# In the Supreme Court of the United States

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

Applicants,

v.

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

Respondents.

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit

### **RESPONDENTS' APPENDIX OF EXHIBITS** VOLUME 3 OF 3 (Pages R. App. 788 to R. App. 1153)

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# Exhibit 24

Yeshiva University

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### Yeshiva University Mission Statement



At Yeshiva University, our mission, Torah Umadda, is to bring wisdom to life through all that we teach, by all that we do and for all those we serve.

- 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.

#### 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 give our graduate students the wisdom to succeed in both their professions and their lives.

#### For Faculty

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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.

At Yeshiva University, teaching the knowledge and values that bring wisdom to life is not only our mission, it is our proud tradition.

Welcome to Yeshiva University

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# Exhibit 25



# Pathways to Our Future

# The Strategic Plan for Yeshiva University

2016 - 2020

SEPTEMBER 29, 2016

YU00928

R. App. 791

YU00929 R. App. 792

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### What Defines YU

Mission, Vision and Values

The University rests upon a foundation that both defines it and separates it from every other institution. We embody a *Unique Mission*:

Yeshiva University is the nation's premier Jewish, student-centered university devoted to teaching, learning and research. Our commitments to Torah, rigorous secular curricula, intellectual exploration, and service to community prepare each student for a personally and professionally successful, meaningful life.

As the YU community works continuously to fulfill its Mission, we must also be looking toward the future in order to ensure *Nowhere but Here* retains its relevance for all our tomorrows. Our *Vision:* 

Yeshiva University will infuse our unique mission into a dynamically growing, changing market and achieve a global impact by supporting students with superior teaching and research. In partnership with the community, we will strengthen society through the continuous advancement of knowledge for the betterment of the Jewish people and humanity as a whole.

Students, faculty, staff and administrators across the university share the responsibility for fulfilling our Mission and realizing our Vision by pursuing purposes and principles that adhere to our *Values:* 

- Promote a Jewish community that champions Torah Umadda, love for humankind, and support for the State of Israel
- Pursue excellence in teaching, learning, and research while supporting academic freedom
- Embrace an integrated approach to work, study, and living
- Be reflective, bold, and forward-looking in our thinking and performance
- · Hold ourselves and each other to the highest ethical standards
- Respect the rights and views of others and each other
- Ensure we maintain a welcoming, supportive community
- Marshal the resources of Yeshiva University to shape, enrich, and inspire the contemporary Jewish community

# **Strategic Priorities**

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The world of 2020 will undoubtedly contain a variety of new developments in higher education, information technology, college financing models, student demographic shifts, the role of Israel in our community's priorities, globalization, and the emergence of new kinds of institutions in the for-profit and not-for-profit sectors. In order to succeed in this ever-evolving environment-to ensure the success of our Mission and the realization of our Vision-we must continually reinvent a plan that reflects strategic thinking and agility in coping with change and imagining new possibilities.

Nothing suggested in the plan, however, can be accomplished without the sound financial stewardship of the University's resources. Thus, the overarching goal of *Pathways to Our Future* is to:

#### Refine and Implement a Sustainable Business Model to Provide the Underpinning for Our Future Growth and Change.

Supporting this goal are five broad Strategic Priorities, each crucial to our status as both a University and as a movement:

- 1. Enhance Student Success and Wellbeing-Academic, Professional and Personal
- 2. Advance Faculty Development and Excellence in Teaching and Research
- 3. Build Enrollment and Academic Offerings through Mission- and Market-Driven Programming
- 4. Operationalize Excellence-Accountability, Transparency, and Systems Implementation
- 5. Expand Community Partnership, Engagement and Impact

Successfully executed, these Strategic Priorities will enhance YU's competitiveness in a rapidly-changing environment of higher education while increasing its relevance to the Jewish world and beyond.

### Strategic Imperative 1: Enhance Student Success and Wellbeing

YU prides itself on preparing students for success in the lives they lead and the careers they build. Our comprehensive approach to education and service to the community also depends on the range and quality of their experiences and interactions with the University, beginning before their first steps on campus. Everything from campus life and programs to support structures and staffing must be ever more effectively help students achieve success, academically, personally and professionally.

#### Actions:

- 1. Develop a "one stop shop" for shared administrative services for students by realigning and/or creating support structures and reducing manual processes to improve efficacy and efficiency. A combined Office of Student Services will allow cross-trained advisors to help students with many of the routine tasks typically handled by the Registrar, Student Finance, Admissions, Student Life, Security, Career Services, Human Resources, Housing, Advising, Facilities and Information Technology Services. The crucial religious needs and goals of the students will be incorporated whenever appropriate.
  - a) Implement new Office by fall 2018.
  - b) Benchmark student and staff satisfaction; survey annually to measure effectiveness; increase satisfaction by 20 percent within six months of implementation.
- 2. Create individualized and integrated academic, spiritual, social, physical/athletic and career/ professional programs to ensure maximal student success; bolster and leverage the YU professional network in order to increase placements and strengthen communities.
  - a) Implement by fall 2018.
  - b) Conduct a student needs assessment; benchmark measures—including employer metrics by fall 2017; conduct an annual survey to demonstrate success; review retention numbers and determine potential trends.
- 3. Provide a safe and secure environment in today's turbulent world. While the safety and security of YU campuses has always been paramount, it's crucial to take advantage of and implement new technology and processes best suited for our urban locations.
  - a) Implement new mobile security app by spring 2017.
  - b) Ensure students are aware of active shooter protocols, participate in drug and alcohol education programs and be aware of how to help friends in trouble.
  - c) Conduct reviews at least twice yearly of new products, procedures and cybersecurity; seek government assistance to enhance ongoing efforts.
- 4. Develop attractive, more wide-ranging housing and food options for students to improve the residential environment.
  - a) Create cooking facilities for students on campus by fall 2017.
  - b) Upgrade all dormitory lounges and communal spaces by fall 2017.
  - c) Create varied meal plan options; improve quality and variety of food available on campus; monitor popularity of selections and revise offerings as necessary.

- 5. Create a greater sense of pride and school spirit. We will:
  - a) Form a committee to develop new activities, traditions and swag that will keep current students engaged and alums more closely connected to the University by spring 2018.
  - b) Increase participation in or attendance at athletic events.
  - c) Enhance the campus and local environments by showcasing student artwork across all campuses; form an advisory group from all YU communities and propose plans by spring 2017. Coordinate with professors and solicit submissions on a twice yearly basis.

Strategic Imperative 2:

# Advance Faculty Development and Excellence in Teaching and Research

The knowledge, experiences and mentorship contributed by faculty are some of the most fundamental drivers of student success. We will work to ensure the quality of ongoing scholarship, enhance teaching and learning experiences, increase support services, and raise the overall satisfaction of faculty.

#### Actions:

- 1. Develop a plan with benchmarks by summer 2017 to improve faculty compensation (salary and benefits) that meets the collective goals of the University.
- 2. Hire a consultant by summer 2017 to clarify university shared governance and school/college faculty governance within each academic unit and across the university to give voice to faculty values and concerns; increase communication among faculty, administration, and staff by working with the Faculty Council and individual faculty interested in coordination.
- 3. Implement a calendar of meetings so that faculty can provide input into policies and practices of ITS, libraries, human resources, and admissions by fall 2017.
- 4. Continue to enhance pre- and post-grant support, providing assistance to faculty and staff for a combination of institutional grants and individual faculty grants.
  - a) Measure the numbers of grant applications, recipients, awards, and amounts of support; assess by examining impact factors such as dollars brought in and journal citations reported beginning in fall 2016.
- 5. Create an institutional repository of research and scholarship to recognize and publicize faculty achievements.
  - a) Ensure faculty web pages—bios, publications, awards, memberships, etc.—are updated by spring 2017.
  - b) Produce an annual digital catalog of university authors beginning in spring 2018.
- 6. Create a Center for Teaching and Innovation to cultivate new classroom practices and curricula.
  - a) Develop a plan and determine staffing and funding needs by summer 2017.
  - b) Raise funds to support the development of the Center by spring 2018.
  - c) Institute an annual faculty development day beginning fall 2018.

## Strategic Imperative 3: Build Enrollment and Academic Offerings through Missionand Market-Driven Programming

Yeshiva University seeks to bring its programs to new and current students through planned, achievable growth. In undergraduate programs across the country, new degrees are being developed to respond to student and market needs. Increasingly, graduate education is also becoming a requirement for job placement and success. The U.S. Bureau of Labor Statistics projects that employers will routinely request graduate training and credentials. Thus, YU must leverage its academic prestige, rigor, inherent spirit of entrepreneurship, and New York City location to offer degrees and programs consistent with high growth areas of employment. YU will grow its enrollment by building and extending its intellectual brand, retaining the hearts and minds of the Modern Orthodox community while expanding beyond our traditional constituency.

#### Actions:

- 1. Enhance and expand academic program offerings.
  - a) Implement a standard methodology for determining new program viability and necessary realignments of existing programs to ensure that graduates meet industry expectations for employment by summer 2017. The methodology must include a marketing plan and budget plan that details both costs and expected revenues.
  - b) Launch an associate in science (AS) degree in management for the 2017-2018 academic year. Launch additional AS degrees, as driven by student needs and demand.
  - c) Launch new degrees leading to in-demand, emergent, high-growth careers by creating two new baccalaureate programs, and eight new master's programs that open additional opportunities for students.
  - d) Identify new or expand existing baccalaureate-to-master's pathways increasing student enrollment.
  - e) Identify and revitalize dormant master's degrees.
  - f) Add tracks within existing master's degrees to increase programmatic choices.
  - g) Develop or revise two self-sustaining, revenue generating professional graduate certificates.
  - h) Continue to shape summer school offerings to respond to student needs and demand.
- 2. Increase student enrollment in all schools and colleges.
  - a) Evaluate the current state of marketing strategies to extract successful methods of outreach that ensure higher yields; implement best national practices that have proven to expand markets.
  - b) Distinguish between institutional branding and programmatic marketing/enrollment management. Consider a diversified institutional brand as professional programs will be designed to reach both traditional and new markets.
  - c) Look for cross-marketing across schools/colleges, and cross-degree opportunities within existing schools/colleges to develop (low-cost) new programs to reach new audiences.
  - d) Develop school-by-school business plans by spring 2017; collaborate with appropriate partners to extend the educational reach of YU into local communities.
  - e) Improve the number of students per program, track the number of students in classes, and refresh the curriculum as appropriate.

- f) Develop a plan to share services across schools, including market research, employer outreach, and relationship building, establishing advisory boards and writing proposals by spring 2017.
- g) Maximize and make efficient use of academic space in all buildings (see also Strategic Imperative 4, Action 7).

# Strategic Imperative 4: Operationalize Excellence–Accountability, Transparency, and Systems Implementation

Yeshiva University must have an efficient, sustainable operation in order to deliver academic excellence and professional fulfillment. These elements include increasing our financial strength, enhancing the interactions between the University and its internal communities, and making YU an attractive place to work and grow academically and professionally.

#### Actions:

- 1. Develop a plan with benchmarks by summer 2017 to improve staff compensation (salary and benefits) that meets the collective goals of the University.
- 2. Increase employee performance and satisfaction, promote a "customer service" orientation, and invest in employee training and development.
  - a) Evaluate and enhance employee orientation, and ensure each employee begins his or her career with an informed, positive start.
  - b) Assess and refine in-house training and workshops, and review need for mandatory and/or recurrent training by spring 2017.
  - c) Reintroduce performance reviews and supply appropriate training to managers by fall 2016.
- 3. Streamline and automate HR, Advancement, and Academic Affairs processes to eliminate or reduce manual operations and increase the speed and fidelity of work.
  - a) Implement Banner Mobile within six to eight months following approval of the capital budget.
  - b) Implement Banner Flexible Registration for online course recruitment within six months following approval of the capital budget.
  - c) Deploy state-of-the art Advancement and Alumni systems to help increase donations by the end of 2017.
- 4. Improve YU's technology infrastructure and establish a technology governance process to vet and prioritize technology projects to control/reduce University operating costs.
  - a) Form an ITS governance group by summer 2017.
  - b) Reduce/eliminate custom solutions (e.g., registration) through the introduction of Banner XE modules beginning in fall 2017 and implementing through 2019.
  - c) Seek commercial partnerships that will lower/eliminate operating costs by summer 2017.
  - d) Reduce the University's IT risk profile by increasing security awareness through compulsory training. Create formal disaster recovery / business continuity planning plans by spring 2018.
  - e) Modernize classroom/library technology and support; provide consistent technology in support of instruction (i.e., LMS); initiate assessments and life cycle planning summer 2017.
  - f) Identify and deploy project management solutions(s) across YU functional and operational areas by summer 2017 to track and analyze time, cost and quality of products and services.

- 5. Refresh the University's digital communications.
  - a) Relaunch YU's web site—yu.edu—and create a more inviting, navigable and up-to-date user experience. Introduce new yu.edu home page, top-level school pages and a new content management system by February 2017. Revise all content by March 2018.
  - b) Improve internal communication and access to information with the implementation of a single sign-on (SSO) University intranet. The intranet will be an important way to reinforce University branding and become a one-stop-shop for news, HR systems, finance and procurement, calendars and events, and directory. ITS and Communications and Public Affairs (CPA) to establish an intranet steering committee and develop a work plan by the end of 2016.
  - c) Conduct a review of all school and program social media sites to ensure they are active and meet University standards by the fall of 2017.
- 6. Elevate the reputation of the University by increasing visibility and recognition, and addressing issues that might negatively impact it in a timely manner. Disseminate YU achievements, thought leadership, and contributions to society internally and externally.
  - a) Centralize and enhance CPA functions to harmonize marketing, advertising and public relations efforts, and gain economies of scale by spring 2017. Develop individual strategic marketing and communication plans for each school and program.
  - b) Centralize the YU Events Office and provide a one-stop-shop for planning, procurement and implementation by the end of 2016.
  - c) Develop a digital repository of research and scholarship and an annual catalog of university authors by the end of 2018.
- 7. Maximize our space utilization from occupancy and financial perspectives across all campuses.
  - a) Complete a space utilization study by fall 2016.
  - b) Evaluate the best uses of YU-owned real estate by fall 2016.

## Strategic Imperative 5: Expand Community Partnership, Engagement, and Impact

Yeshiva University is a center of both higher education and the Modern Orthodox movement—academics and community involvement are inseparable elements in the DNA of YU. Strengthening our community and alumni engagement will help us fulfill our Mission and reach our Vision. We must seek the advocacy and financial support necessary to strengthen our platform, which will also serve to showcase YU to alumni, potential students, donors, and the Modern Orthodox community.

#### Actions:

- 1. Review, update, and revise as appropriate a comprehensive approach to fundraising to address the endowment, capital needs and annual giving.
  - a) Grow the number of confirmed bequest commitments by 50 per year.
  - b) Explore opportunities for donor support and naming rights for new initiatives named in this Strategic Plan, including Office of Student Services, Faculty Research Fellowships, Center for Teaching and Innovation, and new academic offerings.
  - c) Demonstrate the value of being a YU alumnus and increase engagement to create an ongoing, reliable source of financial support; expand alumni fundraising—including "pay for play" networking groups—and increase alumni giving from 16 percent to 20 percent by the end of 2019.
  - d) Generate a minimum of \$35 million in current use funds thorough increased scholarship support, annual giving, and YU trustee leadership gifts.
- 2. Connect the internal and external YU communities; build a national infrastructure of YU ambassadors to promote YU's Torah Umadda approach; engage with alumni, teachers, rabbis, guidance counselors, youth leaders, Israel schools, and camp counselors.
  - a) Redesign the speaker's bureau and increase exposure for Administration, Roshei Yeshiva, faculty and students through appropriate platforms, committees, and news media. Reach 25 communities per year with speakers and 20 communities a year through professional placements and strategic planning, with the top five communities being Los Angeles, Toronto, Chicago/Cleveland, South Florida, and the New York/New Jersey area.
  - b) Provide educational materials, learning programs and create a suite of marketing and communications materials and guides to support these efforts; designate a professional in charge of implementing an interdepartmental strategy and coordinate community events including Shabbatonim, alumni programs, Institutional Advancement gatherings, admissions meetings and the use of Yeshiva College, Revel, Azrieli, RIETS, and other academic faculty in engaging and providing diverse offerings for communities from YU by fall 2016.

- 3. Secure our place as the intellectual and spiritual center of the Modern Orthodox community through publications and programs stressing our unique mission and identity. This will also require bridging the gaps among Roshei Yeshiva, YU public intellectuals, and our constituent communities, enabling communities to turn to Yeshiva for guidance in contemporary halachic and hashkafic matters.
  - a) Hold planning sessions by fall 2016 and begin implementation by winter 2017.
  - b) Repurpose and update selected materials in the Orthodox Forum on an ongoing basis and make them more user-friendly for distribution to targeted communities.
- 4. Expand the government and community relations function to further build and nurture local, state, and federal relationships and monitor appropriate issues, legislation, and policies which may impact the University.
  - a) Hire a director of government relations by fall 2016 to focus full time on further solidifying and expanding our relationships, and identifying grant and funding opportunities. CPA and Government and Community Relations will work on an ongoing basis to monitor and address key issues.
  - b) Meet regularly with trade and professional associations, local officials, and business and community leaders.
  - c) Engage YU staff, faculty and students in determining their volunteerism interests and priorities. Develop a comprehensive list of community involvement by university programs, faculty, staff, student clubs, etc. by spring 2017, and identify opportunities for further development.
  - d) Assess hosting an annual community event—YU Washington Heights Day—commemorating YU's establishment in the neighborhood to bring together YU and its community in a celebration of education, arts, food, etc. by spring 2017.

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### Strategic Planning Committee

Joshua Joseph, Senior Vice President, Chair+ Karen Bacon, Dean of Undergraduate Faculty of Arts and Sciences Selma Botman, Provost and Vice President for Academic Affairs Rabbi Kenneth Brander, Vice President for University and Community Life+ Daniel Gordon, Chief of Staff+ Russell Falkenstein, Consultant with Alvarez and Marsal Jake Harman, Vice President and Chief Financial Officer Marina Holz, Associate Professor of Biology at Stern College James Kahn, Chair of Economics Department Avi Lauer, Vice President for Legal Affairs, Secretary and General Counsel Will Lee, Associate Professor of English at Yeshiva College Melanie Leslie, Dean of Cardozo Law School Seth Moskowitz, Vice President for Institutional Advancement Paul Oestreicher, Executive Director of Communications and Public Affairs Daniella Penn, Stanton Fellow Rabbi Marc Penner, Dean of RIETS Lawrence Siegel, Dean of Ferkauf Graduate School of Psychology

## Task Force Members

Joe Bednarsh, Athletic Director Aliza Berenholz, Senior Director of Events Ed Berliner, Professor of Physics, Director of Science at Yeshiva College Alex Citanna, Professor of Economics Anna-Lisa Cohen, Associate Professor of Psychology Jonathan Cohen, Director of Operations at the Center for the Jewish Future Joseph Dandic, Controller, Finance Department Jade Docherty, Associate Dean at Wurzweiler School of Social Work Chaviva Fisher, Comptroller and Director of Finance Robert Friedman, Director of Student Finance Rabbi Yaakov Glasser, Dean of the Center for the Jewish Future Paul Glassman, Director of University Libraries+ Scott Goldberg, Associate Professor at Azrieli Graduate School of Jewish Education and Administration Marc Goldman, Executive Director of Career Services Rabbi Yosef Kalinsky, Dean of Undergraduate Torah Studies Nathaniel Kane, Associate Vice President for Budget and Management Analysis Rabbi Akiva Koenigsberg, Associate Registrar Aliza Abrams Konig, Assistant Principal at YUHSG

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### **Advisers**

Richard Joel, President, Yeshiva University Laizer Kornwasser, Member, Yeshiva University Board of Trustees Matt Maryles, Member, Yeshiva University Board of Trustees Moshael Straus, Chairman, Yeshiva University Board of Trustees

+ Task Force Chair

#### 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

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# Exhibit 26

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Yeshiva University Career Center **CLASS OF 2018** Post-Graduation Destinations Survey

Susan Bauer Executive Director June 2018

The Yeshiva University Career Center conducted a post-graduation survey of 579 undergraduate students, who completed YU in the 2018-2018 academic year as indicated by Banner and the Registrar's office. Through the outreach efforts of the Career Center, including online and phone surveys, internal data on YU employment and graduate school enrollment, as well as reliable external sources such as LinkedIn, the overall results are included for 80% (N=463) of the Class of 2018. The methodology included data for Summer 2017, January 2018, and May 2018 graduates, consistent with guidelines set by the National Association of Colleges and Employers (NACE).

# **SUMMARY**

93%

of undergraduate Class of 2018 had postgraduation destinations either at graduation or within six-months of graduating

80% of graduates responded to survey or were accounted for through reliable internal and external sources (knowledge rate)

# **90.5%** of graduates

reported that their position was strongly or moderately related to their field of interest

# 80%

# **74%** of graduates

held one or more internships/ part-time jobs during their time at YU

#### Top Industries of Employment

- Accounting
- Education
- Finance Services
- Health Care/Medicine
- Jewish Communal Service
- Marketing

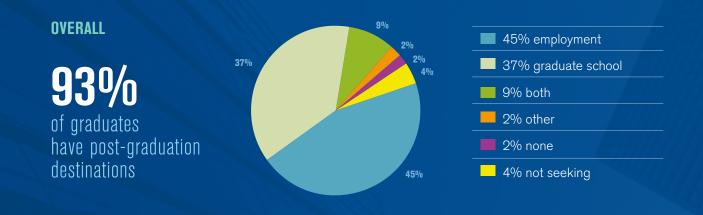
#### Top Areas of Graduate/ Professional Study

- Dentistry
- Education
- Law
- Medicine
- Nursing
- Social Work



Yeshiva University Career <u>Center</u>

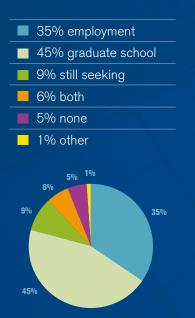
# **CLASS OF 2018 CAREER OUTCOMES**



### **BY COLLEGE**

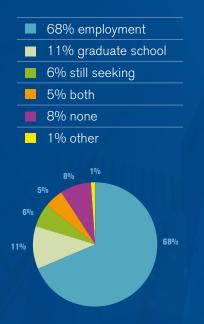
**90%** of Stern College for

Women (SCW) graduates have post-graduation destinations



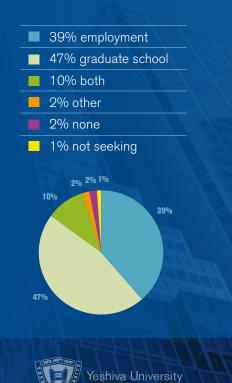
# **93**%

of Sy Syms School of Business (SYMS) graduates have post-graduation destinations



# 96%

of Yeshiva College (YC) graduates have postgraduation destinations



Career Center

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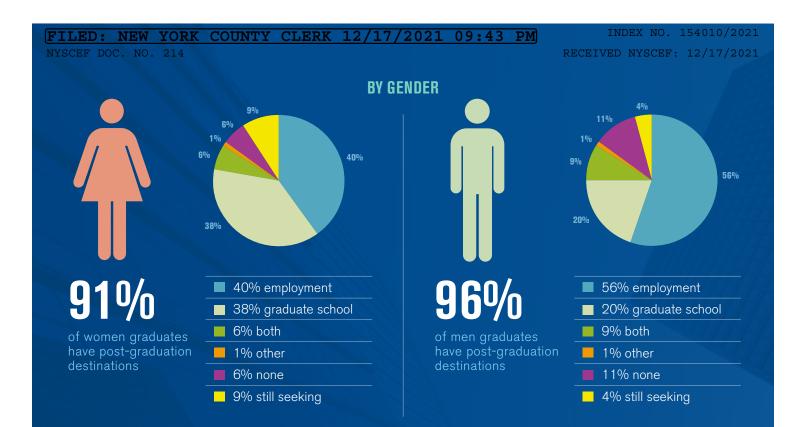
### **BY MAJOR/CONCENTRATION**

(for majors/concentrations reporting at least 10 instances)

	Accounting (70 respondents)	96%	70% employment	14% grad school	9% both	4% none	3% not seeking
	Biology (82 respondents)	91%	37% employment	46% grad school	7% both	1% other	9% none
	Business Intel Marketing Analytics (10 respondents)	90%	60% employment	20% grad school	10% other	10% none	
	English (18 respondents)	83%	78% employment	6% grad school	16% not seeking		
	Finance (35 respondents)	97%	80% employment	9% grad school	3% both	3% none	6% not seeking
	Jewish Studies (14 respondents)	100%	21% employment	36% grad school	29% both	14% not seeking	
	Management (21 respondents)	88%	52% employment	10% grad school	10% both	10% still seeking	19% not seekng
	Marketing (33 respondents)	86%	67% employment	6% grad school	12% still seeking	15% not seeking	
	Mathematics (19 respondents)	94%	58% employment	16% grad school	11% both	5% still seeking	15% not seeking
	Political Science (19 respondents)	88%	21% employment	47% grad school	5% both	11% none	16% not seeking
	Psychology (56 respondents)	94%	36% employment	32% grad school	13% both	2% other	5% 13 none not seeking
	Shaped Major (22 respondents)	100%	32% employment	59% grad school	9% not seeking		
	Speech Pathology/ Audiology (15 respondents)	100%	7% employment	93% grad school			

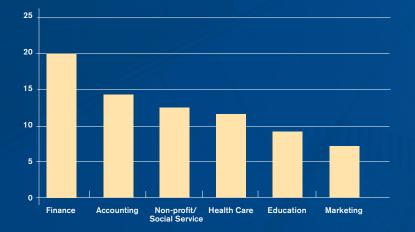


Yeshiva University Career Center

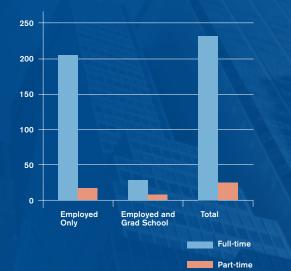


# **EMPLOYMENT AND GRADUATE SCHOOL STATISTICS**

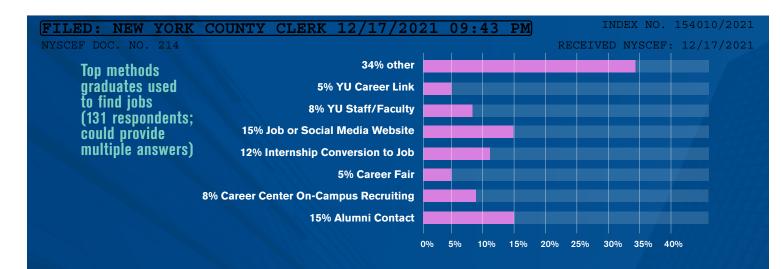
Top industries (by percent of employed graduates working in them: 258 respondents)



Full-time vs. part-time employment (by percentage of employed graduates: 258 respondents)



Yeshiva University



Salary Range	Overall	SCW	SYMS	YC
Less than \$20,000	2.0%		2.1%	4.0%
\$20,000 to \$29,999	9.9%	31.0%	2.1%	
\$30,000 to \$39,999	18.8%	41.4%	2.1%	24.0%
\$40,000 to \$49,999	11.9%	10.3%	6.4%	24.0%
\$50,000 to \$59,999	15.8%	6.9%	21.3%	16.0%
\$60,000 to \$69,999	17.8%	6.9%	27.7%	17.8%
\$70,000 to \$79,999	8.9%		17.0%	8.9%
\$80,000 and more	14.9%	3.4%	21.3%	16.0%

#### Starting salaries (101 respondents)

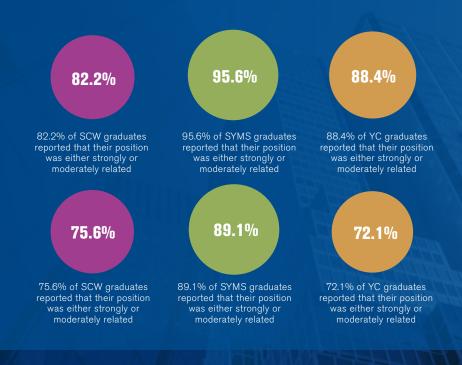
**Relevance to career field** of interest and major field of study (178 respondents)

of graduates reported that

their position was either strongly or moderately related to their field of interest

81.6%

of graduates reported that their position was either strongly or moderately related to their major(s)





Yeshiva University Career Center

#### FILED: NEW YORK COUNTY PM CLERK 09:43

Internships and Part-time Jobs (381 respondents)

# 74% of graduates

held one or more internships or part-time jobs during their time at YU



64.3% of SCW graduates held one or more internships or part-time jobs during their time at YU



88.9% of SYMS graduates held one or more internships or part-time jobs during their time at YU



67.4% of YC graduates held one or more internships or part-time jobs during their time at YU



55.6%

of graduates

held two or more internships

during their time at YU

70.4% of SYMS graduates held two or more internships or part-time jobs during

their time at YU

44.2% of SCW

graduates held two or

more internships or

part-time jobs during their time at YU



53.3% of YC graduates held two or more internships or part-time jobs

during their time

# 32.6% of graduates

held three or more internships during their time at YU





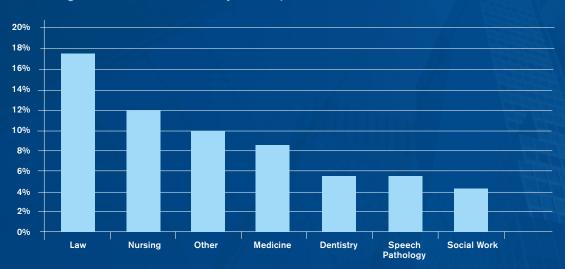


27% of YC

their time at YU

graduates held three or more internships or part-time jobs during their time at YU

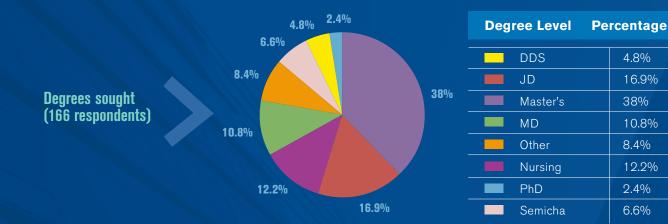
#### Top fields of graduate/professional study (by percent of enrolled graduates in them: 166 respondents)





#### FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 214

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# **CAREER CENTER USAGE STATISTICS**

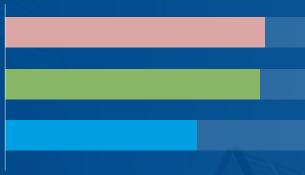
OVERALL

**81%** of graduates used the Career Center during their years at YU

86% of SCW graduates used the Career Center

85% of SYMS graduates used the Career Center

64% of YC graduates used the Career Center



# FIRST-TIME USAGE

Overall	SCW	SYMS	YC
42.1%	42.2%	52.1%	23.1%
30.8%	24.8%	34.2%	41%
19.9%	26.6%	11%	17.9%
7.2%	6.4%	2.7%	17.9%
	42.1% 30.8% 19.9%	42.1%     42.2%       30.8%     24.8%       19.9%     26.6%	42.1%     42.2%     52.1%       30.8%     24.8%     34.2%       19.9%     26.6%     11%



# CONCLUSION

The Yeshiva University Class of 2018 undergraduate graduating students demonstrate great promise as evidenced by the 93% post-graduation destinations career outcomes rate. Whether employment or graduate school was their intended goal, Yeshiva University recent graduates have achieved positive career results. Full-time employment increased by 5% from last year, with 92% (N= 206) of those employed holding full-time positions. In the graduate education outcomes data, law led as a top chosen field of study, and 38% of those students seeking graduate education were entering Master's programs.

Overall, 57% of graduates reporting starting salaries indicated they were earning \$50,000 or more. Sixty-five percent of Sy Syms School of Business graduates were at starting salaries earning \$50,000 or more, a notable 9% increase over the prior year.

#### EMPLOYER SAMPLING

Alliance Bernstein AMI Real Estate Inc. Anderson Tax Axinn, Veltrop & Harkrider LLP Bank Haploin Bank of America **Bar-Ilan University** Berdon LLP **Berkley Research Group** Bloomingdale's Blue Ocean Reality LLC **BMO Capital Markets** Bloomberg LP **BNY Mellon Booz Allen Hamilton** Carleton Energy Consulting **Centers Health Care** Chainalysis Inc CITI

CitvMD Cloudcraft. Inc Columbia University of Psychiatry Conde Nast **Credit Suisse Cross River Bank Curvature Securities LLC** Deloitte **Drum Circle Analytics** Evercore EY Fitch Ratings **Goldman Sachs** Google Grant Thorton Greystone & Co. Hackensack University Medical Center Harbor Group Management Co. LLC Harkham Hillel Hebrew Academy

HASC Homeland Security Houlihan Lokey Israel Discount Bank JP MOrgan Chase & Co KPMG Live Nation Entertainment Logicworks Magen David Yeshiva Marcum LLP Mazars Memorial Sloan Kettering Cancer Center Mercer Microsoft **Moodys Investor Service** Morgan Stanley Mount Sinai School of Medicine NCSY New YOrk Presbyterian Hospital

Norman Bobrow and Co., INC NYU Langone Health Orthodox Union Paxos Trust Company **Pivotal Software Premium Merchant Funding** PwC Ramaz Upper School **Reproductive Medicine Associates** of New York (RMA) RSM US LLP St. Peters University Hospital **TD** Securities Walker and Dunlop Westchester Day School Yeshiva University

#### GRADUATE/PROFESSIONAL SCHOOL SAMPLING

Albert Einstein College of Medicine Bank Street College Baruch College Boston University Brooklyn Law Cardozo Law School Carnegie Mellon University - Silicon Valley Columbia University Cornell Law CUNY Graduate Center Fordham University Harvard University Hebrew University Herbert Wertheim College of Medicine

 Hofstra University
 L

 Katz School
 L

 NYIT
 W

 New York University
 Y

 Pace
 Y

 Pratt Institute
 Y

 Rutgers University
 Sackler School of Medicine

 Seton Hall University
 St. John's University

 SUNY Stony Brook School of Medicine

 Technion American Medical School

 University of Chicago

University of Pennsylvania University of Pittsburgh School of Dental Medicine Wurzweiler School of Social Work Yale University Yeshiva University



Yeshiva University Career Center FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 215 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 27

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Yeshiva University Government Relations



February 16, 2021

The Honorable Robert Jackson 188 State Street, Legislative Office Bldg. Room 306 Albany, NY 12247

# RE: To request assistance in securing \$10 million in the State Fiscal Year 2021-22 budget to contribute to the total cost of renovation of the Amsterdam Avenue Pedestrian Plaza

Dear Senator Jackson,

I write today on behalf of Yeshiva University ("the University"), a 501(c)(3) not-for profit institution of higher learning located in the city of New York, to request your assistance in securing New York State capital construction funding for the renovation of the Amsterdam Avenue Pedestrian Plaza, located adjacent to the University's Wilf Campus in Washington Heights, Manhattan.

As you know, the University has proposed the renovation of the Amsterdam Avenue Pedestrian Plaza, an approximately 34,000 square-foot pedestrian space encompassing city-owned streetscape and sidewalk along the eastern side of Amsterdam Avenue between 183rd and 186th Streets; and adjacent University-owned sidewalk on its Wilf Campus in Washington Heights. The renovated space is anticipated to include pedestrian amenities such as permanent streetscape furniture, street trees, planting beds and a raised crosswalk connecting the plaza to pedestrian space along 185th Street between Amsterdam and Audubon Avenues. Furthermore, the project is anticipated to incorporate critical security infrastructure including sunken bollards designed to withstand vehicle impacts.

The benefit of this project is twofold. Firstly, it will provide a needed space for respite and community gathering in Washington Heights, one that will benefit from the University's regular maintenance efforts and security presence. Secondly, the security upgrades anticipated under the proposed renovation will provide both the University and the surrounding community with improved pedestrian safety and security. Specifically, given the alarming rise of anti-Semitic attacks statewide and the reputation of the University and its affiliated schools as a point of reference for Modern Orthodox Judaism and its adherents, these upgrades will help guard against the potential for vehicular terrorism and provide a greater sense of security to all. Owing to these issues of security and increased pedestrian amenities, among others, the project has garnered the support of both Manhattan Community Board 12 and a coalition of local non-profits, educational institutions, and elected leaders.

According to information provided to us by the New York City Department of Transportation, the anticipated total cost of construction for this project will exceed \$16 million. Therefore, we humbly call on you as our elected state representative to assist in the securing of \$10 million in the State Fiscal Year 2021-22 budget to contribute to the total cost of construction. Your contribution will ensure that Yeshiva University and the surrounding Washington Heights community will enjoy enhanced public amenities and security in the decades to come.

#### Jon B. Greenfield

Director of Government Relations Office of the General Counsel P. 646-592-4414 • F. 212-960-5346 jon.greenfield@yu.edu 500 West 185<sup>th</sup> Street • Belfer Hall 1001 • New York, NY 10033

YU01355

I thank you for your continued support of Yeshiva University and commitment to addressing our critical infrastructure needs. Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Jon Greenfield Director of Government Relations

#### YU01356

R. App. 818

FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 216 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 28

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# Community Project Request Form



# **Overview and Instructions**

The House Appropriations Committee has announced that it will grant a limited number of requests for Community Project Funding for federal Fiscal Year 2022 (October 1, 2021 to September 30, 2022). This document will provide an overview of the request process and basic information required for all requests, followed by a general form for all requests. Following the general form, you will find a table of contents outlining the various streams of available funding (accounts) organized by its associated appropriations bill, followed by specific guidance for those accounts and forms for requested information for *that specific account*.

Community Project Funding requests are narrowly tailored and are **not** comparable to City Council "discretionary fund" or State Legislature "Member Items." Only a particular set of federal funding streams are eligible for Community Project Funding requests, and only government agencies or non-governmental not-for-profit organizations may receive Community Project Funding. Additionally, our office is required to disclose publicly some basic information about the requests our office submits to the Appropriations Committee, including the name and address of the recipient, the amount requested, the intended use of the funds, and justification of the project. If you are not comfortable with the public disclosure of this information, please refrain from submitting a request.

Please ensure that for each Community Project Funding request, you fully complete the general form for all requests **as well as** the questionnaire for the account under which you are requesting funding. You are <u>not required</u> to fill out questionnaires for unrelated accounts, *only* the account under which your project request is eligible. **Multiple requests should be submitted separately. Forms containing multiple requests will not be considered.** 

If you have questions regarding your request, including questions relating to eligibility or proper account, you may contact our office by sending an email to <a href="mailto:Espaillat.Projects@mail.house.gov">Espaillat.Projects@mail.house.gov</a> with "PROJECT INQUIRY" - [Project Title, Subcommittee, Account]" in the subject line.

