva University (“YU”) has privately acknowledged for decades that it cannot legally discriminate against LGBTQ¹ student groups: “[YU] is subject to the human rights ordinance of the City of New York *Under this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does to other student groups,*” the University wrote in a 1995 Fact Sheet titled “Gay Student Organizations.” Ex. 1 (1995 Fact Sheet) at 2 (emphasis added)²; see Weinreich Aff. ¶ 19. YU’s legal analysis is as correct today as it was in 1995, when it received this advice from its lawyers. It is bound by the New York City Human Rights Law (“NYCHRL”), just like any other university in the City. YU chose to register as a nonsectarian corporation fifty years ago—notwithstanding its historical affiliation with Judaism—in order to benefit from government funding that was and is unavailable to entities organized as religious corporations. Because it is now a legally non-sectarian institution, YU knows it has “no credible legal argument” to discriminate against LGBTQ student groups. Ex. 1 at 3.

No matter. YU refuses to recognize LGBTQ student organizations on its campus today. On three occasions in 2019 and 2020, YU denied official university recognition to an undergraduate student organization seeking to form an LGBTQ student club, only because of the group’s LGBTQ status, membership and mission of fostering a safe and inclusive community for LGBTQ students. YU will not allow a student club with the term “LGBT” or “gay” in the title, Dean of Students Chaim Nissel told students in February 2019. There will not be a club, the

¹ LGBTQ refers to people who are lesbian, gay bisexual, trans, queer, or have other non-cisgender or non-heterosexual identities. *What is LGBTQ*, The Lesbian, Gay, Bisexual & Transgender Community Center, <https://gaycenter.org/about/lgbtq/>.

² All references to “Ex.” refer to the Exhibits attached to the Declaration of Katherine Rosenfeld dated April 26, 2021.

administration announced in September 2020, because it would “cloud” the university’s “nuanced” position on the treatment of LGBTQ students.

Plaintiffs YU Pride Alliance (the “Alliance”), the unofficial LGBTQ student group at YU, and John Doe, a current LGBTQ student, move for a preliminary injunction enjoining Defendants from continuing to deny the Alliance official recognition and the same treatment YU gives to over 100 recognized student groups.

Plaintiffs easily meet all three requirements for a preliminary injunction. *First*, their NYCHRL public accommodations discrimination claim will succeed on the merits, as Defendants’ own counsel admitted in 1995. Defendants have denied the Alliance recognition and equal access to school facilities, funding, and other benefits YU provides to its 116 recognized student groups *because* of Alliance members’ sexual orientation and gender and the LGBTQ content of its mission and activities.

Second, the Alliance and its student members will be irreparably harmed absent a preliminary injunction. Without an injunction, the Alliance may wait years for recognition while this case proceeds, by which time many if not all of its current members will have graduated. Numerous courts have held that denying LGBTQ student groups equal access to school facilities satisfies the irreparable harm requirement. Plaintiffs’ expert, Professor Jason Garvey, has marshaled empirical evidence showing the concrete harms exacted when universities refuse to recognize LGBTQ student groups. Alliance members illustrate the irreparable harm best: “[YU] has shown that it does not believe that LGBTQ students need to be treated equally.” Emma Doe Aff. ¶ 6. “Mental illness and distress are prevalent among LGBTQ students at YU because they feel totally alone.” Jane Doe Aff. ¶ 8.

Third, the balance of the equities overwhelmingly favors Plaintiffs. Defendants suffer no harm at all by complying with the law to treat the Alliance the same as all other recognized student groups, but Plaintiffs will continue to suffer the discrimination, denial of access and opportunities in their college experiences, dignitary harms, and injuries to their well-being that result from YU's decision to bar a student club for LGBTQ students.

FACTS

Parties

Plaintiff Alliance is “an unofficial group of undergraduate YU students who seek to create a formal student club that will provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented,” and “foster awareness and sensitivity to the unique experiences of being a LGBTQ+ person in YU and the Orthodox community.”³ Ex. 2 (Mission Statement). It has a President, Vice President, and eight-member board. Jane Doe Aff. ¶ 13.

Plaintiff John Doe⁴ is a current YU student and Alliance board member who identifies as LGBTQ. John Doe Aff. ¶¶ 1, 25. He would like to belong to a recognized club. “Without the funding and resources available to an official club, I have little to no access to safe spaces on campus to discuss my experiences as an LGBTQ Jewish student or seek community and support in person.” *Id.* ¶ 18. Official recognition “will allow the [Alliance] to bring in speakers who can relate to my experiences and provide thoughtful reflections on those experiences.” *Id.* ¶ 19.

³ The Alliance seeks to build a supportive community for both LGBTQ students and their allies. Throughout this brief, the term “LGBTQ students” refers to both LGBTQ students and their allies.

⁴ Throughout this brief, Plaintiff Anonymous is John Doe.

Plaintiffs Meisels, Miller and Weinreich are former Alliance members and/or or recent graduates who were involved in rejected efforts to gain official recognition for an LGBTQ student club. Meisels Aff. ¶¶ 2, 17-44; Miller Aff. ¶¶ 2, 13-28; Weinreich Aff. ¶¶ 2, 14-33.

Defendant YU is a private, nonsectarian university that “integrates the knowledge of Western civilization and the rich treasures of Jewish culture.” YU, *Our History*, <https://www.yu.edu/about/history>. It offers undergraduate students a dual curriculum of academic study and Jewish studies. Defendant Ari Berman is YU’s President. Defendant Chaim Nissel is YU’s Vice Provost of Student Affairs and former Dean of Students.

The Urgent Need for the YU Pride Alliance

Over the years, YU’s LGBTQ students have repeatedly attempted to form a student club. Compl. ¶ 38. Students reinvigorated these efforts in 2018, seeking to create an organization where LGBTQ students could meet on campus, share experiences, socialize, create community, host speakers and events on topics of interest to their members, and support each other. Miller Aff. ¶¶ 13-15; Jane Doe Aff. ¶ 49. Just as the Sephardic Club exists as an affinity group for students with a Sephardic identity, LGBTQ students wanted the same. Miller Aff. ¶ 11. Professor Jason Garvey, an expert on the campus experiences of LGBTQ collegians, explains that the benefits of such organizations for LGBTQ students are enormous. Garvey Report § III.f

The environment at YU is not an easy one for LGBTQ students. The main form of existing community for students today is a WhatsApp chat group. Emma Doe Aff. ¶¶ 7-11. That is not enough. “YU has put a barrier that is preventing the students from easily meeting others who are similarly struggling and could show them that they are not alone.” *Id.* ¶ 11. YU’s unequal treatment fuels an unhealthy campus climate. “Students feel emboldened to tell me and other LGBTQ students that we do not have any rights on campus and should leave YU.” John Doe Aff. ¶ 18. “I could never ‘just’ be a student of [YU]. I always had to fight for my right

to have a community like my fellow students.” Meisels Aff. ¶ 8. Club recognition would be an important step for the quality of students’ experience.

Club Recognition’s Significant Benefits

Official recognition confers significant material and dignitary benefits, which YU has denied the Alliance and its members. YU’s recognized student groups, among other tangible benefits, can use classrooms and campus facilities to host meetings and events; bring speakers of their choice to campus; use bulletin boards, email listservs, and the student event calendar to promote activities; receive funding from student councils; are listed on YU’s club list; and have access to YU’s premium Zoom account during the pandemic. Jane Doe Aff. ¶¶ 35-42 (reviewing benefits of club recognition); Ex. 12 (Beren Student Council Constitution) art. IX §§ I(A)(vii) III(A)(vii), & V(A)(ix) (describing clubs’ funding); Ex. 13 (Wilf Student Council Constitution) art. III § 5 (same).

Together, these material benefits add up to the right to participate on campus. YU’s Undergraduate Student Bill of Rights gives every student this right: “Students who are otherwise qualified have the right to participate fully in the University community without discrimination as defined by federal, state, and local law” and to “be treated fairly with respect and dignity at all times,” including to “organize and join clubs and participate in events *in all cases* in accordance with applicable rules and procedures.”⁵ By denying the Alliance recognition and violating its own Bill of Rights, YU sends a clear message that LGBTQ students are unworthy of equality and dignity on campus.

⁵ YU Undergraduate Student Bill of Rights and Responsibilities, https://www.yu.edu/sites/default/files/legacy/uploadedFiles/Student_Life/Resources_and_Services/Standards_and_Policies/Updated%20Bill%20of%20Rights%2011.29.12.pdf (emphasis added).

Winter 2019 – Fall 2020: Defendants Deny LGBTQ Student Groups Recognition Three Times

The Alliance’s organizers have applied for official recognition three times in the past two years alone. Defendants have rejected each request, even though their applications met all procedural requirements. Defendants have sometimes danced around their plain discriminatory intent by avoiding explicit statements denying the club recognition. But on each application, Defendants unmistakably denied the club recognition and made statements confirming their discriminatory purpose.

In February 2019, YU overruled the Student Council Presidents’ approval of the Gay-Straight Alliance (“GSA”), an Alliance predecessor. Miller Aff. ¶ 17. That same month, Dean Nissel had told Miller that the school would not permit a student club with the terms “LGBT” or “gay” in the title. *Id.* ¶ 16. The Office of Student Life (“OSL”) told Miller that a club addressing tolerance in general on campus would be allowed, but a club specifically addressing LGBTQ inclusion would not. *Id.* ¶ 19.

In January 2020, the Alliance applied for club recognition. It met all the prerequisites, including a mission statement, 25 student signatures, and faculty advisor signature. Ex. 3 (Jan. 2020 Club Application); *see* Meisels Aff. ¶¶ 25-27. But on February 9, four days after meeting with YU administrators to discuss the club’s recognition, the Student Council Presidents, whom the administration designates to process student club requests, abstained from voting on recognition for the Alliance because “[t]he decision about a club focusing on LGBTQ matters at [YU] is too complex and nuanced to be voted on by Student Council Presidents. We are not administrators” Ex. 4 (Feb. 9, 2020 Abstention Letter). The unprecedented abstention left the club recognition decision in Defendants’ hands, but they refused to act, denying the Club recognition. Meisels Aff. ¶¶ 34-38; Jane Doe Aff. ¶¶ 20-21. The Alliance was not granted recognition throughout spring 2020. Jane Doe Aff. ¶ 22.

In September 2020, the Alliance applied again for recognition and again met all the prerequisites. *Id.* ¶ 24; Ex. 5 (Fall 2020 Application). On September 3, 2020, YU sent a statement to the entire YU community that feigned goals of inclusivity but nonetheless denied the Alliance recognition: “forming a new [LGBTQ] club as requested under the auspices of YU will cloud” the school’s “nuanced” position about full acceptance for its LGBTQ students because of “timeless prescriptions” in the Torah that are in tension with “accepting each individual.” Ex. 6 (“Fostering an Inclusive Community”); *see* Meisels Aff. ¶¶ 41-42. The statement suggested the students instead “socialize in gatherings as they fit” without the benefits of club recognition. *Id.* On information and belief, President Berman approved this statement. Compl. ¶ 103. The Alliance was not granted recognition throughout fall 2020. Jane Doe Aff. ¶¶ 28-34.

Winter 2020: Defendants Admit They Will Not Recognize the Alliance

In December 2020, Dean Nissel, responding to a student’s internal Title IX complaint on this issue, wrote that “Yeshiva’s decision to not approve the YU Alliance student group on its undergraduate campuses . . . due to its religious tenets and foundations is a permitted determination.” Ex. 7 (Dec. 9, 2020 Nissel Letter) at 1.

Unproductive and Demeaning Meetings

Alliance members have met many times with Berman, Nissel, and other YU administrators over the last two years seeking official recognition. The students entered these discussions in earnest. YU dodged questions about why it will not recognize the club and belittled the students’ requests for equal rights.

- December 2019: YU Vice President Josh Joseph told Alliance members (incorrectly) that no faith-based institutions in the United States have LGBTQ

clubs. Meisels Aff. ¶ 23. The City's two major Jesuit universities, Fordham and St. John's, both have undergraduate LGBTQ student groups.⁶

- February 2020: Dean Nissel and Vice President Joseph suggested the Alliance's advocates were opposed to Judaism and the Torah and refused to answer questions about if or when they would approve the club. Weinreich Aff. ¶ 26.
- September 2020: A University Dean, parroting the wording of the "Fostering an Inclusive Community" statement, told a student who asked why YU refused to recognize the Alliance that recognition would "cloud the issues being considered." Jane Doe Aff. ¶ 32.⁷

YU Pressures Plaintiffs to Join a non-LGBTQ Affinity Group Instead

Administrators have repeatedly pressed Plaintiffs to join the "Jewish Activism Club" instead of forming an LGBTQ affinity group, claiming that this club would "provide the space you are hoping to create." Ex. 14 (Feb. 14, 2019 Email); *see* Miller Aff. ¶ 18. Denying a discrimination complaint filed by Weinreich, YU wrote that the Jewish Activism Club's use of the word "LGBTQ" in its mission statement shows that YU does not discriminate on the basis of sexual orientation. Weinreich Aff. ¶ 31.

The Jewish Activism Club is not a substitute for the Alliance. Its purpose is to advocate on social issues important to marginalized communities, such as people of color, women, and LGBTQ people. Herszage Aff. ¶ 3. Crucially, it does not share the Alliance's core mission to

⁶ Fordham Univ., *Pride and Rainbow*, https://www.fordham.edu/info/20913/lgbtq_resources/1729/pride_and_rainbow; St. John's Univ., *Spectrum*, <https://www.stjohns.edu/life-st-johns/new-york-city-your-campus/queens-campus-life/spectrum>.

⁷ Miller had a similarly unproductive meeting with President Berman in April 2019. Miller Aff. ¶ 20.

provide a supportive community for students of all sexual orientations and gender identities. *Id.*

¶¶ 5-6.

The Alliance's Fight for Existence

YU's years of denying the club has left the Alliance has been unable to operate as an equal student club. It may not hold meetings on campus; students must travel off-campus for meetings. It cannot choose panels and speakers on issues of its choice. It receives no funding and has had to fundraise from outside sources. During the pandemic, it did not have a premium Zoom account from YU like all other student groups. It is not listed on YU's student group list. It is not invited to the annual club fairs for new students. Jane Doe Aff. ¶¶ 35-42. And intangibly, each day, the message from YU to the students is reinforced: you are not welcome, you do not belong here. YU can issue statements that it affirms tolerance, but its actions tell a different story.

On the other hand, if the student group was recognized, the Alliance would host "an official campus welcoming event; several LGBTQ-related speaker events; book club meetings to discuss books with LGBTQ relevant themes"—the list goes on. *Id.* ¶ 49; Meisels Aff. ¶¶ 38-39. These opportunities would meaningfully improve the experience of being an LGBTQ student at YU: "[H]aving a club on campus is essential to showing LGBTQ students that they belong at YU." Emma Doe Aff. ¶ 12. "If a club existed, I would not have had to push myself so hard mentally and physically just for a space on campus to be myself." Meisels Aff. ¶ 8.

ARGUMENT

Plaintiffs YU Pride Alliance and John Doe move for a preliminary injunction on their First Cause of Action, discrimination based on sexual orientation and gender in violation of New York City Administrative Code § 8-107(4). *See* Compl. ¶¶ 142-45. Plaintiffs seek to restrain

Defendants from continuing their unlawful refusal to officially recognize the Alliance and grant it the same benefits YU gives to all recognized student groups.

The Court should grant a preliminary injunction when the moving party shows (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990). Plaintiffs meet all three requirements.

I. PLAINTIFFS HAVE SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

A. YU Admits the NYCHRL Requires It to Recognize LGBTQ Student Groups

In 1995, YU's Department of Public Relations distributed a four-page "Fact Sheet About Gay Student Organizations at Yeshiva University" in which it unequivocally acknowledged that the NYCHRL requires it to recognize LGBTQ student groups: "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 to other student groups.*" Ex. 1 at 2 (emphasis added). YU reached this conclusion after an "exhaustive review of the ordinance and applicable case law" by "YU's General Counsel and Weil Gotshal & Manges, special counsel engaged to review this issue." *Id.* at 3. YU since acknowledged to the New York Court of Appeals that it must comply with the NYCHRL. *Levin v. Yeshiva Univ.*, 96 N.Y.2d 484, 491 (2001) ("Yeshiva concedes that it is subject to the City Human Rights Law.").

