

# 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 \_\_\_\_\_

YESHIVA UNIVERSITY et al.

MOTION SEQ. NO. 6 and 13

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):

| <b>Papers</b>  | <b>Numbered</b> |
|--|-----------------|
| 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             |
| <br>Motion Sequence 013                              |                 |
| N/Motion, exhs, <i>amicus</i> brief .....            | 308-324         |

-----X  
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.