My office's **deadline** for Community Project Funding submissions for consideration in the fiscal year 2022 appropriations bills is <u>Friday, April 16, 2021</u>. Please email completed Community Project Funding request forms as a Word (.docx) document to <u>Espaillat.Projects@mail.house.gov</u> with "APPLICATION - [Project Title, Subcommittee, Account]" in the subject line. A member of my staff may reach out to you after the deadline if further information is needed.

**Please note**: Submission of this application neither guarantees eligibility for funding, nor guarantees that our office will be able to submit the request on your behalf.

Community Project Funding subcommittees of jurisdiction abbreviation key:

- AG: Agriculture, Rural Development, Food and Drug Administration, and Related Agencies
- CJS: Commerce, Justice, Science, and Related Agencies
- DEF: Defense
- EW: Energy and Water Development, and Related Agencies
- FSGG: Financial Services and General Government
- HS: Homeland Security
- INT: Interior, Environment, and Related Agencies
- LHHS: Labor, Health and Human Services, Education, and Related Agencies
- MILCON: Military Construction, Veterans Affairs, and Related Agencies
- THUD: Transportation, and Housing and Urban Development, and Related Agencies

#### YU01155

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# **Guidance for All Community Project Funding Requests**

- Requests must be for fiscal year 2022 funds only and cannot include multi-year funding.
- You must include accurate recipient information when filling out the online request. The recipient name provided should be the legal name of the organization that will be receiving these funds. Please do not include abbreviations, acronyms, or use a "The" before the recipient name.
- You must include a project description, which must be limited to 1,000 characters.
- You must include a budget breakout specifically describing how the requested Federal funding will be used by the grantee, such as amounts for salaries for providers or instructors, tuition payments, educational materials, exhibits, supplies, evaluation activities, equipment, travel, etc. This can be provided in a separate, attached document.
- You must include an explanation of the request, including an explanation of why this is a good use of taxpayer funds—this information will be included on our official House website.
- You must indicate whether the grantee is a for-profit entity. Note that in FY 2022, Congress will not fund any for-profit entities.
- Please indicate whether you are aware of another member of Congress making a request for this same project (just Yes/No, not which Member(s)).
- We also **strongly encourage** you to include letters of support from local community organizations or local elected officials, or other materials that would document community support and community need, such as a newspaper editorial or a state/local intended use plan. The Appropriations Committee will use this information when determining whether to grant a request. These can be provided as attachments when you submit your form.

#### Distinguishing between program, language, and community project funding requests:

- **Program Request:** A request to fund a specific program in an appropriations bill at a specified level. Example: Provide \$4,000,000,000 for the Low Income Home Energy Assistance Program.
- Language Request: A request to include specific bill or report language that does not direct funding to a particular entity but encourages, urges, or directs some type of action by an agency. Example: The Committee encourages the National Cancer Institute to support research to develop diagnostic tests for early detection of kidney cancer.
- **Community Project Funding Request:** A funding request for a specific non-governmental entity to carry out a specific project. Example: Provide \$500,000 for a substance abuse treatment program in City, State.

If the programmatic or report language request is intended to be for a specific non-governmental entity and not competitively awarded, or narrowly defines a competitive grant to the extent that only one entity or geographic area can apply, this is a community project funding request and must be submitted as such. NYSCEF DOC. NO. 216

# Required Information for ALL APPLICATIONS:

Requestor Name	Jon Greenfield
Requestor email address	Jon.greenfield@yu.edu
Requestor phone number	(646) 592-4414
Are you filling this out on behalf of a government agency or non-profit organization? [Yes/No]	Yes
Government agency or organization name that will be primary recipient of funds requested	Yeshiva University
Recipient street address, including city, state and ZIP code	500 West 185 <sup>th</sup> Street New York, NY 10033
Recipient website	https://www.yu.edu/
Project Title	Weissberg Commons renovation, New York City, NY-13
Project Description (max 1,000 characters)	Yeshiva University proposes the renovation of Weissberg Commons, a multipurpose events space located on the ground floor of 2495 Amsterdam Avenue in the Washington Heights neighborhood of Manhattan, New York City. The project is anticipated to provide critical structural upgrades to the space and modernize audiovisual equipment utilized in both academic and public-facing events, extending the useful life of the space and providing an improved experience for visitors.
Full project cost	\$1,291,000
Amount requested for project	\$1,000,000
**Subcommittee of jurisdiction abbreviation [ex. LHHS]	THUD
**Account [ex. Employment and Training Administration]	Transportation/HUD appropriations bill in the HUD-EDI (Economic Development Initiative) account

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#### **Economic Development Initiative (EDI)**

Department of Housing and Urban Development (HUD)

Guidelines and Requirements for Appropriations Submissions Database

EDI community project requests may be used for economic and community development activities, including land or site acquisition, demolition or rehabilitation of housing or facilities, construction and capital improvements of public facilities (including water and sewer facilities), and public services. Requests may also include planning and other activities consistent with the underlying authorization for the Community Development Block Grant program within HUD. EDI community project requests are not eligible for the reimbursement of expenses for activities already undertaken (including debt service or debt retirement).

All projects must be:

- Supported broadly by local stakeholders, including residents, businesses, and elected officials.
- Administered by governmental or non-profit entities, including public housing agencies, as well as tribes . and tribally designated housing entities.

# **Community Project Funding Request**

For each EDI community project request, you will need to provide the following information:

We loc         Ave         Ma         to p         and         bot         the         imp         What are the benefits of this project and why is it a         priority?         Wa         Coi         spatial         bot         bot	shiva University proposes the renovation of eissberg Commons, a multipurpose events space cated on the ground floor of 2495 Amsterdam enue in the Washington Heights neighborhood of anhattan, New York City. The project is anticipated provide critical structural upgrades to the space
priority? sig Wa Col spa bot	d modernize audiovisual equipment utilized in th academic and public-facing events, extending e useful life of the space and providing an proved experience for visitors.
as yea res He Let Ma ger	e University anticipates that the project will gnificantly contribute to the overall benefit of the ashington Heights community given Weissberg ommons' long history as an events and meeting ace. Weissberg Commons is regularly used for th University events such as academic classes, mmencement ceremonies and staff events, as well various community-facing activities. In recent ars, Weissberg Commons has hosted local stauranteurs for the New York City Department of ealth and Mental Hygiene's annual Restaurant tter Grade seminar. It frequently welcomes anhattan Community Board 12 for its monthly neral board meetings and has given space to mmunitywide mental health programming,

NYSCEF

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CEF DOC. NO. 216	RECEIVED NYSCEF: 12/17/20
LEF DOC. NO. 216	Iargest Jewish book fair in the Western Hemisphere. Furthermore, the space is regularly utilized for community service programs, most notably, the annual graduation/completion ceremony for students from local public schools participating in START Science, a science education program for local public middle school students run by University undergraduate students; and public events hosted by Wurzweiler Care Café, a community mental health program of the University's Wurzweiler School of Social Work.
	Most recently, Weissberg Commons was selected by the City of New York as a community vaccination hub as part of the response to the COVID-19 pandemic, opening to the public in April 2021.
	Furthermore, the proposed project will contribute to economic activity in the neighborhood by employing approximately 10 people for the duration of the renovation project.
Amount requested for the community project.	\$1,000,000
Total project cost.	\$1,291,000
Can the project obligate all appropriated funds within 12 months after enactment? If not, what would be the expected date of obligation?	Yes
Estimated start and completion dates	January 2022 - May 2022
Has the request been submitted to another Subcommittee or Committee this fiscal year? If yes, which one(s)?	No
Does the project have other public (federal, state, local) and/or private funds committed to meet match or cost- share requirements for costs related to construction, operations, and maintenance? If so, what is the source and amount of those funds?	The University maintains available institutional funds to contribute to approximately 20% of the proposed project's total cost.
<b>NOTE</b> : The match requirements are defined in statute. While EDI projects do not have a match requirement, other projects associated with a larger development effort may.	
Does the project require an environmental review? If so, what is the status and/or outcome of the environmental review and NEPA category of action (if applicable)?	No
Is the project primarily a service, new construction, rehabilitation, land or site acquisition, planning, or economic development project?	Rehabilitation
Has the project received previous Federal funding? If so, how much and which public law (e.g., appropriations act or authorization act) provided it?	No
Does the project impact beneficiaries of HUD's rental assistance programs (owners, public housing agencies, service providers, or tenants)?	No

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Who are the community partners participating in this project?	New York State Assembly Member Carmen De La Rosa, New York City Council Member Mark Levine
If the project includes new construction or land or site acquisition activities, does it comply with local zoning requirements?	N/A
Is the project included or supported by an identified priority area within the community's HUD Consolidated Plan? If yes, please provide a link to the plan.	No
Is the project intended to address issues related to climate change or resiliency, civil unrest, or inequities?	The project intends to improve upon public event space that hosts programming and activities intended to address inequities in health access and education.

# YU01160

R. App. 825

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DISTRICT OFFICE 500 WEST 141ST STREET NEW YORK, NY 10031 (212) 928-6814 FAX: (646) 582-1408

CITY HALL OFFICE 250 BROADWAY, RM. 1816 NEW YORK, NY 10007 (212) 788-7007

district7@council.nyc.gov

April 15, 2021



THE COUNCIL OF THE CITY OF NEW YORK

MARK D. LEVINE COUNCIL MEMBER, 7<sup>th</sup> DISTRICT, MANHATTAN CHAIR HEALTH

CO-CHAIR MANHATTAN DELEGATION

**COMMITTEES** 

EDUCATION HOSPITALS PARKS & RECREATION TRANSPORTATION

Hon. Adriano Espaillat U.S. House of Representatives 2332 Rayburn House Office Building Washington, D.C., 20515

Dear Congressmember Espaillat,

I am writing as New York City Council Member for the 7<sup>th</sup> District to enthusiastically express my support for Yeshiva University in their request for federal funding from the 117<sup>th</sup> Congress, for renovations to the Weissberg Commons event space in Washington Heights.

Through my duties as Council Member, I have had the pleasure of working closely with Yeshiva University faculty, staff, and students on various initiatives in recent years. Their commitment to the betterment of the Washington Heights community is the living embodiment of Tikkun Olam, the Jewish philosophy of repairing the world. This is particularly evident in the ways in which they open their doors to community groups and activities, providing critical programming and offering space to public events. I have seen this firsthand, particularly at the university's Weissberg Commons events space, where I have spoken at graduations, community board meetings and other events. Most recently, this space has served as a COVID-19 vaccination site for the City of New York, contributing to greater health equity in the community.

By providing Yeshiva University with the financial support to complete needed renovations to Weissberg Commons, your office will help ensure they can continue to conduct needed public programming while offering a space where our community can come together to learn and grow. Therefore, I am proud to support the Weissberg Commons project and respectfully request that your office afford Yeshiva University's application your full and fair consideration.

I thank you in advance for your consideration of Yeshiva University's request and express my continued gratitude to you for your leadership.

Sincerely,

Much Leini

Mark Levine Council Member, 7th District

FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 217 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 29

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Degree (Year Authorized)	Source
Bachelor of Arts (1928)	Ex. 30 at YU00846
Bachelor of Science (1928)	Ex. 30 at YU00846
Doctor of Divinity <sup>1</sup> (1940)	Ex. 30 at YU00846
Master of Science (1945)	Ex. 30 at YU00843
Doctor of Philosophy (1945)	Ex. 30 at YU00843
Doctor of Medicine (1950)	Ex. 30 at YU00842
Doctor of Dental Surgery (1950)	Ex. 30 at YU00842
Master of Arts (1958)	Ex. 30 at YU00840
Doctor of Education (1958)	Ex. 30 at YU00840
Master of Social Work (1961)	Ex. 30 at YU00838
Doctor of Pedagogy (1969)	Ex. 30 at YU00836
Doctor of Law (1969)	Ex. 30 at YU00836
Doctor of Social Welfare (1969)	Ex. 30 at YU00835
Bachelor of Education (1970)	Ex. 30 at YU00834
Bachelor of Science in Education (1970)	Ex. 30 at YU00834
Doctor of Psychology (1980)	Ex. 30 at YU00831
Master of Laws (1998)	Ex. 30 at YU00830
Master of Public Health (2008)	Ex. 30 at YU00828
Master of Business Administration (2011)	Ex. 30 at YU00827
Doctor of the Science of the Law (2015)	Ex. 30 at YU00826
Associate in Science (2016)	Ex. 30 at YU00825
Master of Studies in Law (2017)	Ex. 30 at YU00824

# **Degrees Yeshiva University Is Eligible to Award Under Charter Documents**

#### **Degrees RIETS Is Eligible to Award Under Charter Documents**

Degree Awarded	Source
Master of Hebrew Literature	Ex. 5 (RIETS 1970)
Doctor of Hebrew Literature	Ex. 5 (RIETS 1970)
Master of Religious Education	Ex. 5 (RIETS 1970)
Doctor of Religious Education	Ex. 5 (RIETS 1970)

<sup>&</sup>lt;sup>1</sup> At YU, as elsewhere, Doctor of Divinity degree is a strictly honorary degree that is not religious in nature. <u>https://blogs.yu.edu/news/tag/honorary-degree/</u> (discussing award of Honorary Doctor of Divinity).

FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 218 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 30

NYSCEF DOC. NO. 218



# 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

<u>Voted</u>, 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.



Chancello

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.

Sharrow & Jahoe

Interim President of the University and Commissioner of Education



#### 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

<u>Voted</u>, 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.



Chancellor

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.

President of the University and Commissioner of Education



#### 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.



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



#### **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

<u>Voted</u>, 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.



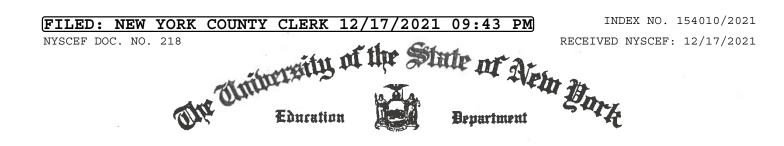
Granted, June 16, 2015 by the Board of Regents of The University of the State of New York, for and on behalf of the State Education Department, and executed under the seal of said University and recorded as Number 26,309.

Neugl # Lock

Chancellor

El jale to 7 Berlin

**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

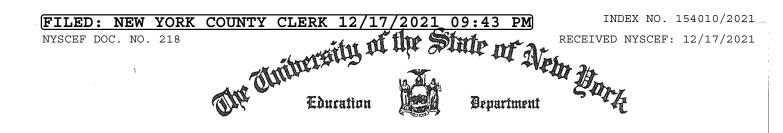
<u>Voted</u>, that the absolute charter in the first instance of Yeshiva University, located in the city, county, and state of New York, which was incorporated pursuant to the provisions of the Membership Corporation Law under the corporate name "The Rabbi Isaac Elchonon Theological Seminary Association" 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

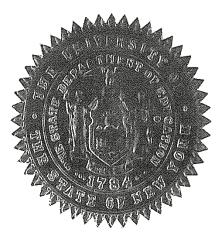


#### AMENDMENT OF CHARTER

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

<u>Voted</u>, 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

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#### YESHIVA UNIVERSITY

#### AMENDMENT OF CHARTER

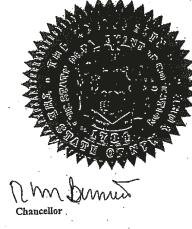
This Instrument Witnesseth That the Board of Regents for and on behalf of the Education Department of the State of New York at their meeting of June 17, 2003,

An application having been made by and on behalf of the trustees of Yeshiva University, for an amendment of its charter, it was

<u>Voted</u>, 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 Elchanon Theological Seminary Association" on March 20, 1897; which certificate of incorporate 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."

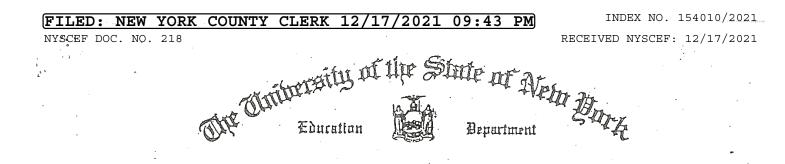
and to correct the spelling "Elchonon" to "Elchanan" and remove "(sic)" from all references spelled "Elchanan."



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.

hul

President of the University and Commissioner of Education



#### 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 Elehonon 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 be, 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 an on behalf of the State Education Department, and executed under the scal of said University and recorded as Number 22,477.

NYSCEF DOC. NO. 218

INDEX NO. 154010/2021

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The Distinction of the State of Velo 2007 Education Bepartment 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 18,050

Hom

President of The University

and Commissioner of Education

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INDEX NO. 154010/2021

RECEIVED NYSCEF: 12/17/2021

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Amendment to Charter YESHIVA UNIVERSITY

Bepartment

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:

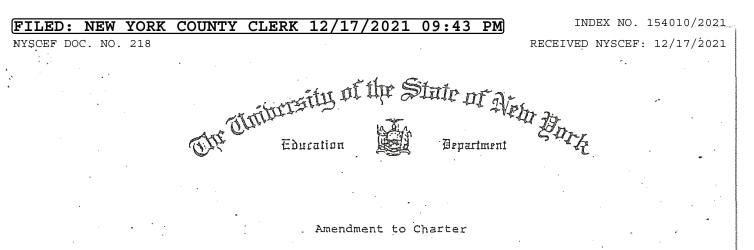
"2. The property and estate of Yeshiva University are vested in, and all of its rights, powers . and privileges shall be exercised by its board of trustees, consisting of not less than 16 nor more than 40 trustees, elected from time to time by the board of trustees. The number of trustees, their qualifications 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

dent. of The Unit rsity and

Commissioner of Education



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.



said University and Number 13,011.

Esiph W. My Lerin Chancellor

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

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President of The University YU00833 Commissioner of Education

FILED: NEW YORK COUNTY CLERK NYSCEF DOC. NO. 218 YU00834 Ostanted January 24, 1970 by the Bourded Heyend for and in behalf of the State Education Trepartment, authorizing the university to earger the additional degrees of vachelor ion (BED) and buckelor of science in concation (B.S. in Ed), in conformily ethalter of Uestinna Annwersily, founded in the eily, county and state of Iew Porti, - Which was muntes by the Board of Reports, and angended in partous respects, and having been fast amended by the Sugarts on Janesz 1989 wher AO, 145 Icur Vork and the Regulations of the Conunissioner of Education. for the registration. of mistilutions of higher education; and Attract Army constants and when the send of soul Wepothers by autionizing the university to emper the additional degree of dector of board of Regents of She University of the State of 12 By defeting lieve from the miliorization to grant the degrees of This instrument witnesseth . Mad Mr. Band of Mayinds for and on behav and rivershed therein. Vi Actuality of the Alate of Hew Pork has amonded the /2021 09:43 PM Amendment to Charter of Reshing Aminersity (312) (. R. J KB ATHINITALI (12.10) લુ eller Eller sachelor of religious education BB itebrew literature master of veligious concation religious education boctor of fiels rew filterature 2/110/10: Education -- 115 ereited an 0,745,05) 1211/124 Juras ules a) the Traster of Dachelvi 002000 52010 Clork of course RECEIVED NYSCEF: 12/17/2021 INDEX NO. 154010/2021 R. App. 842

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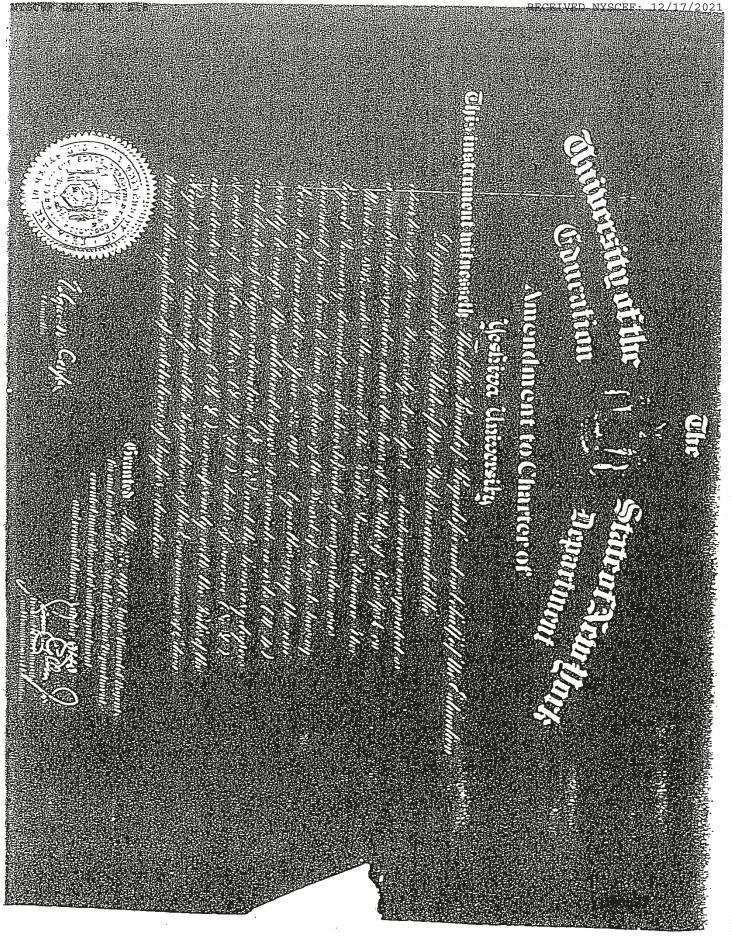
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INDEX NO. 154010/2021



INDEX NO. 154010/2021 FILED: NEW COUNTY CLERK 09 PM YORK 021 4 DOC. NO. 218 NYSCEF RECEIVED NYSCEF: 12/17/2021 YU00838 tion turough amendment of its charter by the Resents on November 21, 195B, and by substituting, therefor suttunky to confur the barree of marter of social work (Oll, 5, 9.1), in conformity with the Tales of the Barro of Playents and the the authority to infer the define of marter of secied service (OU. 2.3.), which authority was granted to the worknes טותרנטי סרַ אַןבאונעט אַנועעטיטנען, פּונעט אַןסיע, – - שאונטו שעט אונטו אינטיאטערנדט איז ג זועטואעטועט באייטטע try action of the Board of Regentry having been last anumbed on Ollande 25, 1960, -- by beleting therefrom the Columbia Treological Sumary Hassociation, which certificate of incorporation was unarbed from time to time the taws of the State of Olen Mork on Otherste 20, 1897, when the name of The Ribby Junie Elebonon by the Buriel of Weyrots for and un hehalf af the State Education Department. Regulations of the Commissioner of Edneation for the regulation of institutioner of nighter education. corrected under the seal of said Deput Am Department This instrument witnesseth Mid Mr. Nourd of Meyenls for and on holard Dependenced of the Andre of Wein Ports has amonded the Oranted June 25, 1964, and weathed therein Amendment to Charter of glestina glinineveilig Ultr MALTER HA HA LAN 4 4

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R. App. 847

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R. App. 849

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R. App. 851 NDEX NO. 154010/2021 segres of bubistor of Nebrew literature (BNL), moster of Hebrew literature (M.N.L.), bachelor of religious education (B.R.E.), master of religious education (M.R.E.). Misster retorn to Fabli Isaac Elehanan Theological Seminary and Jeshiva College-by changing the corporate name of the institution to Jeshiva University and by authorizing it to confer the Rabbi Jeane Elchanan Cheological Sourmany and Verliva College surporution his ingbeen amended by action of the Regents of the University on Murch 27,1924, and again amended and the name of the carporation changed to Rubbi IsaacEl chunch Ili's instrument with with the Matthe Rogents with Unewaity of the State of an North have amended the cortificate of incorporation of Rabbi Isaac Elehanan Theological Seminary and Yeshiva College, New York, which was duly incorporated as a member-Heckgics! Seminary Association and Yeshiva College by action of the Regents on March 29,1928, and further americal by the Regents on May 18,1933, with respect to the digicsconferring personal the corporation, and again amonded by action of the Regents on April 19,1940, in relation to the conferring of degrees and by changing the name of the corpoship incorporation under the laws of the State of New York on Murch 20, 1897, under the name Pathoi Isaac Edularian Theological Seminary Association, such certificate of ne-Granted November 16, 1945 for the Wegents of the University of the Andre of Son Sink executed under their sul and recorded in their YU00843 of science ONS), and doctor of philosophy (Ph. D.) when courses leading to said degraes shall have been approved by the Education Departments. allie Lumber 5135 Amendment to charter of 0120 COUNTY CLERK 12/17/2021 100.

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inating the word "Association" from its corporate name, so that hereafter the name of the corporation shall be Robbi Isaac Etchanan Theologica Seminary
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 clim-
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Rabbi Isaac Schanan Theological Seminary Association and geshiva College
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R. App. 853 INDEX NO. 154010/2021 RECEIVED NYSCEF: 12/17/2021 7U00842 Olis instrument witnesseth . That the Regents of the University of the State of Sea Dork Rabbi Isaac Elchanan Theological Seminarz Association and Gestinn College errouted under their seal and verouted in their I'm E like Gunuted John 18, 1933 (1) It want 1 ..... A150 Amendment to charter of Theological Seminary Association and Yeshiva Collecto, which was duly incorporated as a tificate of incorporation having been amended by action of the Resents of the University membership corporation under the laws of the State of New York on Morch 20,1897. under the name Rabbi Isaac Elehanan Theologizal Seminary Association (such cer-Colleges by action of the Regents at their meeting held March 29, 1928) by on March 27, 1924, and further amended and the name of the carporation changed Humane Letters, (L. H. D.), and Doctor of Laws, (LL. D), Honoris nave emended the certificate of incorporation of Robbi Isaac Elchonan to Rabbi Isaac Elchanan Theological Seminary Association and Yeshira authorizing' said corporation to confer the defrects of Dactor of CLERK 12/17/2021 causa'. NEW YORK

R. App. 854 RECEIVED NYSCEF: 12/17/2021 INDEX NO. 154010/2021 Rabbi Isaac Elchanan Theological Seminarz, Association If instrument witnesseth Matthe Regentref the University of the State of Son And tatents was n under the laws of the State of New York, March 20, 1897, and charter Grunten March 29, 1928 of the Whinwordy of the II. Ciation, New York City, which was incorporated as a membership corporation ing the corporate name of said corporation to Robbi Isaac Elehanon Theilogi-Trave amondod the charter of Rabbi Isaac Elchanan Theological Seminary Assoyire. courses in liberal ark and sciences Leading to the degrees of Bachelor of Arts and Bachelor of Science, provided However, that such degrees shall not be conferred amended by the Repents of the University on March 27, 1924, by changcol Sominary Association and Yeshivah Collego und by authorizing soid corporation to antil the same shall have been dily registored by the State Education Department Amendment to charter of Wr. . I under D corrected and in conforming with its villes and regulations. 09:43 ALLE REPERTING IN THE REAL 2021/

154010/2021 NO. 09 ΡM COUNT have amended the charter of Rabbi Isaac Electranan Theological Seminary CANS 540 itteraryour Doctor Doctor of Hebrew. Literature county and state of New York, which membership corporation March 20, 1897. Rabbi Isaac Schanan Theological Seminaars, confer upon its graduates This instrument initnessets Machine Regardad the Chainmily of the Statich I Amendment to charter of Sumfed r L corporation city. Hebraicarum, g Such the. authorizing ALL THE THE THE incorporated caled in degree

INDEX NO. 154010/2021 YORK COUNTY CLERK 09:43 FILED: NEW 12 2 PM 02 1 ٩. 1.6 Certificate of Ancorporation STATE OF NEW YORK City and County of New-York We, the Andersigned, desiring to form a corporation pursuant to the provi sions of the membership Corporations Law, all being of full ago and two Thirds being citizens of the United States and at least one a resident of the state of Yew York, do hereby Certify and : State; *...* The particular objects for which the corporation is to be formed are to promote Larst. . • .\_ the study of Talmud and to assist in educating and pre-· · · · · paring students of the Hebrew faith for the Hebrew Orthodox ministry, Second. The name of the proposed corporation is ... 64The Rabbi-Isaac Elchonon Theological Seminary Association • . - i.\*\* Third. The territory in which its operations are to be principally conducted is the City,County and State of New-York Ron The town, village or city in which its principal office is to be located is the City New-York of in the County of New-York കർ State of New York. zifth, The number of its directors is YU00848 -

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FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM INDEX NO. 154010/2021 NYSCEP DOC. NO. 218 RECEIVED NYSCEF: 12/17/2021 ÷, In Witness Wilhereof, we have made and acknowledged this Certificate ll-th February this day of 189 7 - jehrida salotnon Asher L. Jerma Mark comis aistle utBernste Mato n.e ms. J. F

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# Exhibit 31

NYSCEF DOC. NO. 219

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BENJAMIN N. CARDOZO SCHOOL OF LAW . YESHIVA UNIVERSITY

April 27, 2021

**BY EMAIL** Rabbi Dr. Ari Berman President, Yeshiva University 500 West 185<sup>th</sup> Street New York, NY 10033

Dear President Rabbi Dr. Berman:

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. We appreciate your expressions of empathy and, as described in a fall 2020 memo "Fostering an Inclusive Community," the establishment of measures to address issues of diversity and inclusion. But the continued refusal to recognize the student organization is hurtful to our students and other community members and will seriously damage the reputation of the University's graduate and undergraduate programs. It is also wrong and unlawful.

Discrimination against a student organization solely because of its focus on LGBTQ+ issues has no place in a University that holds itself out as a community committed to the flourishing and equal dignity of all its members. We have a collective obligation to ensure that each student is supported and given the opportunity to thrive, and refusing to extend access to University facilities to this student group on the same terms all other student groups enjoy will prevent LGBTQ+ students, together with their allies, from creating the space to find that support. Particularly as our students grapple already with the effects of a catastrophic public health crisis and deepening racial divide, insisting that LGBTQ+ students bear this avoidable additional insult is hard to fathom. 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.

At bottom, this issue turns on basic principles of dignity and equal treatment. Over the past several months, some of us have met with you and members of the University's Ad Hoc

Committee formed to consider these issues. While these meetings were respectful, there is still no apparent end in sight to the University's unacceptable treatment of our LGBTQ+ students, we are compelled to call on you to make clear that discrimination has no home in this historic institution and to give full and equal recognition to LGBTQ+ student groups on the University's undergraduate campuses.

Very truly yours,

Michelle Adams Professor of Law

Christopher Buccafusco Professor of Law Assoc. Dean for Faculty Development

Michael Burstein Professor of Law Vice Dean

David G. Carlson Professor of Law

Robert K. Collins Professor of Practice

Laura Cunningham Professor of Law

Rebekah Diller Clinical Professor of Law

Myriam Gilles Paul R. Verkuil Research Chair and Professor of Law

Betsy Ginsberg Clinical Professor of Law

Elizabeth Goldman Clinical Professor of Law

Toby Golick Clinical Professor of Law Emerita

Peter Goodrich Professor of Law

NYSCEF DOC. NO. 219

Michelle Greenberg-Kobrin Clinical Associate Professor of Law

Michael Herz Arthur Kaplan Professor of Law

Kyron J. Huigens Professor of Law

Rebecca Ingber Professor of Law

Jocelyn Getgen Kestenbaum Clinical Associate Professor of Law

Barbara Kolsun Professor of Practice

Ramya J. Kudekallu Clinical Teaching Fellow

Kate Levine Associate Professor of Law

Burton N. Lipshie Professor of Practice

Lela Love Professor of Law

Peter Markowitz Professor of Law

Ingrid Mattson Associate Dean for Library Services, Professor of Legal Research, & Director of the Law Library

Kathryn Miller Clinical Assistant Professor of Law

Lindsay Nash Clinical Associate Professor of Law

Leslie S. Newman Professor of Law

NYSCEF DOC. NO. 219

Mauricio Noroña Clinical Teaching Fellow

Jonathan H. Oberman Clinical Professor of Law

Ngozi Okidegbe Assistant Professor of Law

Deborah Pearlstein Professor of Law

Michael Pollack Associate Professor of Law

Alexander Reinert Max Freund Professor of Litigation and Advocacy

Gabor Rona Professor of Practice

Michel Rosenfeld University Professor of Law and Comparative Democracy Justice Sydney L. Robins Professor of Human Rights

David Rudenstine Sheldon H. Solow Professor of Law

Leslie Salzman Clinical Professor of Law

Jeanne L. Schroeder Professor of Law

Anthony Sebok Professor of Law

Kate Shaw Professor of Law

Edward Stein Professor of Law

Stewart Sterk Mack Professor of Law

NYSCEF DOC. NO. 219

Martin Stone Professor of Law

Matthew Wansley Assistant Professor of Law

Samuel Weinstein Associate Professor of Law

Richard H. Weisberg Floersheimer Professor of Constitutional Law

David J. Weisenfeld Professor of Practice

Alisa Whitfield Clinical Teaching Fellow

Felix Wu Professor of Law

Charles Yablon Professor of Law

Ekow Yankah Professor of Law

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## Exhibit 32

#### Report of Dr. Jason C. Garvey, April 26, 2021

#### I. Executive summary

Considerable research across decades has demonstrated the importance of campus climate, belonging, and relationships on undergraduate college student development and success (see Mayhew et al., 2016 for a comprehensive overview of how college affects students). Students' undergraduate experiences are shaped by a variety of factors, including sociohistorical, policy, community, and institutional contexts (Hurtado et al., 2012).

For queer<sup>1</sup> and trans<sup>2</sup> students, welcoming and safe campus environments are critical to their success (Garvey et al., 2017). Affirming campus spaces and relationships foster friendships, community, and kinship networks among queer and trans students, which in turn promote healthy identity exploration, campus engagement, and academic success (Garvey, Squire, et al., 2018; Miller, 2017; Pitcher & Simmons, 2020). Queer and trans student organizations are the optimal context to foster growth, cultivate supportive relationships, and encourage positive experiences among students (Garvey, Mobley et al., 2019). Additionally, 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 and success (Garvey, 2020; Pitcher et al., 2018).

<sup>&</sup>lt;sup>1</sup> Queer is a term people often use to express a spectrum of identities and orientations that are counter to the mainstream. Queer is often used as a catch-all to include many people, including those who do not identify as exclusively straight and/or folks who have non-binary or gender-expansive identities. This term was previously used as a slur, but has been reclaimed by many parts of the LGBTQ movement. See <a href="https://www.hrc.org/resources/glossary-of-terms">https://www.hrc.org/resources/glossary-of-terms</a> for more information.

<sup>&</sup>lt;sup>2</sup> Trans is an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being trans does not imply any specific sexual orientation. Therefore, trans people may identify as straight, gay, lesbian, bisexual, queer, or another sexual orientation. See <a href="https://www.hrc.org/resources/glossary-of-terms">https://www.hrc.org/resources/glossary-of-terms</a> for more information.

Report of Dr. Jason C. Garvey, April 26, 2021 YU Pride Alliance, *et al.* v. Yeshiva University, *et al.* 

I begin my report with a summary of my credentials, including my administrative, scholarly, service, and teaching experiences and expertise in higher education and student affairs administration. Following, I provide an overview of higher education and student affairs scholarship concerning queer and trans students, foregrounding relevant concepts like campus climate, belonging, identity development, minority stress and mental health, and relationships. I close this report by emphasizing the critical role that formally recognized queer and trans student organizations play on their overall experiences and success.

#### II. Introduction and credentials

#### a. Introduction

I was retained by Katherine Rosenfeld from the law office of Emery Celli Brinckerhoff Abady Ward & Maazel LLP to provide expert testimony regarding a case involving several students at Yeshiva University (YU) with respect to their claims stemming from YU's refusal to recognize the YU Pride Alliance, a student organization for LGBTQ undergraduate students and their allies.

#### b. Credentials

I currently serve as the Friedman-Hipps Green and Gold Professor of Education at the rank of associate professor with tenure. My primary appointment is within the Higher Education and Student Affairs Administration (HESA) program at the University of Vermont (UVM). I was awarded the inaugural endowed professorship in 2020 for my "teaching, research, and support of LGBTQ students, faculty, and administrators at the post-secondary education and public education levels<sup>3</sup>." I also serve as the program coordinator for the HESA program and as faculty-

<sup>&</sup>lt;sup>3</sup> http://catalogue.uvm.edu/undergraduate/aboutuniv/professorships/

Report of Dr. Jason C. Garvey, April 26, 2021 YU Pride Alliance, *et al.* v. Yeshiva University, *et al.* 

in-residence for the Leadership & Social Change undergraduate learning community, both at UVM.

From 2012-2017, I was a research associate with the Q Research Institute for Higher Education with Campus Pride, a "national nonprofit 501(c)(3) organization for student leaders and campus groups working to create a safer college environment for LGBTQ students<sup>4</sup>." Prior to my faculty appointments, I worked in student affairs administration roles across a variety of functional areas:

- Research and assessment coordinator, Department of Residential Life, University of Maryland (2012-2013)
- LGBT student involvement and advocacy coordinator, Multicultural Involvement and Community Advocacy, University of Maryland (2010-2011)
- Academic advisor and orientation coordinator, College of Behavioral and Social Sciences, University of Maryland (2008-2010)
- Summer Research Opportunities Program coordinator, Office of Graduate Recruitment and Diversity Initiatives, The Ohio State University (2007-2008)

In my research, I examine queer and trans collegians across educational contexts primarily using quantitative methods. I often use survey data to foreground salient experiences for queer and trans collegians, including identity development, campus climate, belonging, and retention. I have published 37 peer-reviewed journal manuscripts and an additional 16 chapters in edited books<sup>5</sup>. I have also served as lead editor for two books: *Case studies for student* 

<sup>&</sup>lt;sup>4</sup> https://www.campuspride.org/about/

<sup>&</sup>lt;sup>5</sup> https://scholar.google.com/citations?user=6oFPFscAAAAJ&hl=en

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development theory: Advancing social justice and inclusion in higher education<sup>6</sup> (2020, Routledge) and *Trans\* policies and experiences in housing and residence life<sup>7</sup>* (2018, Stylus). In addition, I have given 95 refereed conference presentations, 37 invited talks, and 53 campus talks.

As a public scholar, I seek to take my work outside the academy to the broader public and relevant communities. In that role, I have collaborated with local and national organizations to promote positive social change for queer and trans collegians, including Campus Pride, the Pride Center of Vermont, ACPA: College Student Educators International, the Spencer Foundation, and the National Science Foundation. I currently serve as the Executive Associate Editor for the *Journal of College Student Development<sup>8</sup>* and in 2020, I guest-edited a special issue for the *Journal of College Student Retention: Research, Theory, & Practice* on queer and trans college student retention<sup>9</sup>. I also serve on the editorial board for *The Journal of Higher Education*.