This 1995 Fact Sheet did not mince words about YU's view of its LGBTQ students. "YU does not approve of homosexual conduct," it explained, citing then-YU President Norman Lamm's "considered repudiation of homosexual conduct as utterly immoral." Ex. 1 at 2-3. But even so, President Lamm knew that "as president of a nondenominational institution that must accommodate people who reflect a wide range of backgrounds and beliefs, it is my duty to assure

that the policies and procedures of Yeshiva University conform to the applicable provisions of non-sectarian law, even in the rare instances in which these may offend my own religious beliefs and personal convictions.” *Id.* at 3. President Lamm’s legal analysis is correct. The NYCHRL requires YU to recognize the Alliance. The University cannot claim a religious exemption from the law because it is incorporated as a nondenominational institution. And it has no defense based on the free exercise of religion because the NYCHRL is a valid and neutral law of general applicability.

Twenty-six years later, YU has discarded its own accurate legal analysis in service of its institutional intolerance.

B. YU Is Correct: Its Refusal to Recognize the YU Pride Alliance Violates the NYCHRL

The NYCHRL makes it an “unlawful discriminatory practice” to deny equal access to “any of the accommodations, advantages, facilities, or privileges of a place or provider of public accommodations” based on a person’s sexual orientation or gender. N.Y.C. Admin. Code § 8-107(4)(1)(a). This provision must be given a “liberal construction in all circumstances” to fulfill the law’s “uniquely broad and remedial purposes.” *Bennett v. Health Mgmt. Sys., Inc.*, 92 A.D.3d 29, 34 (1st Dep’t 2011) (cleaned up). YU’s refusal to officially recognize the Alliance because of its members’ sexual orientation and gender and the LGBTQ content of its mission has deprived Plaintiffs of numerous “accommodations,” “advantages,” “facilities,” and “privileges” given to YU’s 116 recognized student organizations. *See* N.Y.C. Admin. Code § 8-107(4)(1)(a).

1. The Alliance Has Standing

In addition to Plaintiff John Doe, who as a current student seeking to join the Alliance has standing to seek relief, the Alliance has standing as an organization. An organization has “standing in its own right to seek judicial relief from injury to itself and to vindicate whatever

rights and immunities the association itself may enjoy.” *Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 51 (2019) (cleaned up). The Alliance is an “organization,” making it a “person” protected from public accommodations discrimination by the NYCHRL. N.Y.C. Admin. Code § 8-107(4)(1)(a) (prohibiting discrimination against any “person”); *id.* § 8-102 (defining “person” to include “organizations”).

Because it is protected by the NYCHRL, the Alliance, “just like an individual[,] must show that it has suffered an ‘injury in fact’” that is fairly traceable to Defendants’ conduct and redressable by a favorable decision. *Mental Hygiene Legal Serv.*, 33 N.Y.3d at 51.

The Alliance satisfies these standing requirements. Its inability to meet and host events on campus, promote events on campus, access funding available to recognized groups, and appear on the club list are “concrete and demonstrable injuries” beyond its “abstract social interests.” *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (impairment to housing organization’s “ability to provide counseling and referral services for low-and moderate-income homeseekers” satisfies injury-in-fact requirement). Without these resources, the Alliance has been forced to organize groups on social media where “students who do not know each other” have “difficult, heartbreaking, and painful conversations” that “would be much more easily shared and moderated in person.” *Emma Doe Aff.* ¶¶ 9-11; *see also Meisels Aff.* ¶ 38 (“If we [were] a recognized student club . . . we would have hosted pizza meet-and-greets on campus [and] would have invited speakers to campus talking about being Jewish and queer.”). Defendants caused these injuries by refusing to recognize the Alliance, and those injuries would be redressed by the relief the Alliance seeks—an injunction restraining Defendants from continuing to unlawfully deny it official recognition. Accordingly, the Alliance has standing to bring its public accommodations claim under the NYCHRL.

2. YU Is a “Place or Provider of Public Accommodation” Under the NYCHRL

The NYCHRL defines a “place or provider of public accommodation” expansively to include any “place or provider” that “extend[s]” or “offer[s]” access to “goods, services, facilities, accommodations, advantages, or privileges of any kind.” N.Y.C. Admin. Code § 8-102. A private, nonsectarian university like YU meets this definition. *See Novio v. N.Y. Acad. of Art*, 286 F. Supp. 3d 566, 583 (S.D.N.Y. 2017) (graduate school is a place of public accommodation under the NYCHRL); *Bahl v. N.Y. College of Osteopathic Medicine of N.Y. Institute of Tech.*, No. 14 Civ. 4020, 2015 WL 4603210, at *9-10 (E.D.N.Y. July 28, 2015) (same). Indeed, the numerous benefits of official recognition that YU has denied the Alliance—meeting space, bulletin board access, funding opportunities, and club lists, among others—are paradigmatic examples of “services,” “facilities,” “advantages,” “privileges,” and “accommodations” under the NYCHRL. *See Jane Doe Aff.* ¶¶ 35-42; N.Y.C. Admin. Code § 8-102; *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1 (D.C. 1987) (Georgetown, a Jesuit university, cannot deny LGBTQ student group equal access to outreach mechanisms, funding opportunities, and other benefits of student group recognition because these are “facilities and services” under D.C. Human Rights Law).

3. The Individual Defendants Are Subject to the NYCHRL

The NYCHRL prohibits any “owner . . . superintendent, agent, or employee of any place or provider of public accommodation” from denying equal access to public accommodations based on a protected characteristic. N.Y.C. Admin. Code § 8-107(4). Berman and Nissel are both YU employees.

4. Defendants Refuse to Recognize the Alliance Because of Sexual Orientation and Gender

Defendants communicated their discriminatory purpose all three times they rejected Plaintiffs' applications to form an LGBTQ affinity group at YU.⁸

- February 2019 Rejection of GSA: That month, Dean Nissel told Miller that the school would not permit a club with the words "LGBT" or "gay" in the title, and the OSL told Miller the school would not allow a club focused on LGBTQ inclusion. Miller Aff. ¶¶ 16-19.
- February 2020 Rejection of the Alliance: After the Student Council Presidents (understandably) placed the decision about permitting or denying a "club focusing on LGBTQ matters" in Defendants' hands, Defendants refused to respond to the Alliance's requests for recognition and did not recognize the club that semester. Ex. 8 (Feb. 11, 2020 Email); *see* Meisels Aff. ¶¶ 31-37.
- September 2020 Rejection of the Alliance: YU's September 2020 public letter rejecting the club's fall 2020 application for recognition stated that "forming a new [LGBTQ] club as requested under the auspices of YU will cloud" the school's "nuanced" position about full acceptance for its LGBTQ students. Ex. 6.

Dean Nissel laid YU's rejection of the Alliance bare in December 2020: "Yeshiva's decision to not approve the YU Alliance student group on its undergraduate campuses . . . due to its religious tenets and foundations is a permitted determination." Ex. 7 at 1.

⁸ Discrimination against LGBTQ people and groups constitutes sexual orientation and gender discrimination under the NYCHRL. The law defines "sexual orientation" to include "actual or perceived romantic, physical or sexual attraction to other persons . . . on the basis of gender," and "gender" to include "actual or perceived sex, gender identity and gender expression . . . regardless of the sex assigned to that person at birth." N.Y.C. Admin. Code § 8-102.

YU's insistence that the students join the Jewish Activism Club instead of the Alliance seals the point. YU claims its recognition of the club, which focuses on a range of social justice issues, proves YU's absence of discrimination. Weinreich Aff. ¶ 28. The University has this backwards. It proves that YU's discrimination is targeted directly against an LGBTQ affinity group and its LGBTQ members.

C. YU Is Not Exempt from the NYCHRL on Any Ground

As its lawyers advised YU in 1995, and as remains equally true today, YU cannot claim a religious exemption to evade compliance with the NYCHRL.

1. By Registering as a Nonsectarian Corporation, YU Chose Not to Exempt Itself from the NYCHRL

YU is not entitled to NYCHRL's exemption from the definition of "place or provider of public accommodation" for a "religious corporation incorporated under the education law or the religious corporation law," N.Y.C. Admin. Code § 8-102, because it is not a religious corporation. YU incorporated as a non-sectarian institution in December 1969, when it amended its Charter to end its incorporation as a religious corporation and become "an educational corporation under the Education Law of the State of New York." Ex. 9 (Dec. 1969 YU Charter Amendment) ¶ 1. At the same time, YU separated its yeshiva (Jewish seminary) into a distinct entity, the Rabbi Isaac Elchanan Theological Seminary ("REITS"). Ex. 10 (Jan. 1970 YU Charter Amendment); Ex. 11 (Feb. 1970 REITS Charter).

YU has maintained its legal status as a non-sectarian institution ever since, a conscious choice motivated by its desire to receive public funds that other private research universities receive. Yeshiva University, *Consolidated Financial Statements: June 30, 2020 and 2019*, at 6 ("YU Financial Statement"), https://www.yu.edu/sites/default/files/inline-files/USDP-0195928%20Yeshiva%20University%2012.23.20_FINAL_1.pdf; Michael J. Brovide, *The*

Ghosts Have Become Alive, YESHIVA UNIV. COMMENTATOR, May 10, 2020 (discussing YU’s continued incorporation “as a non-sectarian institution as a matter of law, mostly to allow them to remain eligible for financial assistance provided by the state and national government”). YU has reaped many governmental financial benefits because of its legal status as a nonsectarian institution.⁹ “The University derives its revenues principally from student tuition and fees, government appropriations, contributions, and investment earnings.” YU Financial Statement at 6.

YU knows full well that its incorporation as a nonsectarian institution means it is not exempt from the NYCHRL’s definition of a “place or provider of public accommodations.” The 1995 Fact Sheet where YU acknowledged that the NYCHRL required it to treat LGBTQ student groups equally also explained that YU’s 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 University’s *legal status as a nondenominational institution*.” Ex. 1 at 3 (emphasis added). Nothing material about YU’s legal status has changed since then. It is still incorporated as a non-sectarian institution and is still not exempt from the NYCHRL’s definition of a “place or provider of public accommodations.”

⁹ For example, YU has received hundreds of millions of dollars in tax-exempt bonds from the Dormitory Authority of the State of New York (“DASNY”), including \$90 million in bond financing in 2011. *See* \$90,000,000: DASNY, Yeshiva University Revenue Bonds (Sept. 21, 2011) (“DASNY Bond Report”), https://www.dasny.org/sites/default/files/inline-files/Yeshiva_University%20Final_OS.pdf. Presumably because the New York State Constitution prohibits public funding of religious educational institutions, N.Y. CONST. art. IX, § 3, access to DASNY bonds comes with “Restrictions on Religious Use,” specifically that the funds “shall not be used for sectarian religious instruction or in connection with a school or department of divinity for any religious denomination,” DASNY Bond Report, *supra*, at C-8 (cleaned up).

2. YU Cannot Claim a “Religious Principles” Exemption

YU also does not qualify for the NYCHRL’s narrow “religious principles” exemption, which provides that a religious institution or affiliated organization may “limit[] employment or sales or rentals of housing accommodations or admissions to or giv[e] preference to persons of the same religion or denomination . . . to promote the religious principles for which it is established or maintained.” N.Y.C. Admin. Code § 8-107(12).

By its plain language, this provision applies only to certain religious organizations giving preference to people with shared religious affiliations in “employment,” “housing,” and “admission” decisions. *Id.*

The New York Court of Appeals, construing the New York State Human Rights Law’s (“NYSHRL”) nearly identical exemption, called it a “narrow exception for preference in employment, housing, and admissions in order to promote the religious principles of such institutions.” *Scheiber v. St. John’s Univ.*, 84 N.Y.2d 120, 126 (1994) (cleaned up); *accord Logan v. Salvation Army*, 809 N.Y.S.2d 846, 849 (Sup. Ct. N.Y. Cnty. 2005) (NYCHRL’s “limited exemption” does not apply in workplace harassment claim based on sexual orientation).

YU’s denial of recognition and equal benefits to an LGBTQ student organization is not a preference to persons of a particular denomination in a housing, employment, or admissions decision, to which the limited exemption applies—even if YU’s incorporation as a nondenominational institution would not bar it from availing itself of the exemption to begin with. That ends the inquiry.

D. The Alliance Is Entitled to Injunctive Relief

The NYCHRL expressly permits individuals aggrieved by an unlawful discriminatory practice under § 8-107 to pursue “injunctive relief and such other remedies as may be appropriate.” N.Y.C. Admin. Code § 8-502(a).

The injunctive relief envisioned by the NYCHRL is broad. The “law anticipates the vigilant enforcement of rights thereunder and explicitly states that ‘any person claiming to be aggrieved by an unlawful discriminatory practice as defined in [§ 8-107]’ shall have a cause of action in any court of competent jurisdiction for injunctive relief.” *Wilson v. Phoenix House*, 42 Misc. 3d 677, 708 (Sup. Ct. Kings Cnty. 2013) (quoting N.Y.C. Admin. Code § 8-502). Injunctive relief advances the NYCHRL's strong purpose to root out “prejudice, intolerance, bigotry, discrimination, sexual harassment and bias-related violence or harassment in any form.” N.Y.C. Admin. Code § 8-101; *see also Wilson*, 42 Misc. 3d at 707. Accordingly, injunctive relief “should be crafted to prevent future violations and remove the lingering effects of past discrimination.” *Short v. Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375, 402 (S.D.N.Y. 2012) (adopting injunction requiring defendants to follow the law and to implement anti-discrimination policies and training).

The injunctive relief Plaintiffs seek serves these core purposes. Recognizing the Alliance and granting it the same benefits as other recognized student groups puts an end to Defendants’ ongoing violation of the NYCHRL and alleviates the lingering stigma placed on Alliance members as a result of Defendants’ years-long unlawful refusal to recognize the club.

E. Defendants Have No Free Exercise Defense

“[T]he 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).’” *Catholic Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 521 (2006) (quoting *Emp. Div., Dep’t of Human Res. of Ore. v. Smith*, 494 U.S. 872, 879 (1990)). There can be no dispute that the NYCHRL is a valid and neutral law of general of applicability that Defendants must follow even if it has the “incidental effect” of burdening their religious exercise. *Id.* at 522 (cleaned up). Indeed, the Third

Department has already held that the NYSHRL, the NYCRHL's statewide counterpart, is a valid and neutral law of general applicability because it does not "target[] religious beliefs" and its objective is not to "infringe upon or restrict practices because of religious motivation." *Gifford v. McCarthy*, 137 A.D.3d 30, 39 (3d Dep't 2016) (cleaned up) (wedding venue owners cannot refuse to host same-sex wedding despite religious objection). Defendants cannot cloak their unlawful discrimination in the guise of free exercise.

In fact, recognizing the Alliance does not burden Defendants' religious exercise at all. It is well established that permitting a club to exist on equal terms with other student clubs does not imply the institution's endorsement of the club's mission, convey a message that the club's beliefs are favored, or indicate school support for the club's message. *See, e.g., Bd. of Educ. of Westside Cmty. Schs. v. Mergens By and Through Mergens*, 496 U.S. 226, 250 (1990) ("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 nondiscriminatory basis."); *Widmar v. Vincent*, 454 U.S. 263, 274 (1981) ("An open forum in a public university [with over 100 student groups] does not confer any imprimatur of state approval. Such a policy would no more commit the University to religious goals than it is now committed to the goals of the Students for a Democratic Society, Young Socialist Alliance or any other group eligible to use its facilities." (cleaned up)).

That is precisely the case here. Club recognition allows students to organize on campus and access certain resources to advance *their own* interests, not those of YU or its administrators. YU's website describing its "Student Clubs and Organizations" acknowledges this—the University's "numerous clubs offer programs and events indicative of the vast interests of the students." YU, *Student Clubs and Organizations*, <https://www.yu.edu/student-life/student->

organizations (emphasis added). Indeed, YU's 116 recognized student groups organize around interests and identities as diverse as poetry and private equity, video games and the outdoors, and College Democrats and College Republicans. YU Club List Fall 2020, https://docs.google.com/spreadsheets/d/1N_Jao6nYxFBOYSvGMpy8awSmho6SZWAWPIUgv7amcQM/edit?_ga=2.92446173.115941488.1619301732-1212899715.1617635385#gid=0. No one reading YU's club list would think it endorses or takes any view on these organizations' conduct or message. How could it? The College Democrats and Republicans have diametrically opposed political missions, yet YU recognizes both.¹⁰ As YU acknowledged, "[t]he New York City ordinance states explicitly that institutions acting in compliance with the law are not thereby endorsing homosexual behavior or organizations involved with gay issues." Ex. 1 at 2.