I have designed and taught a number courses in higher education and student affairs administration graduate preparation programs. My instruction includes both skill-based classes (i.e., helping skills in student affairs, teaching in higher education, quantitative research methods, applied research in student affairs, assessing and evaluating student outcomes) and theory-based classes (i.e., college students and contexts, student development theory, student affairs, queer and trans college student contexts and identities).

<sup>&</sup>lt;sup>6</sup> <u>https://www.routledge.com/Case-Studies-for-Student-Development-Theory-Advancing-Social-Justice-and/Garvey-Harris-Means-Perez-Porter/p/book/9781138610743</u>

<sup>&</sup>lt;sup>7</sup> <u>https://styluspub.presswarehouse.com/browse/book/9781620367681/Trans-Policies-Experiences-in-Housing-Residence-Life</u>

<sup>&</sup>lt;sup>8</sup> https://www.myacpa.org/journal-college-student-development-editors

<sup>&</sup>lt;sup>9</sup> https://journals.sagepub.com/toc/csra/21/4

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#### III. Subject matter of report

#### a. Field of scholarship summary regarding how college impacts traditionally

#### marginalized students

In 1982, Hall and Sandler explored campus climate experiences for women in academia, demonstrating the biased and discriminatory campus environments that disadvantage particular groups of students. Since then, decades of theoretical and empirical scholarship in higher education has pointed to the necessity of safe and affirming campus climates as important factors in the success and persistence of college students (Mayhew et al., 2016; Pascarella & Terenzini, 1991, 2005). Researchers and practitioners have come to understand campus climate as an indicator for equity and quality across all social groups and student populations.

Campus climate refers to "the cumulative attitudes, behaviors, and standards of employees and students concerning access for, inclusion of, and level of respect for individual and group needs, abilities, and potential" (Rankin, 2005, p. 17). The climate of an institution reflects the strengths, weaknesses, and prejudice of the larger society in which schools are situated (Sandler et al., 1996). Campus climate is a difficult construct to measure and assess (Rankin & Reason, 2008), yet is critical to students' success in higher education (Garvey, Squire, et al., 2018). Those who endure harassment and/or discrimination suffer, while those who experience a welcoming and warm climate are more likely to yield positive outcomes (Mayhew et al., 2016; Pascarella & Terenzini, 1991, 2005). In fact, an accumulation of subtle forms of marginalization or "micro-inequities" can have a profound negative impact on learning because it can limit students' connections with campus communities (Hall & Sandler, 1984). In their seminal comprehensive summary of how college impacts students, Pascarella and Terinizi

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(2005) noted that involvement, engagement, and affiliation with a campus are central to a student's learning, development, and progress in college.

Seminal campus climate studies have continually demonstrated that students experience campus climates differently based upon social group membership (Mayhew et al., 2016). Campus climate has been described by scholars as "racist" for students of color (Hurtado et al., 2012), "chilly" for women (Hall & Sandler, 1984), and "hostile" for queer and trans students (Rankin et al., 2010). Such empirical examinations have continued, confirming that campus climate remains a critical component of student success (Mayhew et al., 2016).

#### b. Campus climate and belonging

A number of scholars have examined campus climate among queer and trans students, noting a gradual improvement in campus climate perceptions across time (Garvey et al., 2017). Among queer and trans students, campus climate has been studied in regards to student success (Pitcher et al., 2018), student perceptions and experiences (Garvey et al., 2017), and student relationships (Linley et al., 2016; Vaccaro, 2012). Scholars have examined campus climate both within and outside of the classroom (Garvey & Rankin, 2015; Linley et al., 2016), and across different institutional types (Garvey et al., 2015).

Campus climate has a profound impact on queer and trans students' persistence, success, and sense of belonging (Garvey, Squire, et al., 2018; Woodford et al., 2018). A hostile campus climate disrupts queer and trans students' social networks and jeopardizes their satisfaction with their college experience (Garvey & Rankin, 2018; Beemyn & Rankin, 2011). In addition, a hostile climate impacts students' retention, choice of major, and classroom engagement (Garvey, Squire, et al., 2018). Woodford and Kulick (2015) confirmed these findings, noting that discrimination on campus is associated with decreased academic and social integration among

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queer and trans students. Although data suggest a positive trend in queer and trans experiences throughout the years because of activism and advocacy (Garvey et al., 2017), the challenges of campus climate and experiences for queer and trans students remain an issue worthy of inquiry.

Queer and trans student success is mediated by a healthy and affirming campus environment that embraces all students (Garvey et al., 2015). Having a positive climate allows queer and trans students to feel like they can be out and act against heterosexist and transphobic practices and policies (Garvey, Mobley et al., 2019; Tetreault et al., 2013). Queer and trans students who have more positive perceptions of campus climate oftentimes feel like they can be more out, and those who are more out are more likely to speak up about bias incidents and reported harassment (Tetreault et al., 2013). Furthermore, queer and trans students experience greater academic success when campus administrators take actions to improve the campus climate around diversity issues (Garvey, Squire, et al., 2018).

Belongingness is defined as "students' perceived social support on campus, a feeling or sensation of connectedness, the experience of mattering or feeling cared about, accepted, respected, valued by, and important to the group (e.g., campus community) or others on campus (e.g., faculty, peers)" (Strayhorn, 2012, p. 3). Belongingness has both cognitive and affective dimensions, combining students' self-perception of their role within groups with students' selfassessment of their own actions. Strayhorn noted that sense of belonging is not solely a human need, but also a dominant motivating force that shapes student behavior.

Belonging has strong ties to students' academic achievement and success; it is especially salient for queer and trans students because experiences of marginalization can generate barriers to fulfilling a sense of belonging within academic experiences. When students' personal safety is at risk, they are less likely to feel a sense of belonging or identify with that campus community.

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As an act of survival, queer and trans students are then more likely to disengage where they perceive there may be a risk (Garvey & Rankin, 2015; Garvey et al., 2015). Trans students' higher exposure to discrimination is directly linked with a lower sense of belonging than cisgender students (Garvey & Rankin, 2015). Further, nonbinary students are more likely than binary trans people to experience isolation and lack of acceptance from queer and trans communities, leaving nonbinary students to create their own support communities (Nicolazzo, 2016; Rankin & Beemyn, 2012).

#### c. College student development

Theories of identity development help educators understand how students grow and increase complexity of their own developmental capabilities (Rodgers, 1990). As noted by Patton and colleagues (2016), student development theory encompasses "A collection of theories related to college students that explains how they grow and develop holistically, with increased complexity, while enrolled in a postsecondary educational environment" (p. 6). Student development theories are typically organized into families of theories, including theories to understand students' sexual and gender identity development.

One prevailing term used within both sexual and gender identity development theories is outness, which refers to the extent that queer and trans people disclose their sexual and/or gender identity to others (Sorgen, 2011). Student development theorists typically framed outness as "a process by which individuals pass through a series of key stages on a pathway from a split self into a person whose sexual orientation [and/or gender identity] has been fully integrated into a healthy, whole self" (Klein et al., 2015, p. 317). Contemporary identity development scholars do not view outness as a singular experience, or one that should be exalted as an ending point to a developmental journey (Garvey, Mobley, et al., 2019). Nonetheless, a number of scholars have

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examined identity disclosure among queer and trans collegians, determining that it is an influential dimension to student success (Garvey, Matsumura, et al., 2018; Garvey, Mobley, et al., 2019; Rankin et al., 2010; Sorgen, 2011).

Stage-like models that promote outness as a catalyst for sexual and/or gender identity development provide helpful insights for student success. When students have a clear formation of their identity, it can promote greater clarity in their academic and professional pursuits, which has broad-reaching implications for college choice, matriculation, and student success (Hurtado et al., 2012). Additionally, identity disclosure promotes community and kinship among peers, faculty, and staff (Garvey & Inkelas, 2012; Garvey, Matsumara, et al., 2018; Garvey, Viray, et al., 2019). These connections are particularly important, because fostering connections among first-year queer and trans students is a defining characteristic for promoting first-year retention and persistence (Squire & Norris, 2014).

#### d. Minority stress and mental health

According to minority stress theory, queer and trans individuals face chronic stressors related to prejudice, stigma, and discrimination rooted in social norms, institutions, and policies that favor heterosexual and cisgender people (Meyer, 1995, 2003). Minority stress theory contends that queer and trans individuals may experience mental and physical health problems as a result of negative social environments created by oppressive attitudes, prejudice, and discrimination (Silverschanz et al., 2008). Such hostile contexts may contribute to greater psychological distress, cultivate internalized oppression, and force queer and trans students to conceal their identities (Meyer, 1995; Szymanski, 2009; Szymanski & Balsam, 2011; Waldo et al., 1998).

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Over the past decade, an increasing number of researchers agree that the social stigma and discrimination are contributing factors to the elevated rates of depression and suicide among queer and trans people (Haas et al., 2010). Discrimination at the individual level (hostility, harassment, bullying, and physical violence) and institutional level (policies and lack of resources) have been identified as risk factors for depression, social isolation, and hopelessness which, in turn, place queer and trans people at risk for contemplating suicide (Diamond et al., 2012; Haas et al., 2010).

As minority stress theory and existing research suggest, experiencing discrimination can be a pathway to adverse outcomes among queer and trans collegians (Garvey, Squire, et al., 2018; Woodford et al., 2016). Existing research conducted with queer and trans collegians supports this theory, specifically in terms of psychological well-being, including anxiety, depression, and psychological distress (Nadal et al., 2011; Oswalt & Wyatt, 2011; Silverschanz et al., 2008; Woodford et al., 2014; Woodford, Kulick et al., 2015).

Exclusionary policies or lack of formal supports can contribute to the chronic stress that queer and trans students face, whereas inclusive policies and resources (including registered queer and trans student organizations) can promote acceptance, challenge oppression, and provide support for queer and trans students (Hatzenbuehler & Pachankis, 2016; Pitcher et al., 2018; Woodford et al., 2016). A greater level of support and inclusion from institutional policies and programs may protect queer and trans students from discrimination, and these initiatives can indirectly promote students' psychological well-being in terms of lower distress and higher self-acceptance (Woodford et al., 2018). Students who perceive that there are inclusive campus programs and policies are more likely to feel safer on campus (Hong et al., 2016). When QT

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students feel safer and more comfortable on campus, they are more likely to be academically successful (Garvey, Squire, et al., 2018).

#### e. Relationships

Compositional diversity is concerned with *who* is represented in an institution's community, including students, faculty, and staff, and their diverse social identities (Hurtado et al., 2012). The more a university includes historically marginalized populations in its campus culture, the better the experience for all students (Nguyen et al., 2018). Regarding compositional diversity, relationships with peers and faculty are the cornerstone of student success (Mayhew et al., 2016). Particularly among students with marginalized identities, positive interactions with peers mitigate negative campus climate experiences (Garvey et al., 2017). Formal and informal relationships between student peers can promote more affirming environments (Simpfenderfer et al., 2020; Tetreault, 2013). In fact, students who know more queer and trans students have more positive perceptions of campus (Simpfenderfer et al., 2020).

For queer and trans people, community is integral to surviving and thriving in higher education (Blockett, 2017; Miller, 2017; Nicolazzo, 2017; Pitcher & Simmons, 2020). Queer and trans students seek or form friendships, community, and kinship networks in order to explore identity, build friendships, and engage with campus resources or activism (Miller, 2017; Pitcher & Simmons, 2020). These relationships may take the form of looser networking, tight connections, or chosen family relations, all of which have proven to be survival strategies for queer and trans students in oppressive institutions (Pitcher & Simmons, 2020). Kinship is considerably important for queer and trans students, as it often is considered chosen family. For queer and trans students who experience rejection or discomfort from their families, these kinship relationships often take the form of familial bonds (Nicolazzo, 2017).

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Queer and trans peer relationships foster space for students to share stories, make meaning together, and validate each other when queer and trans students feel isolated (Garvey, Mobley et al., 2019). Affirming support networks promote positive self-esteem, sense of purpose, and adjustment for queer and trans students (Ellard-Gray & Desmarais, 2014; Schmidt et al., 2011). Often, queer and trans students may bond in community over common campus struggles and build power through planning actions or engaging in activism together to bring about change. Additionally, scholars have demonstrated the critical need for trans, nonbinary, and agender students to carve spaces for regrouping in order to build power and to practice self and community care (Flint et al., 2019; Garvey, Viray, et al., 2019; Nicolazzo, 2017; Nicolazzo et al., 2017). Conversely, the absence of kinship is detrimental to queer and trans student success. When trans students do not have access to supportive resources or meaningful relationships of kinship, they are less likely to graduate (Goodrich, 2012; Singh et al., 2013).

#### f. Queer and trans student organizations

One important organizational commitment towards queer and trans inclusion is how institutions encourage or disparage the formation of queer and trans student groups. Historically, in years prior to the 2000s, groups of queer and trans students often had to meet in secret or remain unofficial and unrecognized by the institution (Beemyn, 2003). Even before the events at the Stonewall Inn, gay students at several colleges and universities (e.g., Columbia, Cornell) were forming underground societies (Beemyn, 2003; Graves, 2018). The covert nature of these student groups was due, in part, to campus climates that were less than welcoming. However, progress on college campuses has led to the formation of many recognized student groups that connect students socially and provide avenues for leadership and advocacy (Duran & Nicolazzo, 2017; Self & Hudson, 2015). Queer and trans students feel more welcomed when there are

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institutional resources allocated to queer and trans supports, including student organizations (Pitcher et al., 2018). Particularly because queer and trans student organizations are often coordinated through the labor of students, college and university administrators must support the development of these organizations by providing formal recognition and resources. As described by Pitcher and Simmons (2020), administrators must uplift and support individual and group efforts among queer and trans students who seek to promote their own and each other's retention through student organizations.

Identity-based student organizations on campus are critical resources for queer and trans students' well-being (Renn, 2010) and being involved in these student groups promote positive campus climate perceptions (Garvey et al., 2017). Formally recognized student organizations play many roles, such as offering safe and supportive spaces for queer and trans students as well as confronting hostility and discrimination on campus through advocacy and education (Pitcher et al., 2018). The availability of queer and trans student organizations signals a welcoming climate that is indicative of the broader campus environment (Hong et al., 2016). Queer and trans student organization involvement facilitates warmer climate perceptions and lower rates of victimization among queer and trans undergraduate students (Chesir-Teran & Hughes, 2009; Goodenow et al., 2006). In fact, Woodford and colleagues (2018) found that the formal presence of queer and trans student organizations is associated with decreased levels of experiential discrimination. Conversely, the lack of resources that address queer and trans inclusion facilitates hostile and discriminatory experiences for these students (Evans & Broido, 2002; Ryan & Rivers, 2003).

Formally recognized queer and trans student organizations is of critical importance to queer and trans students within colleges and universities (Garvey, Mobley, et al., 2019). Queer

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and trans student organizations provide significant support while also affirming students' identities (Marine & Nicolazzo, 2014; Westbrook, 2009). When queer and trans students have supportive peer networks, it fosters positive self-esteem, sense of purpose, and adjustment (Ellard-Gray & Desmarais, 2014; Garvey, Mobley, et al., 2019; Schmidt et al., 2011). Moreover, social acceptance by peers is a predictive factor for queer and trans students' academic development (Kilgo et al., 2019). These student-run organizations offer queer and trans students essential spaces to seek and find a sense of belonging that nurtures student retention and success (Garvey, Mobley, et al., 2019).

Especially because queer and trans students must exist in colleges and universities that inherently disadvantage queer and trans people, spaces that promote kinship and community are vital for student success (Garvey et al., 2017; Nicolazzo et al., 2017; Pitcher & Simmons, 2020). Designated student organizations provide direct support to queer and trans students by serving as a community or gathering place. Queer and trans student groups create opportunities for students to grow as leaders, build community, learn from each other, and engage in activism. In these organizations, students engage with queer and trans discourse, create community, and mobilize together (Garvey, Mobley et al., 2019). Additionally, 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 and success (Garvey, 2020; Pitcher et al., 2018).

Particularly for students whose identities are not always centered within queer and trans student services, most notably bisexual, pansexual, fluid students (Garvey, Matsumura, et al., 2018), asexual students (Mollet & Lackman, 2018), trans students (Garvey, Viray, et al., 2019), and queer and trans students of color (Duran, 2019), finding community in student organizations

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can be invaluable for belongingness and transitions. Trans students specifically navigate identity development, build community, and foster belonging in queer and trans student organizations, and these organizations also have a positive relationship with trans students' persistence in college (Nicolazzo et al., 2017).

Dated: April 26, 2021

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DR. JASON C. GARVEY

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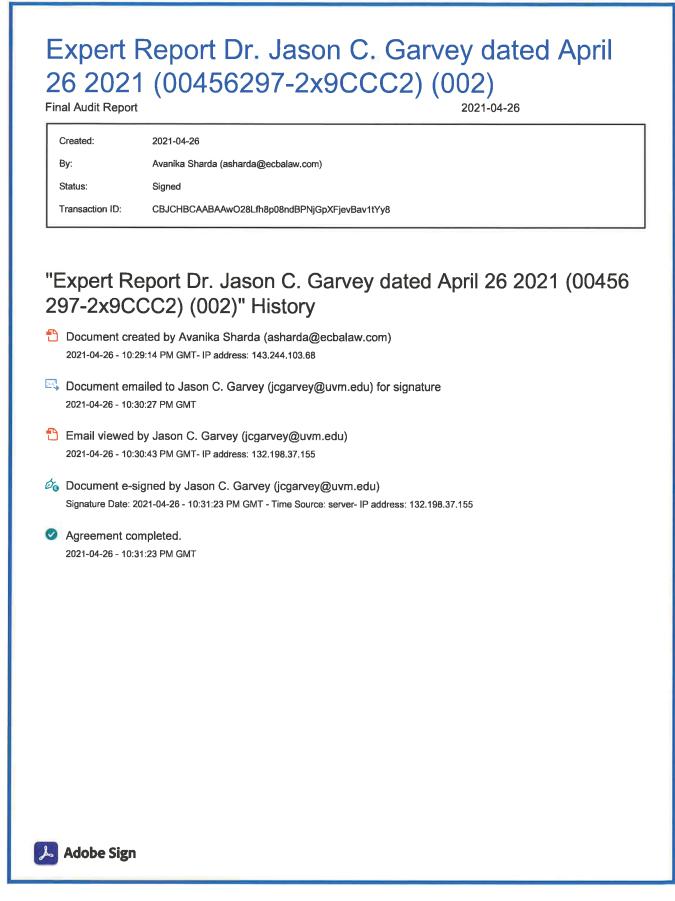
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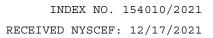
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# Exhibit 33

NYSCEF DOC. NO. 221





# Redacted: Nonresponsive

President Berman reviewed the University's mission: "Yeshiva University is an ecosystem of educational institutions and resources that prepares the next generation of young leaders for great success in their personal and professional lives, endowing them with both the will and wherewithal to transform the Jewish world and the broader society for the better."

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# Exhibit 34

# FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 222

# 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' RESPONSE TO PLAINTIFFS' SECOND DEMAND FOR DISCOVERY AND INSPECTION

PLEASE TAKE NOTICE that pursuant to CPLR § 3122, Defendants Yeshiva University, President Avi Berman, and Vice-Provost Chaim Nissel ("Defendants"), by and through their undersigned counsel, submit the following information and responses to Plaintiffs' Second Demand for Discovery and Inspection. By providing such information, Defendants do not waive any objection to the admissibility of this information on the grounds of relevance, materiality, or any other appropriate ground.

#### **GENERAL OBJECTIONS**

- 1. Defendants object to the requests to the extent they seek to impose obligations beyond those required under the Civil Practice Law & Rules.
- Defendants object to the requests to the extent they seek disclosure of information protected by any applicable evidentiary privilege, including but not limited to the attorney-client privilege, work product doctrine, and First Amendment privilege.
- 3. Defendants object to the requests to the extent they seek disclosure of information prohibited from disclosure by federal statutory and regulatory requirements, state privacy laws, and any other provision of law prohibiting the disclosure of information.
- 4. Defendants object to the requests to the extent they seek disclosure of information protected from disclosure by the federal or state constitution.

- 5. Defendants object to the request to the extent they are, or incorporate terms that are, vague, ambiguous, impermissibly imprecise, or otherwise unintelligible.
- 6. Defendants object to the requests to the extent they seek information that is not relevant to the sole issue on discovery: whether Yeshiva University is a religious corporation incorporated under the Education Law pursuant to the New York City Human Rights Law.
- 7. Defendants object to the requests to the extent they seek information or documents that are already within Plaintiffs' possession, custody, or control.
- 8. Defendants object to the requests to the extent they seek information or documents that are outside Defendants' possession, custody, or control.
- 9. Defendants object to the definition of "'Defendant,' 'Yeshiva University,' 'Yeshiva,' or 'YU'" in that it purports to include many persons other than Defendants, including "persons who currently or in the past acted or purported to act on their behalf," such that Defendants are unable to reasonably discern what persons and entities are included in such definition. Defendants further object that this definition encompasses persons with documents beyond the possession, custody, or control of Defendants.
- 10. Defendants object that the timeframe of "April 1, 2015 to date" is overly broad, not proportionate, and unduly burdensome, because none of the alleged facts at issue in this case occurred until fall 2018.

# DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST DEMAND FOR DISCOVERY AND INSPECTION

 All Form CHAR410s, also known as "Registration Statements for Charitable Organizations," and all attachments thereto, submitted by or on behalf of Yeshiva University to any agency, department, or office of the State of New York.

#### **ANSWER**:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all." Defendants further object that this request is duplicative of other discovery requests already served by Plaintiffs. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through third-party subpoenas or Freedom of Information Law requests. Defendants further object to this request as so overbroad as to be outside the scope of discovery because the Court has held that representations made in government filings do not suffice to prove Yeshiva University falls outside the NYCHRL religious exemption. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce Yeshiva University's Form CHAR410.

2. All copies of the form attached hereto as Exhibit A, and all attachments thereto, that Yeshiva University has ever completed or submitted to any agency, department, or office of the State of New York, without limitation as to the date completed or submitted.

#### ANSWER:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all copies." Defendants further object that this request is duplicative of other discovery requests already served by Plaintiffs and identical to Request 1 from Defendants' Second Demand for Discovery and Inspection. Defendants further object that this request is unduly burdensome with regard to scope and time to the extent it seeks documents filed before April 1, 2015, including documents filed several decades ago. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through third-party subpoenas or Freedom of Information Law requests. Defendants further object to this request as so overbroad as to be outside the scope of discovery because the Court has held that representations made in government filings do not suffice to prove Yeshiva University falls outside the NYCHRL religious exemption. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce Yeshiva University's Form CHAR410. Defendants further refer Plaintiffs to their response to Request No. 1.

3. All documents prepared by Yeshiva University in relation to its completion of its most recent Form CHAR410.

#### ANSWER:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all documents." Defendants further object that this request is duplicative of other discovery requests already served by Plaintiffs and has complete overlap with Requests 1 and 2 from Defendants' Second Demand for Discovery and Inspection. Defendants further object that this request is vague and overbroad as to its use of "in relation to." Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through third-party subpoenas or Freedom of Information Law requests. Defendants further object to this request as so overbroad as to be outside the scope of discovery because the Court has held that representations made in government filings do not suffice to prove Yeshiva University falls outside the NYCHRL religious exemption. Defendants further object to the extent this request encompasses documents subject to the

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attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce Yeshiva University's Form CHAR410. Defendants further refer Plaintiffs to their response to Request Nos. 1 and 2.

4. The Form CHAR410 identified as missing from the New York State Attorney General's Office's records regarding Yeshiva University, as reflected in the document attached hereto as Exhibit B and found at "Registration Statement for Charitable Organizations" on the Yeshiva University profile page with the New York Charities Bureau, available at <a href="https://www.charitiesnys.com/RegistrySearch/show\_details.jsp?id={75F13C7C-A493-4F5A-9984-12CC4DF8C659}">https://www.charitiesnys.com/RegistrySearch/show\_details.jsp?id={75F13C7C-A493-4F5A-9984-12CC4DF8C659}</a>.

# **ANSWER**:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all documents." Defendants further object that this request is duplicative of other discovery requests already served by Plaintiffs and has complete overlap with Request 1 from Defendants' Second Demand for Discovery and Inspection. Defendants further object that this request is misleading in that it characterizes the document as "missing," when the New York State Charities Bureau website does not state that the document is missing or whether it was ever required to be submitted. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through thirdparty subpoenas or Freedom of Information Law requests. Defendants further object to this request as so overbroad as to be outside the scope of discovery because the Court has held that representations made in government filings do not suffice to prove Yeshiva University falls outside the NYCHRL religious exemption. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce Yeshiva University's From CHAR410. Defendants further refer Plaintiffs to their response to Request Nos. 1, 2, and 3.

5. All "Constitutional Eligibility Questionnaires" or substantially equivalent documents that Yeshiva University completed in support of its application for Bundy Aid. An example of the "Constitutional Eligibility Questionnaire" attached hereto as Exhibit C.

#### ANSWER:

Defendants object to this request as not proportionate, overbroad, and unduly burdensome in that it requests "[a]ll" questionnaires. Defendants further object to this request as duplicative of earlier discovery requests. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they have conducted a thorough search and have not identified any such documents.

6. The Yeshiva University Board of Trustees' 1967 petition to amend the Yeshiva University charter as submitted to the New York State Education Department.

#### ANSWER:

Defendants object to this request as not proportionate, overbroad, and outside the scope as to time because it requests a document from more than 50 years before the events at issue in this lawsuit. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through its third-party subpoena on the New York State Education Department.

Subject to and without waiving these objections or the General Objections, Defendants respond that this document is available at PL000009-15.

 All non-public governing documents and conflict of interest policies referenced in Yeshiva University's IRS Form 990 Schedule O.

#### **ANSWER**:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all non-public governing documents and conflict of interest policies." Defendants further object that this request is vague because it does not identify which IRS Form 990 it refers to. Defendants further object that this request is outside the scope of discovery currently authorized by the court. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they have already produced Yeshiva University's articles of incorporation and bylaws. No further documents will be produced.

 Documents sufficient to show which, if any, religious entity controls or operates Yeshiva University.

#### ANSWER:

Defendants object that this request is vague in that it does not define "religious entity." Defendants further object that this request is outside the scope of discovery currently authorized by the court, because the New York City Human Rights Law does not require that any religious entity control or operate an organization in order for that organization to qualify as a religious corporation incorporated under the Education Law. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce any non-privileged, responsive documents within Defendants' possession, custody, or control.

 Documents sufficient to show which matters regarding Yeshiva University's operation and governance are under the authority of religious leaders, and who comprises the religious leadership of Yeshiva University.

#### ANSWER:

Defendants object to this request as vague and confusing in that it does not define "matters." Defendants further object to this request as unduly burdensome because Yeshiva University is a large research university with thousands of students and many different administrative departments and schools, each with a large number of various "matters" under their auspices. Yeshiva University objects to this request to the extent that it seeks documents concerning any schools other than the University's undergraduate schools. Defendants further object to the extent this request seeks confidential, First Amendment-protected information regarding the internal religious affairs of Yeshiva University. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce non-privileged, responsive documents sufficient to show the religious leadership of Yeshiva University's undergraduate programs.

10. Documents sufficient to show any statements of religious beliefs that Yeshiva University faculty or employees are asked to sign.

#### ANSWER:

Defendants object to this request as vague and confusing in that it does not define "statements of religious beliefs." Defendants further object to this request as unduly burdensome because Yeshiva University is a large research university with hundreds of faculty and employees and many different administrative departments and schools. Yeshiva University objects to this request to the extent that it seeks documents concerning any schools other than the University's undergraduate schools. Defendants further object to the extent this request seeks confidential, First Amendment-protected information regarding the internal religious affairs of Yeshiva University. Defendants further object that this request is outside the scope of discovery currently authorized by the court, because the New York City Human Rights Law does not require that an organization's employees sign statements of religious beliefs in order for that organization to qualify as a religious corporation incorporated under the Education Law. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce any non-privileged, responsive documents concerning the University's undergraduate programs.

11. Documents sufficient to show any policies or directives requiring Yeshiva University undergraduate students to attend religious services.

#### **ANSWER**:

Defendants object to this request as vague and confusing in that it does not define "policies" or "directives." Yeshiva University objects to this request to the extent that it seeks documents concerning any schools other than the University's undergraduate schools. Defendants further object that this request is outside the scope of discovery currently authorized by the court, because the New York City Human Rights Law does not require that a religious university require its students to attend religious services in order for that religious university to qualify as a religious corporation incorporated under the Education Law. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce any non-privileged, responsive documents concerning the University's undergraduate programs.

12. Documents sufficient to show what percentage of Yeshiva University's funding comes from a religious entity corporation.

#### ANSWER:

Defendants object to this request as vague because it does not define "religious entity corporation." Defendants further object that this request is not proportionate, is overbroad, and is unduly burdensome in that it seeks financial information from potentially thousands of individuals or organizations that is not relevant to the disposition of this case. Defendants further object that this request seeks confidential financial information, including confidential financial information of third party donors. Defendants further object that this request is outside the scope of discovery currently authorized by the court, because an organization's source of funding has no bearing on whether that organization qualifies under the New York

City Human Rights Law as a religious corporation incorporated under the Education Law. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege. Based on the foregoing objections, Defendants will not produce any documents in response to this Request.

13. All Form CHAR410s, also known as "Registration Statements for Charitable Organizations," and all attachments thereto, submitted by or on behalf of the Rabbi Isaac Elchanan Theological Seminary ("RIETS") to any agency, department, or office of the State of New York.

#### ANSWER:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all." Defendants further object that this request seeks documents from an entity that is not a party to this lawsuit.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will not produce any documents.

14. All Form CHAR410 Schedule E forms and/or "Request for Registration Exemption for Charitable Organizations" forms, and all attachments thereto, submitted by or on behalf of RIETS to any agency, department, or office of the State of New York. An example of Form CHAR410 Schedule E is attached hereto as Exhibit D for reference.

#### **ANSWER**:

Defendants object that this request is not proportionate, is overbroad, and is unduly burdensome in that it requests "all." Defendants further object that this request seeks documents from an entity that is not a party to this lawsuit. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through third-party subpoenas or Freedom of Information Law requests. Defendants further object to this request as so overbroad as to be outside the scope of discovery because the Court has held that representations made in government filings do not suffice to prove Yeshiva University falls outside the NYCHRL religious exemption. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege.

Subject to and without waiving these objections or the General Objections, Defendants respond that they will not produce any documents.

15. Documents sufficient to confirm and/or certify RIETS' current state of incorporation, including but not limited to its Articles of Incorporation as filed with New York State, New York County, and any other government entity.

#### ANSWER:

Defendants object that this request seeks documents that are publicly available. Defendants further object that this request seeks documents from an entity that is not a party to this lawsuit.

Subject to and without waiving the General Objections, Defendants respond that they will not produce any documents.

16. All current and operative by-laws for RIETS, including any amendments to those by-laws.

#### ANSWER:

Defendants object on the ground that this request seeks documents from an entity that is not a party to this lawsuit. Defendants also object that this request is vague and unclear, as the current bylaws necessarily include any "amendments" to such bylaws. Based on the foregoing objections, Defendants respond that they will not produce any responsive documents. 17. All minutes of RIETS' Board of Trustees' meetings and committee meetings within the RIETS Board of Trustees concerning Yeshiva University's status as a religious corporation.

#### ANSWER:

Defendants object to this request as not proportionate, overbroad, and unduly burdensome in that it requests "[a]ll minutes." Defendants object that this request seeks documents from an entity that is not a party to this lawsuit. Based on the foregoing objections, Defendants will not produce any documents in response to this Request.

 All internal communications amongst the RIETS Board of Trustees concerning Yeshiva University's status as a religious corporation.

#### ANSWER:

Defendants object to this request as not proportionate, overbroad, and unduly burdensome in that it requests "[a]ll internal communications." Defendants further object that this request seeks documents from an entity that is not a party to this lawsuit. Based on the foregoing objections, Defendants will not produce any documents in response to this Request.

19. Documents sufficient to show RIETS' corporate relationship with Yeshiva University.

#### ANSWER:

Defendants object that this request is duplicative of other discovery requests already served by Plaintiffs. Defendants further object to this request to the extent it requests documents already within Plaintiffs' possession, including through third-party subpoenas or Freedom of Information Law requests. Defendants further object to the extent this request encompasses documents subject to the attorney-client privilege, work product doctrine, First Amendment privilege, and/or any other applicable privilege. Subject to and without waiving these objections or the General Objections, Defendants respond that they will produce any non-privileged, responsive documents within Defendants' possession, custody, or control, sufficient to show RIETS's corporate relationship with Yeshiva University.

Dated: November 10, 2021

New York, New York

#### Respectfully submitted,

# KAUFMAN BORGEEST & RYAN LLP

# By: <u>/s/ Eric S. Baxter</u>

David Bloom 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. 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

NYSCEF DOC. NO. 222

To: Emery Celli Brinckerhoff Abady Ward & Maazel LLP Attn: Katherine Rosenfield, Esq. Marissa R. Benavides, Esq. Max Selver, Esq. *Attorneys for Plaintiffs* 600 Fifth Avenue, 10th Floor New York, New York 10020 (212) 763-5000 FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 223 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 35

NYSCEF DOC. NO. 223

# EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

RICHARD D. EMERY ANDREW G. CELLI, JR. MATTHEW D. BRINCKERHOFF JONATHAN S. ABADY EARL S. WARD ILANN M. MAAZEL HAL R. LIEBERMAN DANIEL J. KORNSTEIN O. ANDREW F. WILSON KATHERINE ROSENFELD DEBRA L. GREENBERGER ZOE SALZMAN SAM SHAPIRO

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December 7, 2021

# Via Electronic Mail

Eric S. Baxter William J. Haun Abigail E. Majane Smith The Becket Fund for Religious Liberty 1919 Pennsylvania Ave. NW, Suite 400 Washington, DC 20006

Brian M. Sher Samantha R. Montrose Kenneth Abeyratne Kaufman Borgeest & Ryan LLP 120 Broadway, 14th Floor New York, New York 10271

*Re: YU Pride Alliance, et al. v. Yeshiva University, et al.,* Index No.: 154010/2021

Dear Counsel:

We are in receipt of Defendants' First, Second, Third, and Fourth Production of documents. While our review of these productions is ongoing, we have already encountered multiple documents that have been improperly redacted in their produced form. We write to identify these improperly redacted documents and request that you reproduce unredacted versions of these documents and cure this deficiency or, in the alternative, advise us of your availability to meet and confer pursuant to Local Civil Rule 202.20-f. If we are unable to promptly resolve these disputes, we intend to move to compel. As you know, the parties are proceeding on an expedited briefing schedule and it is imperative that these issues be promptly presented to the Court. Should it become necessary, we are available to confer on December 8, 2021.

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EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP Page 2

In light of these production deficiencies, we write also to reiterate Plaintiffs' General Instruction No. 4 to Plaintiffs' Demands for Discovery and Inspection:

All documents that respond, in whole or in part, to any portion of the document requests below shall be produced in their entirety, including all attachments, exhibits and enclosures, and without expurgation or redaction.

Plaintiffs' General Instruction Nos. 12, 13, and 15 further require Defendants to produce all nonprivileged information in a responsive document; if unable to do so, Defendants must furnish a list describing the nature of the withheld information and Defendants' grounds for withholding. Defendants have not furnished this list with regard to any of the redacted documents produced.

Defendants' failing is particularly problematic with regard to documents that are rightfully part of the public domain. Multiple of the redacted documents are public filings or otherwise relate to public proceedings, including Defendants' production of Yeshiva University's Form 990 filing with the Internal Revenue Service and bond issue with the Dormitory Authority of the State of New York ("DASNY"). *See* Specific Document Deficiencies, *infra*. Examples of these improper redactions are attached hereto as Exhibit A. These documents involve Yeshiva University's public representations and public agreements with government entities. Defendants have no valid basis to redact these or any other public documents containing information responsive to Plaintiffs' demands. Accordingly, these and any future produced documents that are part of the public domain should be produced in full, without redactions.

# Defendants' Production YU00944-1042 (Yeshiva University Form 990)

Defendants' production of its 2018 Form 990 is inadequate. Throughout the document, Defendants redacted partial or full pages without explanation or justification. *See* Bates Nos. YU00951-54, YU1033-40. Defendants' redactions of this public tax document are improper for two reasons: (1) the filing is rightfully public information, *see* YU00945 (labelling Form 990 as a "Copy for Public Inspection"); and (2) because Defendants did not provide Plaintiffs any information to ascertain whether there could be a legitimate basis to redact that information. With Defendants providing no reason to maintain its redactions, Plaintiffs demand that Defendants produce a fully unredacted version of Yeshiva University's 2018 Form 990 as soon as possible.

# Defendants' Production YU01244-1307 (\$90 Million DASNY Bond Issue)

Defendants' production of the documents supporting the issue of a \$90 million DASNY bond to Yeshiva University is similarly deficient. Of the 63 pages contained in the bond issue agreement and attachments, at least 50 pages are partially or fully redacted with no explanation as to Defendants' basis for the redactions. *See* Bates Nos. YU01250-61, 1264-1291, 1296-1307. A DASNY bond is an issuance of a loan using public funds—its terms are rightfully available for public inspection. None of the limited terms of the bond issue agreement available for Plaintiffs' review indicate otherwise, and Defendants again have provided *no* basis for your redaction of

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roughly 75% of the agreement. Accordingly, Plaintiffs demand that Defendants produce a fully unredacted version of the \$90 million DASNY bond issue agreement as soon as possible.

### Defendants' Production YU02557-2980 (Yeshiva University Self-Study Report 2012)

Defendants' production of the Yeshiva University 2012 Self Study Report submitted to the Middle States Commission on Higher Education ("MSCHE") is yet another example of Defendants' misapplication of redactions to a responsive document. Defendants redacted hundreds of pages with a cursory claim that the information on these pages is "nonresponsive," *see* YU02772-2980, and redacted additional pages with no explanation whatsoever. *See, e.g.*, YU02620. These redactions in plain conflict with Plaintiffs' General Instructions to produce responsive documents in full and provide details regarding any information for which Defendants deemed redaction necessary.

These redactions also give Plaintiffs serious misgivings regarding Defendants' judgment in designating material for redaction. Plaintiffs are recently in receipt of an unredacted version of the 2012 Self-Study Report from MSCHE. A comparison of the redacted and unredacted versions shows that Defendants improperly redacted information that may indeed be relevant to Yeshiva University's character and mission. *See, e.g.*, YU02620-2662. It is for this very reason that Defendants are not entitled to unilaterally determine the relevance of its responsive documents. Defendants have an obligation to produce responsive documents in full, or at minimum proffer the nature of the redacted information for the parties to make an informed determination as to its potential relevance. Defendants did neither here. Because of the uncertainty created by Defendants' cursory and improper redactions, Plaintiffs demand an unredacted reproduction of all redacted documents.