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT A PRELIMINARY INJUNCTION

"[I]rreparable injury means injury for which a monetary award cannot be adequate compensation." *Jackson Dairy, Inc. v. H. P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979); accord *J.O.M. Corp. v. Dep't of Health of State of N.Y.*, 173 A.D.2d 153, 154 (1st Dep't 1991). The Alliance brings its NYCHRL public accommodations discrimination claim exclusively for injunctive relief because a monetary award is not an adequate remedy here. And the harm to Plaintiffs is not only "imminent," but *currently ongoing*. *White v. F.F. Thompson Health Sys., Inc.*, 75 A.D.3d 1075, 1076-77 (4th Dep't 2010) (cleaned up). Students seek to form a club that can function in the 2021-2022 school year; to do so, the Club must be approved at the start of the fall semester in August 2021. Ex. 12 art. VII § I(B) (club applications submitted within first

¹⁰ YU also recognizes other "Political and Activism" student organizations, such as the "YU Feminist's Club." YU Club List Fall 2020, *supra*. As with the College Democrats and Republicans, YU allows these organizations to meet and organize events on campus to further their own interests, not YU's or its administrators'.

three weeks of semester); Ex. 13 art. III § 4(1) (club applications submitted within first two weeks of semester). Absent immediate relief, another year will pass where the Alliance is denied the right to form as a club. This means another year where students lack access to the benefits of a chosen student club, whether to hold leadership positions, foster connections important for career and academic development, create new friendships, gain expertise in political or social issues, or any of the myriad important benefits of belonging to a chosen student organization.

The only way to prevent irreparable harm to the YU Pride Alliance is to preliminarily enjoin Defendants from continuing their refusal to recognize the club. No amount of money can compensate the Alliance or its members for the harm Defendants have imposed on the organization's ability to advance its mission of building a community that supports YU's LGBTQ students—the toll is a dignitary, social, emotional, and educational one that cannot be distilled to dollars and cents. John Doe Aff. ¶ 17 (“I have no official space where I can gather with other LGBTQ students to form a community, share our similar experiences, and provide support to each other.”); *see also* Emma Doe Aff. ¶¶ 9-11. Professor Garvey's research confirms that “queer and trans student organizations provide space where students experience belonging and connect with support, both of which have positive impacts on queer and trans student retention.” Garvey Report § III.f. Such “spaces that promote kinship and community are vital for student success.” *Id.*

Because of the purely non-compensable and ongoing nature of Plaintiffs' injuries, numerous courts have granted preliminary injunctions ordering schools to recognize LGBTQ affinity groups or give them equal access to facilities. *See Boyd Cnty. High Sch. Gay Straight All. v. Bd. of Educ. of Boyd Cnty., KY*, 258 F. Supp. 2d 667, 692 (E.D. Ky. 2003) (“Absent a preliminary injunction, Plaintiffs will be unable to meet at school, unable to benefit from a forum

for discussion with other students who are suffering the effects of harassment based on sexual orientation, and unable to work with other students to foster tolerance among all students.”); *see also Straights and Gays for Equality (SAGE) v. Osseo Area Schs.*—*Dist. No. 279*, 471 F.3d 908, 913 (8th Cir. 2006); *Gay-Straight All. of Okeechobee High Sch. v. Sch. Bd. of Okeechobee Cnty.*, 483 F. Supp. 2d 1224, 1228, 1231 (S.D. Fla. 2007) (“*Okeechobee Cnty.*”) (collecting cases); *White Cnty. High Sch. Peers in Diverse Educ. v. White Cnty. Sch. Dist.*, No. 06 Civ. 29, 2006 WL 1991990, at *13 (N.D. Ga. July 14, 2006) (“*White Cnty.*”).

The irreparable harm to Plaintiffs absent a preliminary injunction is magnified because many of its members are likely to graduate long before a final judgment in this case. *E.g.*, Jane Doe Aff. ¶ 3 (current YU senior). Without a preliminary injunction, the Alliance cannot offer the benefits of being an officially recognized student group to these students at all. *See Okeechobee Cnty.*, 483 F. Supp. 2d at 1231 (irreparable harm to unrecognized Gay-Straight Alliance because “the end of the school year is approaching and seniors who desire equal access of the [club] will graduate prior to resolution on the merits” (cleaned up)); *Boyd*, 258 F. Supp. 2d at 692 (same).

III. THE BALANCE OF EQUITIES FAVORS PLAINTIFFS

The balance of the equities strongly supports entering a preliminary injunction “since the irreparable injury to be sustained by [P]laintiff[s] is more burdensome to [them] than the harm caused to defendants through imposition of the injunction.” *Burmax Co. v. B & S Indus., Inc.*, 135 A.D.2d 599, 601 (2d Dep’t 1987) (cleaned up).

Plaintiffs face irreparable harm if YU is not required to recognize their student organization. *See supra* Section II. The harm is both dignitary and material. YU’s refusal to recognize the Alliance stigmatizes YU’s LGTBQ students as unworthy of equal treatment. John Doe Aff. ¶¶ 11-14; Douglas Nejaime & Reva Siegel, *Religious Exemptions and*

Antidiscrimination Law in Masterpiece Cakeshop, 128 YALE L.J. FORUM 201, 214 (2018) (“[The Supreme Court] is especially concerned to emphasize that public accommodations laws protect against the dignitary as well as the material harm of refusals.”). The clock is also ticking down on many of the Alliance members’ college years. The organization has an urgent interest in serving these students with on-campus events and speakers, using resources available to recognized student groups, so that an inclusive, welcoming space can be part of their college experience.

By contrast, YU is not harmed at all by allowing the formation of the student group. Injunctive relief would simply require Defendants to comport with its duty to treat the Alliance and its student members the same as YU’s other clubs.¹¹ YU will argue that permitting the Club burdens its free exercise of religion. But YU faces no burden on its religious exercise. *See supra* Section I.D.

Courts have resoundingly rejected claims that educational institutions are burdened by the recognition of an LGBTQ club and found the balance of equities favors the students and organizational plaintiffs. *See, e.g., Okeechobee Cnty.*, 483 F. Supp. 2d at 1231 (“The balance of hardships favors the Plaintiffs. Compliance with a preliminary injunction will require only that the Defendant recognize the OHS GSA and grant it the same access and privileges it already grants many other clubs.”); *White Cnty.*, 2006 WL 1991990, at *13.

CONCLUSION

YU has denied its LGBTQ undergraduate students equal treatment for far too long. But the University’s opportunity to become a safer, more welcoming, and more *equal* place for

¹¹ Notably, several of YU’s graduate schools, including Cardozo School of Law, recognize LGBTQ student groups on campus. Cardozo Student Bar Ass’n, Student Clubs & Organizations, <https://www.sbacardozo.com/clubs-orgs#outlaw>.

LGBTQ students remains. Alliance recognition will give students “a space to meet others like them, feel less alone, and get the support the need to successfully continue their college careers.”

Jane Doe Aff. ¶ 8.

For the reasons stated above, Plaintiffs’ motion for a preliminary injunction should be granted.

Date: April 27, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld

Marissa Benavides

Max Selver

600 Fifth Avenue, 10th Floor

New York, New York 10020

Telephone: (212) 763-5000

Fax: (212) 763-5001

Attorneys for Plaintiffs

Diane L. Houk, *Of Counsel*

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Plaintiffs' Memorandum of Law in Support of Preliminary Injunction has 7,000 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

Date: April 27, 2021
New York, NY

Respectfully Submitted,

EMERY CELLI BRINCKERHOFF ABADY
WARD & MAAZEL LLP

/s/ Katherine Rosenfeld

Katherine Rosenfeld
Marissa Benavides
Max Selver

600 Fifth Avenue, 10th Floor
New York, New York 10020
Telephone: (212) 763-5000
Fax: (212) 763-5001

Attorneys for Plaintiffs

Diane L. Houk, *Of Counsel*

- Exhibit X -

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKYU PRIDE ALLIANCE, *et al.*,

Plaintiffs,

v.

YESHIVA UNIVERSITY, *et al.*,

Defendants.

Index No. 154010/2021

(Kotler, J.)

AFFIDAVIT OF RABBI DR. ARI BERMAN

Rabbi Dr. Ari Berman, of full age, deposes and says

1. I am the President of Yeshiva University. I am also the President of the Rabbi Isaac Elchanan Theological Seminary or RIETS.

2. Yeshiva and RIETS are part of a multi-millennial tradition that hearkens back to when G-d gave Israel the Torah on Mount Sinai.

3. Yeshiva continues that tradition by forming each generation of undergraduate students in the Jewish faith, while also giving them a stellar secular education.

4. Yeshiva's dual purpose is captured by its motto of *Torah Umadda*, which refers to Torah and Madda, or "secular studies." Yeshiva's education of *Torah Umadda* encourages students to carry Torah values into the secular world.

5. RIETS's primary purpose is to prepare students to become ordained rabbis. It is one of the nation's largest and most prominent Orthodox seminaries.

6. Although Yeshiva and RIETS are separately incorporated, their work has always been closely integrated. RIETS is housed on Yeshiva's undergraduate men's campus, and RIETS's rabbis are an

essential part of Yeshiva's Torah studies. RIETS's *Roshei Yeshiva* ("senior rabbis") also provide spiritual guidance to Yeshiva's senior administrators, including myself.

7. Given the age of incoming students, the influence of Torah study is profound and pervasive during students' undergraduate years. The undergraduate program is structured to help students embrace the Jewish faith and engage with the secular world from a foundation of Torah values.

8. In Yeshiva's graduate schools, the focus shifts to professional training and academic research. Our graduate schools continue to facilitate religious observance by ensuring Shabbat- and kosher-compliant environments and by respecting the Jewish holiday calendar. But the graduate programs are no longer structured with the same religious environment or religious studies as Yeshiva's undergraduate programs.

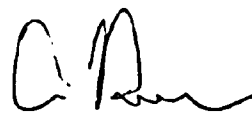
9. This reflects our beliefs about how best to form students in the faith while also preparing them to make a difference in the secular world.

10. The Torah reflects a distinct way of life that G-d has commanded Israel to model including a traditional view on intimate relationships. How we apply the Torah's mandates in the modern world is informed by thousands of years of biblical and rabbinic teachings, including the command to "love your neighbor as yourself."

11. After much deliberation, Yeshiva decided that hosting the student club "Pride Alliance"—as described by Plaintiffs and understood by the culture at large—has implications that are not consistent with Torah.

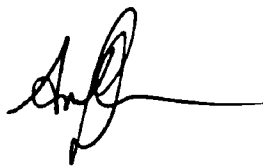
12. Yeshiva, however, remains committed to ongoing dialogue toward the creation of forums and/or clubs that are consistent with Torah values and promote inclusivity.

WHEREFORE, Plaintiffs' motion for preliminary injunction should be denied and their case dismissed.



Rabbi Dr. Ari Berman
President
Yeshiva University

Affirmed before me on this 28th day of May 2021



Andrew J. Lauer
Attorney and Counselor at Law
Notary Public - State of New York
Nassau County - No. 02LA5076277
Commission Expires July 30, 2023

- Exhibit Y -

Schedule E (Form CHAR410, CHAR410-A or CHAR410-R) Must be attached to form CHAR410, CHAR410-A or CHAR410-R	Request for Registration Exemption for Charitable Organizations New York State Department of Law (Office of the Attorney General) Charities Bureau - Registration Section 120 Broadway New York, NY 10271 www.charitiesnys.com	Open to Public Inspection
---	--	--------------------------------------

Full Name of Organization Yeshiva University	Fed. employer ID no. (EIN) 13-1624225	NY State registration no. 44-1046
---	--	--------------------------------------

If your organization is not claiming exemption from registration under either or both Article 7-A or the EPTL, do **not** complete Schedule E and do **not** submit a blank Schedule E. An exemption request that is not accompanied by all required documentation as listed below and in CHAR410, CHAR410-A or CHAR410-R Part D (Attachments) will not be considered. Do **not** request exemptions that cannot be supported by the documentation required. An exemption request has **not** been granted unless you receive a letter confirming your organization's exemption.

Indicate whether you are claiming an exemption from the EPTL or Article 7-A or both. Complete the corresponding exemption request questions.

- EPTL ☐ ⇨ Complete Part I (EPTL), skip Part II (Article 7-A).
- Article 7-A ☐ ⇨ Complete Part II (Article 7-A), skip Part I (EPTL).
- Both EPTL and Article 7-A ☒ ⇨ Complete Part I (EPTL) **and** Part II (Article 7-A). If you complete one but not both exemption request parts, your organization may be exempted under only one law and registered under the other law, in which case your organization would be required to file annually with the Charities Bureau.

Part I EPTL Exemption Request

Registration exemption claim (check all that apply)	Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)
<input type="checkbox"/> 1. Organization is not charitable	None
<input type="checkbox"/> 2. Organization does not conduct activity in NY State	If your organization lists a New York address in either question 3 (Mailing address) or question 4 (Principal NYS address) of CHAR410, CHAR410-A or CHAR410-R Part A, attach a detailed explanation of why the organization has a New York address but claims not to conduct activity in NY State
<input type="checkbox"/> 3. Organization is a government agency or is controlled by a government agency	For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency and either: <ul style="list-style-type: none"> • a copy of the letter from the Charities Bureau confirming the government agency exemption of that other organization, or • a copy of the government agency's charter and, if applicable, IRS tax exemption determination letter
<input type="checkbox"/> 4. Organization reports annually to either the U.S. Congress or the NY State Legislature	Attach a copy of either: <ul style="list-style-type: none"> • the most recent annual report filed with the U.S. Congress or the NY State Legislature, as the case may be; or • a letter from such legislative body confirming that your organization reports annually to it
<input type="checkbox"/> 5. Organization is 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	<ul style="list-style-type: none"> • Attach a copy of listing in official denominational directory (for example, "Blue Directory"), if applicable; and • For organizations operated, supervised or controlled by or in connection with another organization that is exempt from registration as religious, attach a description of the relationship between your organization and that other organization and either: <ul style="list-style-type: none"> - a copy of the letter from the Charities Bureau confirming the religious exemption of that other organization, or - a copy of that other organization's certificate of incorporation, by-laws, trust agreement and/or other organizational document and amendments, and, if applicable, IRS tax exemption determination letter
<input checked="" type="checkbox"/> 6. Organization is an educational institution, museum or library incorporated under the NY State Education Law or by special act	None
<input type="checkbox"/> 7. Organization is a hospital, skilled nursing facility or diagnostic/treatment center	Attach a copy of your organization's operating certificate from the NY State Department of Health
<input type="checkbox"/> 8. Organization is a membership organization (fraternal, patriotic, social, student, alumni, veterans)	None
<input type="checkbox"/> 9. Organization is a volunteer firefighters or volunteer ambulance service organization	None
<input type="checkbox"/> 10. Organization is a historical society chartered by the Board of Regents of the State University of New York	Attach a copy of the organization's charter from the Board of Regents of the State University of New York
<input type="checkbox"/> 11. Organization is a cemetery corporation subject to the provisions of Article 15 of the NY State Not-For-Profit Corporation Law	None
<input type="checkbox"/> 12. Organization is the NY State parent teachers association ("PTA") or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department	Attach a copy of both: <ul style="list-style-type: none"> • the educational institution's charter from the NY State Education Department; and • a description of the relationship between the organization and the educational institution
<input type="checkbox"/> 13. Organization is incorporated under Article 43 of the NY State Insurance Law	None

Part II: Article 7-A Exemption Request	
Registration exemption claim (check all that apply)	Required additional documentation (in addition to attachments listed in CHAR410, CHAR410-A or CHAR410-R Part D)
<input type="checkbox"/> 1. Organization does not solicit or receive any contributions from NY State (including residents, foundations, corporations, government agencies, etc.)	None
<input type="checkbox"/> 2. Organization solicits and receives gross contributions from NY State (including residents, foundations, corporations, government agencies, etc.), but organization's gross contributions are less than and will continue to be less than \$25,000 per year <u>and</u> organization does not and will not use the services of a professional fund raiser or fund raising counsel	None
<input type="checkbox"/> 3. Organization receives all or substantially all of its contributions from a single government agency to which it submits annual financial reports similar to those required by Article 7-A <u>and</u> organization's gross contributions from all other NY State sources, including other government agencies, do not and will not exceed \$25,000 per year	Attach a copy of the organization's most recent IRS Form 990, 990-EZ or 990-PF, including Schedule B, filed with the IRS
<input type="checkbox"/> 4. Organization receives an allocation from a federated fund, United Way or incorporated community appeal <u>and</u> organization's gross contributions from all other sources do not and will not exceed \$25,000 per year <u>and</u> organization does not and will not use the services of a professional fund raiser or fund raising counsel	Attach a copy of the organization's most recent IRS Form 990, 990-EZ or 990-PF, including Schedule B, filed with the IRS
<input type="checkbox"/> 5. Organization is incorporated under the religious corporations law <u>or</u> is another type of organization with a religious purpose <u>or</u> is operated, supervised or controlled by or in connection with a religious organization	<ul style="list-style-type: none"> Attach a copy of listing in official denominational directory (for example, "Blue Directory"), if applicable; <u>and</u> For organizations operated, supervised or controlled by or in connection with another organization that is exempt from registration as religious, attach a description of the relationship between your organization and that other organization <u>and</u> either: <ul style="list-style-type: none"> a copy of the letter from the Charities Bureau confirming the religious exemption of that other organization, <u>or</u> a copy of that other organization's certificate of incorporation, by-laws, trust agreement and/or other organizational document and amendments, <u>and</u>, if applicable, IRS tax exemption determination letter
<input type="checkbox"/> 6. Organization is an educational institution that confines its solicitation to its student body, alumni, faculty and trustees and their families	Attach a copy of the organization's charter from the NY State Department of Education, Board of Regents of the State University of New York or similar government agency
<input checked="" type="checkbox"/> 7. Organization is an educational institution or museum that files annual financial reports with the Board of Regents of the State University of New York as required by the NY State Education Law or with an agency having similar jurisdiction in another state	Attach a copy of either: <ul style="list-style-type: none"> the most recent annual financial report filed with the Board of Regents of the State University of New York or other similar government agency; <u>or</u> a letter from such government agency confirming that your organization reports annually to it
<input type="checkbox"/> 8. Organization is a library that files annual financial reports as required by the NY State Education Department	Attach a copy of either: <ul style="list-style-type: none"> the most recent annual financial report filed with the NY State Education Department; <u>or</u> a letter from the NY State Education Department confirming that your organization reports annually to it
<input type="checkbox"/> 9. Organization is a membership organization (fraternal, patriotic, social or alumni) that confines its solicitation of contributions to its membership	None
<input type="checkbox"/> 10. Organization is a law enforcement support organization that confines its solicitation of contributions to its membership	None
<input type="checkbox"/> 11. Organization is a historical society chartered by the Board of Regents of the State University of New York that confines its solicitation of contributions to its membership	Attach a copy of the organization's charter from the Board of Regents of the State University of New York
<input type="checkbox"/> 12. Organization is the NY State parent teachers association ("PTA") or any PTA affiliated with an educational institution subject to the jurisdiction of the NY State Education Department	Attach a copy of both: <ul style="list-style-type: none"> the educational institution's charter from the NY State Education Department; <u>and</u> a description of the relationship between the organization and the educational institution
<input type="checkbox"/> 13. Organization is a chartered local post, camp, chapter or county unit of a bona fide veterans' organization, a bona fide organization of volunteer firefighters, a volunteer ambulance service organization, or a bona fide auxiliary or affiliate of such an organization <u>and</u> organization's fund raising is done by its members without direct or indirect compensation	For veterans' organizations, attach a copy of the organization's charter from a bona fide veterans' organization
<input type="checkbox"/> 14. Organization is a police department, sheriff's department or other governmental law enforcement agency	None
<input type="checkbox"/> 15. Organization is a government agency or is controlled by a government agency	For organizations controlled by a government agency, attach a description of the relationship between your organization and the government agency <u>and</u> either: <ul style="list-style-type: none"> a copy of the letter from the Charities Bureau confirming the government agency exemption of that other organization, <u>or</u> a copy of the government agency's charter <u>and</u>, if applicable, IRS tax exemption determination letter

- Exhibit Z -

EMPLOYEE HANDBOOK



Yeshiva University

Nissel Ex 1 - 1



Yeshiva University



Welcome

Welcome to Yeshiva University! You are now a valued member of our family, encompassing thousands of students and employees, as well as more than 50,000 alumni. We are pleased you chose to join Yeshiva University and welcome your talent as we work together to provide an exceptional educational opportunity to our students and our extended community. We wish you a successful and rewarding career with us.

With origins dating back to 1886, Yeshiva is composed of three undergraduate schools (Yeshiva College, Stern College for Women and Sy Syms School of Business); graduate schools of medicine (Albert Einstein College of Medicine), law (Benjamin N. Cardozo School of Law), social work (Wurzweiler School of Social Work), psychology (Ferkau Graduate School of Psychology), advanced Jewish studies (Bernard Revel Graduate School of Jewish Studies), and Jewish education and administration (Azrieli Graduate School of Jewish Education and Administration). YU is also affiliated with the Rabbi Isaac Elchanan Theological Seminary – (RIETS); two Yeshiva University High Schools (for boys and girls); the YU Museum and two Israeli Amitot.

Consistently ranked among the top national research universities, we are proud to be the country's oldest and most comprehensive institution combining Jewish scholarship with academic excellence and achievement. We are even prouder of our mission: to "bring wisdom to life" through all that we teach, by all that we do and for all those we serve. Throughout the University's three Manhattan campus locations (Wilf Campus, Beren Campus and Brookdale Center), Resnick Campus in the Bronx, the Gruss Institute in Jerusalem, the Boys High School in Manhattan and the Girls High School in Queens, our focus is on our students and on empowering them, as both educated and ethical people, to utilize their special talents and wisdom for the betterment of society.

At Yeshiva University, we are dedicated to offering the world the highest levels of scholarship coupled with a deep commitment to the value of values. We draw our strength from four core ideals: nobility, the advancement of the principles of Torah and Western civilization; excellence, the pursuit of intellectual discovery and our standing as one of North America's premier centers of academic achievement; Israel, the land and state at the heart of the Jewish people; and community, our obligation to instill a sense of service in our students and contribute to society at large.

Our success is built by creative, productive employees who are encouraged to make suggestions while thinking "outside the box." Your job, every job, is essential to fulfilling our mission every day to the people who trust and respect us. The primary goal of Yeshiva University, and yours, as one of its employees, is to live our unique mission statement and continue to be an industry leader. We achieve this through dedicated hard work and commitment from every employee. It is the desire of Yeshiva University to have every employee succeed in his or her job, and be part of achieving our goals.

As an employee at Yeshiva University, you are expected to become familiar with the contents of the entire Employee Handbook. It is designed to clearly state University policies, and to serve as a valuable reference guide. Feel free to ask your supervisor any questions you may have about Yeshiva University policies. If you need further clarification, you may contact the Human Resources' Employee Engagement and Development.

Again, welcome to this great institution and this great place to work.

Richard M. Joel
President, Yeshiva University

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Introduction

Whether you are a new employee or have been with us for a while, we are delighted to have you as a member of our team. We take pride in making Yeshiva a dynamic and rewarding place to work and grow. We expect that you will take advantage of the many opportunities you find here while helping us continue to teach the knowledge and values that bring wisdom to life.

We have prepared this Handbook to ensure that your association with us is as productive as possible. We consider you our most valuable resource and will do all we can to help you enjoy a successful and rewarding career.

As you read through this Handbook, it will be helpful to keep a few things in mind. First, it contains general information of importance to you plus certain guidelines you need to know. It does not attempt to cover all aspects of your association with us. You can find more details in official documents. If you have any questions about a given guideline, policy or benefit, contact the Human Resources Department. They will be more than happy to provide you with the answers you need.

Second, the procedures, practices and policies described here may be modified or discontinued at any time. If and when they are, we will make every effort to let you know.

Third, this Handbook contains information for you. It is not to be shared with others except your fellow University colleagues who need to know what you do to carry out their duties.

Fourth, if you are a represented employee and there is any conflict between what is written here and the collective bargaining agreement that may cover you, the collective bargaining agreement always prevails.

Finally, nothing in this Handbook confers any contractual right – either expressed or implied – to an employee of the University. Nor does it guarantee any fixed terms or conditions of employment.

If you are a Non-tenured employee, your employment with us is not for any specific length of time (unless your employment is subject to the terms of an employment agreement that specifies the duration of your employment). You may be terminated at will, with or without cause and without prior notice. You may also leave on your own for any reason at any time. In addition, no supervisor or any other University representative (except the President, Provost, the Deans with regard to Faculty, and Human Resources for all staff employees) has the authority to enter into an employment agreement that specifies a specific period of employment or to make any agreement contrary to the above.

Mission Statement

Yeshiva University is a leading global educational institution requiring competitive human resources programs to attract, develop and retain excellent employees. Yeshiva's staff serves as strategic partners in creating a positive and supportive working and learning environment that aims to sustain a high-quality experience for our constituents and embraces the University's mission to enable and ennoble the community.

For Undergraduate Students

We bring wisdom to life by combining the finest, contemporary academic education with the timeless teachings of Torah. It is Yeshiva's unique dual curriculum, which teaches knowledge enlightened by values that helps our students gain the wisdom to make their lives both a secular and spiritual success.

For Graduate Students

Yeshiva brings wisdom to life by not only teaching the knowledge and skills to be highly accomplished scholars and professionals, but by teaching the ethical and moral values that will make them truly admirable people. It is our dual emphasis on professional excellence and personal ethics that gives our graduate students the wisdom to succeed in both their professions and their lives.

For Faculty

Yeshiva helps our professors bring their own wisdom to life by providing the encouragement, resources and intellectual freedom to pursue their own academic ideals. And they, in turn, share their wisdom with our students, our society and the world at large.

For Alumni and Supporters

To bring wisdom to life is Yeshiva's service to humanity and a worthy mission shared in spirit and practice by all associated with the University.

For the Jewish Community

In America, Israel and around the world, our mission to bring wisdom to life will foster greater understanding and appreciation of the heritage, traditions and values we all hold so dear.

For Society and the World

Yeshiva University serves as a wellspring of wisdom.

Our students learn and go forth, as both educated and ethical people, to share their own special talents and wisdom with society.

Our faculty's research, academic work and scholarly writings help bring wisdom to many of the most pressing social, political, medical, legal and human rights issues facing the world today.

Our University serves as a platform to bring Yeshiva's collective wisdom to the world through our community outreach, publications, seminars and broad range of academic programs.

At Yeshiva University, teaching the knowledge and values that bring wisdom to life is not only our mission, it is our proud tradition.

Employment-at-Will

University employees not represented for collective bargaining – and who have not signed a contract of employment – are “employees-at-will.” This means that no one has a contractual right, express or implied, to remain in the University’s employ. The University may terminate an employee’s employment, without cause, and with or without notice, at any time for any reason.

As a University employee you agree that your employment relationship with Yeshiva is governed by, and construed in accordance with, applicable federal, New York State and New York City law, and such substantive law shall apply to all disputes between you and Yeshiva in any forum, except as provided otherwise in a duly executed employment contract.

Equal Employment Opportunity Statement

Equal employment opportunity has and will continue to be a fundamental principle at Yeshiva. This policy applies to recruiting, hiring, pay and benefits, terminations and all other terms of employment.

Yeshiva bases employment on personal capabilities and qualifications. We do not discriminate on the basis of race, color, religion, sex, age, national origin, disability, veteran or disabled veteran status, pregnancy, marital status, sexual orientation, alienage or citizenship status, creed, genetic disposition or carrier status or any other legally protected status.

In addition, Yeshiva will provide reasonable accommodations to a qualified disabled employee who has made Yeshiva aware of his or her condition. The accommodation must not impose an undue hardship on Yeshiva. If you are disabled and believe you need an accommodation to perform the essential functions of your job, please contact the Office of the Chief Human Resources Officer (www.yu.edu/humanresources).

The Human Resources Department has overall responsibility for this policy and maintains reporting and monitoring procedures. If you have any questions, they will be glad to help you.

Appropriate disciplinary action may be taken against any employee willfully violating this policy.

Non-Discrimination and Anti-Harassment Policy

Yeshiva University is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in an environment that promotes equal employment opportunities and prohibits discriminatory practices, including harassment. Therefore, Yeshiva expects that all relationships among persons in the workplace will be professional and free of bias, prejudice and harassment.

Equal Employment Opportunity

It is the policy of Yeshiva University to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, national origin, religion, sex, age, disability, pregnancy, alienage or citizenship status, marital status, creed, genetic predisposition or carrier status, sexual orientation or any other characteristic protected by law. The University prohibits and will not tolerate any such discrimination or harassment.

Definitions of Harassment

Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, catcalls or touching; insulting or obscene comments or gestures; display or circulation in the workplace of sexually suggestive objects or pictures (including through e-mail); and other physical, verbal or visual conduct of a sexual nature. *Sex-based harassment* — that is harassment not involving sexual activity or language (e.g., male manager yells only at female employees and not males) — may also constitute discrimination if it is severe or pervasive and directed at employees *because of their sex*.

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, national origin, age, disability, pregnancy, alienage or citizenship status, marital status, creed, genetic predisposition or carrier status, sexual orientation or any other characteristic protected by law or that of his/her relatives, friends or associates, and that: (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual's work performance; or (iii) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

Individuals and Conduct Covered

These policies apply to all applicants and employees, and prohibit harassment, discrimination and retaliation whether engaged in by fellow employees, by a supervisor or manager, or by someone not directly connected to Yeshiva (e.g., an outside vendor, consultant or customer).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events.

Retaliation Is Prohibited

Yeshiva prohibits retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action.

Complaint Procedure

Reporting an Incident of Harassment, Discrimination or Retaliation

Yeshiva strongly urges the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe they have experienced conduct that they believe is contrary to Yeshiva's policy or who have concerns about such matters should file their complaints with *their immediate supervisor, the Diversity & Affirmative Action Officer, the Chief Human Resources Officer or any member of the University's Unlawful Harassment Panel* before the conduct becomes severe or pervasive. Individuals should not feel obligated to file their complaints with their immediate supervisor before bringing the matter to the attention of one of the other Yeshiva designated representatives identified above.

IMPORTANT NOTICE TO ALL EMPLOYEES

Employees who have experienced conduct they believe is contrary to this policy have an obligation to take advantage of this complaint procedure. An employee's failure to fulfill this obligation could affect his or her rights in pursuing legal action. Also, please note, federal, state and local discrimination laws establish specific time frames for initiating a legal proceeding pursuant to those laws.

Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment. Therefore, while no fixed reporting period has been established, Yeshiva strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. Yeshiva will make every effort to stop alleged harassment before it becomes severe or pervasive, but can only do so with the cooperation of its staff/employees.

The availability of this complaint procedure does not preclude individuals who believe they are being subjected to harassing conduct from promptly advising the offender that his or her behavior is unwelcome and requesting that it be discontinued.

The Investigation

Any reported allegations of harassment, discrimination or retaliation will be investigated promptly, thoroughly and impartially. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action.

Responsive Action

Misconduct constituting harassment, discrimination or retaliation will be dealt with promptly and appropriately. Responsive action may include, for example, training, referral to counseling, monitoring of the offender and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reduction of wages, demotion, reassignment, temporary suspension without pay, or termination, as Yeshiva believes appropriate under the circumstances.

Finally, these policies should not, and may not, be used as a basis for excluding or separating individuals of a particular gender, or any other protected characteristic, from participating in business or work-related social activities or discussions in order to avoid allegations of harassment. The law and the policies of Yeshiva prohibit disparate treatment on the basis of sex or any other protected characteristic, with regard to terms, conditions, privileges and perquisites of employment. The prohibitions against harassment, discrimination and retaliation are intended to complement and further these policies, not to form the basis of an exception to them.

A comprehensive copy of the University's Unlawful Harassment Policy and Procedures can be obtained at the Office of Diversity & Affirmative Action located at the Albert Einstein College of Medicine, 1300 Morris Park Avenue, 1206 Belfer, Bronx, New York 10461, (718) 430-3771. A copy of the Unlawful Harassment Policy and Procedures can also be accessed at www.yu.edu/humanresources.

Disability Accommodations

Policy

Yeshiva University is committed to prohibiting discrimination against qualified individuals with disabilities or perceived disabilities who can perform the essential functions of the job as mandated by the Americans with Disabilities Act, the Rehabilitation Act, as well as applicable state and local laws. This policy applies to the job application process, hiring, termination, advancement, compensation, job training, and other terms, conditions and privileges of employment.

It is the policy of Yeshiva University to provide a reasonable accommodation to qualified applicants, staff and faculty members with disabilities who have made the University aware of their disability, provided such accommodation does not constitute an undue hardship on Yeshiva.