# Deadline for Reproduction of Responsive Documents

Plaintiffs' surreply in response to Defendants' converted motion for summary judgment is due on December 17, 2021, ending the parties' opportunity to conduct expedited discovery. Because the close of discovery is less than three weeks away, Plaintiffs must act expeditiously to preserve our rights. Accordingly, please confirm by December 8, 2021 that Defendants will produce unredacted versions of the above-identified documents—with the exception of personal identifying information and attorney-client privileged information—on or before December 9, 2021.

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Please promptly remedy the deficiencies identified above and advise us of your availability for a conference call tomorrow to discuss any outstanding issues.

Sincerely,

/s/

Katherine Rosenfeld Marissa Benavides Max Selver

c. All counsel of record (via email)

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# Exhibit 36

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# LOCAL LAWS OF

# THE CITY OF NEW YORK

# FOR THE YEAR 1965

#### No. 97

#### A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the powers and jurisdiction of the city commission on Human Rights.

#### Be it enacted by the Council as follows:

Section 1. Section Bil-1.0 of Title B of chapter one of the administrative code of the city of New York as last amended by local law number eleven for the year nineteen hundred sixty-two is hereby amended to read as follows:

#### TITLE B

#### CITY COMMISSION ON HUMAN RIGHTS

§ B1-1.0 Policy.—In the city of New York, with its great cosmopolitan population consisting of large numbers of people of every race, color, creed, national origin and ancestry, there is no greater danger to the health, morals, safety and welfare of the city, and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of differences of race, color, creed, national origin or ancestry. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundations of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space because of race, creed, color or national origin, and to take other actions against discrimination because of race, creed, color or national origin, as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 2. Section B1-2.0 of the administrative code of the city of New York, as last amended by local law number eleven of nineteen hundred sixty-two is hereby repealed and reenacted to read as follows:

§ B1-2.0 Definitions.—When used in this title:

1. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with

employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful discriminatory practice" includes only those practices specified in section B1-7.0 of this title.

5. The term "employer" does not include any employer with fewer than four persons in his employ.

6. The term "employee" and this title does not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

7. The term "commission" unless a different meaning clearly appears from the context, means the city commission on human rights created by this title.

8. The term "national origin" shall, for the purposes of this title, include "ancestry."

9. The term "place of public accommodation, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as : inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bathhouses, swimming pools. laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies, or bureaus; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owners and one or more tenants. Such term shall not include public fibraries, kindergartens, primary and secondary schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the regents of the state of New York; any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility. supported in whole or in part by public funds or by contributions solicited from the general public; or any institution, club or place of accommodation which is in its nature distinctly private.

No institution, club, organization or place of accommodation which 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 shall be deemed a private exhibition within the meaning of this section.

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.

11. The term "publicly-assisted housing accommodations" shall include all housing accommodations within the city of New York in

(a) public housing

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(b) housing operated by housing companies under the supervision of the state commissioner of housing, or the city housing and redevelopment board

(c) housing constructed after July first, mineteen hundred-fifty, within the city of New York

(1) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,

(3) which is constructed in whole or in pairt on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

(d) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, mineteen hundred fiftyfive, financed in whole in or part by a loan, whether or not secured by a mortgage the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(e) housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodation is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (a) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any of its political subdivisions or any agency that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

12. The term "multiple dwelling," as herein used, means a dwelling which is occupied, as a rule, for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fire-proof building used wholly for commercial purposes except for not more than one jamitor's apartment and not

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more than one penthouse occupied by not more than two families. The term "family," as used herein, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder," "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.

14. The term "real estate broker" means any person, firm or conporation who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction, or otherwise, exchange, purchase or rental of an estate or interest in real estate or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

15. The term "real estate salesman" means a person employed by a licensed real estate broker to list for sale, sell or offer for sale at auction or otherwise to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rents for the use of real estate for or in behalf of such real estate broker.

§ 3. Section B1-5.0 of the administrative code of the city of New York, as added by local law fifty-five of the year nineteen hundred fifty-five, is hereby amended to read as follows.

§ B1-5.0 Powers and duties.—The powers and duties of the commission shall be:

1. To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious intergroup relations within the city of New York.

2. To enlist the cooperation of the various racial, religious and ethnic groups, community organizations, labor organizations, fraternal and benevolent associations and other groups in New York City, in programs and campaigns devoted to eliminating group prejudice, intolerance, bigotry and discrimination. NYSCEF DOC. NO. 224

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3. To study the problems of prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby in all or any fields of human relationship.

4. To receive, investigate and pass upon complaints and to initiate its own investigations of:

(a) racial, religious and ethnic group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby;

(b) discrimination against any person, group of persons, organization or corporation, whether practiced by private persons, associations, corporations and, after consultation with the Mayor, by city officials or city agencies. Upon its own motion, to make, sign and file complaints alleging violations of this title.

5. To hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith to require the production of any evidence relating to any material under investigation or any question before the commission.

6. To issue publications and reports of investigations and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby,

7. To appoint an executive director. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury,

8. To recommend to the Mayor and to the council legislation to aid in carrying out the purpose of this title.

9. To submit an annual report to the Mayor and the council which shall be published in the City Record.

§4. Chapter one of the administrative code of the city of New York is hereby amended by adding thereto six new sections to be sections B1-7.0, B1-8, B1-9, B1-10.0, B1-11.0 and B1-12.0 to follow section B1-6.0, to read as follows:

§1-7.0 Unlawful discriminatory practices: 1. It shall be an unlawful discriminatory practice:

(a) For an employer, because of the age, race, creed, color, national origin or sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of his age, race, creed, color or national origin, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the age, race, creed, color, national origin or sex of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this title or because he had filed a complaint, testified or assisted in any proceeding under this title.

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

(b) To deny to or withhold from any person because of his race, creed, color, national origin or sex the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(c) To discriminate against any person in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin or sex;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin or sex, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color or national origin of any person directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodation, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

3. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodation or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color or national origin of such person or persons.

(b) To discriminate against any person because of his race, creed, color or national

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origin in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

(c) To cause to be made any written or oral inquiry or record concerning the race, creed, color or national origin of a person seeking to rent or lease any publicly-assisted housing accommodation.

3-a. It shall be an unlawful discriminatory practice:

a. For an employer or licensing agency, because an individual is between the ages of forty and sixty-five, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.

b. For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of forty and sixty-five, or any intent to make any such limitation, specification or discrimination.

c. For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he has opposed any practices forbidden under this title or because he has filed a complaint, testified or assisted in any proceeding under this title. But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, by reason of his race, color or religion.

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color or national origin of such person or persons.

(2) To discriminate against any person because of his race, creed color or national origin in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race. NYSCEF DOC. NO. 224

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creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations, or (2) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or members of his family reside in such housing accommodation.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons such land or commercial space because of race, creed, color or national origin of such person or persons.

(2) To discriminate against any person because of race, creed, color or national origin in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesman or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color or national origin of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withheld any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color or national origin of such person or group of

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record of inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination.

d. It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit

union, investment company, mortgage company, insurance company or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, tand or commercial space, or any officer, agent or employee thereof:

(1) To discriminate against any such applicant or applicants because of the race, creed, color or national origin of such applicant or applicants or of any member, stock-holder, director, officer or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, land or commercial space, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any such financial assistance.

(2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color or national origin.

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this title, or to attempt to do so.

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this title or because he has filed a complaint, testified or assisted in any proceeding under this title.

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section B1-80 of this title to violate the terms of such agreement.

9. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

§ B1-8.0 Procedure. 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or his attorney-at-law, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission upon its own motion may, in like manner, make, sign and file such complaint. In connection with the filing of such complaint, the commission is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this title, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

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2. After the filing of any complaint, the commission shall make prompt investigation in connection therewith. If the commission shall determine after such investigation that probable cause does not exist for crediting the allegations of the complaint that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice, the commission shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent. The complainant may, within thirty days of such service, apply for review of such action of the commission. Upon such application, the chairman shall review such action and determine whether there is probable cause to credit the allegations of the complaint and accordingly shall enter an order affirming, reversing or modifying the determination of the commission, or remanding the matter for further investigation and action, a copy of which order shall be served upon the complainant. If the commission after such investigation shall determine that there is probable cause to credit the allegations of the complaint, or if the chairman after such review, shall determine that there is probable cause, and if in complaints of discrimination in housing, the property owner or his duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations for a period of ten days from the date of said finding of probable cause, the commission may cause to be posted for a period of ten days from the date of the said finding, on the door of said housing accommodations, a notice stating that said accommodations are the subject of a complaint before the commission and that prospective transferees will take said accommodations at their peril. Any destruction, defacement, alteration or removal of the said notice by the owner of his agents, servants and employees, shall be a misdemeanor punishable on conviction thereof by a fine of not more than \$500 or by imprisonment for not more than one year or by both. If the commission, after such investigation, shall determine that there is probable cause to credit the allegations of the complaint, or if the chairman after such review, shall determine that there is such probable cause, the commission shall immediately endeavor to eliminate such unlawful discriminatory practice by proceeding in the following manner:

a. If in the judgment of the commission circumstances so warrant, it may endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. The terms of such conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the commission and the respondent, including a provision for the entry in court of consent decree embodying the terms of the conciliation agreement. The members of the commission and its staff shall not disclose what transpired in the course of such endeavors. Whenever a complaint is filed, pursuant to subdivision five (d) of section B1-7.0 of this title, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where the express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any bonrower and a specific description of the collateral for any loan to such horrower may, if otherwise relevant, be introduced in evidence in any hearing before

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the commission or any review by a court of competent jurisdiction of any order or decision by the commission.

b. In case of failure to eliminate such unlawful discriminatory practice complained of, or in advance thereof as determined by the commission, it shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint at a hearing before two members of the commission, designated by the chairman and sitting as the commission, at a time and place to be fixed by the chairman and specified in such notice. The place of any such hearing shall be the office of the commission or such other places as may be designated by the chairman. The case in support of the complaint shall be presented before the commission by one of its attorneys. Endeavors at conciliation by the commission shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

c. If, upon all the evidence at the hearing, the commission shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this title, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, payment of compensatory damages to the person aggrieved by such practice, as, in the judgment of the commission, will effectuate the purposes of this title, and including a requirmeent for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereof.

3. Any complaint filed pursuant to this section must be so filed within one year after the alleged act of discrimination.

4. At any time after the filing of a complaint alleging an unlawful discriminatory practice under subdivision three or under paragraphs (a), (b) or (c) of subdivision five of section B1-7.0 of this title, if the commission determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commission may enter in such proceeding, the commission may direct the corporation counsel to apply

in the name of the commission to the supreme court in any county within the city of New York where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, for an order requiring the respondents or any of them to show cause why they should not be enjoined from selling, renting, leasing or otherwise disposing of such housing accommodation, land or commercial space to any one other than the complainant. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual a commission order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper.

§ B1-9.0 Judicial review and enforcement. Any complainant, respondent or other person aggrieved by such order of the commission may obtain judicial review thereof, and the commission may obtain an order of court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the supreme court of the state within any county wherein the unlawful discriminatory practice which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable at a special term of such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the commission. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows reasonable grounds for the failure to adduce such evidence before the commission. The findings of the commission as to the facts shall be conclusive if supported by sufficient evidence on the record considered as a whole. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing. A proceeding under this section when

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instituted by any complainant, respondent or other person aggrieved must be instituted within thirty days after the service of the order of the commission.

§ B1-10.0 Penal provision. Any person, employer, labor organization or employment agency, who or which shall wilfully resist, prevent, impede or interefere with the commission or any of its members or representatives in the performance of duty under this title, or shall wilfully violate an order of the commission, shall be guilty of a misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both; but procedure for the review of the order shall not be deemed to be such wilful conduct.

§ B1-11.0 Construction. The provisions of this title shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this title shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section B1-7.0 of this title, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievence of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this title, he may not subsequently resort to the procedure herein.

§ B1-12.0 Separability. If any clause, sentence, paragraph or part of this title or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this title.

§5. Title C and title D of chapter one of the administrative code of the city of New York are hereby repealed.

§ 6. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, SS.:

I hereby certify that the foregoing is a true copy of a local law passed by the Council of The City of New York, and approved by the Mayor on December 13, 1965, on file in this office.

HERMAN KATZ, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW SECTION 27

Pursuant to the provisions of Municipal Home Rule Law Section 27, I hereby certify that the enclosed law (Local Law 97 of 1965, Council Int. No. 825, Print No. 1002) contains the correct text and:

Received the following vote at the meeting of the New York City Council on November 23, 1965: Thirty (30) affirmative votes and one (1) negative vote and one (1) not voting.

Was approved by the Mayor on December 13, 1965.

Was returned to the City Clerk on December 14, 1965.

MORRIS HANDEL, Acting Corporation Counsel



FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 225 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 37

#### FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM

NYSCEF DOC. NO. 225

# LOCAL LAWS OF THE CITY OF NEW YORK FOR THE YEAR 2016

# No. 35

Introduced by Council Members Lander, Johnson, Rosenthal, Lancman, Rose and Kallos.

## A LOCAL LAW

# To amend the administrative code of the city of New York, in relation to construction of the New York city human rights law.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Following the passage of local law number 85 for the year 2005, known as the Local Civil Rights Restoration Act, some judicial decisions have correctly understood and analyzed the requirement of section 8-130 of the administrative code of the city of New York that all provisions of the New York city human rights law be liberally and independently construed. The purpose of this local law is to provide additional guidance for the development of an independent body of jurisprudence for the New York city human rights law that is maximally protective of civil rights in all circumstances.

§ 2. Section 8-130 of the administrative code of the city of New York, as amended by local law number 85 for the year 2005, is amended to read as follows:

§ 8-130 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] *state* civil and human rights laws, including those laws with provisions [comparably-worded] *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.

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

§ 3. This local law takes effect immediately.

#### THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 9, 2016 and approved by the Mayor on March 28, 2016.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

#### CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 35 of 2016, Council Int. No. 814-A of 2015) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.

FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 226 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 38

#### FILED: NEW YORK COUNTY CLERK 02/27/2021 09:45 RM

NYSCEF DOC. NO. 226

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

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

## AFFIDAVIT OF JANE DOE

STATE OF NEW YORK ) ) ss.: COUNTY OF NEW YORK )

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.<sup>1</sup> 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.

## <u>September 3, 2020: Yeshiva University Communicates Refusal to Allow LGBTQ Student</u> <u>Clubs</u>

23. On September 3, 2020, the YU Pride Alliance submitted the "Club ApplicationFall 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.

 $<sup>^1\,</sup>https://yucommentator.org/2020/02/student-council-abstains-from-lgbtq-club-vote-leaving-decision-to-yu-administration/$ 

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."<sup>2</sup>

#### 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

<sup>&</sup>lt;sup>2</sup> 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 Neubuger 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

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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 <u>26th</u> day of April, 2021

NOTARY PUBLIC

AVANIKA SHARDA NOTARY PUBLIC-STATE OF NEW YORK No. 01SH6365179 Qualified in Kings County My Commission Expires 10-02-2021 FILED: NEW YORK COUNTY CLERK 12/17/2021 09:43 PM NYSCEF DOC. NO. 227 INDEX NO. 154010/202 RECEIVED NYSCEF: 12/17/202

# Exhibit 39

The Constitution of the Beren Campus Undergraduate Student Government Association

#### **Index of Articles and Sections**

- I. Introduction
- II. Name and Purpose
- III. Membership
- IV. Non-Discrimination Policy
- V. Committees
- VI. Student Life Committee
- VII. Clubs
- VIII. Constitutional Council
- IX. Powers and Duties of the SGA
- X. Financial Adviser
- XI. Activities
- XII. Finances
- XIII. Elections
- XIV. Effective
- XV. Amendment
- XVI. Relationship With Outside Organizations

#### Article I. INTRODUCTION

#### Section I. Preamble

We, the undergraduate students of the Beren Campus, hereby organize a Student Government Association with the mission to facilitate an active, engaged, and inclusive undergraduate campus community and strive to represent the undergraduate student voice in communication between University administration, faculty, staff, and trustees; to foster undergraduate student community through the recognition and financing of undergraduate student organizations, initiatives, and activities; and to address issues of sensitivity, diversity, and awareness in all aspects of undergraduate student campus life. We recognize this Constitution as our governing document intended to make clear the purposes, structures, and powers of this association.

#### Section II. Authority

The Beren Campus undergraduate student body grants the Student Government Association responsibility and authority through election of the members. The authority of this Constitution is the basis for the conduct of all business of the Student Government Association. The Student Government Association is a permanent and continuously organized body with authority vested in its officers, members and representatives. The

structure by which the Student Government Association exercises its responsibilities is found in this Constitution.

#### Section III. Vision

It is the vision of Student Government Association to responsibly serve and empower every Beren Campus undergraduate student to be a force for change and improvement while fostering and preserving tradition at Yeshiva University.

#### Article II. NAME AND PURPOSE

#### Section I. Name

The name of the organization shall be the Student Government Association of the Beren Campus, hereafter referred to as the "SGA."

#### Section II. Purpose

The following shall be the purpose of the SGA for the Beren Campus undergraduate students:

- A. To gather and express student opinion, actively represent student views, appropriately address student concerns, and ensure that students are informed of all information of impact to their undergraduate experience;
- B. To provide a forum for the communication and expression of student views on campus life;
- C. To articulate student opinions on various issues;
- D. To determine priorities and expenditures of student activity fees assigned to the SGA;
- E. To recognize and constitute campus clubs and organizations;
- F. To share responsibility with University administration in governance concerning all matters of student life;
- G. To ensure diverse and entertaining programming that is accessible to the entire student body;
- H. To address issues of sensitivity, diversity, and awareness in all aspects of student life; and
- To promote and ensure responsible self-governance, open dialogue, and action through student representatives selected by fair and transparent election and appointment processes.

#### Article III. MEMBERSHIP

#### Section I. Representation

All undergraduate students of the Beren Campus are represented by the SGA.

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#### **Section II. SGA Governing Bodies**

The SGA shall be composed of the Stern College for Women Student Council (hereafter referred to as the "SCWSC"), the Torah Activities Council (hereafter referred to as the "TAC"), the Sy Syms School of Business Student Council (hereafter referred to as the "SYMSSC"), the Class Councils, the Financial Adviser, and the Constitutional Council.

The members of the SGA are comprised of the members of each of the SCWSC, the TAC, the SYMSSC, the Constitutional Council, the Financial Adviser, and the Class Councils.

#### Section III. SCWSC Membership

The members of the SCWSC shall be:

- A. President
- B. Vice President of Clubs
- C. Vice President of Academic Affairs
- D. Vice President of Programming
- E. Vice President of Public Relations

#### Section IV. SCWSC Purpose

The purpose of the SCWSC shall be:

- A. To express the opinions of the undergraduate students of Stern College for Women upon matters affecting them;
- B. To carry out the desires of the Stern College for Women undergraduate student body;
- C. To serve as a liaison between University administration, faculty and staff, and undergraduate students of Stern College for Women; and
- D. To coordinate extra-curricular activities for the undergraduate students of Stern College for Women with the approved student clubs.

#### Section V. TAC Membership

The members of the TAC shall be:

- A. President
- B. Vice President of Speakers
- C. Vice President of Shabbat
- D. Vice President of Chessed
- E. Vice President of Public Relations

#### Section VI. TAC Purpose

The purpose of the TAC shall be:

- A. To enhance the religious experience of undergraduate students on the Beren Campus;
- B. To carry out the desires of the Beren Campus undergraduate student body with respect to their religious experience;
- C. To serve as a liaison between University administration, faculty and staff and undergraduate students on the Beren Campus on matters pertaining to Jewish programming; and
- D. To coordinate extra-curricular religious experiences for undergraduate students on the Beren Campus.

#### Section VII. SYMSSC Membership

The members of the SYMSSC shall be:

- A. President
- B. Vice President

#### Section VIII. SYMSSC Purpose

The purpose of the SYMSSC shall be:

- A. To express the opinions of the undergraduate students of Sy Syms School of Business on the Beren Campus upon matters affecting them;
- B. To carry out the desires of the Sy Syms School of Business undergraduate student body on the Beren Campus;
- C. To serve as a liaison between University administration, faculty and staff, and Sy Syms School of Business undergraduate students on the Beren Campus; and
- D. To coordinate extra-curricular activities for the undergraduate students of Sy Syms School of Business on the Beren Campus with the approved student clubs.

## Article IV. NON-DISCRIMINATION POLICY

Membership and actions of the SGA shall not discriminate, including but not limited to: race; ethnicity; nationality; sexual orientation; gender identity; religious, spiritual and humanistic belief or lack thereof; age; disability; health status; political affiliation or ideology; or socioeconomic standing.

## Article V. COMMITTEES

#### Section I. Committees of SCWSC

The following standing committees shall conduct the designated business of the SCWSC:

- A. Election Committee; and
- B. Student Life Committee.

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The SCWSC may constitute ad hoc committees which do not fall under the jurisdiction of the above committees to deal with other matters of interest or concern to the undergraduate students of Stern College for Women.

## Section II. Committees of TAC

The following standing committee shall conduct the designated business of the TAC:

A. Shabbat Enhancement Committee.

The TAC may constitute ad hoc committees which do not fall under the jurisdiction of the above committee to deal with other matters of interest or concern to the undergraduate students of the Beren Campus.

#### Section III. Committees of SYMSSC

The following standing committee shall conduct the designated business of the SYMSSC:

A. Leadership Awards Dinner Committee.

The SYMSSC may constitute ad hoc committees which do not fall under the jurisdiction of the above committee to deal with other matters of interest or concern to the undergraduate students of Sy Syms School of Business on the Beren Campus.

## Article VI. STUDENT LIFE COMMITTEE

## Section I. Membership

Student Life Committee (hereafter referred to as the "SLC") membership shall consist of:

- A. Two SLC chairs appointed by the outgoing SLC chairs;
- B. Members selected by the incoming SLC chairs after an application and interview process;
- C. At least one representative of each class and a minimum of six students; and
- D. To the best of the chairs' ability, members of different majors. However, no major is guaranteed to be represented.

## Section II. Responsibilities:

The SLC shall:

- A. Serve as a permanent committee of the SCWSC;
- B. Meet regularly as a committee, and the chairs shall meet with the President of the SCWSC on a monthly basis;
- C. Serve as liaisons between the Stern College for Women student body and several areas of academic life and student life on the Beren Campus; and
- D. Meet with relevant administrators at least once monthly.

## Article VII. CLUBS

## Section I. Club Status

Club status must be obtained from the SCWSC or the SYMSSC or the TAC. The following process shall occur:

- A. Applications for renewal of club status shall be made on an annual basis before finals in the Spring semester or within the first three weeks of the Fall semester, with approval of the SCWSC, the SYMSSC or the TAC, as applicable.
- B. Applications for new club status shall be made during an agreed upon two week period within the first three weeks of each academic semester. (For purposes of this Constitution, references to a semester only mean the Fall or Spring semester, and not any Summer or other semester.)
- C. In the event that this schedule cannot be maintained as a result of religious holiday or emergency, the Student Councils shall have the authority to create a new schedule.
- D. After 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.
- E. In its discretion, the council shall give status to a new club for a period contingent upon compliance with regulations.

## Section II. Responsibilities

Clubs shall:

- A. Attend one or more mandatory information sessions held by the applicable council;
- B. Hold at least two events per semester;
- C. Complete and submit event request and speaker forms as well as requested follow-up forms in the appropriate timeframe as indicated by the SGA; and
- D. Otherwise comply with the requirements of the applicable council and the SGA.

## Article VIII. CONSTITUTIONAL COUNCIL

#### **Section I. Purpose**

The council established by this Article VIII shall be named the Constitutional Council. The Constitutional Council shall:

- A. Be composed of five Justices and an additional Alternate Justice;
- B. Be headed by a Chief Justice, who shall be one of the five members of the Constitutional Council;

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- C. Hear and decide questions of the constitutionality of any actions taken under the provisions and jurisdiction of this Constitution, and have original and appellate jurisdiction over such questions; and
- D. Have the authority to convene special elections to fill all vacant SGA positions, and have such other duties and powers as set forth herein.

#### **Section II. Appointments**

Appointments to the Constitutional Council shall be made in accordance with the following:

- A. The Chief Justice shall be appointed by the incoming Presidents of the SCWSC, the TAC and the SYMSSC (each, an "SGA President") after an interview process shortly following the SGA elections.
- B. Justices, including the Alternate Justice, shall be appointed from a pool of nominees based on a majority vote of the incoming Chief Justice and all incoming SGA Presidents.
  - a. Nominees can be self-nominations or peer-nominations.
  - b. Justices shall have a term of one year that can be renewed the subsequent year upon completion of the nomination process.
- C. Appointments should be made by the end of the Spring semester following the SGA elections.

## See Article XIII, Section V for additional eligibility requirements.

## Section III. Duties and Powers of Justices

The Justices of the Constitutional Council shall:

- A. Convene within five school days of receiving a suit, including the day of filing, to vote whether a case shall be heard.
  - a. Cases shall only be heard upon a majority agreement of the Justices. The five Justices shall constitute a quorum; provided that if a Justice cannot participate for any reason (including due to a conflict), the Alternate Justice can take her place.
- B. Convene for public trial within two weeks following the court's decision to hear a case, open to the entire student body.
- a. A defendant may request a private trial, and the Constitutional Council shall decide whether to grant or deny that request.
- C. Have the power to examine evidence, call available witnesses, authorize the issuance of such writs as it shall deem necessary or desirable, and make such rules as it shall deem necessary and proper for the conduct of its business.
- D. Decide all cases in which a member of the SGA is involved, and cases between undergraduate councils, committees, and clubs on the Beren Campus.
- E. Try all cases of impeachment of an SGA member.

- F. Hear all cases of discrepancy regarding elections and referenda, and activities of the Election Committee, and such other matters as described herein.
- G. Determine verdict and other matters based on a majority vote.
- H. Publish a verdict within three school days of the end of any trial which shall become effective immediately after publication.
- I. Hold at least one non-trial meeting per semester to review any actions taken by the Constitutional Council since the last meeting, and to produce and make public a Constitutional Council Official Report on an annual basis containing a summation of any actions taken by the Constitutional Council for such year, and any rulings of the Constitutional Council for such year, including the opinions themselves and commentary on them.

## Section IV. Duties and Powers of the Chief Justice

The Chief Justice shall:

- A. Operate as the chair of the Constitutional Council;
- B. Convene and preside over meetings of the Constitutional Council;
- C. Maintain an accurate copy of the SGA Constitution;
- D. Distribute an updated copy of the SGA Constitution to each SGA President and Justice, and redistribute each time it is amended;
- E. Advise the SGA on all legal and constitutional questions after convening with the other Justices;
- F. Distribute a copy of the filed suit to the accused party within one day of receipt; and
- G. Distribute opinions of the Constitutional Council to any party named or referenced in such an opinion.

## Section V. Procedural Rights

- A student accused and brought to trial must be guaranteed the following rights:
  - A. To receive a copy of the filed suit against them within one day of receipt by the Constitutional Council;
  - B. The opportunity to prepare a reasonable defense in advance of the trial;
  - C. To confront and question the accuser, or to study and challenge any incriminating statements;
  - D. To question witnesses and submit material evidence;
  - E. To refuse to testify against themselves;
    - a. Any person offering testimony may refuse to answer questions that would incriminate herself;
    - b. No evidence may be presented against a student that was seized and held unlawfully;

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- F. To receive an impartial and open trial, and if convicted, to be subjected to no cruel or unusual punishment; and
- G. To have trials completed with deliberate speed.

## Article IX. POWERS AND DUTIES OF THE SGA

#### Section I. Powers and Duties of SCWSC Positions

- A. President
  - The President shall:
    - i. Enforce the provisions of this Constitution and the laws of the SGA;
    - ii. Represent the undergraduate student body of Stern College for Women as an official spokesperson;
    - iii. Have the power to convene the SCWSC, the Constitutional Council, or SCWSC clubs when she shall deem it necessary;
    - iv. Preside over all meetings of the SCWSC, keep track of attendance, and appoint note-takers;
    - v. Meet with the Presidents of the TAC and the SYMSSC on a weekly basis regarding campus and council issues;
    - vi. Coordinate with the Presidents of the undergraduate student governments on the Wilf Campus ("Wilf Campus Presidents") when necessary;
    - vii. Make budgetary decisions, including but not limited to, SCWSC club event funding and allocating funding for SCWSC Beren Campus-wide events; and
    - viii. Assist each member of the SCWSC in fulfilling their respective responsibilities.
- B. Vice President of Clubs
  - The Vice President of Clubs shall:
    - i. Perform the duties of the SCWSC President, upon written communication from the SCWSC President, until further notice from the SCWSC President;
      - 1. Such communications shall also be made public to the Beren Campus undergraduate student body and to the Constitutional Council to become effective,
    - Act as the SCWSC President under extenuating circumstances upon a determination by a majority of the members of the SCWSC, subject to approval by the Constitutional Council;
    - iii. Organize at least one yearly event for all SCWSC club presidents;
    - iv. Organize a mandatory information session for all SGA club presidents in the beginning of the academic year as well as a mandatory information

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session for all new SGA club presidents in the beginning of the Spring semester;

- v. Assign one member of SCWSC to serve as a liaison to each SCWSC club;
- vi. Oversee all non-academic SCWSC clubs and keep a list of how many events and of what kind each respective non-academic club runs each semester;
- vii. Have the power to give and remove SCWSC club status from any club not adhering to rules and norms; and
- viii. Ensure that the SCWSC event request form is up-to-date and to frequently check it.
- C. Vice President of Academic Affairs
  - The Vice President of Academic Affairs shall:
    - i. Oversee all academic SCWSC clubs on campus and keep a list of how many events and of what kind each respective academic club runs each semester;
    - ii. Serve as a liaison between the Beren Campus undergraduate student body and the Deans of Stern College for Women to implement student input regarding academic affairs;
    - iii. Serve as a liaison to, and meet with, the Beren Campus Undergraduate Career Center, Beren Campus Undergraduate Academic Advisement and the Deans of Stern College for Women at least once per semester; and
    - iv. Conduct a Beren Campus undergraduate student survey regarding students' academic experiences at least once per semester.
- D. Vice President of Programming

The Vice President of Programming shall:

- i. Oversee the Joint Class Council and meet with them regularly;
- ii. Foster and implement new and diverse SCWSC programming on the Beren Campus;
- iii. Conduct Beren Campus undergraduate student surveys after SCWSC Beren Campus-wide programs;
- iv. Put together committees for annual and new SCWSC programming on the Beren Campus;
- v. Serve as a resource for all programming committees of the SGA; and
- vi. Oversee yearly transition efforts in order to inaugurate new SCWSC members.
- E. Vice President of Public Relations

The Vice President of Public Relations shall:

i. Act as the official public relations director of the SCWSC, including developing and promoting SCWSC publicity, branding and relationship with the media;

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- ii. Act as a public relations resource for SCWSC student groups;
- iii. Maintain and update all social media accounts of the SCWSC;
- iv. Be responsible for marketing all SCWSC events, including but not limited to, flyer-making and distribution as well as email circulation;
- v. Write and send weekly emails about SCWSC events to the Beren Campus undergraduate student body; and
- vi. Update the Beren Campus undergraduate student body about weekly SCWSC events through email, whiteboard announcements and/or other means of communication.

## Section II. General Powers and Duties of all SCWSC Members

All members of the SCWSC shall:

- A. Be responsible for undergraduate student life on the Beren Campus;
- B. Attend and help prepare for all SCWSC programming;
- C. Serve on committees to organize SCWSC Beren Campus-wide events;
- D. Serve as liaisons for SCWSC clubs;
- E. Be on campus for Shabbat as indicated by the SCWSC rotation;
- F. Help with all SCWSC student leader events such as orientation; and
- G. Attend SCWSC weekly meetings.

## Section III. Powers and Duties of TAC Positions

A. President

The President shall:

- i. Enforce the provisions of this Constitution and the laws of the SGA;
- ii. Represent the undergraduate student body of the Beren Campus as an official spokesperson for religious affairs;
- iii. Have the power to convene the TAC, the Constitutional Council, or TAC clubs when she shall deem it necessary;
- iv. Preside over all meetings of the TAC, keep track of attendance, and appoint note-takers;
- v. Meet with the Presidents of the SCWSC and the SYMSSC on a weekly basis regarding campus and council issues;
- vi. Coordinate with the Wilf Campus Presidents when necessary;
- vii. Make budgetary decisions, including but not limited to, TAC club event funding and allocating funding for TAC Beren Campus-wide events; and
- viii. Assist each member of the TAC in fulfilling all of their respective responsibilities.

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- ix. Ensure that the TAC event request form is up-to-date and to frequently check it.
- B. Vice President of Speakers
  - The Vice President of Speakers shall:
    - i. Perform the duties of the TAC President, upon written communication from the TAC President, until further notice from the TAC President;
      - 1. Such communications shall also be made public to the Beren Campus undergraduate student body and to the Constitutional Council to become effective,
    - ii. Act as the TAC President under extenuating circumstances upon a determination by a majority of the members of the TAC, subject to approval by the Constitutional Council;
    - iii. Bring religious speakers to the Beren Campus to cater to a wide range of undergraduate students and topics;
    - iv. Communicate and coordinate logistics with potential speakers for the TAC;
    - v. Oversee W9 forms, invoices and signed speakers engagement agreements for speakers for the TAC;
    - vi. Coordinate with the University Facilities Department and other applicable departments to ensure proper arrangements are made for speakers for the TAC; and
    - vii. Work with the TAC Vice President of Public Relations to provide speaker information to the Beren Campus undergraduates.
- C. Vice President of Shabbat
  - The Vice President of Shabbat shall:
    - i. Develop an overview of Shabbat programming on the Beren Campus for undergraduate students for the full academic year, prior to the start of the academic year;
    - ii. Create a theme for each Shabbat of the academic year and invite related speakers and clubs to participate in programing:
    - Attend weekly meetings with the University Office of Student Life and Beren Campus couples to prepare for upcoming and future Shabbatot; and
    - iv. Oversee and support the Shabbat Enhancement Committee.
- D. Vice President of Chessed

The Vice President of Chessed shall:

i. Provide a medium through which Beren Campus undergraduate students can connect to Judaism outside of a structured learning environment;

- ii. Oversee all TAC Chessed clubs and committees, and meet with these club and committee heads regularly; and
- Develop meaningful Chessed related programing on the Beren Campus for the undergraduate students, including both short and long term events and initiatives.
- E. Vice President of Public Relations

The Vice President of Public Relations shall:

- i. Act as the official public relations director of the TAC, including developing and promoting TAC publicity, branding and relationship with the media;
- ii. Maintain and update all social media accounts of the TAC;
- Be responsible for marketing all TAC events, including but not limited to, flyer-making and distribution as well as email circulation;
- iv. Write and send weekly emails about TAC events to the Beren Campus undergraduate student body; and
- v. Update the Beren Campus undergraduate student body about weekly TAC events through email, whiteboard announcements, and/or other means of communication.

## Section IV. General Powers and Duties of all TAC Members

All members of the TAC shall:

- A. Attend and help prepare for all TAC programming;
- B. Serve on committees to organize TAC Beren Campus-wide events;
- C. Serve as liaisons for TAC clubs;
- D. Be on campus for Shabbat as indicated by the TAC rotation;
- E. Help with all TAC student leader events such as orientation; and
- F. Attend TAC weekly meetings.

## Section V. Powers and Duties of SYMSSC Positions

A. President

The President shall:

- i. Enforce the provisions of this Constitution and the laws of the SGA;
- ii. Represent the Beren Campus undergraduate student body of Sy Syms School of Business as its official spokesperson;
- Have the power to convene the SYMSSC, the Constitutional Councils, or SYMSSC clubs when she shall deem it necessary;
- iv. Preside over all meetings of the SYMSSC, keep track of attendance, and appoint note-takers;
- v. Meet with the Presidents of the TAC and the SCWSC on a weekly basis regarding campus and council issues;

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- vi. Coordinate with the Wilf Campus Presidents when necessary;
- vii. Assign one member of the SYMSSC to serve as a liaison to each SYMSSC club;
- viii. Have the power to give and remove club status from any SYMSSC club not adhering to rules and norms;
- ix. Make budgetary decisions, including but not limited to SYMSSC club event funding and allocating funding for SYMSSC Beren Campus-wide events; and
- x. Assist each member of the SYMSSC in fulfilling all of their respective responsibilities.

## B. Vice President

- The Vice President shall:
  - i. Succeed to the office of SYMSSC President in the event that the SYMSSC President leaves office;
  - Perform the duties of the SYMSSC President, upon written communication from the SYMSSC President, until further notice from the SYMSSC President;
    - 1. Such communications shall also be made public to the Beren Campus undergraduate Sy Syms School of Business student body and to the Constitutional Council to become effective,
  - iii. Assist in SYMSSC Beren Campus-wide events;
  - iv. Ensure that the SYMSSC event request form is up-to-date and to frequently check it;
  - v. Serve as a liaison to the SYMSSC clubs assigned to her; and

## Section VI. Class Councils

#### **Section I. Purpose**

The purpose of the Class Councils is to represent and organize extracurricular activities for students of their academic year in conjunction with the SCWSC Vice President of Programming.

#### **Section II. General Powers and Duties**

- A. There shall be five Class Councils, one for each undergraduate class of Stern College for Women, and one for the undergraduate classes of The Katz School on the Beren Campus;
- B. Each Class Council shall consist of a President and a Vice President;

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- C. Election of the members of the Sophomore, Junior, and Senior Class Council of Stern College for Women shall take place in conjunction with the SGA elections each spring;
- D. Election of the members of the Freshman Class Council of Stern College for Women and The Katz School Class Council shall take place in the Fall semester, not less than ten nor more than twenty-five days after the first day of classes;
  - a. In the event that this schedule cannot be maintained as a result of religious holiday or emergency, the Election Committee shall have the authority to create a new schedule.
- E. All Class Councils shall serve on the Joint Class Council that is advised by the SCWSC Vice President of Programming; and
- F. Class Councils shall meet at least twice monthly, and the Joint Class Council shall meet at least once monthly.

## Article X. Financial Adviser

## **Section I. Purpose**

The purpose of the Financial Adviser shall be to oversee the finances of the SCWSC, the TAC, and the SYMSSC.