Scope

This policy applies to all Yeshiva employees and to individuals applying for a job at Yeshiva.

Disability Accommodations Process and Procedures

To request a reasonable accommodation, Yeshiva employees should complete and submit a Disability Accommodations Form to their immediate supervisor, Chairperson or Dean and provide a copy to the Chief Human Resources Officer. Employees can obtain this form from the Human Resources Department or on the Human Resources Web site, www.yu.edu/humanresources. If the need for a reasonable accommodation or the form of the accommodation cannot be resolved at this level, the employee should contact the Chief Human Resources Officer.

- A. An applicant who seeks a reasonable accommodation during the job application process should contact the Chief Human Resources Officer.
- B. The employee must provide medical documentation via the Disability Accommodations Health Care Provider Release Form, from a certified health care provider to the Chief Human Resources Officer (see Establishing Eligibility section.)
- C. On receipt of an accommodation request, the Chief Human Resources Officer and the employee's supervisor will meet with the employee to discuss and identify the precise limitations resulting from the disability and the potential accommodation that Yeshiva might make to help overcome those limitations.
- D. The Chief Human Resources Officer will review all accommodation requests and supporting documentation. To the extent permitted by law, the Chief Human Resources Officer may consult with the individual's health care provider, Yeshiva's own medical professionals and other University personnel, including General Counsel, to fully evaluate the accommodations request.
- E. Yeshiva will determine the feasibility of the requested accommodation by considering various factors, including, but not limited to the nature and cost of the accommodation, the availability of tax credits and deductions, outside funding, Yeshiva's overall financial resources and organization, and the accommodation's impact on the operation of the University, including its impact on the ability of other employees to perform their duties and on Yeshiva's ability to conduct business.

Once the Chief Human Resources Officer decides to provide a reasonable accommodation, the employee, applicant, appropriate supervisor, Chairperson or Dean will be notified. The designated department will implement the accommodation and handle its funding the same as any other departmental expenditure. If accommodations other than the one requested by the employee or applicant are determined by Yeshiva to be reasonable, Yeshiva will, as may be appropriate, consider the employee's or applicant's preference. The law does not require Yeshiva to make the best possible accommodation, to reallocate essential job functions, or to provide personal use items (i.e., eyeglasses, hearing aids, wheelchairs, etc.). If it is determined that an accommodation will not be offered, the individual will receive a written explanation.

Confidentiality

All information and documentation received for a reasonable accommodation will be kept confidential to the extent practical and/or required by law.

Complaint Procedure

If a Yeshiva employee believes that he or she has been discriminated against on the basis of a disability, he or she should refer to the internal complaint process set forth in the Unlawful Harassment Policy, which can be found at www.yu.edu/humanresources. If an applicant believes that he or she has been discriminated against on the basis of a disability, a complaint may be filed with the Chief Human Resources Officer. At any time, an individual may pursue other remedies available under applicable federal, state or local law.

On the Job

Work Schedules/Flexible Arrangements

Yeshiva University requires that all departments observe and maintain adequate staffing during regular business hours. On the Manhattan campuses normal work hours are defined as Monday through Thursday, 9:00 a.m. to 5:30 p.m., and Friday 9:00 a.m. to 2:30 p.m. On the Einstein campus normal working hours are defined as Monday through Friday, 9:00 a.m. to 5:00 p.m. Some departments providing student or faculty services must also maintain extended workweeks and hours.

Yeshiva also recognizes that our employees may, from time to time, require adjustment to their normal work schedules to assist them in meeting personal responsibilities that may conflict with meeting their professional obligations to the University. Supervisors may permit reasonable adjustment (flextime) to the established normal arrival and departure times of the workplace, to accommodate individual employee needs such as education, child care commitments or, family or personal illness. Such adjustments should be considered on a short-term basis and are not intended to permanently change an employee's terms of employment or work obligations. We also recognize that flexible scheduling is not possible for all work areas because of the specific requirements of that workplace and that supervisors will not be able to approve a flexible schedule in response to an employee's request. This policy covers changes to work schedules that are regular and recurring and not sporadic or temporary which can be managed within the scope of a supervisor's discretion.

Supervisors considering flextime should examine staffing needs for their areas to determine if the workplace needs to be fully staffed for the entire period of the regularly scheduled workday. Where possible, arrival and departure times for individual employees can be staggered to meet both the needs of the employee and the department. Supervisors must assure that there is adequate staffing during normal business hours. Any variation from the employee's normal work schedule, e.g., working a 10-hour, four-day week, must be discussed in advance with the area Department Head, Vice President or Dean, and the Chief Human Resources Officer.

Flexible work schedules should be discussed in advance by the staff member and the supervisor. In order to receive approval for a flexible work arrangement, the supervisor must certify that the altered schedule is manageable within the operation and staffing of the department and will not adversely affect operations or services to clients. Both parties should have written copies of the agreed-to schedule. Supervisors should review the flextime needs, continuation of those arrangements, and their application on a regular basis.

There are occasions when it may be possible and practical for employees to accomplish some of their work while remaining at home. Supervisors who are considering permitting a staff member to do a portion of his or her work at home on a *regular* basis must discuss the proposed arrangement first with Chief Human Resources Officer.

Procedure

Employee

- Completes Flexible Work Arrangement Form to request alternate schedule to accommodate special needs.
- If request is approved, receives written copy of schedule change.
- Notifies supervisor of any change in circumstances that may require a change or termination of the flexible schedule.

Supervisor

- Reviews workplace needs and possibilities for flexible scheduling.
- Consults with the area Department Head, Vice President or Dean, and the Chief Human Resources Officer when a change in the employee's schedule is proposed.
- Reviews and approves or disapproves employee request for flexible scheduling.
- Provides employee with written copy of schedule.
- Reviews workplace needs and flexible schedules on a regular basis.

Flexible Work Arrangement Strategies

Flextime

Flextime arrangements allow employees to start and end work during some range of hours outside of the regularly scheduled workday. Flextime arrangements do not reduce the normal workload obligation.

Compressed Work Week

Compressed work schedules allow employees to work all their hours in fewer than five days per week. Common examples of this are schedules allowing employees to work 35 hours in four days per week for an extra day off per week, or 70 hours in nine days every two weeks for an extra day off every two weeks.

Voluntary Reduced Time

Voluntary reduced time allows an employee to reduce the number of hours she or he works in a week in order to have extra time to take care of personal or family needs – but only with the prior approval of the department head. Employees may voluntarily reduce their work time and still maintain regular benefits accorded to full-time employees. Salary and time off benefits are pro-rated accordingly. Employees who wish to voluntarily reduce their workload will have their share of University contribution to benefits affected and should contact the University Benefits Office to determine new costs.

Telecommuting

Telecommuting is working from a site other than the normal worksite, usually at home. If approved, the employee is usually responsible for any expenses required to maintain compatible office equipment and connections in his or her home, in accordance with the University's IT network security standards and/or applicable OSHA guidelines.

Open Communication

This policy is designed to ensure open communication between you and University Deans/Department Heads, managers, supervisors and Human Resources.

We want communication to be open and easy. Feel free to speak with your supervisor about any workplace issues or problems. That is often the best way to resolve any difficulty. All your concerns will receive appropriate attention. If for any reason you cannot reach your supervisor, you can contact your Department Head or the Human Resources Department (www.yu.edu/humanresources).

We want to ensure that every member of our community receives fair and equitable treatment from supervisors, peers and fellow employees. We are committed to working with all employees to resolve problems, differences or disputes that may arise in relation to the workplace. We want our employees to feel confident that complaints will be handled in a fair and equitable manner.

Background and Credit Checks

Prior to employment, or in the case of promotion to a position of substantial responsibility, all applicants will be subject to a background check. Background checks will include, but not be limited to, a review of criminal history, verification of employment and education as well as validation of a Social Security number. Candidates applying for positions having contact with finances and/or handling money may also be subject to a credit background check. A copy of the background and credit check will be provided to the applicant and/or candidate as provided by law. This background information is collected as a means of making Yeshiva a safe work environment.

Employment of Family Member/Members of the Household

Yeshiva considers the most qualified individuals for its available positions. Your relatives (or members of your household) may be hired by Yeshiva and can work at the same location unless any of the following apply:

- You are directly supervising a parent, spouse, child, brother, sister or other household member.
- You are ultimately responsible for a family member where the relationship could affect the immediate supervisor's ability to objectively manage, direct or evaluate the employed family member or other household member.
- Family members are employed in positions that may cause situations involving favoritism, undue influence or a breach of confidentiality.
- You are in a position to approve the appointment of a family member or other household member to a position at Yeshiva.

If any of these issues apply, Yeshiva will try to find a suitable position to which one of you can transfer. If not, one of you will be asked to resign. It is not the purpose of this policy to alter any current employment relationships that may have been officially approved in the past.

Please direct any questions about the application of this policy to your Department Head. The Chief Human Resources Officer has final authorization to interpret and implement this policy.

Dress Code Guidelines

Yeshiva wants you to be neat, well-groomed and appropriately attired while performing your duties and interacting with members of the public and the University community. Your personal appearance should reflect the University's professionalism and dignity. Refrain from wearing clothing and accessories that detract from that image.

Use good judgment in selecting clothing that is neat and appropriate for the workplace. Additionally, clothing should cover tattoos, if possible, and there should be no visible body piercings. Please consult with your supervisor, who has the ultimate responsibility for defining the appropriate attire for your particular work environment. Some Yeshiva personnel may be required to wear a uniform and/or protective/safety clothing on the job.

OSHA/Safety

Yeshiva is committed to providing and maintaining a safe work environment for all employees and is compliant with OSHA/governmental regulations. Employees are responsible for working safely and for reporting unsafe conditions to their supervisor, Yeshiva's Department of Environmental Health & Safety at (718) 430-4150 or to the Human Resources Department (www.yu.edu/humanresources).

If you are injured on the job, no matter how small or insignificant the injury, you must report it to the Security Office and your immediate supervisor and/or it may be referred to the Workers' Compensation Unit of University Benefits (www.yu.edu/humanresources). Also, depending on the nature of your work and assigned duties, you may be required to attend various safety training programs and to comply with the safety procedures.

Drug & Alcohol Use

Yeshiva prohibits the unlawful possession, use, distribution, or manufacture of illicit drugs and unauthorized use of alcohol at any University facilities or in connection with any University activities. Any student, faculty member, staff or other employee of the University found to be in violation of this policy will be subject to appropriate disciplinary action – up to and including termination. You can access the full Drug & Alcohol Policy on the Human Resources Web site (www.yu.edu/humanresources).

Smoke-Free Workplace

In compliance with government regulations, Yeshiva prohibits smoking throughout its workplace.

I. Purpose and background

In order to provide employees, students and others with a smoke-free environment and to comply with New York State and New York City smoking regulations and statutes, it is the policy of Yeshiva to prohibit smoking in all Yeshiva owned or leased buildings, facilities, and property.

II. Policy

- A. Smoking is prohibited in all indoor areas of Yeshiva buildings and facilities except within the privacy of residential apartments, unless otherwise prohibited.
- B. Smoking is prohibited in Yeshiva vehicles.
- C. "No-Smoking" signs are prominently and conspicuously posted in all appropriate locations of the work place in accordance with the Smoke-Free Air Act.

- D. Outdoor Smoking Locations: All campus entryways and landscaped areas have been designated as SMOKE-FREE areas and where possible, designated smoking areas have been assigned. Please contact Security to determine the outdoor smoking locations at your campus.
- E. All employees are expected to comply with this policy. The enforcement of this policy is to the responsibility of the Security Office.
- F. Inquiries, complaints or disputes about smoking in the workplace should be directed to the Campus Security Director (212) 960-5221 or (718) 430-2180, or the Human Resources Department, at (212) 960-5400, ext. 6678 or (718) 430-3348.
- G. Employees and applicants for employment who exercise or attempt to exercise any rights granted under the Smoke-Free Air Act and/or the smoking policy are protected from retaliatory adverse personnel action as defined in these regulations. If employees or applicants feel any such adverse employment action has been taken against them for exercising their rights under the Smoke-Free Air Act and/or this policy, they should contact Human Resources' Employee Engagement and Development at (212) 960-5400, ext. 6678 or (718) 430-3348. This office will be responsible for investigating and appropriately resolving any such complaint.
- H. Yeshiva will provide a written copy of this smoking policy upon request to any employee or prospective employee.
- I. A copy of this smoking policy will be provided upon request to interested and appropriate regulatory agencies.

Computer Systems/Network

Use Limited to Business Purposes

Yeshiva provides computer systems to conduct University business which are to be used for Yeshiva purposes only. All communications and information transmitted by, received from, or stored in these systems are Yeshiva records and property of the University. Use of the computer systems for personal purposes other than occasional use is prohibited.

No Expectation of Privacy

Employees have no reasonable expectation of personal privacy with respect to anything stored in, created, received or sent over the computer systems. Yeshiva may monitor or review any and all files, documents or other information contained or accessible through the computer systems for *any* reason without employee permission. This includes possible monitoring of Web sites visited by employees, chat and news groups, e-mail, and blogs, plus review of all electronic/deleted files, metadata and other electronic information stored on Yeshiva's central backup system or otherwise available as part of its data management. Using passwords or other security measures does not give an employee a right to privacy.

Professional Use of Computer Systems Required

All Yeshiva's policies with respect to workplace conduct apply equally to its computer systems. This includes, but is by no means limited to, Yeshiva's policies against discrimination and harassment, sexual or otherwise, its non-solicitation policy, and its policies against disclosure of trade secrets or other confidential business or proprietary information. Employees may not use Yeshiva's Computer Systems to download or copy copyrighted materials or another company's trade secrets or confidential, proprietary information.

Creation, solicitation, posting or distribution of offensive e-mail messages, computer “wallpaper” and the like violate Yeshiva’s policies against harassment and discrimination. Although Yeshiva may employ filters or other screening devices to block offensive, sexually explicit or inappropriate material, it generally is not possible to block out all such offensive content. If you encounter or receive this kind of material, you should immediately report the incident to the Diversity & Affirmative Action Officer at (718) 430-3771 or the University’s Compliance Hotline (866) 447-5052, and www.yu.edu/compliance.

Be Courteous and Considerate of Others

You are reminded to be courteous to other users of the system and always conduct yourself in a professional manner. E-mails, in particular, are sometimes misdirected or forwarded and may be viewed by persons other than the intended recipient. You should write e-mail communications with no less care, judgment and responsibility than you use for letters or internal memoranda written on Yeshiva letterhead. You are not authorized to retrieve or read any e-mail messages that are not sent to you, absent prior approval from Yeshiva management. Finally, you may not send unsolicited e-mail to persons with whom you do not have a prior relationship without the express permission of your supervisor.

Limitations on Internet Use

Although Yeshiva recognizes that the Internet may have useful applications to Yeshiva’s business, you may not engage in random Internet use (“surfing the Net,” playing games, shopping, blogging or accessing or downloading entertainment software) during work time. Management approval is required before anyone can use the Yeshiva’s computer systems to post any information on commercial online systems or the Internet. Any approved posted material should contain all proper copyright and trademark notices.

Online Representations with Respect to the University and Its Information

You need approval from Yeshiva to act as an official representative. If you make reference, on the Internet (including on a blog) to Yeshiva, its employees or customers, you *must* include a disclaimer indicating that the opinions expressed are yours and not necessarily those of Yeshiva.

You may not disclose trade secrets, confidential business information (e.g., business plans, strategies, customer information, etc.) or other proprietary information of Yeshiva or its customers through blogs and other Internet postings. In addition, you must not disclose certain University financial information in violation of securities laws or regulations.

Violation of any these provisions regarding online representations (even if posted by the employee outside of work hours and through non-Yeshiva computer systems) is grounds for disciplinary action, up to and including termination.

Maintaining and Securing the Systems

Users should routinely delete outdated or otherwise unnecessary e-mails, voice mails and computer files. These deletions will help keep the system running smoothly and effectively, as well as minimize maintenance costs.

To ensure security and to avoid the spread of viruses, accessing the Internet through a computer attached to Yeshiva’s network must be done through an approved Internet firewall. Accessing the Internet directly by modem is strictly prohibited unless the computer you are using is not connected to the Yeshiva network.

In addition, files obtained from sources outside Yeshiva, including disks brought from home; files downloaded from the Internet, news groups, bulletin boards or other online services; files attached to e-mail; and files provided by customers or vendors may contain dangerous computer viruses that may damage Yeshiva’s computer network. You may not download or use these disks or files on the

computer systems without first scanning the material with University-approved virus-checking software. If you suspect that a virus has been introduced into the University's network, notify the ITS Help Desk immediately at (212) 960-5294 or helpdesk@yu.edu.

Violations of Policy

Any employee who discovers misuse of any of the computer systems should immediately contact Information Security Officer at (718) 430-8957. Violations of the University's computer systems policy may result in disciplinary action up to and including termination.

Whistle-Blower/Compliance Hotline

Introduction

Ethics and integrity are among the core values of Yeshiva University. We expect our faculty and staff to fulfill their duties with integrity and in full compliance with existing law, regulations and the University's own operating policies and procedures. To that end, the University is introducing a compliance hotline as an additional method for reporting violations of policy, improper conduct and compliance concerns.

Reporting Responsibility

It is the ethical responsibility of all faculty and staff to report violations or suspected violations.

No Retaliation

No faculty or staff member who in good faith reports a violation of policy, improper conduct or compliance concerns shall suffer harassment, retaliation or adverse employment consequence as a result of having made such report. An employee who retaliates against someone because such person has reported a violation in good faith is subject to discipline up to and including termination of employment. This policy is intended to encourage and enable employees and others to raise legitimate concerns.

Reporting Violations

This policy recommends that employees share their questions, concerns, suggestions or complaints with someone who can address them properly. In most cases, an employee's supervisor is in the best position to address an area of concern. However, if you are not comfortable speaking with your supervisor or you are not satisfied with your supervisor's response, you are encouraged to speak with someone in the Human Resources Department or anyone in management whom you are comfortable in approaching. Supervisors and managers are expected to report suspected improper conduct to Human Resources or to the University's Compliance Hotline. An employee may submit a report to the Hotline by calling toll free at (866) 447-5052 or via the Web at www.yu.edu/compliance.

Hotline Committee

The Hotline will be managed by an independent third party, Global Compliance, and reports will be forwarded to the University's Director of Internal Audit. The Director of Internal Audit shall refer all complaints to the University's Hotline Committee. The Hotline Committee is responsible for investigating and resolving all reported complaints and allegations and, upon completion of the investigation, the results will be forwarded to the University's Audit Committee.

Acting in Good Faith

Anyone filing a complaint concerning a violation or suspected violation of policy, improper conduct or compliance concerns must be acting in good faith and have reasonable grounds for believing the information disclosed indicates that a violation exists. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense leading to disciplinary action up to and including termination of employment.

Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

Handling of Reported Violations

All reports will be promptly investigated, and appropriate corrective action will be taken if warranted by the investigation.

Identification Cards

To maintain the safety and security of Yeshiva, you are required to carry a valid Yeshiva photo identification card. You can obtain a card through the campus Security Office when you are hired after authorization by the Human Resources Department. You may be asked to display your identification card at any time when entering a Yeshiva Facility.

The Yeshiva University official identification card provides access to:

- University buildings
- Library services and resources – print and electronic, and
- University events.

Lost or damaged cards may be replaced for a fee, which you must pay. Your identification card must be returned to your supervisor or the Human Resources Department when you leave Yeshiva's employment.

Time Off and Leaves of Absence

Attendance

Yeshiva depends on its employees to report to work on all scheduled workdays and during all scheduled work hours and to report to work on time. Excessive or patterned absenteeism will impact the productivity of the workplace and your performance.

You must notify your supervisor as far in advance as possible, but no later than one hour before your scheduled starting time if you expect to be late or absent. You must call your supervisor for each day of your absence, unless you are directed otherwise by your supervisor.

Vacation

Vacation Eligibility

As part of Yeshiva's generous time-off policy, all employees are eligible for vacation days and will accrue vacation time on a pay period basis. Please refer to the Human Resources Web site (www.yu.edu/humanresources) for a vacation accrual schedule.

You become eligible to take your accrued vacation time after completing your first six months of employment. You may, under special circumstances, with your supervisor's approval, borrow additional time in excess of your accrued time up to the amount which you would accrue for the calendar year. If your employment terminates before the end of the calendar year, you must repay any days borrowed but not earned.

You do not accrue vacation when on an unpaid leave of absence.

If a Yeshiva-observed holiday falls during a scheduled vacation, the day will be charged to holiday pay. If a serious illness or death in the family occurs during an authorized vacation, sick time or bereavement time can be charged in lieu of vacation time with your supervisor's approval.

Scheduling Vacation

To maintain appropriate staffing levels, your supervisor will coordinate, schedule and approve your requested vacation dates. You should make your vacation request well in advance to allow time for your supervisor to accommodate all requests and adequately staff the department. Since all vacation requests must be approved in advance, we strongly recommend that you receive final vacation approval before making financial commitments.

You should take all of your earned vacation time each year. All vacation time must be approved in advance by your Department Head and scheduled in accordance with operational needs. Vacation should be used on a current basis but may be carried over into another year with departmental approval so long as the total vacation carried over on December 31st of each year does not exceed your annual entitlement. Unused, accrued vacation time beyond your maximum annual entitlement shall be forfeited. All unused accrued vacation time will be paid on separation of employment with Yeshiva. However, an employee who does not provide adequate notice of at least two weeks upon resignation forfeits any rights to unused accrued vacation pay.

Holidays

The University provides you with paid holidays each year. The holidays celebrated depend on your work location, as described below.

Albert Einstein College of Medicine (Einstein)

The following legal and Jewish holidays are observed on dates set by Einstein:

LEGAL HOLIDAYS	JEWISH HOLIDAYS*
New Year's Day	Rosh Hashanah (2 days)
Dr. Martin Luther King's Birthday	Yom Kippur (1 day)
Presidents Day	Sukkot (2 days)
Memorial Day	Shemini Atzeret (1 day)
Independence Day	Simhat Torah (1 day)
Labor Day	Passover (first 2 and last 2 days)
Thanksgiving Day	Shavuot (2 days)
Christmas Day	

** Employees in Central Administration departments also receive paid time off for those religious holidays observed by Einstein without regard to the number of such days that fall on workdays. A schedule is published each year and may be found on the Human Resources Web site (www.yu.edu/humanresources). Employees in departments other than Central Administration (academic departments) receive seven personal days each year to use for any reason. However, these days should be scheduled in accordance with departmental operational needs.*

Manhattan Campuses

The following legal and Jewish holidays are observed on dates set by the University:

LEGAL HOLIDAYS	JEWISH HOLIDAYS
New Year's Day	Rosh Hashanah (2 days)
Memorial Day	Yom Kippur (1 day)
Independence Day	Sukkot (2 days)
Labor Day	Shemini Atzeret (1 day)
Thanksgiving Day	Simhat Torah (1 day)
Christmas Day, or 1 day during the month of December	Passover (first 2 and last 2 days)
	Shavuot (2 days)

Emergency Closing

Yeshiva will make every effort to remain open for business on scheduled workdays. However, there may be instances where conditions make it impossible to do so. These include, but are not limited to, severe weather, declared state of emergency, utility disruptions, natural disasters and terrorist actions. In all cases, employee safety will be the primary consideration. To find out the status of Campus Operations in the event of natural and civil emergencies, please refer to Yeshiva's Web site (www.yu.edu). You can also call the Yeshiva University Hotline, (877) YU-2-2222, or Einstein's Hotline, (718) 430-2400, for updates and other emergency information.

Alert Find

In the event of issues presenting a threat to campus safety or situations that require time-sensitive distribution of information, we will post the relevant information on Yeshiva's text- and voice-messaging emergency alert system, Alert Find (www.yu.edu/alertfind). To receive these alerts, you must register in advance for this service at the Web site.

Paid Leaves

Absence Due to Illness

To keep each department running smoothly and efficiently, it is important that every employee report to work regularly and on time. For this reason, careful attention is given to promptness, absence record and overall dependability, as noted earlier.

Yeshiva recognizes, however, that an employee may occasionally be disabled by injury or illness. As a result, sick days are designed to provide protection to you against loss of income during unavoidable illness or injury.

Sick Days

Full-time employees accrue sick days at the rate of one day per month; part-time employees who are eligible to accrue sick leave will do so on a pro-rated basis. Please contact the Human Resources Department for additional information. You can accumulate up to a maximum of 130 days. You can use sick days only in cases of genuine illness or injury, if you are on active pay status immediately prior to the illness or injury. Accrual begins when you complete six months of active employment and is retroactive to your date of hire.

If you use all of your available sick days, you can use accrued vacation time. Unused sick days are not paid when you leave Yeshiva.

Bereavement/Condolence Leave

If a member of your immediate family dies, you will receive a paid leave of absence for up to five days. These days are to be taken consecutively within a reasonable time of the date of the death or funeral, and may not be split or postponed.

Immediate family includes your spouse, child, stepchild, parents, step-parents, siblings, step-siblings (brothers and sisters), grandparents, grandchildren (or members of your household), father-in-law, mother-in-law, grandparent-in-law, son-in-law or daughter-in-law.

One day of paid leave is provided for the death of your aunt, uncle, first cousin, niece or nephew. If you need more time for funeral or other arrangements, it may be charged to accrued personal or vacation days with departmental approval.

You should make your supervisor aware of your situation.

Jury Duty

If you are a full-time or part-time employee and are required to serve on a jury, Yeshiva will grant you a paid leave of absence. You will be paid your normal, scheduled work hours while serving on jury duty; therefore, you are responsible for informing the courts of that fact. You are only eligible to receive travel expenses from the courts for their jury service. While on jury duty, you are expected to report to work any day you are excused.

If you receive a jury duty notice, you should immediately notify your supervisor. Additionally, a copy of the notice to serve jury duty and completion of duty served should be submitted to your supervisor.

If jury duty falls when you cannot be away from work, Yeshiva may request the court to allow you to choose a more convenient time to serve. You must cooperate with Yeshiva's request and ask for the postponement in accordance with the court's procedures.

Time Off to Vote

The scheduling of time off to vote is based on operating needs and is at the discretion of supervisory staff within each department. Schedules will be changed if an employee has less than four hours between the opening of the polls and the start of the shift or the end of the shift and the closing of the polls. Such changes may be up to two hours' leave with pay.

If you live outside of the New York metropolitan area, you should let your supervisor know, at least two days in advance, if you anticipate a conflict between your work schedule and the opportunity to vote.

No employee will be penalized or retaliated against for requesting time off to vote.

Nursing Mothers

Nursing mothers will be accommodated with reasonable break time (up to 20-30 minutes each break at least once every three hours), and a private place to express milk in the workplace. Employees are expected to take such breaks at a time that does not interfere with their duties. Such breaks are unpaid for non-exempt employees, except to the extent the employee uses a regular paid break. The employee may also utilize her meal period for this purpose, if she wishes. Employees who anticipate the need to arrange for such breaks should contact the Chief Human Resources Officer as far as possible in advance of the employee's return to work after childbirth, so that appropriate arrangements can be made.

Unpaid Leaves

Family And Medical Leave Act ("FMLA") Policy

Federal law provides employees with job-protected leave under certain circumstances. University policy as well as applicable collective bargaining agreements may provide even greater benefits. Please consult with Human Resources or your applicable collective bargaining agreement to determine what other benefits you may be entitled to under University policy.

Events that May Entitle an Employee to FMLA Leave

Eligible employees of Yeshiva University (the University) are entitled to take up to 12 work weeks of job-protected unpaid Family and Medical Leave Act (FMLA) leave during any rolling 12-month period for one or more of the following reasons:

1. The employee's own serious health condition;
2. To care for a child, spouse or parent who has a serious health condition;

3. The birth of a child or placement of a child for foster care or adoption; and/or
4. A “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter or parent is a “covered military member” on “covered active duty” or has been notified of an impending call or order to covered active duty in the Armed Forces. Leave for “qualifying exigency” includes the need to take time off due to:
 - the short-notice deployment of a covered family member (i.e. within seven or less calendar days prior to the date of deployment);
 - attendance at military events and related activities, such as pre-deployment briefings and family support sessions;
 - time needed to provide or arrange for child care or participate in school-related activities with respect to a child or ward of the covered family member;
 - time needed to make or update financial and legal arrangements relating to the covered family member or act as the covered family member’s representative with respect to military service benefits;
 - time needed to participate in counseling, where the need for counseling arises from the covered member’s active duty or call to active duty;
 - to spend up to five days with a covered family member on short-term rest and recuperation leave during the period of deployment;
 - post-deployment activities, including any official ceremony sponsored by the military, as well as exigencies arising from the death of a covered family member while on active duty status;
 - other activities provided that the University and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of the leave.

Eligible University employees are entitled to take up to 26 work weeks of job protected FMLA leave during a 12-month period to care for an employee’s spouse, child, parent or next-of-kin, who is also a “covered service member” of the United States Armed Forces (including a member of the National Guard or Reserves) with a “serious injury or illness” (a/k/a “military caregiver leave”).

For purposes of this policy, phrases such as “serious health condition”, “next of kin”, “covered active duty”, “covered military member”, “eligible family members of covered service members and covered military members”, “covered service member”, and “serious injury or illness” are terms defined by governmental regulations. If you have any questions as to what these terms mean and/or whether they apply in your circumstances, please contact the Human Resources Department.

Eligibility

University employees are eligible for FMLA leave if they:

- Have been employed by Yeshiva University for at least 12 months; and
- Have completed 1,250 hours of service during the 12-month period prior to the commencement of a leave.

Spousal Coverage

In the event both spouses are University employees, they are entitled to a combined total of 12 weeks of FMLA leave for a single qualifying event or condition, except that they are entitled to a combined total of 26 weeks of leave to care for a covered service member.

Amount of Leave that May Be Taken

An eligible employee is entitled to take up to 12 workweeks of unpaid FMLA leave during a 12-month rolling period for any FMLA-qualifying reason. A rolling 12-month period means that the University will measure backward 12 months from the date that an employee seeks to use FMLA leave to determine whether that employee has exhausted his/her 12-week entitlement in that 12-month period.

Leave to care for a newborn or newly placed child must conclude within 12 months after the birth or placement of the child.

An eligible employee is entitled to take up to 26 workweeks of unpaid leave in a single 12-month period for the military caregiver FMLA leave. During that single 12-month period, the employee may not take more than a combined maximum of 26 workweeks of FMLA leave for all purposes, and may not take more than 12 weeks of FMLA leave for any purpose other than to care for a covered service member. The 12-month period in which an eligible employee may take the FMLA military caregiver leave is calculated on a going forward basis starting with the first day the leave is taken.

Military caregiver leave is to be applied on a per-covered service member, per-injury basis. During a single 12-month period, the employee may not take more than a maximum combined total of 26 workweeks of FMLA leave for all purposes. Except for military caregiver leave, FMLA leave is still limited to 12 workweeks within a 12-month period for all other qualifying reasons.

FMLA Leave Runs Simultaneously with All Other Unpaid Leaves

An employee's 12- or 26-week FMLA entitlement runs concurrently with all other applicable unpaid leaves including, but not limited to, short-term and long-term disability, Workers' Compensation. Employees may substitute accrued paid leave for unpaid FMLA leave as discussed below.

Substitution of Paid Leave

An employee must use available paid sick leave where an FMLA leave is taken for his or her own serious health condition (including childbirth). Employees will not be required to use accrued vacation or personal leave unless such leave otherwise would be forfeited under the University's personnel policies or the applicable labor agreement. However, an employee may elect to substitute earned vacation or personal time for otherwise unpaid FMLA leave, if he or she does so prior to taking FMLA leave. An employee who elects to take paid leave must follow all applicable University policies with respect to the use of that leave.

The University will count applicable paid leave taken for a FMLA-qualifying reason toward an employee's 12- or 26-week FMLA entitlement. This applicable leave will run *concurrently* with and count toward an employee's 12- or 26-week FMLA entitlement. Once such accrued benefits are exhausted, the balance of the FMLA leave will be without pay, unless the employee is eligible for short-term disability benefits in accordance with applicable state law.

Intermittent or Reduced Schedule FMLA Leave

Intermittent leave is Family or Medical leave taken in separate blocks of time due to a single qualifying reason. A reduced schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

Employees may take intermittent or reduced schedule Family or Medical leave for their own serious health condition, to care for a child, spouse or parent who has a serious health condition or to care for an injured service member where such leave is medically necessary for planned or unanticipated medical treatment of a serious health condition or for recovery from treatment or recovery from a serious health condition. Leave taken for qualifying exigencies may also be taken on an intermittent basis.

Intermittent or reduced-schedule leave should be scheduled to the extent possible to minimally disrupt business operations.