## Section II. Appointment

- A. The Financial Adviser shall be appointed from a pool of nominees based on a majority vote of the incoming SGA Presidents.
  - a. Nominees can be self-nominations or peer-nominations.
  - b. The Financial Adviser shall have a term of one year that can be renewed the subsequent year upon completion of the nomination process.
- B. Appointment of the Financial Adviser must be made by the end of the Spring semester following the SGA elections.

## Section III. General Powers and Duties of the Financial Adviser

The Financial Adviser shall:

- A. Be responsible for the finances of the SGA.
- B. Serve as a liaison between the Beren Campus Office of Student Life and the SGA Presidents regarding finances.
- C. Ensure that student fees are appropriately allocated to each of the SCWSC, the TAC and the SYMSSC.
- D. Be a resource for budgeting for each of the councils.
  - i. Present the past years' spending in a meeting with the SGA Presidents at the beginning of the academic year.

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- ii. Suggest a budget plan to the SGA Presidents at the beginning of the academic year based on previous spending. Suggest an updated budget plan at the beginning of the Spring semester.
- iii. Attend the first meeting of the SGA committee planning inter-council events to present a budget plan. Serve as resource throughout the inter-council event planning process.
- E. Document all SGA spending by council.
  - i. Update weekly a document containing each council spending.
  - ii. Send a weekly report of spending per their respective clubs and per their respective council to the SGA Presidents.
  - iii. Present a full report of SGA spending to the next year's Financial Adviser.
- F. Collect all documents verifying the use of all funds.
- G. Attend meetings of the SGA Presidents at the request of a SGA President.

## Article XI. ACTIVITIES

#### Section I. SGA Councils

A. A term of each member of the SGA Councils shall begin as of the first day of orientation for the Fall semester and last until Commencement in the Spring semester. Pre-planning activities should occur during the summer months.

B. Each of the SCWSC, the TAC and the SYMSSC shall meet at least weekly.

C. All meetings of the SCWSC, the TAC and the SYMSSC shall be open to the entire undergraduate Beren Campus student body except for Executive Sessions. There must be at least two open meetings per semester.

D. The President of each council shall have the right to call meetings at any time. E. A council will also hold meetings at the written request of the applicable student body; for this to happen ten percent of the undergraduate Beren Campus student body which the council represents must sign and submit the request to the President of the council.

## Section II. Attendance Policy

- A. Members of the SGA councils may not be absent from more than three meetings during the course of a semester.
- B. Council members are expected to attend SGA inter-council programming as well as programming for their specific council.
- C. Council members are expected to attend Beren Campus undergraduate orientation for both semesters.
- D. In the case of extenuating circumstances, this attendance policy can be waived at the discretion of the relevant council president.

#### Section III. Impeachment

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Any SGA member or club president who is negligent in the fulfillment of her duties is subject to impeachment.

- A. A motion to impeach a member must be initiated by a petition signed by the relevant council president, or by a majority of the members of the relevant council, or by ten percent of the Beren Campus undergraduate student body which the member represents, and presented to the Chief Justice; in the case that the impeachment charges are directed at the Chief Justice, the other Justices shall receive and present the petition;
- B. The Constitutional Council shall convene to discuss the charges and determine if a trial is appropriate; in the event that a Justice is the accused, she shall be replaced by the Alternate Justice; and
- C. In the event that they determine a trial is necessary, they shall follow the procedure of Article VIII.

#### Section IV. Resignation

In the event that a member of the SGA resigns, a letter of resignation should be submitted by the member in writing to the President of the relevant council. Should an SGA President resign, the resignation letter by the President should be submitted to the Chief Justice. Upon the receipt of the letter of resignation, the resigning member is obligated to distribute a public statement to their constituents and continue fulfilling her duties for two weeks.

## Article XII. FINANCES

#### **Section I. SGA Finances**

- A. The SGA shall work with the University Finance Department annually to receive its allotted budget.
- B. The budget of the SGA will be divided among the SCWSC, the TAC and the SYMSSC.
- C. Of the total SGA budget, the SCWCS will receive 52%, the TAC will receive 38% and the SYMSSC will receive 10%.
- D. Class Councils receive funding from the SCWCS as the SCWCS may determine in its discretion.

## Article XIII. ELECTIONS

## **Section I. Election Committee**

There shall be an Election Committee in charge of coordinating the election of the members of the SGA. No one who is running for office is eligible to serve on the Election Committee. Members of the Election Committee shall include:

A. The SGA Presidents, who shall serve as co-chairs.

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- B. A Justice who is in the senior class to be appointed by the Chief Justice (the Chief Justice shall not serve on the Election Committee).
- C. Two seniors collectively selected by the SGA Presidents who are not otherwise members of the SGA.

# Section II. Election Committee Responsibilities

The Election Committee shall:

- A. Meet within the first week of the Fall semester to plan the Fall elections for the Freshman Class Council, Katz Class Council, and any vacant positions on the SGA.
- B. Meet within the first month of the Spring Semester to plan the Spring elections.
- C. Run a fair, unbiased election.
- D. Establish and consistently enforce the rules and regulations for campaigning and elections and clearly publicize these rules and regulations prior to the beginning of campaigning.
  - a. All rules must have realistic prospects of being fulfilled.
- E. Determine the eligibility of candidates before the start of campaigning.
- F. Compose and publicize the requirements for the statements of intent due from prospective candidates.
- G. Ensure that the election schedule and events are well-publicized.
- H. Organize one Beren Campus-wide debate that is mandatory for all candidates.
- I. Monitor election events and the full day of student voting.
- J. Create budgets for each candidate and ensure that each candidate's campaign spending is within the spending limit.

# Section III. Election Schedule

- A. For the Spring elections, the schedule shall be as follows:
  - a. A list of the available positions and the election schedule shall be published two weeks before statements of intent are due from prospective candidates.
  - b. A week before statements of intent are due, there will be an informational meeting led by the Election Committee for the Beren Campus undergraduate student body about the positions of the SGA.
  - c. Statements of intent shall be due at least a week before campaigning begins.
- B. For the Fall elections, the schedule shall be as follows:
  - a. A list of available positions and the election schedule shall be published the first Monday of the second week of the Fall semester.
  - b. On the Tuesday of the second week of the Fall semester, there will be an informational meeting led by the Election Committee for the Beren

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Campus undergraduate student body about the vacant positions of the SGA.

- c. Statements of intent shall be due on or prior to the Thursday of the second week of the Fall semester
- C. The list of candidates running shall be published the day before campaigning begins.
- D. All candidates will be required to sign a contract stating the following, when they announce their candidacy and before active campaigning begins: "If elected to the office of (position) of the SGA, I will fulfill all responsibilities of my position as listed in the Constitution of the SGA. I understand that failure to do so will result in my removal from office. During the campaign I will do my best to abide by the tone and spirit of the election regulations."
- E. Campaigning shall take place throughout a full week, ending on the day prior to elections.
- F. The campus-wide debate shall take place during the week of campaigning as determined by the Election Committee.
- G. Spring Elections shall take place on a Thursday approximately one month prior to Commencement.
- H. Fall Elections shall take place on a Thursday approximately three weeks after the beginning of the Fall semester.
- I. In the event that any schedule cannot be maintained as a result of religious holiday or emergency, the Election Committee shall have the authority to create a new schedule.
- J. The candidate receiving the most votes cast in an election shall be considered the winner; candidates running unopposed must receive at least ten percent of potential votes for her position.
- K. Write-in votes shall be a valid means of determining preferences for every position that is empty or in which someone is running unopposed; before a writein candidate can be declared a winner the Election Committee shall deem her eligible to run, and she must receive the most votes and at least ten percent of potential votes for her position.
- L. In the event that two candidates receive the same number of votes, there will be a runoff to decide the election. The runoff shall take place by the following Wednesday. Candidates participating in the runoff election shall have an additional 48 hours to campaign. If candidates have not exceeded their spending limit, they may spend additional money up to, but not exceeding, that amount.
- M. After the votes have been tallied, the winners of the election shall be announced.
- N. When a new position is created by the SGA, a special election shall be held in order to fill the position if it is created after the election period.

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- O. Following elections, outgoing SGA members shall provide orientation to incoming SGA members.
- P. Outgoing SGA members shall meet with their successors consistently before the turnover and the end of the outgoing member's term of office.
- Q. The incoming SGA members shall be responsible for leading at least one meeting following elections and before the end of the Spring semester and to conduct planning until the start of the new academic year.

# Section IV. Campaign Guidelines for Election of Members

- A. The spirit of the elections should be one of open and free speech, where personal responsibility and discretion of all community members is emphasized. The primary reason for election guidelines is to administer a fair election, where candidates have an opportunity to share their views and reasons for running for office with the community.
- B. No candidates may run as a ticket.
- C. No campaign material may be publicly displayed before the first day of campaigning begins.
- D. To limit inequities due to financial situations, candidates must restrict their total budget to the spending limit set by the Election Committee. This includes materials not purchased by the candidates but used to endorse them. All campaign finances must be included in the budget, including advertising, printing, entertainment, and materials used. Community members are encouraged to express their opinions about the election. However, they may not spend money doing so. Receipts of purchases shall not exceed the spending limit and shall be saved, along with an itemized budget, and the Election Committee may request this to be submitted at any point. Throughout the campaign, candidates may continue to purchase campaign materials, but the total amount spent on the election may not exceed the spending limit.
- E. The Election Committee shall not any discuss with third parties matters pertaining to the election beyond what is necessary; all matters pertaining to elections and candidates shall be confidential.
- F. If a candidate does not adhere to these election regulations, the Election Committee reserves the right to disqualify the candidate after meeting with the candidate to discuss the non-compliance. Circumstances will be considered on a case by case basis. If a candidate is disqualified and wishes to appeal the decision, she has the right to appeal the decision to the Constitutional Council.

## Section V. Eligibility of SGA Members

A. In order to be eligible for an SGA position, a student must:

- 1. Be a full-time student at the time of the election and throughout her term of office.
- 2. Have a GPA of at least 3.0 in the semester prior to the election and in every semester throughout her term, and have no grade of a D or below in the semester prior to the election.
  - a. Eligibility with regard to academic standing will be approved by the University's Academic Advisement or the applicable Dean.
- 3. Have a record of service or leadership, including but not limited to: club head, class board member, resident advisor or captain of any athletic team.
- 4. Not be, throughout her term of office, a president of any club under her own council's jurisdiction, a resident advisor, an editor-in-chief of any publication for the University or its students, or a secretary general of the Yeshiva University National Model United Nations.
- 5. Live in University housing on the Beren Campus, unless the Election Committee approves an off-campus living arrangement within the tri-state area.
- 6. Not hold more than one SGA office at the same time.
- B. Candidates for President must be rising seniors with record of prior leadership in the University.
- C. Candidates for Vice-Presidents must be rising juniors or rising seniors.
- D. Candidates for a Class President and Vice President for an undergraduate class of Stern College for Women must be rising academically into that class. If a candidate becomes a member of another class while serving her term, she shall complete her elected term, pursuant to approval of the SCWSC President.
- E. Candidates for Katz School Class President must be from either academic class in the Katz School.
- F. Candidates for Justices must have at least one year of experience on the Beren Campus.
- G. In making appointments of Justices, the Chief Justice and the SGA Presidents shall, to the best of their ability, ensure representation from among the various academic divisions of the Beren Campus, provided that no division is guaranteed representation on the Constitutional Council and that Justices shall be selected primarily on the basis of ability and experience.
- H. The Chief Justice must:
  - 1. Be a rising senior.
  - 2. Be appointed by the SGA Presidents by a two-thirds majority vote.
  - 3. Have at least one year of experience as a Justice on the Constitutional Council.

If a suitable candidate is not found who is a rising senior on the

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Constitutional Council, notwithstanding clause (1) a special appointment shall be made and eligibility shall be extended to all rising juniors on the Constitutional Council; and if a suitable candidate is not found who is a rising junior on the Constitutional Council, notwithstanding clause (2) a special appointment shall be made and eligibility shall be extended to all full-time rising seniors with a record of prior leadership in the University.

# Section VII. Special Elections

- A. In the event that an SGA member resigns, is impeached, or is otherwise removed from office or if the SGA member position is otherwise vacant for any reason including without limitation if nobody is elected during the regular election, the Constitutional Council shall decide whether or not a special election should be held to fill the position.
- B. In the case that an election is held, the relevant council shall act as the Election Committee.
- C. Nomination shall close on a date set by the council.
- D. For a nomination to be valid, the candidate must be eligible as provided in Section V of this Article XIII.
- E. Six days of campaigning shall follow the close of nominations.
- F. The Election Committee shall host an open forum for debate and speeches.
- G. The election shall take place on the scheduled day of voting as determined by the Election Committee. All other procedures regarding elections as set forth above shall apply as applicable, including campaign guidelines as provided in Section IV of this Article XIII.

# Article XIV. EFFECTIVE

This Constitution shall be effective when:

- A. Approved by a majority of votes cast by the undergraduate students of the Beren Campus and
- B. A copy has been signed by all of the SGA Presidents then in office.

# Article XV. AMENDMENT

# Section I. Constitutional Review

- A. Once every three years, this Constitution shall be reviewed by a special ad hoc committee chaired by the Chief Justice.
- B. This committee shall be called the Constitutional Review Committee (hereafter referred to as the "CRC").

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- C. The CRC shall be composed of the Chief Justice, up to two graduating members of the Constitutional Council, up to two graduating members of the SCWSC, up to two graduating members of the TAC, up to two graduating members of the SYMSSC, and up to two graduating undergraduate students on the Beren Campus who are not members of the SGA.
- D. The report of the CRC shall be considered at a meeting of all SGA members. If the report proposes amendments, then the procedures of Section II of this Article XV below shall be followed.

## Section II. Amendment Procedures

- A. A majority vote of all of the SCWSC, TAC, SYMSSC, and Class Council members shall be required for this Constitution to be amended. A student body vote of the undergraduates on the Beren Campus can be called at the discretion of the Chief Justice, in which case a majority of votes cast shall be required for this Constitution to be amended.
- B. A vote to amend the Constitution may not be taken until the proposed amendment has been reviewed by the Constitutional Council.
- C. No amendment shall be retroactive.
- D. The amendment shall take effect two weeks after it has been approved.

## Article XVI. RELATIONSHIPS WITH OUTSIDE ORGANIZATIONS

## Section I. Wilf Campus Councils and Governing Boards

- A. The SGA shall honor all partnership agreements made with other University organizations, such as the Student Organization of Yeshiva, the Yeshiva Student Union, the Yeshiva College Student Association, the Syms Student Council on the Wilf Campus, and other governing boards.
- B. In the event that an SGA member feels that the terms of an agreement have been breached, the relevant parties shall convene a meeting together.

## Section II. Office of Student Life

A. The SGA shall work in conjunction with the University's Office of Student Life to provide support for student activities.

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EFFECTIVE AS OF: May 28th , 2019

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Name: Adına Cohen TAC President

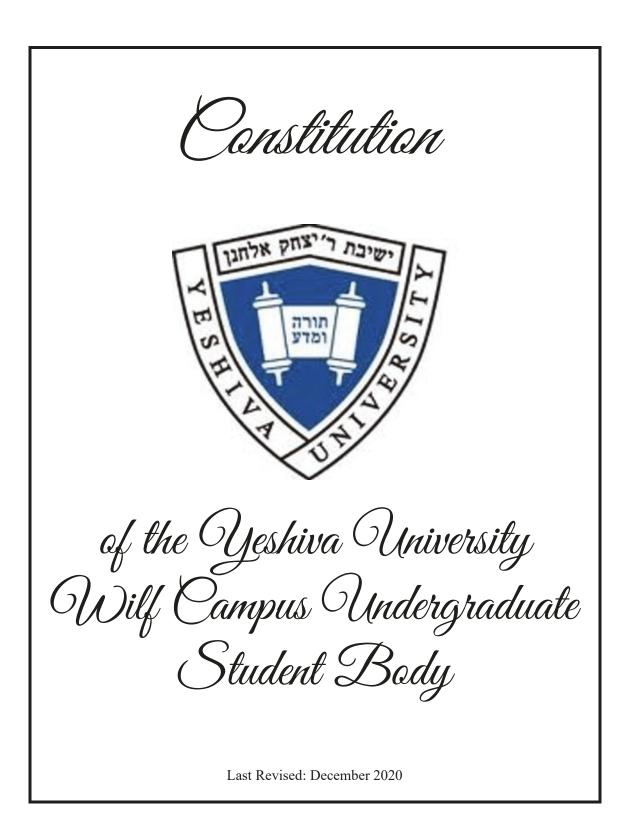
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## Preamble

e, the undergraduate male students of Yeshiva University, in order to further the interests and provide for the general welfare of the Student Body, advocate for the interests of the Student Body to the Yeshiva University administrators and faculty, 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 Wilf Campus Student Government (WCSG) 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 WCSG shall commit, in its actions and decisions, 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 Wilf Campus Student Government (WCSG) shall consist of the Yeshiva Student Union (YSU), the Yeshiva College Student Council (YCSC), the Sy Syms School of Business Student Council (SYMSSC), the Student Organization of Yeshiva (SOY), the Wilf Student Life Committee (SLC), the Wilf Canvassing Committee, the Wilf Amendments Committee, and the Wilf Student Court.

# Article III

Yeshiva Student Union

Section 1

(1) The representative body 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, the Student Union Vice President of Class Affairs, the Senior Class Representative, the Junior Class Representative, the Sophomore Class

Representative, the Freshman Class Representative, the Katz Undergraduate School Representative, and the Makor College Experience Representative.

(3) The members of the Yeshiva Student Union Council must be full-time students in good standing on Wilf Campus.

## Section 2

(1) The YSU President must be a senior in good standing and a full-time student on Wilf Campus.

(2) The YSU President shall preside over all meetings of the General Assembly, prepare an agenda before all such meetings, call meetings of the Student Body when he deems appropriate, act as a representative of the Student Body at all official functions and meetings with the administration and faculty, and accept petitions of the Student Body to be presented at General Assembly meetings.

(3) If for any reason the YSU President temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. The YSU Vice President of Clubs shall then serve as Acting YSU President. The original YSU President shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

- I. No WCSG member's temporary leave shall be for longer than 30 days.
- II. No member of WCSG may spend more than a total of 45 days on temporary leave in an academic year.

(4) If the YSU President is permanently unable to perform his duties or is removed from office before and including February 1, the YSU Vice President of Clubs shall succeed to the YSU Presidency. In the event of the aforementioned, the new YSU President shall appoint a YSU Vice President of Clubs, with the approval of a majority of the General Assembly, within two weeks of assuming office.

(5) If the YSU Vice President of Clubs is appointed YSU President permanently, but would otherwise be deemed ineligible due to the General Assembly restrictions listed in Article VIII, Section 3, then he must resign from those previously held positions in order to assume the YSU Presidency.

(6) If the YSU Vice President of Clubs is ineligible to be YSU President due to class standing or chooses to retain his previously held positions, an election will be held within two weeks to determine the new YSU President.

## Section 3

(1) The YSU Vice President of Clubs must either be a senior, or a junior who has completed four full-time semesters on campus. He must also be in good standing, and a full-time student on Wilf Campus.

(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 club-related student complaints.

(4) The YSU Vice President of Clubs shall retain the right to audit and monitor the finances of all clubs.

(5) The YSU Vice President of Clubs shall, along with the YSU President, coordinate all major YSU 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, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. The YSU President shall then appoint a temporary replacement, with the approval of a majority of the General Assembly. The original YSU Vice President of Clubs shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(7) If the YSU Vice President of Clubs is permanently unable to perform his duties or is removed from office before and including February 1, an election for a new YSU Vice President of Clubs shall be held within two weeks. If the vacancy occurs after February 1, the YSU President shall appoint a replacement with the approval of a majority of the General Assembly.

## Section 4

Within the first two weeks of each semester, the YSU Vice President of Clubs shall designate and publicize a period of at least two weeks for the submission of petitions for new clubs.
 Clubs may operate under the auspices of the YSU, YCSC, SOY, and SYMSSC.

(3) Any group of students wishing to form a club affiliated with the Student Government and Yeshiva University 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 Council under whose auspices it seeks to operate, no fewer than twenty-five signatures of students, and the signature of a Faculty Advisor. The YSU Vice President of Clubs shall present the petition to the General Assembly at the Club Appointment Meeting.

- I. Club Appointment Meeting shall be defined as a meeting at which either one or multiple clubs' petitions are presented.
- II. The General Assembly shall have the choice to either hold one meeting at which every club petition is presented, one meeting for each individual club, or multiple meetings where at each meeting either one or multiple petitions are presented.

(4) A majority vote of the General Assembly shall be necessary to establish a club with full rights and privileges.

Section 5

(1) Each club shall choose its own method for electing or appointing club officers and shall inform the YSU Vice President of Clubs of its bylaws.

(2) In order for a club to be eligible for funding, a club must present to the YSU Vice President of Clubs its current board, purpose, and proposed events and activities.

(3) The YSU, YCSC, 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 6

(1) In order that a club need not reapply for affiliation with the WCSG at the beginning of each academic year, it shall organize at least two Registered Club Events each year, have at least ten members, and shall at all times have a Faculty Advisor and follow the regulations set forth by the General Assembly.

I. Registered Club Event shall be defined as any event organized and executed by a student club through, or with approval of, either the Office of Student Life or the Career Center.

(2) If a club does not meet these requirements, and does not reapply for affiliation with the WCSG at the beginning of the academic year, the club shall be considered dissolved.(3) Any group wishing to sponsor a specific activity not within the program of existing recognized organizations may petition the General Assembly for recognition limited to the duration of the activity, providing that the members follow all established regulations for recognized organizations. A majority vote of the General Assembly shall be required to recognize the group for the duration of said activity.

Section 7

(1) The YSU Vice President of Class Affairs must either be a junior or senior, or a sophomore who has completed two full-time semesters on campus. He must also be in good standing, and a full-time student on Wilf Campus.

(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 General Assembly liaison to all class officers and assist them in coordinating class activities.

(4) The YSU Vice President of Class Affairs shall chair a standing committee, named the Committee on Class Affairs, which shall consist of the four elected class Representatives, one from each undergraduate class of the university.

(5) 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 General Assembly. The original YSU Vice President of Class Affairs

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will be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(6) If for any reason the YSU Vice President of Class Affairs temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. The YSU President shall then appoint a temporary replacement, with the approval of a majority of the General Assembly. The original YSU Vice President of Class Affairs shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

#### Section 8

(1) All class Representatives must be members in good standing of their respective classes by the end of Election Day, as well as throughout their term of office.(2) The Representatives of each class shall represent their respective classes at all meetings of the Committee 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.

(3) The Senior Class Representative shall be responsible for arrangements for the Senior Class Dinner, Senior Service Awards, and the production of the Masmid Yearbooks.(4) If any class Representative temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. The YSU Vice President of Class Affairs shall then appoint a temporary replacement, with the approval of the YSU President. The original class Representative shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(5) If any class Representative is permanently unable to perform his duties or is removed from office before and including February 1, an election shall be held within two weeks of the vacancy to fill the position. If the vacancy occurs after February 1, the Vice President of Class Affairs shall appoint a replacement, subject to approval by a majority of the General Assembly.

## Section 9

(1) The Katz Undergraduate School (KUS) Representative shall serve the students of the Katz Undergraduate School, and shall be the representative of the Katz Undergraduate School students in all matters of specific interest to these students.

(2) The KUS Representative must be at least a sophomore in good standing and a full-time student of the Katz School for at least two semesters prior to taking office.

(3) If the KUS Representative is permanently unable to perform his duties or is removed from office before or including March 1, an election shall be held within two weeks to fill the position.

If the vacancy occurs on or after March 1, the YSU President will select a new KUS Representative subject to GA approval.

(4) Only students in the Katz School may vote in the election for the KUS Representative.

#### Section 10

(1) The Makor College Experience Representative shall serve the students of the Makor College Experience, and shall be the representative of the Makor College Experience students in all matters of specific interest to these students.

(2) The candidates for the Makor College Experience Representative shall be nominated by the Director of Makor and submitted to the Canvassing Committee before the stated deadline for declaration of candidacy.

(3) There shall be no write-in candidates for the election of the Makor College Experience Representative.

(4) Only students of the Makor College Experience Program may vote in the election for the Makor College Experience Representative.

## Article IV

Yeshiva College Student Council

Section 1

(1) The YCSC representatives shall serve the students of Yeshiva College and act as a liaison to the faculty and administration. They shall be the representative body of Yeshiva College students in academic matters and matters of specific interest to these students.

(2) The YCSC shall consist of a President, a Vice President, and a Treasurer.

(3) The YCSC President must be a senior in good standing and a full-time student of Yeshiva College for at least two semesters prior to taking office.

(4) The YCSC Vice President must be a junior or senior in good standing and a full-time student of Yeshiva College for at least two semesters prior to taking office.

(5) The YCSC Treasurer must be a full-time Yeshiva College student in good standing and attended Yeshiva College for at least two semesters prior to taking office.

(6) If any YCSC officer temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. If the YCSC President is the officer who temporarily cannot perform his duties, the YCSC Vice President shall serve as Acting YCSC President. If any other officer temporarily cannot perform his duties, the YCSC President shall appoint a temporary replacement, with the approval of a majority of the General Assembly. The original YCSC officer shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(7) If the YCSC President is permanently unable to perform his duties or is removed from office before and including February 1, the YCSC Vice President shall succeed to the YCSC

Presidency, and an election for a new YCSC Vice President shall be held within two weeks. If the vacancy occurs after February 1, the YCSC Vice President shall succeed to the YCSC Presidency and shall appoint a YCSC Vice President.

(8) If any other YCSC officer is permanently unable to perform his duties or is removed from office before and including February 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after February 1, the YCSC President shall appoint a replacement.
(9) If the YCSC Vice President is appointed YCSC President permanently, but would otherwise be deemed ineligible due to the General Assembly restrictions listed in Article VIII, Section 3, then he must resign from his previously held positions in order to assume the YCSC Presidency.
(10) If the YCSC Vice President is ineligible to be YCSC President due to class standing or chooses to retain his previously held positions, an election will be held within two weeks to determine the new YCSC President.

## Article V

Sy Syms School of Business Student Council

## Section 1

(1) The SYMSSC shall serve the students of the Sy Syms School of Business on Yeshiva University's Wilf Campus, and shall be the representative body 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 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 or senior in good standing and a full-time student of the Sy Syms School of Business on Wilf Campus for at least two semesters prior to taking office.

(5) The SYMSSC Treasurer must be a junior or 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.

(6) If any SYMSSC officer temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. If the SYMSSC President is the officer who temporarily cannot perform his duties, the SYMSSC Vice President shall serve as Acting SYMSSC President. If any other officer temporarily cannot perform his duties, the SYMSSC President shall appoint a temporary replacement, with the approval of a majority of the General Assembly. The original SYMSSC officer shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(7) If the SYMSSC President is permanently unable to perform his duties or is removed from office before and including February 1, the SYMSSC Vice President shall succeed to the SYMSSC Presidency, and an election for a new SYMSSC Vice President shall be held within

two weeks. If the vacancy occurs after February 1, the SYMSSC Vice President shall succeed to the SYMSSC Presidency and shall appoint a SYMSSC Vice President.

(8) If any other SYMSSC officer is permanently unable to perform his duties or is removed from office before and including February 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after February 1, the SYMSSC President shall appoint a replacement.

(9) If the SYMSSC Vice President is appointed SYMSSC President permanently, but would otherwise be deemed ineligible due to the General Assembly restrictions listed in Article VIII, Section 3, then he must resign from his previously held positions in order to assume the SYMSSC Presidency.

(10) If the SYMSSC Vice President is ineligible to be SYMSSC President due to class standing or chooses to retain his previously held positions, an election will be held within two weeks to determine the new SYMSSC President.

# Article VI

Student Organization of Yeshiva

## Section 1

(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 body of all religious and spiritual life on Wilf Campus.

(2) The SOY board shall consist of a President, a Vice President, a PR Secretary, and a representative from MYP, SBMP, IBC, and JSS.

(3) The SOY President must be an upper junior or senior in good standing and enrolled in a Judaic Studies morning program.

(4) The SOY Vice President must be a junior or senior in good standing and enrolled in a Judaic Studies morning program.

(5) The MYP, SBMP, IBC, and JSS Representatives must be elected representatives from their respective morning programs and shall represent the interests of their respective Judaic Studies morning programs to the SOY Council.

(6) The SOY PR Secretary must be a student in good standing and belong to a Judaic Studies morning program, and can be from any class.

(7) The MYP, SBMP, IBC, and JSS Representatives shall assist the SOY President and Vice President in the performance of their duties and should maintain contact with the faculty heads of their respective programs.

(8) If any SOY officer temporarily cannot perform his duties, he shall submit to the Chief Justice a letter stating as such, as well as an estimate as to how long the leave will be for. If the SOY President is the officer who temporarily cannot perform his duties, the SOY Vice President shall

serve as Acting SOY President. If any other officer temporarily cannot perform his duties, the SOY President shall appoint a temporary replacement, with the approval of a majority of the General Assembly. The original SOY officer shall be reinstated when he transmits a declaration to the Chief Justice that he is able to perform his duties.

(9) If the SOY President is permanently unable to perform his duties or is removed from office before and including February 1, the SOY Vice President shall succeed to the SOY Presidency, and an election for a new SOY Vice President shall be held within two weeks. If the vacancy occurs after February 1, the SOY Vice President shall succeed to the SOY Presidency and shall appoint a SOY Vice President.

(10) If any other SOY officer is permanently unable to perform his duties or is removed from office before and including February 1, an election shall be held within two weeks to fill the position. If the vacancy occurs after February 1, the SOY President shall appoint a replacement.
(11) If the SOY Vice President is appointed SOY President permanently, but would otherwise be deemed ineligible due to the General Assembly restrictions listed in Article VIII, Section 3, then he must resign from his previously held positions in order to assume the SOY Presidency.
(12) If the SOY Vice President is ineligible to be SOY President due to class standing or chooses to retain his previously held positions, an election will be held within two weeks to determine the new SOY President.

#### Article VII

Student Life Committee

Section 1

(1) The Student Life Committee shall serve as a bridge between the Student Body and the administrative departments within Yeshiva University and assist YSU, YCSC, SYMSSC, and SOY in promoting and running events.

(2) The Student Life Committee shall consist of a Senior Co-Chair, a Junior Co-Chair, and student liaisons to different departments at Yeshiva University.

(3) The Senior Co-Chair and Junior Co-Chair shall be appointed by the outgoing Senior

Co-Chair and shall be confirmed by a majority vote of the General Assembly.

(4) The appointments must take place prior to the Spring Elections.

(5) The Senior Co-Chair and Junior Co-Chair shall be responsible for appointing the student liaisons.

(6) If the Senior Co-Chair is permanently unable to perform his duties before or after February 1, the Junior Co-Chair shall succeed to the Senior Co-Chair position and appoint a new Junior Co-Chair within two weeks.

(7) If the Junior Co-Chair is appointed Senior Co-Chair permanently, but would otherwise be deemed ineligible due to the General Assembly restrictions listed in Article VIII, Section 3, then

he must resign from his previously held positions in order to assume the Senior Co-Chair position.

(8) If the Junior Co-Chair is ineligible to be Senior Co-Chair due to class standing or chooses to retain his previously held positions, the General Assembly will appoint a new Senior Co-Chair.

## Article VIII

General Assembly

Section 1

(1) The General Assembly shall consist of five voting members, including the Presidents of the YSU, YCSC, SYMSSC, and SOY, as well as the Senior Co-Chair of the Student Life Committee.

## Section 2

(1) The WCSG 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 WCSG.

# Section 3

(1) No student may be a member of the General Assembly while holding a position on the Editorial Board of The Commentator or The Observer, the board of WYUR, or serving as Parliamentarian, Associate Justice or Chief Justice on Student Court, Chairman of the Canvassing Committee, Resident Advisor or Head Resident Advisor.

(2) No student may hold an elected position in the General Assembly while serving as a Head, President, executive board member, or Co-President of a Club which is sponsored by or affiliated with the Council which he is a President of.

(3) No student may hold more than one position in 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 Student Life.

# Section 4

(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 majority vote 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) The first meeting of the new General Assembly shall be held at some point between the graduation day of the outgoing senior class and one week after the start of classes of the Fall semester.

(6) The YSU President shall nominate all Justices, the Parliamentarian, the Canvassing Committee Chairman, and the Amendments Committee Chairman 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.

(7) For all appointed positions other than Justices on the Student Court, the appointee shall sign an oath of affirmation, as outlined in Article X Section 6, subsection 4. Justices shall sign an oath of affirmation, as outlined in Article XI Section 4, subsection 2. The appointee shall not hold the position to which they have been appointed until the appointee has signed the proper oath of affirmation.

## Section 5

(1) The General Assembly shall have the power to:

- I. Exercise parliamentary authority in all General Assembly matters.
- II. Impose sanctions upon any student organization for infraction of this Constitution or any regulations passed by the General Assembly.
- III. Affiliate or disaffiliate with recognized regional, national, or international student organizations and their activities.
- IV. Exercise authority as delegated elsewhere in this Constitution.
- V. Be the representative, self-governing body of the undergraduate male students of Yeshiva University and have precedence over all other organized and established undergraduate male student organizations.
- VI. Represent student opinion in all student-faculty and student-administration relations.
- VII. Regulate all student elections through the Canvassing Committee.
- VIII. Authorize student social functions.
- IX. Sponsor a money-making project for any charity it sees fit.
- X. 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, a General Assembly vote on the matter shall be held.

XI. By majority vote, remove any member of the Canvassing Committee who is not also a member of a Council, in the event that they deem him unfit to serve. In the event that the Canvassing Committee Chairman is removed, the General Assembly shall replace the Chairman within 2 days via the mechanism stated in Article X Section 1, subsection 2. If any other member is removed, the Canvassing Committee Chairman shall appoint a replacement within 2 days.

## Section 6

(1) Within one week of the end of each semester, YSU, YCSC, SYMSSC, and SOY must each release to the student body a full accounting of their budget during the previous semester, including the amount in the budget at the start of the semester; the amount in the budget at the conclusion of the semester; and all expenditures, the date they were made, and the event they were associated with.

(2) Within one week of the end of each semester, the General Assembly must release to the student body a record of club event and budget requests and approvals, including the number of events requested by each club, the number of events approved for each club, the total amount of funds requested by each club, and the total funding approved for each club.

# Article IX

Committees

Section 1

(1) This Constitution recognizes five types of committees: standing committees, special committees, joint committees, subcommittees, and investigative committees.

(2) This Constitution recognizes the Student Life Committee, Canvassing Committee, Amendments Committee, and Committee on Class Affairs as standing committees. No other committee shall be considered a standing committee.

(3) All standing committees shall be under the auspices of the General Assembly, and a part of the Wilf Campus Student Government.

(4) Special committees that do not fall under the auspices of any one Council shall be under the auspices of the General Assembly. These committees shall be appointed by the YSU President, with the approval of a majority of the General Assembly.

(5) Special committees may be appointed as the Presidents of the YSU, YCSC, SYMSSC, and SOY shall see fit, with the approval of a majority of the Council under the auspices of which the special committee shall serve.

(6) Joint committees, including membership from both the Wilf and Beren student bodies and having jurisdiction over matters of joint interest between the Wilf and Beren Campus student

bodies, may be formed in cooperation between members of student government from both campuses.

(7) Joint committees that do not fall under the auspices of any one Council on either the Wilf or Beren Campuses shall be under the auspices of both the General Assembly and the SCWSC, TAC, and SYMSSC Beren Presidents. These committees shall be appointed by the YSU President, with the approval of a majority of the General Assembly and a majority of the SCWSC, TAC, and SYMSSC Beren Presidents.

(8) Joint committees may be appointed as the Presidents of the YSU, YCSC, SYMSSC, and SOY shall see fit, with the approvals of the President of the corresponding Council on Beren Campus, a majority of the Council of which the relevant Wilf Campus President is president of, and a majority of the Council of which the relevant Beren Campus President is president of.

I. The corresponding Councils to YSU, YCSC, SYMSSC, and SOY are as follows: SCWSC, SCWSC, SYMSSC Beren, and TAC.

(9) Subcommittees may be composed of members of individual standing committees, special committees, or joint committees.

(10) Subcommittees shall be appointed by the chairmen of the relevant standing, special, or joint committee, with the approval of a majority of the relevant standing, special, or joint committee.(11) Investigative committees shall only be appointed during impeachment proceedings.

(12) No committee may have the same name or purpose as a committee under the auspices of the General Assembly, unless approved by a majority of the General Assembly.

Section 2

(1) All members of committees, other than joint committees, must be full-time students in good standing on Wilf Campus.

(2) All members of joint committees must either be full-time students in good standing on Wilf Campus, or full-time students in good standing on Beren Campus.

(3) Unless otherwise delineated in this constitution, all committees shall have between one and two chairmen.

(4) When appointing a committee other than a joint committee and the Committee on Class Affairs, the appointer shall also propose between one and three chairmen. In order for the committee to be approved, the approvers must approve the committee, as well as at least one, but no more than two, of the proposed chairmen.

(5) When appointing a joint committee, the appointer shall propose one chairman, from Wilf Campus, and one chairwoman, from Beren Campus. In order for the committee to be approved, the approvers must approve the committee, as well as both of the proposed chairmen.

(6) Unless otherwise delineated in this Constitution, all committee members shall be appointed by the committee chairmen.

Section 3

(1) Unless removed, members of standing committees, special committees, joint committees, and subcommittees shall sit on said committee until graduation day.

(2) Non-chairmen members of committees other than the Canvassing Committee and the Committee on Class Affairs may be removed by the committee chairmen, with the approval of a majority of the committee's non-chairmen members.

(3) Chairmen of special committees which are under the auspices of the General Assembly may be removed by unanimous vote of the committee members, said chairman excluded. In the event that a chairman is removed, and the committee only had one chairman prior to his removal, the YSU President shall, with the approval of a majority of the General Assembly, appoint a new chairman.

(4) Chairmen of special committees which are under the auspices of an individual Council may be removed by unanimous vote of the committee members, said chairman excluded. In the event that a chairman is removed, and the committee only had one chairman prior to his removal, the President of the Council under which the relevant special committee was formed shall appoint a new chairman, with the approval of a majority of the Council under the auspices of which the special committee serves.

(5) Chairmen of joint committees may be removed by unanimous vote of the committee members, said chairman or chairwoman excluded. In the event that a chairman is removed, the YSU President shall, with the approval of a majority of the General Assembly, appoint a new chairman. In the event that a chairwoman is removed, the SCWSC President shall, with the approval of either the SYMSSC Beren or TAC President, appoint a new chairwoman.
(6) Chairmen of subcommittees may be removed by unanimous vote of the committee members, said chairman excluded. In the event that a chairman is removed, and the committee only had one chairman prior to his removal, a new chairman shall be appointed by the chairmen of the relevant standing, special, or joint committee under which the relevant subcommittee was formed, with the approval of a majority of the relevant standing, special, or joint committee.
(7) In the event that a chairman of a standing committee, other than the Committee on Class Affairs, is impeached and removed from office, the YSU President shall, with the approval of a majority of the General Assembly, appoint a new chairman.