When an employee takes intermittent or reduced-schedule leave, the University may temporarily transfer the employee to an alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates a reduced-schedule or intermittent leave schedule.

Notice

Where reasonable and practicable, the employee must give at least thirty (30) days' advance notice prior to the commencement of a FMLA leave. If proper notice is not given, leave may be denied unless there is a reasonable excuse for the delay. If the need for family or medical leave is not foreseeable, notice must be given by the employee as soon as possible and practicable. Except in cases of extreme medical emergencies, employees are expected to advise their supervisor as soon as they know the need for and expected duration of the leave, and generally within two business days of the time they know of the need for leave. Notice may be given by telephone, e-mail, fax, or other similar methods. In all cases, whether leave is taken intermittently or continuously, the employee, where practicable, must make a reasonable effort to schedule his/her leave so as not to interrupt University operations unduly.

The University will notify the employee requesting leave whether s/he is eligible for FMLA. If the employee is eligible, the notice will indicate any additional information required and describe the employee's rights and responsibilities. If the employee is not eligible, the University will provide a reason for the ineligibility.

Upon the provision of sufficient information, the University will notify the employee that leave has been designated as FMLA leave and the amount of leave to be counted towards the employee's leave entitlement. The University will also notify the employee if the leave is not designated as FMLA leave due to insufficient information or a non-qualifying reason. The University *may* provisionally designate the employee's leave, at the outset, as FMLA leave, subject to submission of sufficient information.

Certification

The employee must provide medical certification from a health care provider to confirm that the employee or employee's child, spouse or parent has a serious health condition or that service member leave is required. For the purposes of a FMLA leave, a serious health condition is an illness, injury, impairment, or a physical or mental condition that involves:

- any period of incapacity or treatment in connection with, or following, inpatient care in a hospital, hospice or residential medical care facility ;
- any period of incapacity requiring absence from work, school, or other regular daily activities for more than three calendar days that also involves continuing treatment by a health care provider; or
- continuing treatment by, or under the supervision of, a health care provider for prenatal care, or for a chronic or long-term health condition that is so serious that if not treated would likely result in a period of incapacity for more than three calendar days.

Note that ALL Non-Faculty employees are required to submit documentation substantiating sick leave absences (including those not covered by the FMLA).

An employee requesting leave for a qualifying exigency should provide documentation pertaining to the exigency, including a copy of his or her family member's military orders, except where military necessity or other circumstances make it impossible or unreasonable to do so.

Medical certification by a health care provider or certification of a qualifying exigency must be provided within 15 days of the leave request unless it is not possible to do so. Failure to provide the required certification on time may impact the employee's ability to take the leave as requested.

The University may seek clarification or authentication of information provided on a medical certification form, and may require an opinion from a second health care provider at its expense to verify any information in the medical certification.

The University requires that the serious medical condition be recertified every 30 days except for leave related to pregnancy or childbirth or where the minimum duration of the serious health condition at issue is more than 30 days. For employees requesting intermittent or reduced leave for periods in excess of six months, the University requires recertification every six months. In addition, employees are required to report periodically on their status and intent to return to work. If the circumstances of an employee's leave change and the employee is able to return to work earlier than originally indicated, the employee should notify the University at least two days prior to the date that he or she intends to return to work.

An employee returning from FMLA leave taken for his/her own serious health condition must provide certification from a health care provider that he/she is medically able to resume work. An employee failing to complete the return-to-work medical certification form will not be permitted to resume work until the completed form is provided.

Benefits

During FMLA leave that runs *concurrently* with paid leave, all of an employee's benefits will continue as elected prior to the commencement of the leave. During FMLA leave that is unpaid, all University benefits that operate on an accrual basis, such as sick, personal and vacation days, will cease to accrue.

All group health benefits will continue during the leave provided that the employee continues *all required* regular employee contributions to these plans. *Employees enrolled in University sponsored benefit plans should contact the University Benefits Office to make arrangements for employee contributions. Union-represented employees should contact their Benefit Fund Office so that they can comply with the requirements of their Benefit Fund.* All other benefits will be governed in accordance with the terms of each benefit plan.

Job Reinstatement/Return to Work

Eligible employees taking leave under this policy will be reinstated to their former position or to an equivalent position with equivalent benefits and other terms and conditions of employment. However, no employee is entitled under this policy to any right, benefit or position other than that to which the employee would have been entitled had he or she not taken leave. Thus, for example, if a layoff or some other extenuating circumstance or business condition arises that affects the employee's position, reinstatement may not be possible. An employee who does not return to work after exhausting available FMLA leave will not be reinstated to employment, except as provided by an applicable collective bargaining agreement.

The University reserves the right to deny reinstatement to certain key employees, where such denial is necessary to prevent substantial and grievous economic injury to the University's operations. Key employees will be notified of the University's intention in this regard as soon as a determination is made

that such injury would occur. In the event such notice is given to a key employee already on leave, the employee will be offered the opportunity to terminate his or her leave and immediately return to work.

No Work During Leave

The taking of another job while on FMLA leave may lead to disciplinary action, up to and including discharge.

Applying for a Leave

All employees wishing to apply for an FMLA leave or having any further questions concerning an FMLA leave should contact the University's Benefits Office at (718) 430-2547 or (718) 430-2566.

Medical or Disability Leave

Employees who have completed at least six months of active employment and become disabled will be eligible for an unpaid medical leave of absence for up to six months. (Some or all of this time may be covered by accrued sick pay, if eligible under the University's sick or unpaid leave guidelines.)

All University employees who are absent from work due to illness or injury for more than seven consecutive calendar days are required to submit documentation substantiating their absence and apply immediately for medical or disability leave by contacting the University Benefits Office at (718) 430-2566.

Maternity leave is considered a disability under New York State Law. You will be asked to submit follow-up medical reports as needed.

Upon your return to duty, you must provide medical documentation of your fitness for duty.

Military Leave

If you serve in the United States Army, Navy, Air Force, Marines, Coast Guard, National Guard, Reserves or Public Health Service, you will receive an unpaid leave of absence for your service in accordance with applicable law. While on military leave, you may substitute your accrued paid leave time for unpaid leave. If you satisfy certain conditions, at the end of your leave you generally have a right to return to your prior position or to a position that you would have obtained had you not gone on military leave.

During a military leave of less than 31 days, your group health plan coverage continues. For military leaves of more than 30 days, you may elect to continue your health coverage for up to 24 months. You may be required to pay all or part of the premium for the continuation of coverage.

You can access the full Military Leave Policy on the Human Resources Web site, www.yu.edu/humanresources.

Personal Leave

Employees who have completed six months of employment may apply for an unpaid personal leave of absence of up to six months. The request is subject to the approval of the Department Head, Dean and the Chief Human Resources Officer. Any exceptions to this policy must be approved by the Chief Human Resources Officer.

During an unpaid leave of absence, you do not accrue sick, vacation or personal time (except as provided by law, i.e., military leave). You do not receive pay for holidays that fall during an unpaid leave.

Parental Leave

Yeshiva University is committed to supporting employees who have additions to their immediate families or challenges caring for a spouse, child or elder parent with an extended illness or incapacitation with the option to participate in an extended leave of absence program.

Leave for Birth or Adoption of a Child

An unpaid leave of absence of up to 12 months in a single continuous period *may be granted at the discretion of your supervisor or Department Chair*. To be eligible for the leave, you must have at least three years of continuous service, and your employment may not be subject to a collective bargaining agreement. Your leave must begin following the birth of a child, the adoption of a child, or the placement of a foster child into your care. The leave will run concurrently with any other applicable leaves of absence (e.g., FMLA, Disability Leave, etc.) and is available to both eligible female and male employees. In the event both parents are employed by Yeshiva University, only one parental leave will be granted for each newly acquired child.

You are required to return to work upon the expiration of your leave. If you fail to return to work at the University upon the expiration of the Parental Leave, you will be considered to have resigned your employment with the University, effective immediately. Upon request, you may be reinstated to your position before the scheduled expiration of the leave. However, in certain situations, you may not be permitted to return from such leave until the expiration of the period that your leave was requested and was granted. Generally, such restrictions on early return are limited to situations where such return would be disruptive to a project or where the termination of a replacement would occur.

Leave for Care of an Older Child, Member of Your Household, or Parent

You may request a Parental Leave under this policy to care for an older child, a spouse or other individual who resides in your household or an elder parent for periods of extended illness or incapacitation. In those cases, a leave can be granted for up to three months, *at the discretion of your supervisor or Department Chair*, if you have expended all of your accumulated paid time off and FMLA and you provide documentation acceptable to the University that substantiates eligibility under this policy and the need for the leave.

During a period of leave granted under this policy, you remain subject to the general terms and conditions of employment applicable to your employment classification. In the case of leave without pay once FMLA has been exhausted, you are responsible for the cost of benefits continued during the leave and must contact the University Benefits Office to make appropriate arrangements.

If you wish to request a leave of absence under this policy, you may find the form and directions for submission on the Human Resources Department Web site (www.yu.edu/humanresources). Please note that permission must be granted by your Chairperson and Dean, in the case of faculty, or your Senior Administrator and the Dean or Vice President, in the case of staff, before the leave may begin.

The University reserves the right not to approve a leave under this policy when it deems the employee cannot be easily replaced or the extended absence of an employee may be disruptive to its operations. Yeshiva University is committed to supporting employees who have additions to their immediate families with the option to participate in an extended leave of absence program.

A leave of absence, without pay and for a period of up to 12 months in a single continuous period, may be granted to a full-time employee who (i) is the full-time primary care parent during the period of the leave; (ii) has completed at least three years of continuous service; and (iii) is not subject to a collective bargaining agreement; following the birth of an employee's child, the adoption of a child, or the placement of a foster child into the employee's care. The period of Child Care Leave will begin on the date of birth, adoption or foster care placement of the child and may extend up to 12 months following the start date of the leave. This leave will run concurrently with any other applicable leaves of absence (e.g., FMLA, Disability Leave, etc.) and is available to both eligible female and male employees. In the event both parents are employed by Yeshiva University, only one child care leave will be granted for each child.

Employees are required to return to work upon the expiration of their leave. If an employee fails to return to work at the University upon the expiration of the Child Care Leave, the employee will be considered as having resigned his or her employment with the University, effective immediately. Upon request, an employee may be reinstated to his or her position before the scheduled expiration of the leave. However, in certain situations, an employee may not be permitted to return from such leave until the expiration of the period that such employee requested and was granted. Generally, such restrictions on early return are limited to situations where such return would be disruptive to a project or where the termination of a replacement would occur.

Leave other than for birth or adoption: You may request a child care leave under this policy for an older child (less than 18 years of age on the day the leave is granted) if a dependent child or child who resides in the household has an extended illness or period of incapacitation. In those cases, an unpaid leave can be granted for three months if the faculty or staff member has expended all of his or her accumulated paid time off and FMLA, and provides documentation acceptable to the University that substantiates eligibility under this policy and the need for the leave.

During a period of leave granted under this policy, the employee remains an employee at-will and subject to the general terms and conditions of employment applicable to his/her employment classification.

An employee who wishes to request a leave of absence under this policy may find the form and directions for submission on the Human Resources Department Web site (www.yu.edu/humanresources). Please note that permission must be granted by your Dean, in the case of faculty, or your Senior Department Head such as Dean or Vice President, in the case of staff, before the leave may begin.

Professional Conduct

Conflict of Interest

The purpose of this policy is to set standards for the highest ethical conduct with respect to the actions and business relationships of all employees.

You have an obligation to avoid activities or situations that may result in a conflict of interest or the appearance of one. You must not use Yeshiva's position to influence outside organizations or individuals for your direct financial, personal, or professional benefit or that of family members or friends.

You are responsible for recognizing the possibility of a conflict of interest. If you are not certain that a conflict exists, you must err on the side of disclosure. In addition, you must identify and disclose any new potential conflicts as they occur or present themselves.

It is not possible to describe every instance in which a conflict of interest might arise. However, take care if you (or a family member) have a direct or indirect financial or other interest in a business transaction involving Yeshiva, coupled with some degree of influence or control over the outcome. If so, you are vulnerable to the charge that your influence within Yeshiva might advance this private interest or benefit.

Gifts/Gratuities

You are not permitted to solicit or receive any gifts or gratuities of any nature that would, or reasonably could, be expected to influence your responsibilities to the University. Thus, all gifts or gratuities of more than de minimis value (\$25 or less) from companies or individuals doing business or seeking to do business with Yeshiva are prohibited. Obviously, any attempt to offer a bribe should be reported immediately to your supervisor and to the Chief Human Resources Officer.

Personal Purchases

Except where employee discount programs exist, you are prohibited from purchasing personal items from vendors who transact business with the University unless the vendor has a retail operation normally open to the public. Even so, you may not use your employment with the University to influence the vendor in any way. (You must use caution in invoicing personal purchases. To avoid the possibility of error, the invoice should be billed and shipped to your home address.) If you have any questions, contact your supervisor or manager.

Prohibition on Political Contributions

As a not-for-profit organization, Yeshiva funds may not be used for contributions to political candidates or parties. While staff members are free to make such contributions on their own, no reimbursement from the University budget will be provided for such contributions, and no check requests for such purposes will be approved.

Confidentiality Commitment

As an employee of Yeshiva, you may encounter a variety of confidential matters regarding other employees, faculty, staff, students, clients, donors and research. When doing so, it is your responsibility to maintain the highest level of privacy and protection of confidential information for your fellow employees and other members of the Yeshiva community.

Nothing herein shall be deemed to limit an individual's right under the law including, without limitation, an individual's right to discuss the terms and conditions of his or her employment with colleagues or management or to provide information to any government agency in accordance with law.

Personnel Records and Privacy

The Human Resources Department and/or your department maintains a personnel record for all employees. This record contains all documentation related to your association with us – i.e., your employment application, resume, payroll information, performance evaluations, letters of commendations, disciplinary actions, if applicable, etc.

These records are the property of Yeshiva. They are *confidential and can be viewed only* by members of the Human Resources Department or other authorized management staff and appropriate outside agencies. You may review your record at Yeshiva's discretion, by submitting a written request to the Employee Engagement & Development Office. Nothing can be removed from your file.

Health Information

Yeshiva University is a covered entity within the meaning of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) [45 CFR Parts 160 and 164].

No member of the Yeshiva staff shall disclose any individually identifiable protected health information concerning any patient, research participant, student or staff member without prior authorization from the protected individual.

Access to protected health information in the custody of the University shall be restricted to those who need such access as part of their employment, and said access shall be the minimum necessary to perform legitimate University functions.

Educational Records

Yeshiva University is committed to maintaining student educational records in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA). The definition of educational records under the law is quite broad and not limited to academic records.

FERPA gives students the right of access to their educational records, while limiting the disclosure of those records. In general, personally identifiable information derived from educational records may be disclosed only with the students' consent, unless it is directory information (e.g., name, Yeshiva e-mail address, dates of attendance at Yeshiva and school, department or division attended, degrees and awards received, etc.), or unless the law provides an exception that permits disclosure without consent.

One exception allows campus personnel to share information from educational records with other school officials who have a legitimate educational interest. Another exception covers information that is necessary to protect the health or safety of the student or others.

Please note that FERPA's restrictions apply only to information from student educational records that are maintained by the school. They do not apply to personal knowledge derived from direct, personal experience with a student.

Any questions regarding the maintenance of student records or their disclosure should be directed to the Office of General Counsel (212) 960-0051, or GC@yu.edu.

Personally Identifying Information

In the ordinary course of operating its business, Yeshiva obtains tax identification numbers (including Social Security numbers in the U.S.), passport information, driver's license data, residential addresses, personal birth dates, health status information, bank/brokerage account details, tax returns, photos and other personal information about its employees, clients and others who provide goods and services to Yeshiva and its clients. This is usually private and sensitive information that requires confidential treatment and is referred to as "Personally Identifying Information."

General Policy

It is the policy of Yeshiva to comply with all laws and regulations governing the use and disclosure of Personally Identifying Information and to protect the confidentiality of Personally Identifying Information. Yeshiva will protect from improper disclosure all Personally Identifying Information about any individual gathered and stored by Yeshiva.

This policy applies to everyone at Yeshiva: employees, temporary employees, interns, independent contractors, and those employed by our contractors.