(8) All committees other than standing committees shall be dissolved on graduation day, unless the incoming General Assembly unanimously determines and publicizes that it is in the best interest of the student body to not dissolve the committee.

(9) At any time, the General Assembly can, by unanimous vote, decide to dissolve any committee other than the standing committees specified in Section 1, subsection 2 of this Article.

#### Article X

**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 this Constitution.

(2) The Chairman of the Canvassing Committee, who may not be a YSU, YCSC, SOY, or SYMSSC official, nor a member of SLC, shall be nominated by the Yeshiva Student Union President and shall be approved by a majority vote of the General Assembly.

(3) The Presidents of the YSU, YCSC, SYMSSC, and SOY, shall each serve as a member of the Canvassing Committee, or may appoint another student from their respective councils to represent them on the Canvassing Committee and assist in matters deemed necessary by the Chairman of the Canvassing Committee. If one of the aforementioned officials shall run for any WCSG position, or shall be involved in any other conflict of interest, he shall be required to appoint another student from his Council to serve on the Canvassing Committee in his place. If all members on a certain council are either running for any WCSG position or are involved in any other conflict of interest, that Canvassing Committee seat shall remain empty until such time as a member from that council is eligible to serve on the Canvassing Committee.

(4) The Chairman shall select two other students, neither of whom may be elected members of WCSG to complete the committee of seven members, each of whom shall have a vote on the Canvassing Committee.

(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 determining which positions, if any, shall have one or more debates, determining the rules of said debates, and publicizing the debates at least three days prior to their occurrence.

(7) The Canvassing Committee shall conduct elections through a closed ballot in a manner that ensures that the elections are held in an objective fashion. The ballot shall be open for no less than 12 hours and no more than 18 hours. The time that the ballot will open and close must be clearly indicated by the Canvassing Committee in the public notification of all election rules and requirements, and the time that the ballot closes must also be included in the emails to the Student Body which contain individualized links to each student's ballot.

(8) The Canvassing Committee shall be responsible for the tallying of votes. The Canvassing Committee shall publicize the winners of the elections as soon as possible. Within three days of Election Day, the Canvassing Committee shall disclose the data regarding numbers of voter turnout, and the number of votes cast per race, as well as per candidate on the ballot. The Canvassing Committee shall preserve a copy of the results of the elections in a digital archive which the Canvassing Committee shall maintain and make publicly available.

(9) No candidate for any upcoming elections for WCSG positions may serve on the Canvassing Committee.

(10) 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 WCSG, excluding the Freshman and Sophomore Class Representatives and appointments for SLC positions, shall be held no earlier than the second week in April and no later than the first week in May.

(2) Elections for the Freshman and Sophomore Class Representatives shall be held within the first month of classes 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 and requirements for candidacy 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 deadline for the submission of petitions, candidates may begin campaigning at the time set forth by the Canvassing Committee, according to the rules set forth by the Canvassing Committee.

(4) 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.

(5) No candidate may run on a ticket or otherwise campaign jointly with any other candidate for any Student Government position.

(6) All candidates must be eligible according to the rules set forth by the Constitution and Canvassing Committee By-Laws, full-time students in good standing, and must be able to serve for a full academic year.

## Section 4

(1) All Yeshiva University Undergraduate male 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 YCSC President, YCSC Vice President, and YCSC Treasurer.

(3) Only students of Sy Syms School of Business may vote for the SYMSSC President, SYMSSC Vice President, and SYMSSC Treasurer.

(4) All Yeshiva University Undergraduate male students may vote in the election for the SOY President, Vice President, and PR Secretary. Students of MYP, SBMP, IBC, and JSS may only vote for the Representative of their respective Judaic Studies morning program.

## Section 5

(1) In the event of a tie in Spring Elections, the outgoing members of the council in which the tie occurred shall vote from amongst the candidates who have tied. A majority vote of the respective council shall be required to determine the winner. If no candidate receives a majority vote from the outgoing council, the outgoing General Assembly shall vote from amongst the candidates who have tied, and a majority vote of the General Assembly shall be required to determine the winner.

(2) In the event of a tie in any election other than Spring Elections, the members of the council in which the tie occurred shall vote from amongst the candidates who have tied. A majority vote of the respective council shall be required to determine the winner. If no candidate receives a majority vote from the council, the General Assembly shall vote from amongst the candidates who have tied, and a majority vote of the General Assembly shall be required to determine the winner.

(3) All students running as a write-in must receive a minimum of twenty votes to win that position.

(4) Any position not filled during Spring Elections shall have an election within the first month of the classes of the upcoming Fall semester to fill the position.

(5) Any position not filled during Fall Elections shall have an election the second month of classes of Fall semester to fill the position.

I. This month-long period for filling positions that are not filled during Fall Elections shall, for election-period-naming purposes, be called Fall-2.

(6) In the event that the YSU President, YSU Vice President of Clubs, YSU VP of Class Affairs, YCSC President, YCSC Vice President, SYMSSC President, SYMSSC Vice President, SOY President, or SOY Vice President position is not filled during Fall-2, an election shall be held in the first month of the upcoming Spring semester to fill the position.

(7) In the event that any other position is not filled during Fall-2, the position shall remain vacant for the entire academic year.

## Section 6

(1) For all WCSG positions other than the Student Life Committee Senior and Junior Co-Chairs, the last day in office shall be the day before graduation day of the outgoing senior class.

(2) All elected members of the WCSG shall be inducted by the outgoing WCSG Presidents

excluding the Freshman and Sophomore Class Representatives, who shall be inducted in the fall. (3) Official duties of the incoming officers elected in the Spring semester shall be assumed upon graduation day of the outgoing senior class. Official duties of the incoming officers elected in the

Fall semester shall be assumed the day after the election results are released by the Canvassing Committee.

(4) Prior to taking office, each new officer must sign the following affirmation: "I [name] do solemnly affirm that I will to the best of my ability unify the Student Body, safeguard the religious atmosphere on campus, and protect and defend the Constitution of the Wilf Campus." The affirmation shall be submitted to the Office of Student Life.

(5) All newly elected officers must meet all qualifications for their position, as defined in 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 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 in good standing and a full-time student on Wilf Campus, and must be able to serve for a full academic year, and who shall preside over all Student Court meetings and cases tried before the bench, and write the Student Court Official Reports; four Associate Justices, two of whom must be seniors at the time of their nomination and confirmation, and two of whom must be juniors at the time of their nomination and confirmation; and a Justice Pro-Tempore, who must be at least a sophomore at the time of his nomination and confirmation, 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, subsection 1 of this Article.

(3) No student may serve on the Student Court while holding a position on YSU, YCSC, SYMSSC, SOY, or SLC; nor may any student serve on the Student Court while serving as Parliamentarian or on the Canvassing Committee.

(4) In the event that a Justice must step down at the end of the Fall semester, he shall be replaced via the method outlined in Article VIII Section 4, subsection 6 and shall be voted upon at the first meeting of the General Assembly in the Spring semester.

(5) A majority vote of the General Assembly shall be required to remove any Justice from the Student Court.

## Section 2

 The Student Court shall have jurisdiction over disputes with regard to the interpretation of the Student Government Constitution, 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 hold trials, subpoena witnesses, and publicize decisions and dissents.

(3) 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) Any member of the Student Body or WCSG, who has standing, may file a suit with the Chief Justice.

(3) Upon receiving a suit, the Student Court must, by majority vote of the Justices, within five 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 twelve days from the day filed. The Justices shall meet privately and release a majority opinion, in writing, within three days after the case has been heard.

(4) The opinion of the court shall be given to the defendant, and a copy shall be preserved in a digital archive of opinions which the Court shall maintain and make publicly available.

(5) All Student Court decisions involving cases, including decisions to hear a case, decline to hear a case, and Student Court rulings and opinions, must be sent to the entire Student Body via email within two days after the decision has been made.

(6) 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 publicized at least two days prior to the trial.

(7) 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 the unanimous vote of the Student Court or General Assembly.

(8) The Student Court shall, in all cases, accept written briefs as it deems appropriate from external parties.

(9) Either party may appeal if new evidence is found, whereupon the Student Court shall decide whether to hear the case, as delineated in subsection 3 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.
 (2) Prior to performing his duties on the bench, each newly appointed Justice shall take the following oath of affirmation: "I [name] do solemnly affirm that I will administer justice without respect to persons, and faithfully and impartially discharge and perform all the duties incumbent upon me as justice under the Constitution of the Wilf Campus; and that I take this obligation freely, without any mental reservation or purpose of evasion." The affirmation shall be submitted to the Office of Student Life.

## Article XII

Impeachment

#### Section 1

(1) Impeachment proceedings may be brought against any member of the WCSG by a majority of the General Assembly, or by a petition signed by at least one-third of the Student Body, or by a petition signed by at least two-thirds of elected officials of the WCSG. Either must be presented to the Chief Justice of the Student Court, or an Associate Justice of the Student Court if the Chief Justice is implicated.

(2) Upon reception of 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 majority vote of the General Assembly.

(5) The accused shall not vote and shall not be included in the majority tabulation.

# Article XIII Amendments

23

#### 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 General Amendments at least one week prior to the General Student Body Amendment Vote. All General 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 Vote 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 General Amendments shall be by three-fifths of votes cast by the Student Body during the Amendment Vote, excluding blanks.

(6) In addition to the bi-annual General Student Body Amendment Votes, an Emergency Amendment Vote may be held if deemed necessary by the Chairman of the Amendments Committee.

- I. An Emergency Amendment must receive the approval of two-thirds of the members of the Amendments Committee in order to come before the General Assembly.
- II. The Emergency Amendment must then be approved by four-fifths of the General Assembly in order to go to a Student Body Emergency Amendment Vote.
- III. Ratification of Emergency Amendments shall be by four-fifths of votes cast by the Student Body during the Emergency Amendment Vote, excluding blanks.

(7) Upon ratification, the Parliamentarian must adjust the Constitution with the newly approved amendments and submit it to the Office of Student Life to be put online and in print as the updated version. The Amendments Committee shall preserve a copy of the updated Constitution in a digital archive which the Amendments Committee shall maintain and make publicly available.

(8) Any amendments to this Constitution shall not violate Campus or University rules.

Article XIV

Ratification

Section 1

(1) This Constitution shall be ratified by three-fifths votes cast by the Student Body, signed by the current YSU, SOY, SYSMMC, YCSC Presidents, and the SLC Senior Co-Chair, and upon such ratification, shall be binding upon the Student Body.

# Ratified on December 16th, 20201

Signed: 2020-2021 Wilf Student Government General Assembly,

Adam Baron, SYMSSC President:

Adam Baron

Zachary Greenberg, YSU President:

Jochary Downberg

Ari Lowy, YCSC President:

Akiva Poppers, SOY President:

Scott Stimler, SLC Senior Co-Chair:

Scott Stimler

<sup>&</sup>lt;sup>1</sup> This version of the Wilf Constitution was created through the efforts of David Tanner, Zachary Greenberg, Atid Malka, Daniel Melool, Avishalom Neiditch, Akiva Poppers, Yehuda Dov Reiss, and Michael Stark.

# Exhibit B

## SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK ------X YU PRIDE ALLIANCE, MOLLY MEISELS, DONIEL Index No.: 154010/2021 WEINREICH, AMITAI MILLER, and ANONYMOUS,

Plaintiffs,

ANSWER

-against-

YESHIVA UNIVERSITY and PRESIDENT ARI BERMAN,

Defendants.

Defendants **YESHIVA UNIVERSITY** and **PRESIDENT ARI BERMAN** (collectively, "Defendants"),<sup>1</sup> by and through their attorneys, KAUFMAN BORGEEST & RYAN LLP, as and for their Answer to Plaintiffs' Complaint dated April 26, 2021, hereby state upon information and belief as follows:

#### PRELIMINARY STATEMENT

1. Defendants deny in the form and manner alleged each and every allegation contained in paragraphs "1", "2", "3", "4", "5", "6", and "7" of the Complaint, except state that Yeshiva University is a religious corporation whose decision not to recognize YU Pride Alliance as an official student club is rooted in religious principles consistent with its Torah values, and otherwise beg leave to refer all questions of law to the Court.

#### PARTIES

2. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the Complaint, except state that Yeshiva University is a religious corporation whose decision not to recognize YU Pride Alliance as an official

<sup>&</sup>lt;sup>1</sup> Vice Provost Chaim Nissel was dismissed from this action and thus need not interpose an answer to the Complaint.

student club is rooted in religious principles consistent with its Torah values, and otherwise beg leave to refer all questions of law to the Court.

3. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs "9", "10", "11", and "12" of the Complaint.

4. Paragraph "13" of the Complaint does not contain allegations of fact but rather legal conclusions to which no response is required. Defendants respectfully refer all questions of law to the Court. Defendants deny that Yeshiva University is a provider of a public accommodation as defined by § 8-102 of the Administrative Code of the City of New York.

5. Defendants admit the allegations contained in paragraphs "14" and "15" of the Complaint, except deny that Dr. Nissel is an "agent of Defendant Yeshiva" with respect to the facts at issue in this lawsuit.

## JURISDICTION AND VENUE

6. Paragraphs "16", "17", and "18" of the Complaint do not contain allegations of fact but rather legal conclusions to which no response is required. Defendants respectfully refer all questions of law to the Court.

## **STATEMENT OF FACTS**

7. Defendants admit the allegations contained in paragraphs "19", "35", 36", "58", and "92" of the Complaint.

8. Defendants deny in the form and manner alleged each and every allegation contained in paragraphs "22" and "23", except state that Yeshiva University receives public financing, and otherwise beg leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

9. Defendants deny each and every allegation contained in paragraphs "30", "32", "33", "75", "98", "101", "104", "127", and "129" on the ground that the quoted documents speak for themselves.

10. Defendants deny in the form and manner alleged each and every allegation contained in paragraphs "20", "21", "24", "25", "29," "31," "34", "37", "38", "43", "44", "46", "47", "48", "50", "52", "53", "54", "59", "61", "64," "67", "68", "69", "70", "71", "73", "77", "82", "85", "88", "91", "99", "100", "102", "103", "105", "106", "110", "113", "114", "115", "117", "120", and "134" of the Complaint, except state that Yeshiva University is a religious corporation whose decision not to recognize YU Pride Alliance as an official student club is rooted in deeply religious principles and is consistent with Torah values, and otherwise beg leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

11. Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs "26", "27", "28", "39", "40", "41", "42", "45", "49", "51", "55", "56", "57", "60", "62", "63", "65", "66", "72", "74", "76", "78", "79", "80", "81", "83", "84", "86", "87", "89", "90", "93", "94", "95", "96", "97", "107", "108", "109", "111", "112", "116", "121", "123", and "141" of the Complaint.

12. Defendants deny each and every allegation contained in paragraphs "118", "119", "122", "124", "125", "126", "128", "130", "131", "132", "133", "135", "138", "139", and "140" of the Complaint.

13. Paragraphs "136" and "137" of the Complaint do not contain allegations of fact but rather legal conclusions to which no response is required. Defendants respectfully refer all questions of law to the Court.

#### AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

14. In response to paragraph "142", Defendants repeat, reiterate, and re-allege each and every admission or denial heretofore made in response to paragraphs "1" through "141" of the Complaint, with the same force and effect as though fully set forth herein.

15. Defendants deny each and every allegation contained in paragraphs "143", "144", and "145" of the Complaint.

# AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

16. In response to paragraph "146", Defendants repeat, reiterate, and re-allege each and every admission or denial heretofore made in response to paragraphs "1" through "145" of the Complaint, with the same force and effect as though fully set forth herein.

17. Defendants deny each and every allegation contained in paragraphs "147" and "148" of the Complaint.

#### AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

18. In response to paragraph "149", Defendants repeat, reiterate, and re-allege each and every admission or denial heretofore made in response to paragraphs "1" through "148" of the Complaint, with the same force and effect as though fully set forth herein.

19. Defendants deny each and every allegation contained in paragraphs "150", "151", and "152" of the Complaint.

#### AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

20. In response to paragraph "153", Defendants repeat, reiterate, and re-allege each and every admission or denial heretofore made in response to paragraphs "1" through "152" of the Complaint, with the same force and effect as though fully set forth herein.

21. Defendants deny each and every allegation contained in paragraphs "154", "155", and "156" of the Complaint.

# AS AND FOR THE PRAYER FOR RELIEF

22. Defendants deny that Plaintiffs are entitled to any of the remedies requested in Plaintiffs' Prayer for relief. Defendants further deny any allegations set forth in the headings or other aspects of the Complaint not directly addressed in the numbered paragraphs above.

## AS AND FOR A FIRST AFFIRMATIVE DEFENSE

22. Plaintiffs' Complaint fails to state a cause of action for which relief can be granted.

# AS AND FOR A SECOND AFFIRMATIVE DEFENSE

23. The documentary evidence provides Defendants with a complete defense to the claims asserted against them.

# AS AND FOR A THIRD AFFIRMATIVE DEFENSE

24. Plaintiffs failed to exhaust internal and/or administrative remedies.

# AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

25. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

# AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

26. Defendant Yeshiva University is not a "place or provider of public accommodation" under the New York City Human Rights Law ("NYCHRL").

# AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

27. Defendant Yeshiva University is a religious corporation incorporated under the education law, is distinctly private, and is, therefore, exempt from the public-accommodation provisions of the NYCHRL.

#### AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

28. Plaintiffs' claims are barred, including with relation to subject-matter jurisdiction, by the church autonomy doctrine, which forbids "state interference" in "matters of church government as well as those of faith and doctrine." (*Kedroff v St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 US 94, 116 [1952].)

#### AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

29. Plaintiffs' claims are barred by the First Amendment prohibition on government entanglement in religion or religious questions. (*Presbyterian Church v Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 US 440, 441, 452 [1969].)

#### AS AND FOR A NINTH AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by the First Amendment's Free Exercise Clause, because the NYCHRL contains a system by which discretion can be invoked to exempt entities from the law's public accommodations provisions—and failing to exempt Yeshiva from this system is not the least restrictive means of pursuing any compelling government interest.

#### AS AND FOR A TENTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims are barred by the doctrine of constitutional avoidance, which requires courts to avoid applying a statute in a way that raises serious constitutional questions unless there is a clear expression of an affirmative intention by Congress to do so. (*NLRB v Catholic Bishop of Chi.*, 440 US 490 [1979].)

### AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

32. Plaintiff's claims are barred by the Assembly Clause of the First Amendment to the United States Constitution, which protects Defendants' right to engage in otherwise lawful worship and speech activities with persons of their choosing.

### AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

33. Plaintiffs' claims are barred by the First Amendment's protection of freedom of association, which forbids the government from taking actions that would "significantly affect [an organization's] ability to advocate public or private viewpoints." (*Boy Scouts of Am. v Dale*, 530 US 640, 641 [2000].)

### AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims are barred by the Free Speech Clause of the First Amendment to the United States Constitution, which protects Defendants' right to not be forced to speak a religious viewpoint with which it disagrees.

### AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

35. Plaintiffs have not suffered any legally cognizable damages.

#### AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

36. To the extent Plaintiffs did suffer any legally cognizable damages, such damages were aggravated, exacerbated, and/or exaggerated by Plaintiffs' failure to use reasonable diligence in mitigation; in accordance with Article 14 of the CPLR, Defendants reserve their right to assert in mitigation of damages the culpable conduct attributable to Plaintiffs, if any be shown.

## AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

37. Upon information and belief, any damages sustained by Plaintiffs were a result of the culpable conduct of some third person or persons over whom Defendants neither had nor exercised control.

#### AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

38. Plaintiffs' claims for punitive damages are unwarranted, unconstitutional, and in violation of due process, as the alleged acts and/or omissions of Defendants did not involve willful or

wanton malfeasance, maliciousness, or a reckless disregard of Plaintiffs' rights, and thus do not rise to the level of conduct for which punitive damages are justified.

### AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

39. Plaintiffs' claims for punitive damages are barred by the First Amendment's Establishment Clause and Free Exercise Clause, because "imposing punitive damages on [Yeshiva University] to force it to abandon teaching" certain Torah values on campus "is simply too great" an intrusion "upon the forbidden field of religious freedom." (*Lundman v McKown*, 530 NW2d 807, 816 [Minn. Ct. App. 1995], *cert. denied sub nom. Lundman v First Church of Christ, Scientist*, 516 US 1092 [1996].)

### AS AND FOR NINETEENTH AFFIRMATIVE DEFENSE

40. The Complaint is barred, in whole or in part, because Defendants exercised reasonable care to prevent and correct promptly any discriminatory conduct, and because Plaintiffs unreasonably failed to properly take advantage of any preventative or corrective opportunities provided by Defendants to avoid harm otherwise.

### AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

41. Plaintiffs' claims are barred and/or diminished, in whole or in part, by the doctrines of collateral estoppel, waiver, release, res judicata, unclean hands, and/or laches.

### AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

42. Defendants reserve their right to assert any and all additional defenses as may be revealed by further investigation and discovery. NYSCEF DOC. NO. 333

WHEREFORE, Defendants demand judgment dismissing the Complaint herein, together

with the costs and disbursements of this action.

Dated: New York, New York July 18, 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.

By:

Yours, etc.,

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# Exhibit C

# FILED: APPELLATE DIVISION - 1ST DEPT, 08/08/2022 06:13 PM

NYSCEF DOC. NO. 18

2022-02726

ERIC S. BAXTER (of the bar of the District of Columbia) by permission of the Court Time Requested: 15 Minutes

New York County Clerk's Index No. 154010/21

# New York Supreme Court

APPELLATE DIVISION—FIRST DEPARTMENT

YU PRIDE ALLIANCE, MOLLY MEISELS, DONIEL WEINREICH, AMITAI MILLER, and ANONYMOUS, CASE NO. 2022-02726

Plaintiffs-Respondents,

YESHIVA UNIVERSITY and PRESIDENT ARI BERMAN,

Defendants-Appellants,

VICE PROVOST CHAIM NISSEL,

-against-

Defendant.

LESBIAN AND GAY LAW ASSOCIATION FOUNDATION OF GREATER NEW YORK,

Amicus-Curiae Respondent.

# **BRIEF FOR DEFENDANTS-APPELLANTS**

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Attorneys for Defendants-Appellants

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# **PRELIMINARY STATEMENT**

This case is about whether Yeshiva University—the world's premier Jewish institution for higher education—is free to decide for itself which student clubs on its campuses are consistent with its Torah values. Plaintiffs say "no." They argue that the New York City Human Rights Law (NYCHRL) compels Yeshiva to approve a Pride Alliance club, even though Plaintiffs concede that Yeshiva has made a religious decision, in consultation with its senior rabbis, that the club would cloud the nuanced religious message it seeks to convey to its undergraduate students. The NYCHRL itself, however, says "yes." It expressly excludes from its coverage "religious corporations incorporated under the education law," which describes Yeshiva precisely. The trial court, at "first blush," agreed. But then it proceeded to hold that, under the NYCHRL, "religious corporation" is a term of art that means "house of worship." This led it to conclude that Yeshiva is subject to the full scope of the NYCHRL because it does not state a sufficiently clear religious purpose in its charter document, offers too many secular degrees, and-like all institutions of higher education in New York- sometimes (accurately) identifies itself in government filings as an educational institution.

The trial court's amorphous and confused approach, adopted in place of the NYCHRL's plain meaning, introduces multiple problems. It is inconsistent with another section of the law, which independently protects religious organizations' actions in pursuit of their religious missions. It raises intractable First Amendment conflicts, and it potentially subjects all religious institutions of higher education to endless, crippling litigation. The trial court declined to properly address these issues.

It never addressed Yeshiva's religious autonomy defense, and in just briefly addressing Yeshiva's free exercise, speech, and assembly defenses, it ignored the most recent, binding Supreme Court rulings. But these First Amendment doctrines unequivocally say that religious institutions like Yeshiva are free to make internal religious decisions without government interference. Because the trial court had to contort the plain meaning of the NYCHRL's religious exemptions and ignore the First Amendment to conclude otherwise, its ruling must be reversed and summary judgment entered in Yeshiva's favor.

# **STATEMENT OF FACTS**

The trial court ruled that Yeshiva University is not religious and is therefore subject to the full scope of the NYCHRL's public accommodation provisions, with no First Amendment protections. The following undisputed facts refute this conclusion:

# A. Yeshiva's Corporate History

Yeshiva was formed in 1897 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." (Rec 493.) Over time, Yeshiva added secular degrees, changing its name in 1926 to "The Rabbi Isaac Elchanan Theological Seminary Association and Yeshiva College," and then, in 1945, to "Yeshiva University." (Rec 128.) Yeshiva never stopped "promot[ing] the study of Talmud" or "preparing students of the Hebrew faith for the Hebrew Orthodox ministry." (*See, e.g.*, Rec 1774 (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."); Rec 1784 at 31:2-3 ("The mission of Yeshiva University has not changed.").)

In the 1960s and 1970s, in response to changes in New York law, Yeshiva undertook a series of changes to its corporate charter. Revisions to the New York Education Law required that, absent "the consent of the commissioner of education," post-secondary educational institutions like Yeshiva had to incorporate under the Education Law. (Rec 140 (1963 N.Y. Laws 2406-2408) (enacted April 23, 1963); *see also* Education Law § 216 (requirement still in force today).) This requirement applied to secular and religious universities alike. Thus, in 1967, Yeshiva submitted a new charter reincorporating as "an educational corporation under the education law." (Rec 473.) As stated in its 1967 amended charter, Yeshiva "continues" to provide rigorous religious and Torah instruction, particularly for its undergraduates, who are the main source of students at its affiliated Rabbi Isaac Elchanan Theological Seminary and most of whom go on to lead lives based in Torah values that strengthen Jewish communities worldwide. (Rec 1915-1916.)

# **B.** Religious Life at Yeshiva Today

Today, as 50 and 125 years ago, devotion to Torah permeates everyday life at Yeshiva, including at its undergraduate colleges, which are the subject of this lawsuit. As Plaintiffs have never disputed, in everything it does, Yeshiva "operates with an understanding of [its] values," which "come from the Torah." (Rec 1793 at 65:14-16; *see also* Rec 86.) 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 Hebrew name of the University *yeshiva*. 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.

All undergraduates are strongly encouraged to begin their Yeshiva experience with intensive religious studies in Israel, with over 80% doing so for university credit. (Rec 1744, 1783 at 26:14-15.) Consistent with Jewish tradition, 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* Rec 1778 at 7:14-19; *see also* Rec 1880; Rec 1882.) The seminary, RIETS, "sits on the same campus" as the undergraduate men's school, (Rec 1791 at 60:13-14). At Yeshiva, the male undergraduate students study with the RIETS students, as "[t]hey don't really separate" undergraduates and seminary students for religious instruction in the *beit midrash* or "study hall." (Rec 1792 at 62:12-13.)

Yeshiva students living on campus agree "to live in accordance with halachic [Jewish law] norms and Torah ideals," and Yeshiva complies fully with the laws of Shabbat and Kashrut and expects students in its undergraduate programs to do the same. (Rec 86-87; Rec 1811 at 138:20–139:5 (students are "told ... it's a religious campus, orthodox on campus, prayer, kashrut, [S]habbos"); Rec 1883 (elevators run automatically on Sabbath; provision prohibiting use of computers/electronics on Sabbath); Rec 1885 ("Shabbat Programming"); Rec 1886 (explaining to incoming undergraduates that "[e]very week is a Shabbaton" on campus, with "[t]ailored programs").) Yeshiva campuses, dorms, and prayers are sex-segregated consistent

with Torah law and tradition; it maintains synagogues on campus; all doors on campus have mezuzahs affixed, (Deuteronomy 6:4-9; 11:13-21); Yeshiva student government officers are charged to help "maintain the religious atmosphere on campus"; and undergraduate student activities are reviewed for religious compliance. (Rec 86, 88-89, 94.)

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 PM every other weekday. (*See* Rec 1887.) As the handbook also says, "Jewish holidays are observed, and offices will be closed, when the holiday falls on a workday." (Rec 1888; *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." (Rec 1890.) Throughout campus, a wide range of "spiritual guidance and programming" is advertised to all undergraduates. (Rec 1897-1900.) "[E]ach" student has a *mashgiach ruchani*, or "spiritual advisor[]," some of whom "are also faculty." (Rec 1778 at 8:5-7, 11; *see also* Rec 1902.) As the *Wall Street Journal* recently stated 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/3RRY-ZVSG.)

To future students and their families, Yeshiva is adamant regarding "what the campus life is really about." (Rec 1811 at 138:22-139:3.) Students from its "feeder schools" are already "coming from generally Jewish religious background[s]." (Rec 1790 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. (Rec 1811 at 138:22-139:3; *see also* Rec 1900.)

Indications of Yeshiva's religious character are found everywhere on its undergraduate campus. Spiritual guidance resources abound. (*See, e.g.*, Rec 190.) Yeshiva hosts a collection of "more than 10,000 artifacts reflecting 5,000 years of Jewish culture, art, and history from around the world." (Rec 1903.) There is "signage" throughout the dining halls indicating the "expect[ation]" of keeping kosher. (*See* Rec 1796 at 77:17-78:2.) Campus garages are closed on the Jewish Sabbath and all Jewish holidays.

Yeshiva's religious exercise is not identical at all its schools. All graduate and undergraduate programs provide students with *opportunities* to live consistent with Jewish law and Orthodox Judaism, such as by keeping Jewish holidays and having only kosher food available on campus. However, Yeshiva's graduate programs do not all advocate adherence to Jewish law or mandate intense religious studies. Even among its graduate schools, the level of religious intensity varies—between, for example, the Cardozo School of Law, which has a high degree of religious diversity, and the Azrieli Graduate School of Jewish Education and Administration, which serves mostly Jewish students and continues to combine religious and secular studies. These types of distinctions are found in religious schools nationwide. For Yeshiva, as presumably all religious schools, these distinctions reflect the reality it has faced since its founding to balance its mission of forming students in the Jewish faith (the *Torah* of its motto) with its mission of preparing them academically to carry their values to the highest levels of their professions (the *maddah* of its motto). When students are younger and most impressionable, forming their own religious identities away from the direct influence of their families, Yeshiva's focus on religious formation is intense and pervasive. At the graduate level, when students are older and more religiously diverse, Yeshiva's focus switches to professional development with levels of religious influence varying based on the specific program. (Rec 401 ¶¶ 7-8.)

# C. Religious Oversight of Yeshiva's Undergraduate Clubs

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; Rec  $65 \P 98$ .)<sup>1</sup> To that end, while Yeshiva permits undergraduates to "socialize in gatherings they see fit," the school cannot put its seal of approval on undergraduate clubs that appear inconsistent with Torah values. (Doc. 11; *see also* Rec 291-294 ¶¶ 7, 18, 36, 44.)

Official club recognition starts with Yeshiva's undergraduate Student Government. (See Rec 53-54 ¶¶ 29-36; Rec 382 (see art. V § 1I, (i)); Rec 392 (see 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.,

<sup>&</sup>lt;sup>1</sup> All "Doc." cites are to the Supreme Court docket, and "Dkt." cites are to this Court's docket.

Rec 375 ("Preamble"); *see also* Rec 390 (*see* art. II § 1).) Indeed, every elected male student leader is charged to "maintain the religious atmosphere on campus." (Rec 381 (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." (Rec 398 (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. (Rec 293-294 ¶¶ 36, 38.)

"If a proposed club ... raises especially complex issues, the Director of Student Life ... will discuss the approval" with the Vice Provost for Students. (Rec 290-294  $\P\P$  1, 38.) "On particularly difficult issues, especially those affecting Yeshiva's religious mission," the Vice Provost may additionally "consult with Yeshiva's religious leadership," including its *Roshei Yeshiva* "and other senior administrators." (Rec 294  $\P$  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 consistent with Torah values. (Rec 295  $\P$  45.)

Over the years, Yeshiva has rejected multiple undergraduate clubs for being inconsistent with its religious beliefs. For example, Yeshiva has declined to approve proposed shooting, videogame, and gambling clubs. (Rec 294 ¶ 41-44.) It even declined to approve the Jewish "AEPi" fraternity, because it concluded that certain traditional aspects of fraternity life would not be consistent with Yeshiva's Torah values. (Rec 294 ¶ 43.)

# D. Plaintiffs' Concessions that Yeshiva Is Religious

Plaintiffs are three alumni and one current student of the undergraduate schools at Yeshiva. They want Yeshiva to formally recognize an LGBTQ advocacy club: YU Pride Alliance. They admit that Yeshiva is a deeply religious institution. 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.) Plaintiff Miller alleged that "YU was a religious community for me too." (Doc. 23 ¶ 9.) Plaintiffs seek club recognition in part to host school-sponsored LGBTQ "shabbatons," or LGBTQ programming as part of celebrating the Sabbath. (*See, e.g., id.* ¶ 21; Doc. 24 ¶ 32.) And Plaintiff Anonymous sought anonymity because "a crucial part of my identity" is being "a Jewish individual" at Yeshiva. (Doc. 24 ¶ 8.) In their papers, Plaintiffs have argued that "Judaism is deeply important to the University's existence and activities." (Rec 1395.) For Plaintiffs, Yeshiva's religiosity is a feature—one of the main reasons they chose to attend there.

# E. Yeshiva's Decision Not To Recognize the Pride Alliance Club

As explained in Plaintiffs' Complaint, the decision not to recognize YU Pride Alliance as an official campus club was a religious decision made in consultation with Yeshiva's *Roshei Yeshiva*. (Rec 65-67 ¶¶ 98-113.) The Complaint itself concedes that, 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. (Rec 56 ¶ 46; Rec 46 at 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. (Rec 295 ¶ 46; Rec 55 ¶ 43.) In February 2019, Plaintiffs submitted their most recent request for official approval of YU Pride Alliance. At the time, they requested to meet with the Director of Student Life. (Rec 55-56 ¶¶ 45-46; Rec 63 ¶ 90.) But the Director of Student Life lacks authority to singlehandedly decide an issue so intertwined with Yeshiva's religious mission and "needed to speak to more senior administrators." (Rec 55 ¶ 43.)

Plaintiffs next elevated discussions to those with decision-making authority. (Rec 57  $\P$  53.) A panel of rabbis and educators was established to review the issues surrounding the request for formal recognition, (Rec 58  $\P$  58), and there were ongoing meetings with student representatives to discuss the same, (Rec 59-60  $\P\P$  62-71). On September 3, 2020, after conversations among Yeshiva's senior officials and rabbis, Yeshiva announced it would not officially recognize Pride Alliance because doing so would not be consistent with Torah values. (Rec 65  $\P\P$  98, 101.) On the same day, in a decision published to the entire student body, Yeshiva confirmed the Torah-based reasoning for its decision:

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 as they see fit, forming a new club as requested under the auspices of YU will cloud this nuanced message.

(Doc. 11; Rec 65 ¶ 101.) Plaintiffs candidly acknowledge that "timeless prescriptions" in the Torah were the basis for this decision. (*See, e.g.*, Rec 65 ¶ 101.) In a recent YouTube interview, Plaintiff Meisels admitted that Yeshiva "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 Rec 295 ¶ 53.)

# F. Proceedings Below

In April 2021, Plaintiffs filed this action in the Supreme Court, New York County, seeking a preliminary injunction and damages under the NYCHRL. (Administrative Code of City of NY §§ 8-102, 8-107.) The injunction sought to compel Yeshiva to officially and immediately recognize Plaintiff YU Pride Alliance as an undergraduate club, contrary to Yeshiva's internal religious determination that doing so would cloud the nuanced message it seeks to convey consistent with its Torah values.

Yeshiva filed an opposition to Plaintiffs' motion for a preliminary injunction. (Doc. 55.) It also filed a motion to dismiss under CPLR § 3211(a)(1); (7). (Rec 77.) Plaintiffs opposed Yeshiva's motion to dismiss. (Rec 403.)

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." (Rec 458.) At that time, the court rejected Plaintiffs' narrow interpretation of the NYCHRL's "religious corporation" exclusion as "contrary to the plain language of the statute." (*Id.*) The court, however, converted Yeshiva's motion to dismiss into a motion for summary judgment and authorized limited discovery into the question of Yeshiva's religious character. (Rec 459.)

In their opposition to summary judgment, Plaintiffs confirmed that "the University has a Jewish identity" that is "deeply important to [its] existence and activities," (Rec 1395). Plaintiffs also cross-moved for summary judgment that Yeshiva is *not* exempt from the NYCHRL, arguing that, regardless of any religious exercise, Yeshiva is subject to the full scope of the statute. (Rec 1398; *see also* Rec 1410.)

Upon submission of these motions and after oral argument, by Order dated June 14, 2022, the court reversed itself, denied summary judgment to Yeshiva, and granted Plaintiffs' cross-motion, holding that Yeshiva is not a religious corporation incorporated under the Education Law and rejecting or ignoring Yeshiva's First Amendment defenses. (Rec 4.)

On Yeshiva's statutory defenses, the trial court rejected Yeshiva's argument that it is exempt from the public accommodation provisions of the NYCHRL as a "religious corporation incorporated under the education law." (Rec 9.) The court agreed that religious organizations incorporated under the Education Law are separately exempted from those incorporated under the Religious Corporations Law, which are mainly houses of worship. (Rec 9-10.) And it acknowledged Yeshiva's deeply religious nature on multiple occasions:

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.

(Rec 7.)

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.

(Rec 15.)

Yeshiva's religious character [is] evidenced by required religious studies, observation of Orthodox Jewish law, [and] students' participation in religious services, etc.

(Rec 16.) Nevertheless, the trial court then disregarded these findings, Yeshiva's substantial body of evidence proving its religiosity, Plaintiffs' extensive admissions regarding Yeshiva's religiosity, and the court's own conclusion from August 2021 that subjecting Yeshiva to the NYCHRL was contrary to the plain language of the statute.

Instead, the court held that, despite there being "no doubt" about Yeshiva's obviously religious character in its "required religious studies, observation of Orthodox Jewish law, [and] student's participation in religious services, etc.," it did not satisfy the NYCHRL's specific understanding of what a "religious corporation" is, because "[its] organizing documents do not expressly indicate that Yeshiva has a religious purpose." (Rec 11, 15-16.) Further, the court concluded that Yeshiva's primary purpose is "secular" education, that "religion is necessarily secondary to education at Yeshiva," and that only organizations with the *primary* purpose of religious corporation in all manners or it is not.").) The court also concluded that 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 its students do not attend "for religious worship or some other function which is religious at its core." (Rec 16.)

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Regarding Yeshiva's First Amendment defenses, the trial court acknowledged that Yeshiva had raised a religious autonomy defense, (Rec 17-18), but then failed to address that argument, despite several recent U.S. Supreme Court cases holding that religious schools and institutions have autonomy to govern their own internal religious affairs. (See Carson v Makin, 142 S Ct 1987 [2022]; Our Lady of Guadalupe Sch. v Morrissey-Berru, 140 S Ct 2049 [2020]; 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, (494 US 872 [1990],) and the New York Court of Appeals' decision in Catholic Charities of Diocese of Albany v Serio, (7 NY3d 510 [2006]). (Rec 18-19.) 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. (Rec 18; *see also Fulton*, 141 S Ct 1868, 1879-1882 [2021].) The court reasoned that because the NYCHRL exempts *some* religious organizations and some private organizations, the law was still generally applicable; thus, the court could refuse to exempt other religious institutions like Yeshiva. (Rec 18-19.) 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." (Rec 20.) The court further opined that putting Yeshiva's imprimatur on a group that advocated against its Torah values would "not make a statement." (Rec 19.)

The court entered a permanent injunction ordering Yeshiva and President Berman to "immediately grant Plaintiff YU Pride Alliance" official club approval. (Rec 2.) 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* Rec 23.)

Yeshiva filed a Notice of Appeal from the Order with this Court also on June 24, 2022. (*See* Rec 2.) Yeshiva has concurrently sought an emergency stay to preserve the status quo and to prevent Yeshiva from suffering grave and irreparable constitutional harm pending appeal. (Dkt. 5.)

# **QUESTIONS PRESENTED**

1. Q: Did the trial court err in holding that Yeshiva is a public accommodation subject to the full scope of the NYCHRL?

A: Yes. The NYCHRL's plain language provides two religious exemptions, both of which fully apply to Yeshiva.

2. Q: Did the trial court err in declining to grant Yeshiva summary judgment on its religious autonomy defense?

A: Yes. The religious autonomy doctrine bars courts from interfering in Yeshiva's internal religious decisions about which student clubs are consistent with its Torah values.

3. Q: Did the trial court err in declining to grant Yeshiva summary judgment on its free exercise defense?

A: Yes. Under the Free Exercise Clause, religious institutions are exempt from any law that violates their religious beliefs to the same extent secular entities are exempted. Because the NYCHRL categorically exempts dozens of "benevolent societies," and provides two other religious exemptions, Yeshiva is also entitled to an exemption.

4. Q: Did the trial court err in declining to grant Yeshiva summary judgment on its free speech and free assembly claims?

A: Yes. The freedoms of speech and assembly protect the right of organizations to determine the viewpoints they wish to express and form in their members. These respective freedoms protect Yeshiva's internal religious decisions about what student clubs may be given official recognition.

# **STANDARD OF REVIEW**

On appeal, this Court reviews orders granting summary judgment de novo. (*Duane Reade, Inc. v Cardtronics, LP*, 863 NYS2d 14, 16 [1<sup>st</sup> Dept 2008].) And where a determination depends upon application of facts to the law, this Court has "the same discretionary power" as the trial court to review the record and determine their legal effect. (*Small v Lorillard Tobacco Co.,* 94 NY2d 43, 53 [1999].) Where

parties have cross-moved for summary judgment, this Court can reverse entry of summary judgment for one party and enter summary judgment for the other. (*Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429-430 [1996].) The "standard of review concerning entitlement to injunctive relief" is essentially the same. (*Penthouse Terraces, Inc. v McGrath*, 163 AD2d 144, 146 [1st Dept 1990].)

Here, the trial court erred in granting Plaintiffs summary judgment and a permanent injunction by misconstruing the plain language of the NYCHRL and ignoring the applicable First Amendment law. Because it is undisputed that Yeshiva is a religious institution, it is entitled to the religious liberty protections of both the NYCHRL and the First Amendment. Thus, this Court should reverse the entry of summary judgment in Plaintiffs' favor and enter a summary judgment for Defendants.

# <u>POINT 1</u>

# THE TRIAL COURT ERRED BY MISCONSTRUING ONE OF THE NYCHRL'S RELIGIOUS EXEMPTIONS AND ENTIRELY IGNORING ANOTHER.

The NYCHRL includes two relevant religious exemptions for religious institutions like Yeshiva. The first categorically excludes certain "religious corporations" from the definition of public accommodations subject to the law. (Administrative Code § 8-102.) The second exempts "any religious ... organization" from *all* provisions of the NYCHRL to the extent the organization is acting to promote its religious mission. (Administrative Code § 8-107(12).) The trial court contorted the plain meaning of the first exclusion to carve out Yeshiva and ignored

the second exemption entirely. Because both provisions unequivocally protect Yeshiva, the ruling below must be reversed.

# A. As a "religious corporation incorporated under the education law," Yeshiva is excluded from the NYCHRL's definition of "public accommodation."

Under the NYCHRL, the definition of a "[p]lace or provider of public accommodation" expressly excludes organizations that are "distinctly private." (Administrative Code § 8-102.) The law "deem[s]" three types of organizations to fit this exclusion: (1) "a corporation incorporated under the benevolent orders law"; (2) a "religious corporation incorporated under the education law"; and (3) "a religious corporation incorporated ... under the religious corporations law." (*Id.*) The second category describes Yeshiva perfectly. No one disputes that Yeshiva is a "corporation incorporated under the education law" at least in the ordinary sense of that word. By ruling that Yeshiva is nonetheless a public accommodation subject to the full scope of the NYCHRL, the trial court distorted the clear meaning of the statute and should be reversed.

# 1. The trial court erred by ignoring the plain meaning of "religious corporation."

The most basic principle of statutory interpretation is that statutory terms must be given "their usual and commonly understood meaning[s]." (*Rosner v Metro*. *Prop. & Liab. Ins. Co.*, 96 NY2d 475, 479-480 [2001].) Here, the NYCHRL excludes "religious corporations incorporated under the education law." The trial court acknowledged that, at least on its face, this exclusion plainly applies to Yeshiva. In an earlier ruling, it said that holding otherwise would be "contrary to the plain language of the statute." (Rec 458.) And on summary judgment, it found "no dispute that Yeshiva is incorporated under the education law" and conceded that, "on first blush," the exclusion would seem to apply. (Rec 5; Rec 7.) It further acknowledged that Yeshiva's "religious character" is "inherent and integral," and that its religious character "defines [Yeshiva] and sets it apart from other schools and universities." (Rec 10-11; Rec 15-16.) Plaintiffs, too, have conceded that "Judaism is a part of life at YU," that "YU's Jewish character is to be celebrated," and that "Judaism is deeply important to the University's existence and activities." (Rec 410; Rec 1395.)

Despite this, the court chose to disregard what it admitted was the plain meaning of the exemption. (Rec 15.) Instead, it examined "the legislative intent" to determine whether Yeshiva is a "religious corporation ... as the legislature intended," not just as commonly understood. (Rec 7-8.) But that got things exactly wrong. "Legislative intent is best gathered by according the language employed its usual and ordinary meaning." (*Assn. of Contr. Plumbers of City of New York v Contr. Plumbers Assn. of Brooklyn*, 302 NY 495, 500 [1951].)

In defense of this move, the trial court emphasized that NYCHRL exemptions should be "construed narrowly." (Rec 15 (quoting Administrative Code § 8-130).) The court also noted that the NYCHRL originally defined "public accommodation" to exclude *all* "colleges and universities," but that the City Council "removed this exemption" in 1991. (*Id.*) But neither of these supposed indicia of legislative intent affect whether Yeshiva is a "religious corporation incorporated under the education law." A narrow reading of the exemption does not justify reading it out of existence.

Nor is there any reason to conclude that the Council's decision to *extend* coverage to colleges and universities *generally* conflicts with its decision to *keep* the exclusion for *religious* colleges and universities. Indeed, in a 1988 filing to the U.S. Supreme Court, the City represented that it was "quite sensitive to the constitutional issues raised" by the NYCHRL and that the "religious corporations" exemption was intentionally retained because religious organizations "have a more serious claim of 'expressive association' than the typical downtown businessmen's club." (Brief for Appellee, *New York State Club Assn., Inc., v City of New York,* 1988 WL 1026276, \*36-37 [US Jan. 13, 1988, No. 86-1836].) Thus, it is only Plaintiffs' position—that "*there is no such legal entity as a 'religious corporation under the education law,*" (Doc. 147 at 2 n.1)—that flouts both the NYCHRL's plain text and the legislative intent.

### 2. The trial court erred by adopting a test that elevates form over substance.

In reality, the court did not construe the "religious corporations" exclusion narrowly. It just invented a test for determining when a corporation is "religious" and then applied that test to carve Yeshiva out of the exclusion. Because that test is atextual and unworkable, it must be discarded.

#### a. The trial court's test is atextual.

The court reasoned it should look to the RCL for guidance in defining when a corporation is "religious." (Rec 10.) It first noted that the RCL defines a "religious corporation" as one that is "created for religious purposes." (*Id.*; Religious Corporations Law § 2).) Had the court applied *that* test to Yeshiva, there is no

question the test is met, considering Yeshiva's obvious and undisputed religious mission. The court went on, however, to adopt a test that is not supported by the text of either the Education Law or the RCL.

Proceeding past the RCL's clear definition of "religious corporation," the court noted that the RCL "defines ... churches" as places of "divine worship or other religious observances." (Rec 10.) But the definition of a "church" cannot apply to religious corporations incorporated under the education law, since houses of worship generally must incorporate under the RCL, (Religious Corporations Law §§ 2, 2-a, 2-b), and post-secondary schools generally must incorporate under the Education Law, (Education Law § 216). Thus, there is no requirement that a religious corporation incorporated under the Education Law be a place of "divine worship or other religious observances." (Religious Corporations Law § 2.) Were it otherwise, the NYCHRL's distinct exclusion for religious corporations incorporated under the Education Law would be read out of the statute. The court itself acknowledged that the RCL definition cannot be "outcome determinative," since that would "render the [Education Law and RCL exemptions] duplicative." (Rec 10.)<sup>2</sup>

#### b. The trial court's test is unworkable.

The trial court further indicated that an education corporation is religious only if its "organizing documents ... expressly indicate that [it] has a religious purpose." (Rec 11.) But, for multiple reasons, that cannot be the right test.

<sup>&</sup>lt;sup>2</sup> Notably, even if the "church" definition were to apply, it is not at all clear that Yeshiva would not qualify, considering the worship, prayers, and religious studies and lectures that are pervasive in its synagogues, classrooms, and study halls.

*First*, the cited cases looked at charter language as one factor in determining whether the RCL applied to admittedly religious corporations (*See Temple-Ashram v Satyanandji*, 84 AD3d 1158, 1159 [2d Dept 2011]; *In the Matter of Agudist Council of Greater New York v Imperial Sales Co.*, 551 NYS2d 955, 956-57 [2d Dept 1990]; *see also Naarim v Kunda*, 7 Misc 3d 1032(A), 801 NYS2d 237 [Sup Ct, Kings County 2005] (same).) None of these cases suggest that there is an absolute requirement that a corporation can be "religious" only if certain "magic" words are included in its corporate charter.

Second, the court also suggested that a corporation's charter language is critical because "[i]ts corporate purpose is the basis for licensure and receipt of grants and other public funding." (Rec 13.) But this makes an illegal assumption. It would be unconstitutional for government agencies to restrict funding to any corporation based on whether it is religious. (Carson, 142 S Ct at 2001 (in offering funds to private schools, governments cannot discriminate based on religious status or religious use).) Moreover, Yeshiva's religious nature isn't a mystery. To the contrary, Yeshiva has often discussed its religiosity in detail with New York City Council Members as it seeks government funding. (See, e.g., Rec 1910-1913.) And its applications to its accrediting agency are similar. For example, Yeshiva has stated that its "serious, in-depth program in Torah Studies amounting to a second major" for male undergraduates is "[m]ainly what distinguishes undergraduate education at YU." (Rec 1916.) Similarly, Yeshiva detailed its "Mazer Yeshiva Program, currently serving about 625 male undergraduates," which mostly consists of "traditional Talmud study," and leads "[m]any" participants to either further Jewish studies or

go on to rabbinical ordination. (Rec 1918-1919.) There is no evidence that Yeshiva's "licensure" or "funding" has ever turned on a detailed examination of the words in its charter.

*Third*, a "magic words" test would be entirely unworkable, as it would allow any education corporation to exempt itself from the NYCHRL simply by framing its purpose in religious terms. That would subvert the purpose of construing the exemption narrowly. That is why every New York court directly addressing the question of religious identity has emphasized function over corporate form. (See Kittinger v Churchill, 292 NYS 35, 47 [Sup Ct, Erie County 1936]) (evaluating whether a corporation is "religious" requires "looking through the structure and determining what it actually is"; see also Kroth v Congregation Chebra Ukadisha Bnai Israel Mikalwarie, 430 NYS2d 786, 790 [Sup Ct, NY County 1980] (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, 1 [Sup Ct, NY County 2003] (identifying religious corporation based on its "enabling legislation, corporate purposes and activities, position on this lawsuit," and "history").)

The New York Court of Appeals has also held that a function-based analysis is the proper way to identify a religious corporation. (*Scheiber v St. John's Univ.*, 84 NY2d 120, 126 [1994].) In *Scheiber*, the Court of Appeals construed the analogous state Human Rights Law and rejected the very argument that Plaintiffs make here: "that only an entity organized pursuant to the Religious Corporations Law can claim status as a religious organization." (*Id.*) The Court recognized that the statute "contains no such limitation," and found that St. John's University—an educational corporation like Yeshiva—was an exempt "religious institution or organization." (*Id.*) What mattered was not that St. John's corporate documents showed "the intent of fulfilling a secular educational role," but rather that it "ha[d] not abandoned its religious heritage." (*Id.*)

In any case, Yeshiva *does* satisfy the trial court's "magic words" test. Its original charter states it was organized "to promote the study of Talmud." (Rec 1740, 1768.) And its current charter states that it "*continues* to be organized and operated exclusively for educational purposes." (Rec 1767 (emphasis added).) The trial court assumed that "exclusively educational purposes" means exclusively *secular* educational purposes. But there is no textual basis for that reading, especially considering that the term "continues" refers to the original stated purpose of promoting *religious* education. (Rec 493.) That Yeshiva now provides both religious *and* secular education does not change the fact that it is still religious. (Rec 1774; Rec 1784 at 31:2-3.) Since Yeshiva's charter at least plausibly can be read as stating a religious purpose, there is no reason to insist it can be "religious" only if it amends its charter to state its acknowledged religious purpose more explicitly.

# **3.** The trial court erred by ignoring overwhelming evidence of Yeshiva's religious identity.

Perhaps the best evidence that a "magic words" test is unworkable is that the trial court still felt compelled to analyze Yeshiva's functions. But in so doing, the court cherry-picked the evidence, relying on a small handful of documents to conclude that Yeshiva has abandoned its religious identity. All this despite the court's own acknowledgment of Yeshiva's religious character, Plaintiffs' admissions that Yeshiva is religious, sworn statements from Yeshiva's President and Vice Provost, the deposition testimony of its corporate designee, and thousands of pages of evidence demonstrating how Yeshiva's functions overwhelmingly reflect its 3,000year-old Torah values.

As Yeshiva routinely tells the IRS in its most publicly accessible government submission, the Form 990:

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.

(Rec 1908.) Properly considering *all* the evidence before the trial court, Yeshiva is unquestionably religious. Yet none of this abundant evidence appears in the trial court's opinion. Instead, the trial court focused on four documents out-of-context, along with a letter from Cardozo law professors that wasn't even in the record. (*See* Rec 11-14.) This highly selective review of the evidence led the court to the absurd conclusion that Yeshiva is not sufficiently religious to invoke statutory or constitutional protections.

*First*, the trial court cited Yeshiva's 1967 corporate charter, concluding that despite the charter's plain language—Yeshiva's original religious purpose could not have "continue[d]," *supra* 2-3, because Yeshiva had "broadened [its] scope of education" to include so "many secular multi-disciplinary degrees" that providing a *secular* education "thus became Yeshiva's primary purpose." (Rec 11-12) But this is not supported by either New York or federal law. "The religious education and formation of students is the very reason for the existence of most private religious schools." (*Our Lady of Guadalupe*, 140 S Ct at 2055.) Indeed, the New York Education Law explicitly anticipates that it is "a fundamental American right for members of various religious faiths" to establish "educational institutions exclusively or primarily for students of their own religious faith." (Education Law § 313(1).) This right would be meaningless if religious schools could not provide a full secular education alongside religious formation.

*Second*, the trial court relied on a letter from Cardozo law professors, published one day after this lawsuit was filed, stating that some "[f]aculty members, law professors even," "find it unacceptable" that Yeshiva has declined to give official recognition to the Pride Alliance. (Rec 12.) This is not evidence, nor is it even probative of the NYCHRL's "religious corporation" exclusion. It is simply inadmissible hearsay, and Plaintiffs have made no effort to justify its inclusion. Even taken at face value, there is no reasoned basis to credit the views of a group of professors over the view of the University itself. Surely sworn statements, sworn testimony, and the mountain of undisputed admissible evidence of Yeshiva's intense religious environment outweigh one piece of hearsay.

*Third*, the trial court relied on a 27-year-old memo addressing LGBTQ clubs at Yeshiva's distinct graduate schools on different campuses. (Rec 13.) The trial court ignored the memo's emphasis that there were "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." (Rec 1433.) This reflects Yeshiva's internal religious decision to focus on religious formation in its undergraduate programs, when students are most impressionable, to "help [them] embrace the Jewish faith and engage with the secular world from a foundation of Torah values." (Rec 401 ¶ 7.) As at many religious universities, at its graduate schools, Yeshiva's focus shifts to "professional training and academic research. (Id.  $\P$  8.) Although it "continue[s] to facilitate religious observance by ensuring Shabbat- and kosher-compliant environments and by respecting the Jewish holiday calendar," its "programs are no longer structured with the same religious environment or religious studies as Yeshiva's undergraduate programs." (Id.) Yeshiva's religious decision to distinguish between its Jewish-focused undergraduate programs and more religiously diverse graduate programs, as reflected in the 1995 memo, does not mean that Yeshiva is no longer religious. And Plaintiffs have not alleged, let alone identified any evidence, that Yeshiva's intense religious programming diminished at the time of the memo or in the intervening 27 years. The court recited a paragraph from the memo indicating that Yeshiva at the time believed it was "subject to the human rights ordinance of the City of New York." (Rec 13.) But Yeshiva's internal, 27-year-old internal memo does not change the law. (See Starkey v Roman Catholic Archdiocese of Indianapolis, Inc, 2022 WL 2980350, \*6 [7th Cir, July 28, 2022, No. 21-cv-2524] (holding that six-year-old advisory email from defendants' outside counsel was not "binding on this

litigation"); *see also IS Chrystie Mgt. LLC v ADP, LLC*, 168 NYS3d 449, 451 [1st Dept 2022] (statement of law cannot "constitute a judicial admission").)

*Fourth*, the trial court pointed to Yeshiva's CHAR410, a form for registering as a charitable organization in New York. (Rec 14.) The court criticized Yeshiva for registering as an "educational institution" rather than a religious organization. (Id.) But the form itself twice instructed Yeshiva *not* to register as a religious organization if it could not attach "*all* required documentation as listed below." (Rec 630; see also *id.* ("Do *not* request exemptions that cannot be supported by the documentation required.").) To register as a religious organization, Yeshiva had to attach either (1) "a copy of a listing in an official denominational directory" or (2) proof of control by another exempt organization. (Id.) But Yeshiva is an independent Jewish university for which there is no such "denominational directory." And because Yeshiva's form of Judaism eschews hierarchical control, it is unclear how it could have attached the requested documents.<sup>3</sup> As Yeshiva's corporate representative (a RIETS-ordained Rabbi and Dean of Undergraduate Torah Studies) explained, "the word 'control' in Judaism is a hard word to document," because the religion lacks a central authority. (Rec 1805 at 115:16-17); 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

<sup>&</sup>lt;sup>3</sup> This does not mean that Yeshiva lacks religious governance. But under Yeshiva's understanding of Judaism, religious decisions are not made by hierarchical control, but by religious influence, including the influence of its leaders, who are expected to uphold Torah values, and its *Roshei Yeshiva*, or Senior Rabbis, who confer on all major religious decisions made at Yeshiva (*See* Rec 1788 at 45:16-20; *see also* Rec 1786 at 40:8-12; *see also* Rec 1791-1792 at 60:22-61:3; Rec 1793 at 65:14-17.)

conclusion").) This, too, is a religious decision—one protected by the First Amendment. (*See Carson*, 142 S Ct at 2001 ("serious concerns" of "state entanglement with religion and denominational favoritism" arise by secular courts "scrutinizing whether and how a religious school pursues its educational mission").) As such, it made no practical difference whether Yeshiva submitted its CHAR410 as an educational institution *or* as a religious organization, of which it is both.

*Finally*, the trial court considered a February 16, 2021 letter from Yeshiva's Government Relations Director to a New York State Senator. (Rec 14.) There, Yeshiva was "identified ... as a '501[c][3] not-for-profit institution of higher learning ... .'" (*Id.*) Which is true: Yeshiva is a 501(c)(3) nonprofit under federal law, and it is an institution of higher learning. But the trial court did not explain why this undercut Yeshiva's *religious* corporate status. The court again imposed a hard distinction between being "religious" and "educational," but nothing in New York or U.S. Supreme Court case law counsels or allows that conclusion. Indeed, other religious schools in New York City expressly identify themselves as educational "not-for-profit" institutions and as religious in government documents. *Infra* 31-32 (King's College). It cannot be the law that neglecting to say "I am religious" in one piece of correspondence sacrifices your religious identity.

Yeshiva does routinely reference its religious character to state and local government entities—most publicly on its IRS 990 and to local officials. And of course, Yeshiva's Torah-focused seal appears on virtually all public-facing documents. There is no justification for why these repeated representations of Yeshiva's religiosity merited no weight in the court's analysis.

### 4. The trial court erred by ignoring the doctrine of constitutional avoidance.

"[A] statute should be construed, whenever possible, in a way that avoids placing its constitutionality in doubt." (*People v Viviani*, 36 NY3d 564, 579 [2021].) But by wading into the murky territory of fly-specking religious corporate descriptors, the trial court's construction raises "serious First Amendment questions." (See NLRB v Catholic Bishop of Chicago, 440 US 490, 504 [1979]; see also, e.g., Univ. of Great Falls v NLRB, 278 F3d 1335, 1343 [D.C. Cir. 2002] (construing scope of NLRB investigative power into schools' religious identity narrowly to avoid First Amendment concerns identified in U.S. Supreme Court cases).) The First Amendment protects the principle that a religious organization's structure is "more or less intimately connected [to] religious views." (*Watson v Jones*, 13 Wall [80 US] 679, 726 [1871]; Terrett v Taylor, 9 Cranch [13 US] 43, 49 [1815] (recognizing every religion's freedom to employ "corporate powers" consistent with "their own religious duties.").) Therefore, the U.S. Supreme Court in Carson just concluded that government attempts to weigh how "religious" a school is cannot turn on "magic words"—doing so risks "scrutinizing whether and how a religious school pursues its educational mission," thereby creating "serious concerns about state entanglement with religion and denominational favoritism." (142 S Ct at 2001.)

The trial court's statutory construction raises substantial First Amendment questions, with real-world consequences that the trial court decided it did "not need to reach." (Rec 11.) Yet to avoid a constitutional conflict between the First Amendment and the NYCHRL's public accommodations provisions, the NYCHRL must be construed in light of these issues, as they affect all manner of religious schools in the City.

Some religious schools, like St. John's University, never state a religious mission in their corporate documents but still function with religious purposes. (Scheiber, 84) NY2d at 126 (St. John's "conceived with the intent of fulfilling a secular educational role" but still exempt from NYSHRL as a "religious institution"); see also Bishop Loughlin's Vision and the Vincentian Mission, St. John's University /last accessed August 8, 2022], https://perma.cc/Y5FW-ERSK ("The charter simply stated that ... 'The object for which the Society is formed is The education of young men."").) Still others, like The King's College, expressly state their religious mission when receiving government accreditation, but the on-campus religious experience is voluntary. (See, e.g., Institutional Accreditation: The King's College, Attachment B [July 14, 2005], https://perma.cc/BVF2-WUDQ ("Through its commitment to the truths of Christianity and a Biblical worldview, The King's College seeks to prepare students for careers in which they will help to shape and eventually to lead strategic public and private institutions ..."); see also Christian Formation, The King's College [last accessed August 8, 2022], https://perma.cc/U7TY-VD34 ("Because we want students to embrace Christianity for themselves, rather than mandating participation," there is no requirement to participate in "Scripture readings, Sabbath habits, and service to the City.").) Here, Yeshiva, reflecting its own religious commitment to Torah Umadda, expressly announced its religious mission in its founding corporate charter, "continue[d]" its mission when it incorporated under the Education Law in 1967, and to this day continues to guide its undergraduates on how to approach secular studies through the lens of Orthodox Judaism. *Supra* 2-3. Yet to the trial court, Yeshiva's "obvious," "integral," "inherent," and "defin[ing]" "religious character" "is necessarily secondary to education." (Rec 10, 15-16.) This has ominous implications for schools like St. John's (with no religious purpose in their charters but exempt under the NYSHRL) or like King's (a religious purpose in accreditation but a non-mandatory religious environment).

Indeed, the consequences of upholding the trial court's ruling go far beyond recognition of a Pride Alliance club at Yeshiva. The NYCHRL also prohibits discrimination based on "religion," yet religion-based decisions are a key feature of religious universities. Yeshiva, for example, regularly engages in religion-based hiring, (Rec 1792 at 61-62 ("Leading Torah scholars, faculty members at the [University]" are "Roshei Yeshiva" and "very large influencers on campus"), screens undergraduate students who are not serious about the Jewish faith, (Rec 1796 at 77:5-12, 78:21-79:7), promulgates Jewish laws of *Shabbat* and *kashrut*, (*id.*), and maintains Jewish-only worship spaces, (Rec 291 ¶ 15). Similarly, its religiously informed requirements for segregated campuses, study halls, and classes, (*Id.* ¶¶ 10-11), potentially could be subjected to lawsuits under the NYCHRL's prohibitions against religious and sex discrimination. Religious standards at numerous other religious universities and colleges would also be subject to extensive litigation.

Yeshiva sees all aspects of education as part of the religious mission expressed in its initial corporate charter and "continued" by its current one: "promot[ing] the study of Talmud." *Supra* 2-3. Yeshiva's motto—Torah Umadda—literally denotes the integration of religious and secular knowledge. Yeshiva's religious mission includes the development of the whole student, mind, body, and spirit. The supposedly "secular" aspect of this education has deep religious significance. As Yeshiva's former president put it:

Torah Umadda [is] the struggle for both worlds, the refusal to give up on either Torah or on Madda, either on authentic Jewish wholeness or on participation in the wider society. The balance may often prove precarious and the interface between them onerous, but it is the tension of creativity, of life itself.

(Rabbi Norman Lamm, *Torah Umadda* 171 (2010).) So even as Yeshiva's "specific form and structure has shifted depending on times, needs and circumstances, [] the core mission has always remained the same." *Supra* 3 (Yeshiva's current president, from 2017). Thus, when Yeshiva describes itself as "continu[ing] to be organized and operated exclusively for educational purposes," (*see* Rec 10), it is not pitting secular education against religious education. Rather, Yeshiva is describing the entire education of the whole student. This is *why* Yeshiva could say in 1967 that its religious purpose ("promote the study of Talmud") was "continue[d]" under the auspices of the Education Law. *Supra* 2-3.

But by insisting that Yeshiva lacks a "primary" religious purpose because of its secular educational curriculum, the trial court engaged in the very kind of "denominational favoritism" that the U.S. Supreme Court just recently (again) rejected. *See supra* 29 (discussing *Carson*) (*see also Larson v Valente*, 456 US 228, 244 [1982].) Over and over, the trial court assumed that a hard line exists between "religious" and "educational" purposes—even at a school that, as the trial court said, has an "obvious," "integral," "inherent," and "defin[ing]" religious character. (Rec 10-11, 15-16.) If upheld, this artificial distinction would eviscerate Yeshiva's Torah

Umadda mission and permit denominational favoritism. *See, e.g., supra* 28-29 (CHAR410 discussion). This "scrutinizing whether and how a religious school pursues its educational mission" is exactly what the U.S. Supreme Court just said raises "serious concerns" under the First Amendment. (*Carson*, 142 S Ct at 2001 (citation omitted).) Nothing in New York case law requires identifying religious corporations in a way that raises "serious" First Amendment "concerns." Reversal is warranted and summary judgment for Yeshiva is required.

# **B.** Yeshiva is exempt under the NYCHRL's "religious principles" exemption.

There is yet one more reason why the decision below should be reversed: Yeshiva is also exempt under § 8-107(12), which applies to all of the NYCHRL's provisions, including the public accommodation provisions at issue here. That section provides that "[a]ny religious or denominational institution or organization" may make "such selection as is calculated by such organization to promote the religious principles for which it is established or maintained."  $(Id.)^4$  As set forth above, there is no dispute that Yeshiva is religious. As the trial court agreed, its "religious character" is "inherent and integral," making it distinct "from other schools and universities of higher education." (Rec 11.) Plaintiffs likewise concede that "Judaism is deeply important to the University's existence and activities" and describe Yeshiva as "religiously-identified or religiously affiliated." (Rec 1395.) By any ordinary

<sup>&</sup>lt;sup>4</sup> In addition to religious organizations, the "religious principles" exemption protects certain *non*-religious organizations if they are operated for "charitable or educational purposes" and "by or in connection with a religious organization." (N.Y.C. Admin. Law § 8-107(12).) This further demonstrates that, in enacting the NYCHRL, the City Council was "quite sensitive" to constitutional concerns and did not seek to infringe on religious organization's free exercise.

understanding of these concessions—to say nothing of the mountain of factual evidence—Yeshiva must be among "any religious or denominational institution or organization."

Further, Yeshiva's decision about which clubs are consistent with its Torah values and can be given official recognition is unquestionably a "selection" that is "calculated" by Yeshiva "to promote" its religious principles. (Administrative Code § 8-107(12).) Although Yeshiva raised this provision below, (Rec 92, 100, 1751-1752), the trial court never addressed it. Because this "religious principles" provision underscores the City Council's intent to protect First Amendment rights and independently exempts Yeshiva's religious club decisions from the NYCHRL, the decision below must be reversed.

#### POINT 2

#### THE FIRST AMENDMENT PROTECTS YESHIVA'S RIGHT TO MAKE INTERNAL RELIGIOUS DECISIONS

# A. Religious autonomy bars application of the NYCHRL to Yeshiva's internal religious decisions.

The doctrine of religious autonomy, grounded in the First Amendment, bars Plaintiffs' claims because they require the courts to weigh Yeshiva's religiosity and examine its internal religious decision making, necessarily causing government entanglement with religion. Yet while the lower court acknowledged Yeshiva's religious autonomy defense, its opinion never addressed it. Nor did the trial court try to explain how, under the First Amendment, it could justify telling a religious university how to interpret and apply its own religious values. Religious autonomy applies to Yeshiva's decision not to approve Pride Alliance, and it prohibits the permanent injunction entered here.

# 1. Religious autonomy applies to religious schools making religious decisions, not just to churches or employment disputes.

Religious autonomy protects "the right of churches and other religious institutions"—including religious schools—to make "internal management decisions that are essential to the institution's central mission." (*Our Lady*, 140 S Ct at 2060 (applied to Catholic schools).) This broad "sphere" of "autonomy," *id.*, covers a wide range of religious decisions, including but not limited to: the ability of religious institutions 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)), as well as religious institutions' "unquestioned" right to "organize [or not] … to assist in the expression and dissemination of any religious doctrine," (*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).)

The protection of religious autonomy extends much further than just to houses of worship. In recent years, the U.S. Supreme Court has repeatedly held that religious autonomy bars the application of nondiscrimination statutes to religious schools. In *Hosanna-Tabor v EEOC*, the Court unanimously held that religious schools are exempt from Title VII's nondiscrimination standards with regard to ministerial employees. (565 US 171, 188 [2012].) Thus, religious schools cannot be sued by

ministerial employees "regardless of [their] asserted reason (if any) for [an] adverse employment action." (Fratello v Archdiocese of N.Y., 863 F3d 190, 203-204 [2d Cir 2017]; see also Rweyemamu v Cote, 520 F3d 198, 209-210 [2d Cir 2008] (barring race discrimination claim); Butler v St. Stanislaus Kostka Catholic Academy, 2022 WL 2305567, \*4 [ED NY, June 27, 2022, No. 19-cv-3574] (barring sexualorientation discrimination claim).) The Court noted that while nondiscrimination laws are "undoubtedly important," when it comes to religious groups' right to "preach their beliefs, teach their faith, and carry out their mission," "the First Amendment has struck the balance for us." (Hosanna-Tabor, 565 US at 196.) In 2020, the Supreme Court reaffirmed this principle in Our Lady, ensuring religious schools a "sphere" of "autonomy with respect to internal management decisions that are essential to the institution's central mission." (140 S Ct at 2060.) The Court remarked that the ministerial exception, which deals primarily with religious employment, was a smaller subset or "component of [religious] autonomy," which applies more broadly to any religious decisions that are "essential to the institution's central mission." (Id.)

New York courts have agreed. Less than two months ago, for example, a New York court held that the "principle of 'church autonomy," a "broader (and well-settled) principle expressed in [U.S.] Supreme Court and Second Circuit jurisprudence," was an independent bar to a teacher's lawsuit alleging sexual-orientation discrimination against a Catholic school, because adjudicating it would require a jury "to question the Church's explanation of religious doctrine," which

"would violate the church-autonomy principle." (*Butler*, 2022 WL 2305567, at \*4, \*14.)

Nor is religious autonomy limited simply to employment decisions. It also applies to the public benefit context, such as here. Just this past term, the U.S. Supreme Court reiterated that religious autonomy protects religious schools from the "entanglement ... and denominational favoritism" that follows when the government "scrutinize[es] whether and how a religious school pursues its educational mission." (*Carson*, 142 S Ct at 2001.) As such, governments cannot withhold generally available benefits, including school funding, from religious schools solely because they have a religious mission. (*Id.* at 2002.)

Courts have applied religious autonomy to a wide range of other religious decisions, including to protect a religious school's decision not to admit an unvaccinated student, (*Flynn v Estevez*, 221 So3d 1241, 1243 [Fla Dist Ct App 2017]), to internal religious decisions about corporate organization and financial oversight, (*Dermody v Presbyterian Church (U.S.A.)*, 530 SW3d 467 [Ky Ct App 2017]), and to decisions about membership, even in the face of evidence that the decisions violated the organization's own bylaws. (*Singh v Sandhar*, 495 SW3d 482 [Tex Ct App 2016].) Thus, it is clear that religious autonomy applies to internal decisions made by religious schools concerning their religious mission.

# 2. Religious autonomy bars adjudication of Plaintiffs' claims against Yeshiva.

Despite acknowledging it, the trial court never addressed Yeshiva's religious autonomy defense. But religious autonomy bars Plaintiff's claims against Yeshiva, because Yeshiva is a religious institution and its decision not to approve Pride Alliance was grounded in its religious Torah values that are core to Yeshiva's religious mission.

*First*, as both the trial court and Plaintiffs have repeatedly conceded, Yeshiva is deeply religious. Yeshiva seeks not only to form its undergraduate students in the Jewish faith but also to serve as a beacon of Torah values. (Rec 400 ¶¶ 3-4; Rec 292-293 ¶¶ 24-27.) Jews throughout the country look to Yeshiva for religious leadership and guidance. (*See id.*) It is easy then to say of Yeshiva what the U.S. Supreme Court has twice said of all religious schools: "educating young people in their ... faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core" of Yeshiva's mission. (*Our Lady*, 140 S Ct at 2064.) Students come to Yeshiva fully aware of its religious beliefs and standards and how they are to accord with Yeshiva's mission. (Rec 87 at 3; Rec 1811 at 138:20–139:5.)

The trial court opinion made many arguments why Yeshiva is not exempt as a "religious corporation" under the NYCHRL based on its corporate documents, but never addressed Yeshiva's status as religious for First Amendment purposes. Even had the court relied on those same arguments for a First Amendment analysis, they would fail. 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. (*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*, 142 S Ct at 1999 (Ju.) They must look to "the substance of free exercise protections, not on the presence or absence of magic words." (*Id.* at 2000.) 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 autonomy protections.

"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 2001.) 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*, 430 NYS2d at 790 (holding that courts assess religious status by looking at its functions).)

Otherwise, courts would end up in the business—as the trial court did 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 does not qualify as "religious," it is hard to understand what religious organization besides formal houses of worship could.

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. (Rec 11.) 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*, 456 US at 244 ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.").)

Yeshiva's President and corporate designee both witnessed at length about Yeshiva's religious identity. *Supra* Statement of Facts. Plaintiffs have repeatedly conceded its religious identity. *Supra* 9, 12. And the trial court candidly acknowledged Yeshiva's religious identity. *Supra* 12-13. 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.)

Second, Yeshiva's decision not to recognize Pride Alliance clearly qualifies as a religious "internal management decision[]" that is "essential" to Yeshiva's "central mission." (*Our Lady*, 140 S Ct at 2060.) Yeshiva's central mission—particularly for its undergraduate colleges—is to form and religiously support the next generation of Jews deeply rooted in their faith and its values. To that end, Yeshiva carefully

constructs a religious environment on its undergraduate campuses that encourages students to grow in their faith in, devotion to, and understanding of the Torah. Ways Yeshiva accomplishes its mission include mandatory religious instruction for men and women; the provision of *mashgiachim*, or spiritual advisors, to each student; keeping Jewish law throughout its various campuses; and limiting official approval of student undergraduate clubs to those that are consistent with Yeshiva's Torah values. *Supra* Statement of Facts.

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., Rec 57, 58, 65, 67 ¶¶ 53, 58, 98, 101, 110; see also Rec 1791-1793 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." (Forward, 'Second class citizens': LGBTQ students allege culture of alienation and fear at Yeshiva University at 18:11, YouTube (May 10, 2021), https://perma.cc/WP8N-66EN.) 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.) Courts have no authority to adjudicate such "purely ecclesiastical" disputes. (*Watson*, 80 US at 733.)

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. 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.)