Specific Restrictions

While Yeshiva may share Personally Identifying Information internally for administrative purposes and disclose it as required by law, such information:

- Should not be disclosed to third parties
- Should be kept within Yeshiva's secured Technology Resources or its secured office premises, or its authorized off-site storage facilities, except during travel when off-site possession is necessary
- Should not be accessed in the absence of a legitimate business need or objective
- Should be protected by device passwords, encryption, locked carrying cases and the like during travel or when a legitimate business need or objective requires transfer of such information outside of Yeshiva's secured Technology Resources or office premises
- Should not be discarded while still in a readable form; and
- Should be protected by confidentiality and non-disclosure agreements when third party disclosure is required to serve a client or further another University objective.

A Special Note on Social Security Numbers

Social Security numbers are Personally Identifying Information. There are specific laws and regulations restricting the use and disclosure of Social Security numbers, protecting confidentiality of them, and limiting access to them. Therefore, as general rules: do not ask any individual for his or her Social Security number (except to comply with lawful requirements of government agencies or as permitted by law, for example, for credit checks); do not use any individual's Social Security number as an ID number, password, account number or other purpose; and if you obtain an individual's Social Security number, do not disclose it to any third party (except as required or permitted by law) or store or transmit it in a manner which is not secure and confidential.

Notice of Breaches

In the event of a breach of the data security imposed by this policy or any law, regulation or directive, immediate notice should be given to the Chief Human Resources Officer at (718) 430-2541.

Solicitations, Distributions and Use of Bulletin Boards

You may not solicit another employee during working hours or distribute literature in work areas. In addition, you may not disturb the work of others. Persons not employed by Yeshiva may not solicit either.

Bulletin Boards

University bulletin boards are for posting or distributing the following:

- Notices containing matters directly concerning Yeshiva business
- Business announcements that also apply and are of interest to you.

You should check the bulletin boards periodically for new and/or updated information. You should also follow the rules set forth in posted materials and never remove anything from the board itself.

Outside Employment

You may not accept outside employment if it may potentially interfere with your employment at Yeshiva or affect your job performance. In addition, the activity or the outside position must not subject the University to criticism, unfavorable publicity or conflict of interest. All outside employment must be disclosed to your supervisor, who has a right to prohibit such employment.

Violence in the Workplace

Yeshiva strongly believes that all employees should be treated with dignity and respect. Acts of violence will not be tolerated. Any instances of violence must be immediately reported to Security, your supervisor and/or the Human Resources Department. All complaints will be fully investigated. Yeshiva will promptly respond to any incident or suggestion of violence. Violation of this policy will result in disciplinary action, up to and including immediate discharge.

Meeting Performance Standards

All employees are expected to meet Yeshiva's standards of work performance. Work performance encompasses many factors, including attendance, punctuality, personal conduct, job proficiency and general compliance with Yeshiva's policies and procedures.

If you fail to meet these standards, Yeshiva may, under appropriate circumstances, take corrective action. The intent of this process is to document performance issues while providing a reasonable time within which to improve performance. The process is designed to encourage development by providing guidance in areas that need improvement, such as poor work performance, attendance problems, personal conduct, general compliance with Yeshiva's policies and procedures, and/or other disciplinary problems. Yeshiva may give you the opportunity to improve your performance. However, since your employment is at-will, Yeshiva reserves the right to dismiss you at any time.

Compensation

Payment of Salary

Yeshiva's pay schedule can differ depending on position. Generally, most staff are paid on a bi-weekly schedule. Faculty and certain senior administrative staff are paid monthly.

If the normal payday falls on a Yeshiva-recognized holiday, compensation will be distributed one workday prior to the normal schedule. Under no circumstances will Yeshiva release any paychecks prior to the announced schedule.

You will receive a statement of earnings each pay period indicating gross pay and applicable deductions.

The amount of federal withholding is affected by the number of exemptions you claim on your Form W-4, Employee's Withholding Allowance Certificate. If your marital status changes or the number of exemptions previously claimed increases or decreases, you must submit a new Form W-4 to the Payroll Department.

Overtime Pay – Non-Exempt Employees

At times the workload in your department may require your supervisor to request that you work longer hours than your regular schedule. If you are an employee who holds an exempt position, you are expected to work the hours necessary to complete your assigned tasks and projects. Employees in exempt positions do not receive overtime pay. Non-exempt employees are eligible to receive overtime pay. However, a supervisor's prior approval is required before non-exempt employees can work overtime. Failure to receive your supervisor's approval before beginning the overtime work may result in disciplinary action.

Each day, you must record the time you start and finish work on a time record. Your supervisor must approve your hours worked at the end of each pay period. All additional overtime worked must be approved by a supervisor in advance each day.

Employees represented for collective bargaining purposes should refer to the collective bargaining agreement for details outlining overtime pay. All other overtime-eligible employees should consult Human Resources for specifics concerning overtime pay.

Time Records

Attendance is recorded daily by each department and is submitted to the Payroll Department bi-weekly. Our attendance records are University records, and care must be exercised by overtime-eligible employees in recording the hours worked, overtime hours, and absences. You are not to clock or sign in or out for other employees: If you do so, you may be subject to disciplinary action. Please refer to your department's administrator or your immediate supervisor for specifics on time-recording procedures.

Exempt employees are not required to sign in or out. However, business trips, vacation, sick and personal days must be recorded on the attendance sheet by the employee designated to monitor attendance.

Benefits

Benefit Plans

Yeshiva University provides generous and comprehensive benefits, including:

- Health
- Dental
- Long-Term Disability
- Life
- Flexible Spending Account Reimbursement
- Mass Transit and Parking Reimbursement
- Long-Term Care
- Employee Assistance Program
- Retirement Plans
- Tuition Support.

You are generally eligible to participate in these University programs if you are a regular, full-time or regular, part-time employee scheduled to work 20 or more hours per week. In most cases, benefits are described in more detail in the contracts, insurance certificates or plan documents, which are the legal documents that govern the administration and benefit provisions of each program. You can find these documents by clicking here (www.yu.edu/humanresources).

Leaving Yeshiva University

Resignation

A resignation is a voluntary termination of employment initiated by an employee. If you decide to resign for any reason, your supervisor and the Human Resources Department would like the opportunity to discuss the resignation before final action is taken. We request that you provide Yeshiva with a written two-week advance notice period. Bear in mind that vacation days or personal days (if applicable) may not be included in the notice period. Yeshiva will only compensate you for accrued unused vacation if you work throughout the notice period. If, as sometimes happens, your supervisor prefers that you leave prior to the end of your notice, you may be paid for the remainder of that period at the discretion of Yeshiva.

Dismissals/Termination

Yeshiva employees not represented for collective bargaining – and who have not signed a contract of employment – are “employees-at-will.” This means that no one has a contractual right, express or implied, to remain in Yeshiva’s employ. Yeshiva may terminate an employee’s employment, without cause, and with or without notice, at any time for any reason.

In the event of your termination, you are not entitled to any severance or payments whatsoever, aside from any compensation or monies that may be due and/or payable to you under the express terms of this Handbook.

Misconduct

The following guidelines may be applied at the discretion of Yeshiva.

Any employee whose conduct, actions or performance violates or conflicts with Yeshiva’s policies may be terminated immediately and without warning.

The following are some examples of grounds for immediate dismissal:

- Breach of trust or dishonesty
- Conviction of a felony
- Willful violation of an established policy or rule
- Falsification of University records
- Gross negligence
- Insubordination
- Violation of the Anti-Harassment and/or Equal Employment Opportunity Policies
- Time card or sign-in book violations
- Undue and unauthorized absences or lateness from duty during regularly scheduled work hours
- Deliberate non-performance of work

- Larceny or unauthorized possession of, or the use of, property belonging to any co-worker, visitor or student of Yeshiva
- Possession of dangerous weapons on the premises
- Unauthorized possession, use or copying of any records that are the property of Yeshiva
- Unauthorized posting or removal of notices from bulletin boards
- Marring, defacing or other willful destruction of any supplies, equipment or property of Yeshiva
- Failure to call or directly contact your supervisor when you will be late or absent from work
- Fighting or serious breach of acceptable behavior
- Violation of the Alcohol or Drug Policy
- Theft
- Leaving the work premises without authorization during work hours
- Sleeping on duty.

This list is intended to be representative of the types of activities that may result in disciplinary action. It is not exhaustive, is not intended to be comprehensive and does not change the employment-at-will relationship between the employee and Yeshiva.

Post-Resignation/Termination Procedures

Exit Interview

An exit interview is scheduled for all employees who are terminating employment. Human Resources is responsible for scheduling an exit interview before the employee's last day of employment and for arranging the return of all Yeshiva-owned or -issued property, including:

- Photo Identification Card
- Office keys
- University manuals
- Any additional University-owned or -issued property.

Benefits

Benefits (life, medical and dental) end on your last day of employment. An employee, unless dismissed for gross misconduct, has the option to convert to individual life insurance, and/or to continue medical/dental benefits in accordance with the Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations. Specific information will be provided at the exit interview.

Final Paycheck

To receive your final paycheck, you must return all Yeshiva property. This final paycheck will be made available during the next normal pay period.

Contact Information

DEPARTMENT	CONTACT INFORMATION	
Human Resources Department	Yvonne Ramirez Chief Human Resources Officer (718) 430-2541	yvonne.ramirez@einstein.yu.edu www.yu.edu/humanresources
Human Resources Services	Tracey Wilmot (718) 430-2556 Maryellen Meehan (212) 960-5400 ext355	tracey.wilmot@einstein.yu.edu maryellen.meehan@einstein.yu.edu careers@yu.edu
Diversity & Affirmative Action	Renee Coker (718) 430-3771	renee.coker@einstein.yu.edu
Employee Engagement & Development	Michael Sica (212) 960-5400 ext6678 Natasha Reid (718) 430-3348	sica@yu.edu eedinfo@yu.edu
Labor Relations	Edward G. Tighe (718) 430-2552 Michael Sperling (212) 960-5295	edward.tighe@einstein.yu.edu sperlin@yu.edu
University Benefits	Michael Bloom (718) 430-2554	michael.bloom@einstein.yu.edu
Payroll Department	Maria Lombardozi (718) 430-2207 (212) 960-5466	maria.lombardozi@einstein.yu.edu
Safety Department	Anthony Chibbaro (718) 430-4150	anthony.chibbaro@einstein.yu.edu
Legal Department	Andrew J. Lauer (212) 960-0051	GC@yu.edu
Employee Assistance Program	(888) 293-6949	www.horizoneap.com
Security	Don Sommers (212) 960-5200 Dan Braccia (718) 430-2180	security@yu.edu dan.braccia@einstein.yu.edu
Internal Audit	Amanda Grace (212) 960-5456	grace@yu.edu
Global Compliance Hotline	(866) 447-5052	https://www.integrity-helpline.com/yu.jsp
ITS Department	Help Desk (212) 960-5294	helpdesk@yu.edu

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Disclosure Form

PURSUANT TO THE POLICY REGARDING CONFLICT OF INTEREST FOR EMPLOYEES OF YESHIVA UNIVERSITY

I hereby disclose the following activities, interests or relationships in which I am, or may become, involved to determine if they violate the University's policy regarding Conflict of Interest.
(Adequate detail must be provided; if necessary, additional sheets should be attached.)

Name (print)

Date

Address

Signature

Extension

This form is to be submitted to:

Chief Human Resources Officer
Yeshiva University
Jack & Pearl Resnick Campus
1300 Morris Park Avenue
Belfer Educational Center, 1209
Bronx, New York 10461



Receipt for Employee Handbook

I acknowledge that I have received a copy of Yeshiva University's ("the University") Employee Handbook. I plan to read it thoroughly. If there is any policy, provision or benefit that I do not understand, I will ask the Human Resources Department to clarify it.

I also understand that unless there is an exception, the University is an at-will employer, which means that employment is not for any fixed period of time. In that case, either the University or I can terminate employment at any time and for any reason without prior notice. I also understand that no supervisor or other representative of the University has the authority to enter into an agreement for employment for a specific period of time, or to make any agreement contrary to the above (except for the President, Provost or Human Resources).

In addition, I understand that the Handbook describes the University's policies and practices in effect on the date of publication and that nothing written here creates a promise or binding contract of future benefits. I also understand that these policies and procedures are continually evaluated and may change or end at any time with or without notice in the sole discretion of the University.

I acknowledge that I am responsible for knowing all policies and abiding by them. I further acknowledge that this Handbook may be updated and that I am responsible for knowing these updates by periodically checking Yeshiva's Web site (www.yu.edu).

Please sign and date this receipt and return it to the Human Resources Department.

Date

Name (print)

Signature





Yeshiva University
Human Resources Department
Employee Handbook

December 2009

Nissel Ex 1 - 58

**SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF**

(SUBMITTED BY MOVING PARTY)

Date: July 5, 2022

Case # 2022-02726

Title YU Pride Alliance, et al., v. Yeshiva University, et al.

Index/Indict/Docket # 154010/2021

of

Matter _____

Appeal by Defendants from Decree ☒ Order ☐ Judgment ☐ of ☐ Supreme ☒ Surrogate's ☐ Family ☐ County New York
Court entered on June 24, 2022

Name of Judge Honorable Lynn R. Kotler

Notice of Appeal filed on June 24, 2022

If from administrative determination, state agency n/a

Nature of action or proceeding Plaintiffs commenced this action seeking damages, a declaratory judgment and injunctive relief, arising from alleged NYCHRL violations.

Provisions of ☒ order ☐ judgment ☐ decree appealed from Denial of Defendants' converted motion for summary judgment, grant of plaintiffs' cross-motion for summary judgment, etc., and each and every part of said order by which Defendants are aggrieved.

This application by appellant respondent is for staying the execution/enforcement of the order which directed Yeshiva Univ. and President Berman to immediately recognize YU Pride Alliance as an official campus club.

If applying for a stay, state reason why requested A stay is necessary to avoid irreparable injury and to Defendants-Appellants' First Amendment Rights, to avoid prejudice and maintain the status quo, and the appeal is likely to succeed on the merits.

Has any undertaking been posted No If "yes", state amount and type _____

Has application been made to court below for this relief No If "yes", state Disposition _____
Has there been any prior application here in this court No If "yes", state dates and nature _____

Has adversary been advised of this application Yes Does he/she consent No

Attorney for Movant

Name Kaufman Borgeest & Ryan LLP

Address 120 Broadway, 14th Floor, New York, NY 10271;

**The Becket Fund for Religious Liberty

1919 Pennsylvania Ave. NY, Washington, DC 20006**

Tel. No. (914) 449-1000

Email dbloom@kbrlaw.com; ebaxter@becketlaw.org **

Appearing by David Bloom, Esq.

**application for pro hac vice admission on behalf of

Eric Baxter, Esq. pending**

Attorney for Opposition

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

600 Fifth Avenue, 10th Floor

New York, NY 10020

(212)763-5000 krosenfeld@ecbawm.com

MORRISON & FOERSTER LLP

250 W. 55th Street

New York, New York 10019-9710

(212) 336-4482

tfoudy@mofo.com

(Do not write below this line)

DISPOSITION

Justice

Date

Motion Date _____ Opposition _____ Reply _____

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY.

Court Attorney

David Bloom

From: David Bloom
Sent: Friday, July 1, 2022 4:18 PM
To: Eric Baxter; Katie Rosenfeld
Cc: Will Haun; Abigail Smith; 'tfoudy@mofo.com'
Subject: RE: Appeal No. 2022-02726--YU Pride Alliance v. Yeshiva University--Notice re OSC to Stay

Katie,

To be clear, our proposed OTSC will be efiled on Tuesday July 5th, and there will be no need to appear in person thereafter unless instructed to do so by the court.

Thanks.

David Bloom

Sent with BlackBerry Work
(www.blackberry.com)

From: Eric Baxter <ebaxter@becketlaw.org>
Date: Friday, Jul 01, 2022, 4:05 PM
To: Katie Rosenfeld <krosenfeld@ecbawm.com>
Cc: David Bloom <dbloom@kbrlaw.com>, Will Haun <whaun@becketlaw.org>, Abigail Smith <asmith@becketlaw.org>
Subject: Appeal No. 2022-02726--YU Pride Alliance v. Yeshiva University--Notice re OSC to Stay

Dear Katie,

Pursuant to CPLR 2214 and 22 NYCRR § 202.7, I'm emailing to advise you that Appellants-Defendants in the above-mentioned matter will be seeking an order to show cause why the enforcement of Judge Kotler's June 14, 2022 order should not be stayed pending appeal. Please let us know if you will consent to the relief requested.

Sincerely,
Eric

Eric S. Baxter
Vice President & Senior Counsel
Becket — Religious Liberty for All
1919 Pennsylvania Ave NW Suite 400
Washington, DC 20006
202-349-7221 | @becketlaw

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