### **B.** The Free Exercise Clause bars application of the NYCHRL to Yeshiva's internal religious decisions.

Separate from the religious autonomy doctrine, forcing Yeshiva to overturn its internal religious decisions on how to apply its Torah values on campus would violate the federal Constitution's Free Exercise Clause. Under Supreme Court precedent, the Free Exercise Clause is violated when "a government entity has burdened [a religious claimant's] sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" (*Kennedy v Bremerton Sch. Dist.*, 142 S Ct 2407, 2421-2422 [2022].) Once that is shown, the Supreme "Court will find a First Amendment violation unless" the government policy "can satisfy 'strict scrutiny"—a showing that the policy "was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." (*Id.* at 2422.)

### **1.** Applying the NYCHRL here imposes a religious burden on Yeshiva's sincere religious exercise.

Here, there can be no credible dispute that a court applying the NYCHRL's public accommodations provisions to Yeshiva "burden[s] [its] sincere religious practice."

*Kennedy*, 142 S Ct at 2421-2422. As the trial court acknowledged, "[t]here 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." (Rec 15.) And "[e]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." (*Carson*, 142 S Ct at 2001 (cleaned up).) Here, there is no dispute that Yeshiva's intentional, religiously formative, undergraduate environment is burdened by being forced to approve campus clubs that violate its Torah values. This is substantially the same burden identified by the U.S. Supreme Court in *Fulton*: "putting [a religious organization] to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." (*Fulton*, 141 S Ct at 1876.) Therefore, the Free Exercise Clause is triggered.

#### 2. The NYCHRL is not generally applicable.

Yeshiva must next establish that the NYCHRL is either non-neutral toward religion or not generally applicable. "Failing *either* the neutrality or general applicability test is sufficient to trigger strict scrutiny." (*Kennedy*, 142 S Ct at 2422 (emphasis added).) Here, the NYCHRL is not generally applicable in two distinct ways, subjecting it to strict scrutiny (*Id.* ("Failing ... [the] general applicability test is sufficient to trigger strict scrutiny.").)

### a. The NYCHRL's categorical exemptions make it not generally applicable.

The NYCHRL, applied to Yeshiva, is not generally applicable because it "prohibits religious conduct while permitting secular conduct that undermines the

government's interests in a similar way." (*Kennedy*, 142 S Ct at 2422 (quoting *Fulton*, 141 S Ct at 1877.) This problem exists whenever a government policy "treat[s] *any* comparable secular activity more favorably than religious exercise." (*Tandon v Newsom*, 141 S Ct 1294, 1296 [2021] (emphasis in original; citation omitted).) And here, the NYCHRL does just that.

For example, the NYCHRL expressly exempts "distinctly private" clubs and "benevolent orders." (Administrative Code § 8-102 (definition of "Place or provider of public accommodation").) 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 mean that hundreds of organizations— with hundreds of thousands of members—are not public accommodations. (*See* Benevolent Orders Law §§ 2, 7 (expressly exempting over 50 different benevolent orders with numerous chapters and large memberships, including the Masons, the Knights of Columbus, the American Legion, and the Veterans of Foreign Wars).) If the trial court's interpretation of the NYCHRL's religious exemption is correct, then under the NYCHRL all benevolent organizations are excluded.

Remarkably, the trial court concluded that this disparity doesn't violate the general applicability requirement. The trial court reached this conclusion by reasoning that the NYCHRL's "exemption for religious corporations" is "very broad"—larger than the "smaller exception for private organizations" mentioned above. (Rec 18.) But even if that construction of the NYCHRL is correct (and it is not), this conclusion still contradicts *Tandon*. There, the Supreme Court held that

"[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as *or even less favorably* than the religious exercise at issue." (141 S Ct at 1296 (emphasis added).) What matters for general applicability is whether "*any*" comparable secular activity is treated "*more favorably*" than religious exercise. (*Id.* (second emphasis added).) And comparability is determined by "the asserted government interest that justifies the regulation at issue." (*Id.*) Here, the NYCHRL's interest in nondiscrimination toward specified groups simply does not apply to thousands of organizations, some with more members than Yeshiva has students. That's not just "*any*" comparable secular activity with favorable treatment. That's many. The disparity requires strict scrutiny. (*See Tandon*, 141 S Ct at 1297-1298.)

The trial court also ruled that strict scrutiny could be avoided under *Serio*, 7 NY3d 510. But all the trial court claimed with *Serio* is the general statement that Yeshiva has no free-exercise rights against a neutral law of general applicability there was no analysis as to whether the NYCHRL actually *is* generally applicable. (Rec 18.) This mere presumption is insufficient, especially as the trial court also conceded that the NYCHRL contains exemptions. (Rec 19.)

Moreover, *Serio* is out of step with the Supreme Court's recent explication of the free exercise standard. For example, *Serio* collapsed "neutrality" and "general applicability" analysis when subsequent Supreme Court precedent distinguishes them. (*Compare, e.g., Serio,* 7 NY3d at 522 ("To hold that any religious exemption that is not all-inclusive *renders a statute non-neutral* would be to discourage the enactment of any such exemption") *with, e.g., Kennedy,* 142 S Ct at 2422 ("A

government policy will *fail the general applicability requirement* if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way") (cleaned up; emphasis added).)

### b. The NYCHRL's individualized exemptions make it not generally applicable.

Applying the NYCHRL to Yeshiva also is not generally applicable for the additional reason that its public accommodations provisions "provid[e] a mechanism for individualized exemptions." (*Fulton*, 141 S Ct at 1877 (cleaned up).) Section 8-107(4)(b) of the NYCHRL states that the law "shall not apply, with respect to ... gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy." (Administrative Code § 8-107(4)(b).) And here, three Counts of Plaintiffs' four-Count complaint allege that Yeshiva engaged in "Discrimination on the Basis of Gender and Sexual Orientation." (Rec 72 (Count I); Rec 73 (Count II); Rec 74 (Count III).)<sup>5</sup> Under *Fulton*, the mere *existence* of "a system of individual exemptions"—even if it has never been used—that is not extended "to cases of 'religious hardship'" cannot survive strict scrutiny absent a "compelling reason." (141 S Ct at 1877.) Thus, under the clear terms of *Fulton*, Section 8-107(4)(b) renders the NYCHRL not generally applicable.

In response, Plaintiffs have argued that this NYCHRL provision "has nothing to do with" Yeshiva's request that it not be forced to violate its Torah values and approve a club that intends to send a contrary message on nuanced questions of

<sup>&</sup>lt;sup>5</sup> The fourth count alleges a violation of Plaintiffs' right to associate around their views on the same. (*See* Rec 74 (Count IV).)

religious tenets. (*See* Doc. 108 at 3.) And the trial court distinguished *Fulton* altogether, merely because it involved "a foster care contract." (Rec 18.) Neither argument is persuasive.

*First*, under *Fulton*, general applicability is lacking in *any* law if it "invites the government to consider the particular reasons for a person's conduct"—not just foster-care contracts. (141 S Ct at 1877 (cleaned up).) As such, the Supreme Court cited it as a general applicability principle in *Kennedy*, which concerned religious speech on public campuses. (*See* 142 S Ct at 2422 (quoting *Fulton*).) Indeed, the Supreme Court and other courts have relied on *Fulton* in myriad general applicability contexts. (*See, e.g., Mast v Fillmore County*, 141 S Ct 2430 [2021] (remanding imposition of gray water regulations on Amish community in light of *Fulton*); *Dahl v Bd. of Trustees of Western Michigan Univ.*, 15 F4th 728, 733-734 [6th Cir 2021] (holding, under *Fulton*, that a system of exempting students from a vaccination requirement "on an individual basis" is not generally applicable); *Downtown Soup Kitchen v Municipality of Anchorage*, 2021 WL 5999391, \*10 [D. Alaska Dec. 20, 2021, No. 3:21-cv-155] (holding a homeless shelter is not a public accommodation under *Fulton*).)

Second, it is no matter that no formal exception was made or asked for here. Fulton said that it "misapprehends the issue" to claim that a system of individualized exemptions is "irrelevant because the Commissioner has never granted one" like that requested by the religious organization. (141 S Ct at 1879.) Rather, "a formal mechanism for granting exceptions renders a policy not generally applicable, regardless of whether any exceptions have been given, because it invites the government to decide which reasons for not complying with the policy are worthy of solicitude." (*Id.* (cleaned up).) Here, because the Commission decides whether to "grant[] an exemption based on bona fide considerations of public policy," a formal mechanism for granting exemptions undoubtedly exists. (Administrative Code § 8-107(4)(b).)

#### 3. Plaintiffs cannot satisfy strict scrutiny.

Finally, *Fulton* also explains why the NYCHRL fails strict scrutiny when applied to Yeshiva. A law will only survive strict scrutiny against a religious burden if the government's burden on that specific religious exercise is the only way that the law's "interest[] of the highest order" can be achieved. (*Fulton*, 141 S Ct at 1881.) "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, *it must do so*." (*Id.* (emphasis added).) The Court further held that "broadly formulated interests" like "ensuring equal treatment" do not suffice as a sufficiently compelling interest—they must be "properly narrowed" to "the asserted harm of granting specific exemptions to particular religious claimants." (*Id.*) But the NYCHRL's justifications have never been articulated in that narrow way. As such, there is no compelling interest here that justifies "denying an exception to [Yeshiva]." (*Id.*)

Given the NYCHRL's pre-existing categorical and individualized exemptions, and what the trial court called Yeshiva's "inherent and integral religious character which defines it and sets it apart from other schools and universities of higher education" (Rec 15), Plaintiffs offer no basis to conclude that accommodating Yeshiva here would upend the NYCHRL's overall nondiscrimination interest. (*See*  *Church of the Lukumi Babalu Aye, Inc. v City of Hialeah*, 508 US 520, 547 [1993] (compelling interest test not met when law "leaves appreciable damage to that supposedly vital interest unprohibited").) Especially when one of the NYCHRL's intended goals was to protect Jewish identity against American secularism. (See Rec 1752.) Accordingly, Plaintiffs' attempt to apply the NYCHRL against Yeshiva fails strict scrutiny, and the Free Exercise Clause bars their claims.

### C. The Free Speech and Assembly Clauses bar application of the NYCHRL to Yeshiva's internal religious decisions.

"[T]he Free Speech Clause provides overlapping protection for expressive religious activities." (*Kennedy*, 142 S Ct at 2421.) This overlapping protection prohibits compelling a religious organization "to be an instrument for fostering public adherence to an ideological point of view." (*Wooley v Maynard*, 430 US 705, 715 [1977].) And the Assembly Clause protects the freedom of private organizations, including religious organizations, to educate and form the next generation according to their particular tradition's religious vision. (*Our Lady*, 140 S Ct at 2055; *Thomas v Collins*, 323 US 516, 532 [1945].) Yet Plaintiffs seek to use the NYCHRL and this Court to force "cultural changes" both at Yeshiva and in the Orthodox Jewish community at large. (*See, e.g.*, Rec 91.)

Such claims do not survive strict scrutiny, for the reasons stated above. (*See also Hurley v Irish-Am. Gay, Lesbian and Bisexual Group,* 515 US 572-573 [1995] (forcing a gay club's participation in private parade would "essentially requir[e] petitioners to alter the expressive content of their parade" in violation of Free Speech and Assembly Clauses).) Nor is there any basis to conclude that Yeshiva can

somehow speak one way (by explaining why a Pride Alliance club is inconsistent with its Torah values) but express another view in its actions (by nevertheless allowing the club). A court must "give deference [both] to an association's assertions regarding the nature of its expression [and] must also give deference to an association's view of what would impair its expression." (*Boy Scouts of Am. v Dale*, 530 US 640, 653 [2000].) Here, coercing a message from Yeshiva violates the U.S. Supreme Court's promised in *Obergefell*: "The First Amendment ensures that religious organizations ... are given proper protection ... to teach the principles that ... continue the family structure they have long revered." (576 US 644, 679-680 [2015]; *see also* Rec 100-101.) Reversal is required and summary judgment should be awarded to Yeshiva.

#### CONCLUSION

The trial court's ruling should be reversed, permanent injunction vacated, and summary judgment entered in favor of Yeshiva.

Dated: August 8, 2022

Respectfully submitted,

THE BECKET FUND FOR RELIGIOUS LIBERTY

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Attorneys for Defendants

#### PRINTING SPECIFICATIONS STATEMENT

Pursuant to the Uniform Practice Rules of the Appellate Division (22 NYCRR) § 1250.8(j), the foregoing brief was prepared on a computer (on a word processor). A proportionally spaced, Times New Roman typeface was used, as follows:

> Typeface: Times New Roman Point size: 14 pt Line spacing: 28 pt

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 13,105.

#### **STATEMENT PURSUANT TO CPLR 5531**

#### SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION—FIRST DEPARTMENT

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

Plaintiffs-Respondents,

-against-

YESHIVA UNIVERSITY and PRESIDENT ARI BERMAN,

Defendants-Appellants.

VICE PROVOST CHAIM NISSEL,

Defendant.

LESBIAN AND GAY LAW ASSOCIATION FOUNDATION OF GREATER NEW YORK

Amicus-Curiae Respondent

- 1. The index number of the case is 154010/21.
- 2. The full names of the original parties are as set forth above. There has been no change in the parties.
- 3. The action was commenced in Supreme Court, New York County.
- 4. The action was commenced on April 26, 2021 by service of Summons and Complaint; the Answer of Defendants Yeshiva University and President Ari Berman was served on July 18, 2022.
- 5. The nature and object of the action is discrimination pursuant to N.Y.C. Administrative Code § 8-107(4), 8-107(20).
- 6. This appeal is from a Decision and Order of the Honorable Lynn R. Kotler, entered in favor of Plaintiffs, against Defendants on June 24, 2022 which denied Defendants' Motion for summary judgment, and granted Plaintiff's partial motion for summary judgment.
- 7. The appeal is on a full reproduced record.

New York County Clerk's Index No. 154010/21

Appellate Division Case No. 2022-02726

## Exhibit D

#### FILED: NEW YORK COUNTY CLERK 02/08/2022 04:43 PM

NYSCEF DOC. NO. 323

CARDOZOLAW

#### **American Constitution Society**

The Cardozo Student Chapter of the American Constitution Society (ACS) believes that law should be a force to improve the lives of all people. ACS works for positive change by shaping debate on vitally important legal and constitutional issues through development and promotion of high-impact ideas to opinion leaders and the media; by building networks of lawyers, law students, judges and policymakers dedicated to those ideas; and by countering the activist conservative legal movement that has sought to erode our enduring constitutional values. By bringing together powerful, relevant ideas and passionate, talented people, ACS makes a difference in the constitutional, legal and public policy debates that shape our democracy.

#### **Art Law Society**

The purpose of the Cardozo Art Law Society is for students with an interest in the subject to discuss developments and trends in the field, meet with legal practitioners and other related professionals, such as artists, curators and collectors, and to build Cardozo's reputation as a leader in this emerging niche practice area.

Contact: CardozoArtLawSociety@gmail.com

Facebook: https://www.facebook.com/CardozoArtLawSociety

#### Asian Pacific American Law Students Association

The purpose of the Asian Pacific American Law Students Association (APALSA) is to increase awareness of Asian American issues and to foster a community for students interested in such topics.

Contact: <u>APALSA.Cardozo@gmail.com</u>

#### **Black Law Students Association**

The Black Law Students Association (BLSA), affiliated with the National Black Law Students Association (NBLSA), provides support, encouragement and advice to students who identify themselves as African American, Caribbean or African. BLSA membership is open to all Cardozo students and provides valuable programming to inform and enlighten its members and the Cardozo community at large. BLSA serves its members and local community through many programs, including: participation in the annual Cardozo Horizons orientation program; exam prep programs and outlining workshops; a mentoring program; networking programs with alumni; and social programming—including the Black History Month Celebration, which features live performances of poetry, spoken word and song. The event is a celebration of black history and culture with plenty of food and music.

Contact: BLSA.Cardozo@gmail.com

#### **Business Law Society**

The Cardozo Business Law Society is dedicated to providing its members with opportunities to interact and network with lawyers and other professionals in the business community while providing a forum for like-minded individuals to discuss trending topics in the area of business

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NYSCEF DOC. NO. 323

CARDOZOLAW BENJAMIN N. CARDOZO SCHOOL OF LAW YESHIVA UNIVERSITY

access to justice, prevent discrimination within the legal system and safeguard the rights of individuals.

Contact: Cardozo.NLG@gmail.com

#### OUTLaw

OUTIaw is Cardozo's pioneer student group for lesbian, gay, bisexual, transgender, queer, and intersex students and their allies. OUTIaw organizes meetings, educational panels, and social activities to advance LGBTQI rights and issues. One of the group's prominent events is an annual reception in which the E. Nathaniel Gates Award, established in honor of a beloved Cardozo professor, is presented to notable Cardozo LGBT alumni. Past recipients include a Tony Award winner, two lawyers at the forefront of LGBT immigration rights, and the HIV-positive attorney and his counsel chronicled in the movie "Philadelphia." Contact: cardozo.outlaw@gmail.com

#### **Philosophy and Law Society**

The Philosophy and Law Society (PALS) was founded to give students and faculty a chance to discuss the interesting moral and ethical questions that arise naturally during a study of law but would be inappropriate and/or off-topic to discuss during class. Since the interpretations of the law are informed by the moral and ethical beliefs of the reader, learning about beliefs separate from their own will allow current and future lawyers to better promote an outcome favorable for their clients if they understand a greater breadth of beliefs and belief systems. However, PALS will not focus only on law-related topics, but topics that are relevant to the community and world at large. By providing panels of enlightened speakers on important topics, PALS hopes to encourage deeper, more philosophical thought in both standing members and the community.

#### **Real Estate Law Association**

The Real Estate Law Association (RELA) represents the student body's interest in real estate law; members include students concentrating in real estate with intent to work in the field as well as those who are unsure of their interests. We aim to expose students to the various options available as a real estate lawyer often including, but not limited to financing, zoning, development and investment. Collaborating with prominent alumni and other professionals in the real estate legal sphere, we host an array of events throughout the year from larger CLE events, to smaller panel and networking events. These events allow students to expand their understanding of the different facets of real estate law as well as build their professional network by connecting with these accomplished individuals. Contact: CardozoRELA@gmail.com

#### Southeast Asian Law Students Association

The South Asian Law Students Association gathers South Asians and those with an interest in South Asian culture to hold social and networking events. Contact: <u>CardozoSALSA@gmail.com</u>

### Exhibit E

### Office of Student Services and Advising BENJAMIN N. CARDOZO SCHOOL OF LAW

# Student Handbook

# Academic Year 2019 - 2020

This Student Handbook, effective May 2019, supersedes all previously published rules and regulations, announcements, statements, and publications with which it is inconsistent.

The rules and regulations set forth in this Handbook are binding upon all students who are presently matriculated at Benjamin N. Cardozo School of Law (Cardozo), who are on leave of absence from Cardozo or who are Cardozo students visiting at other law schools. Students are deemed to have read and understood this Handbook. Any questions concerning the contents of the Student Handbook should be addressed to the Office of Student Services and Advising.

Cardozo reserves the right to change its rules and regulations, admissions and graduation requirements, course offerings, tuition, fees and any other material set forth in its Bulletin or handbooks at any time without prior notice. Changes become effective when posted on official bulletin boards and/or online. Students should check Cardozo online resources for changes.

Office of Special Events, Office of Student Finance, Office of Student Services and Advising, faculty offices, faculty mailboxes, conference room

11th floor: Office of Admissions, Office of Career Services and Center for Public Service Law, Clinics and Externship Office, seminar/conference room, individual interview rooms

#### **Emergency Response Policy**

As required by federal law, Yeshiva University has established emergency response procedures to address emergency situations requiring immediate notification to the campus community. The University employs separate procedures that govern timely warnings of campus crimes that are sent to the campus community. This policy applies only in situations where the Emergency Response Group (as defined in the policy) determines that there is an immediate threat of danger to the campus community. The "Emergency Response Policy" is available online at <a href="http://www.cardozo.yu.edu/student-life/office-student-services-and-advising/policies">http://www.cardozo.yu.edu/student-life/office-student-services-and-advising/policies</a>.

More information regarding the safety and security at Cardozo can be found online at <u>www.cardozo.yu.edu/campus-security</u> and on the University's website at <u>www.yu.edu/safety-security/</u>.

#### **Evacuation Assistance**

In the event of an emergency, the elevators may not be safe to use. Individuals who would be unable to evacuate the building by using the stairs should register with Security immediately by calling 212.790.0303 or visiting the front desk. In the event of an evacuation, Security will call registered individuals to determine their location and ensure their safety.

#### **Hours/Closings and Cancellations**

During the academic year, the law school is open as follows:

Monday - Thursday	8 a.m. – 12 midnight
Friday	8 a.m. – variable*
Saturday	Building closed (during the December and May exam periods,
	the building may be open during scheduled times on Saturday nights)*
Sunday	8 a.m. – 12 midnight

Summer Hours:

Monday - Thursday	8 a.m. – 10 p.m.
Friday	8 a.m. – variable*
Saturday	Building closed*
Sunday	8 a.m. – 10 p.m.

\*As part of Yeshiva University, Cardozo is closed from Friday evening (anytime between 4 p.m. – 8 p.m.) through Saturday in observance of the Sabbath. Anyone remaining after the posted Friday closing time must exit the building by 8 p.m. The building also closes for various Jewish and national holidays

as indicated on the academic calendar and by postings at the building entrances. Changes in hours for Fridays, holidays, vacation periods, and inter-sessions are posted.

Cardozo administrative offices are open from 9 a.m. to 5:30 p.m., Monday through Thursday, and 9 a.m. to 2:30 p.m. Friday.

Classrooms that are not in use are generally available to students as study space until 8 p.m. Generally, from 8 p.m. until closing, students may use rooms 201, 204, 205, 206, 303, and 304 for studying if they are not otherwise being used in connection with a class, scheduled event, or maintenance. (Please note that this is subject to change depending on the needs for the rooms by the law school). Students are asked to be sure to keep these study spaces clean so that we can continue to keep these rooms available for student use in the future. In order to facilitate maintenance, other classrooms throughout the building will be closed.

If school is completely closed due to inclement weather or other emergencies, an announcement will be posted on the Cardozo website, and/or an email sent. In the event that online communications are not accessible, information will be recorded at 212.790.0320.

Whenever school is open but an individual class is canceled, an official notice is placed on the door of the classroom. Whenever possible, an email will also be sent to students registered for the class.

#### **Hours of Library Services**

During the fall and spring semester, the library is open at the following times:

Sunday	10 a.m. – midnight
Monday – Thursday	8 a.m. – midnight
Friday	8 a.m **

\*\* The library closes at 4 p.m., 5 p.m., or 6 p.m. on Fridays. The specific closing hour for each Friday is posted at the entrances to the library and on the library website. Holiday closings and other changes are also posted. Students requiring the use of a library facility on Friday night and/or Saturday should inquire at the library Reference Desk regarding other facilities outside the law school available for their use. For the most up to date information, please check the library website. For questions about access, contact the reference librarians in person or via lawref@yu.edu.

#### **Student Lounge and Café**

The student lounge is located on the third floor and is generally available for Cardozo student use at all times that the building is open. Students should demonstrate consideration for others by refraining from loud noise, limiting their consumption of food and beverage to the designated areas, and disposing of their trash before leaving the lounge.

The café is also generally available for Cardozo student use at all times that the building is open, though Dunkin Donuts and the prepared food options are available only at scheduled hours on

weekdays when school is in session. In addition, vending machines, refrigerators, and microwaves are available for student use at all times.

The prepared food options available in the café are a part of the Yeshiva University Department of Food Services, which conducts a kosher operation, under the rabbinical supervision of the Kashruth Division of the Union of Orthodox Congregations of America. In addition, all Cardozo events are catered by kosher caterers. (A brief description of kosher food is included at the end of the Handbook.)

Individual students are free to bring kosher or non-kosher food into the building for their own consumption only. Students are asked to respect the designations on microwaves and other food facilities when preparing or storing their food.

Due to event-related activities, part or all of the lounge or café may be closed at any time.

#### **Bookstore, Assignments and Duplicated Materials**

Assigned texts for all courses are available at the Union Square North location of Barnes & Noble. Store policies, hours and prices are set by Barnes & Noble management.

A list of textbooks for the semester's courses is posted on the <u>Registrar</u>'s page of the Cardozo website along with Registration materials as it becomes available. The bookstore also carries study aids and an assortment of stationary supplies.

Professors often assign duplicated materials in addition to, or in place of, a casebook. These materials are picked up at the Faculty Services Office/Classroom Materials Window, room 522, during the hours listed below. When duplicated materials supplement a book or books, students are not charged a duplication fee. If there is not an assigned book for a course, there will be a charge for duplicated materials.

Before the start of each semester, assignments for the first day of class are posted on the <u>Current</u> Students page of the Cardozo website. Syllabi may also be posted on this site and/or Canvas in the relevant course folder.

At times, professors may direct students to turn in written assignments at the fifth floor Faculty Services/Classroom Materials Window, room 522. Papers must be delivered to or picked up from the office between 9 a.m. – 5 p.m., Monday – Thursday, and between 9 a.m. –2 p.m., Friday. Any changes in these hours will be posted outside the office.

#### **Photocopying and Printing**

The law library has Xerox machines on floors 6, 7, and 8 for printing, copying, and scanning. An account is required for all printing. Journals and faculty research assistants can copy or print in the library using the appropriate account.

Journals, official student groups, and faculty research assistants may have copies made of related materials in the law school's Production Department, which is located on the sixth floor via the 12th

and identified a faculty member, they should contact the Assistant Dean for Graduate and International Programs or the Registrar. Please note that credits earned for the thesis count toward graduation requirements but not toward the 24-credit requirement for the New York Bar exam.

iii. Concentration in Jewish Law

Cardozo's program in Jewish law and interdisciplinary studies allows students in the comparative legal thought program to concentrate in Jewish law. Students wishing to receive such a concentration must complete a minimum of 10 credits in Jewish law courses in addition to the other requirements for the comparative legal thought degree. Deadlines for applying for the concentration are April 15 for students graduating in June; June 15 for students graduating in September; and November 15 for students graduating in January.

- c. Dispute Resolution and Advocacy LLM Program
  - i. Coursework

The 24-credit program consists of coursework, practical training and a writing requirement. Students in this program are required to take at least 14 credits in courses related to dispute resolution and advocacy.

ii. Writing Requirement

Students must complete a paper focusing on a topic in conflict resolution or advocacy through a course, thesis or independent study. The writing requirement may be satisfied in either of the following ways:

- A scholarly paper written for a course or independent study<sup>5</sup> of at least 20 pages using Bluebook citation format. Graded papers must receive a grade of "B" or higher
- Completion of substantive memoranda, draft opinions and/or briefs written for a course, clinic or externship. The written work should be substantial (as a guideline no less than 20 pages) and should have a written evaluation by the professor, judge, or externship supervisor for whom it is written

Students are responsible to get a signature of the supervising faculty member indicating satisfactory completion of the writing requirement.

iii. Practical Training

<sup>&</sup>lt;sup>5</sup> Credits earned for independent study do not qualify for credit toward the 24-credit requirement for the New York Bar exam eligibility.

#### Appendix

#### Jewish Holidays and Kosher Food

Students at Cardozo may see references to Jewish holidays and kosher food. For those who are interested, below is a brief description of some of the holidays, including those for which the Cardozo schedule may be modified, and a brief explanation of kosher food and food for the Passover holiday.<sup>21</sup>

The Jewish calendar is primarily lunar, so the dates on which these holidays fall in the "secular", primarily solar, calendar change every year, with a leap-month added to the Jewish calendar in certain years to compensate for the difference between the lunar and solar calendars. The days of the Jewish holidays begin shortly before sunset and end shortly after sunset.

#### 1. Holidays

a. Shabbat (the Sabbath)

Takes place every seventh day, beginning on Friday night and ending shortly after sunset on Saturday. It is a day of rest, reflection and prayer with special rituals, including the lighting of candles, blessings over the wine and challah bread. No work is to be done on the Sabbath.

b. Rosh HaShanah (literally, Head of the Year)

Refers to the celebration of the Jewish New Year. It marks the beginning of a ten-day period of prayer, self-examination and repentance, which culminate on the fast day of Yom Kippur. The customs and symbols of Rosh HaShanah reflect the holiday's dual emphasis, happiness and humility. Special customs observed on Rosh HaShanah include; the sounding of the shofar (ram's horn), using round challah and eating apples and honey (and other sweet foods) for a sweet new year.

c. Yom Kippur

Is the "Day of Atonement" and refers to the annual observance of fasting, prayer and repentance. The Yom Kippur fast also enables one to put aside physical desires and to concentrate on spiritual needs through prayer, repentance and self-improvement. It is customary in the days before Yom Kippur to seek out friends and family whom they have wronged and personally ask for their forgiveness.

d. Sukkot

A Hebrew word meaning booths or huts; refers to the festival of giving thanks for the fall harvest as well as the commemoration of the forty years of wandering in the desert. Sukkot is celebrated five days after Yom Kippur and is marked by several distinct

<sup>&</sup>lt;sup>21</sup> Web sources for the information in this section include: <u>www.ou.org</u>; <u>www.webexhibits.org</u>, <u>www.zipple.com</u>, <u>www.hillel.org</u>, and others.

traditions. One tradition, which takes the commandment to "dwell in booths" literally, is to build a *sukkah*, a booth or hut.

e. Shemini Atzeret

Takes place on the eight day of Sukkot, but is considered a separate holiday. In Israel, it is celebrated on the same day as the Simchat Torah (see below). As is frequently the case with long-standing holidays, there are multiple explanations for this holiday. For example, it is the holiday on which special prayers asking for rainfall and water for the coming year are said. In addition, it is understood as a day highlighting the relationship between God and the Jewish people.

f. Simchat Torah

Hebrew for "rejoicing in the Law", this holiday is a joyous celebration of the completion of the annual reading of the Torah and an affirmation of its life-long study. Among other rituals, Torah scrolls are taken from the ark and carried or danced around the synagogue.

g. Chanukah

Meaning "dedication" in Hebrew, refers to the joyous eight-day celebration during which the victory of the Macabees over the armies of Syria in 165 B.C.E. and the rededication of the Temple in Jerusalem is celebrated. The modern home celebration of Chanukah centers around the lighting of a special menorah which holds 9 candles (one candle for each day and one to light the other candles); unique foods, latkes and jelly doughnuts; and special songs and games.

h. Tu BiSh'vat

The "New Year of the Trees", is an arbor day. Scholars believe that Tu BiSh'vat was originally an agricultural festival, marking the emergence of spring. Tu BiSh'vat has become a tree planting festival, in which trees are planted in Israel in honor or in memory of a loved one or friend.

i. Purim

Is celebrated by the reading of the Scroll of Esther, known in Hebrew as the *Megillat Esther*, which relates the basic story of Purim. Under the rule of King Ahashuerus, Haman, the King's prime minister, plots to exterminate all of the Jews of Persia. His plan is foiled by Queen Esther and her uncle Mordechai, who ultimately save the Jews of the land from destruction. Purim has become-a thankful and joyous affirmation of survival against all odds and is often celebrated with costume parties and fairs.

j. Passover ("Pesach" in Hebrew)

Is a major spring festival, commemorating the Exodus from Egypt over 3,000 years ago. The ritual observance of this holiday centers around a special home service called the seder (meaning order) and a festive meal, the prohibition of leavening and the eating of matzah (an unleavened bread). A book called the *hagaddah*, meaning "telling", which contains the order of rituals, readings, prayers and songs for the seder, is read.

k. Shavuot

Is a festival marking the giving of the Torah at Mount Sinai. Like so many other holidays, Shavuot began as an ancient agricultural festival, marking the end of the spring barley harvest and the beginning of the summer wheat harvest. It was distinguished in ancient times by bringing crop offerings to the Temple in Jerusalem. Special customs on Shavuot include staying up late for special readings and the serving of dairy dishes to symbolize the sweetness of the Torah as well as the "land of milk and honey".

#### 2. Kosher Food

Kosher food is food that is prepared and stored in ways dictated by Jewish kosher dietary laws. These laws include such restrictions as a prohibition against the eating of certain animals (e.g. pigs, shellfish), the prohibition of mixing milk with meat or poultry, a requirement for certain methods of slaughter of animals and the extension of these rules to ensure that there is no contamination of items used in food preservation, storage and service. Not all Jewish people observe the rules for keeping kosher, and for those who do observe rules, there are different levels of observance.

Since Cardozo is part of Yeshiva University, certain microwaves and refrigerators may be designated as kosher, and students are asked to respect these designations. In addition, the food service is a kosher one. However, since Cardozo is a non-sectarian school, you may bring in any kind of food that you wish for your own consumption.

Student leaders who are planning events should consult the "Student Organization Guide", available online at <u>http://www.cardozo.yu.edu/student-life/office-student-services-and-advising/handbooks</u>, for additional information on catering.

3. Passover Food

In addition to the rules above, there are special rules as to the food that may be eaten during the Passover holiday. As a result of these rules, the vending machines and food service at Cardozo are closed during this holiday.

In commemoration of the fact that the Jews left Egypt in a hurry without enough time to let their bread rise, the Passover observance includes removal of "chametz" or leaven. Chametz includes anything made from the five major grains that is not cooked within a short time after being mixed with water. The grain product that is eaten during Passover is matzah, which is unleavened bread made from flour and water and cooked very quickly. It comes in many forms so that it may be used for baking and as a noodle or bread substitute. Chametz must even be removed from the home, and the prescribed process of cleaning to remove it is detailed and extensive.

## Exhibit F

NYSCEF DOC. NO. 149

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

PRESENT: <u>HON.LYNN R. KOTLER, J.S.C.</u>	PART <u>8</u>
YU PRIDE ALLIANCE et al.	INDEX NO. 154010/21
	MOT. DATE
- v - YESHIVA UNIVERSITY et al.	MOT. SEQ. NO. 7&8
The following papers were read on this motion to/for	

ECFS DOC No(s).
ECFS DOC No(s)
ECFS DOC No(s)

Previously, in a decision/order dated August 18, 2021, the court converted defendants' motion to dismiss (sequence 6) to a motion for summary judgment on notice and set a briefing schedule for the parties to submit supplemental papers. Now, plaintiffs have brought two motions. The first seeks a six-ty-day continuance to file a surreply "in order to provide sufficient time for the conduct of discovery regarding facts relevant to Defendants' converted motion" and the second stayed plaintiffs' September 17, 2021 filing deadline pending the hearing of the motion and seeks a further order staying that deadline *sine die.* Defendants oppose both. For the reasons that follow, both motions are granted.

Plaintiffs argue that they "seek a continuance under CPLR 3212(f) to have adequate time to conduct discovery regarding factual issues necessary to resolve the central question ... whether Yeshiva University [("Yeshiva")] is exempt from the New York City Human Rights Law's ("NYCHRL") ... because it is a religious corporation incorporated under the education law." Plaintiffs' counsel explains that they "seek documents from [Yeshiva] (as well as from non-parties) that are not currently available to them but bear directly on Yeshiva's claimed corporate status and are essential to opposing the pending motion for summary judgment."

In turn, defendants argue that plaintiffs are not entitled to discovery while admitting that whether Yeshiva is a religious corporation is "the crux of the matter, including this discovery dispute." Defendants argue, however, that demands plaintiffs have already served go beyond the scope they portray in their motion, and that neither plaintiffs nor the court should "analyze and weigh Yeshiva's internal deliberations and its communications with government agencies to see if they somehow outweigh 135 years of conveying Torah values to its undergraduate students day in and day out." The court agrees with plaintiffs that Yeshiva's new position contradicts its prior arguments on the underlying converted motion. Indeed, 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.

12 21 Dated:

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

1. Check one:

2. Check as appropriate: Motion is

3. Check if appropriate:

□ CASE DISPOSED ☑ NON-FINAL DISPOSITION □ GRANTED □ DENIED □ GRANTED IN PART □ OTHER □ SETTLE ORDER □ SUBMIT ORDER □ DO NOT POST □ FIDUCIARY APPOINTMENT □ REFERENCE

Page 1 of 3

NYSCEF DOC. NO. 149

To now assert that plaintiffs are not entitled to any discovery as to the nature of Yeshiva simply because the First Amendment bars such inquiry is unavailing. The First Amendment's religious guarantees are not a shield which can be raised simply because a person or entity deems it so. Civil disputes involving religious parties or institutions, such as this case, "may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution" (*Congregation Yetev Lev D'Satmar, Inc. v. Kahana,* 9 NY3d 282, 286 [2007] citing *First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S.,* 62 NY2d 110 [1984] and *Park Slope Jewish Center v. Congregation B'nai Jacob,* 90 NY2d 517 [1997]; see also Cohen v. Berliner, 2021 NYSlip Op 30682[U] [Sup Ct, Kings Co March 5, 2021]). Instead, "[t]he First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs" (*Congregation Yetev Lev D'Satmar, Inc., supra*). The issue here before the court is one of pure law: is Yeshiva a religious corporation within the meaning of the NYCHRL and therefore exempt from its application as a place of public accommodation? The answer to this question is not a religious dispute (*cf. Park Slope Jewish Center, supra* at 521).

However, plaintiffs will not be permitted to explore every corner of the earth in their attempt to answer the preceding question in the negative. Discovery must be limited to the issue of whether Yeshiva is a religious corporation within the meaning of the NYCHRL. Further, discovery must not be duplicative. Plaintiffs' counsel outlines their document requests as follows: [1] documents concerning Yeshiva's corporate form; [2] Yeshiva's governance documents; [3] Yeshiva's representations to government entities, accreditation agencies, and charitable foundations regarding its status as a religious corporation; [4] Yeshiva's non-discrimination policies; and [5] non-public documents concerning Yeshiva's status as a religious corporation.

In addition, plaintiffs have served a subpoena on the Middle States Commission on Higher Education ("MSCHE"), which accredits Yeshiva University as an institution of higher education, seeking information concerning Yeshiva's representations to MSCHE such as mission, activities and nondiscrimination policies and organization. Plaintiffs also served the New York State Department of Education with a subpoena seeking "documents concerning YU's representations to New York State in the context of seeking "Bundy Aid" for the last decades." Plaintiffs served a subpoena duces tecum and ad testificandum for testimony from former Yeshiva University Senior Vice President Rabbi Dr. Josh Joseph regarding YU's corporate status as a "religious corporation under the education law" and when YU assumed this status.

Finally, plaintiffs have also served each of the defendants with deposition notices.

The court notes that there is no motion for a protective order before it, nor a motion to quash any of the subpoenas served. The only application for relief before the court is a request to adjourn the briefing schedule and submission of the converted motion so that plaintiffs may engage in discovery and develop the record. The court finds that it must grant the relief plaintiffs seek (*see i.e. 211 West 56th St. Associates v. Department of Housing Preservation and Development of City of New York*, 78 AD2d 793 [1st Dept 1980]). A cursory review of plaintiffs' document demands reveals information which they are entitled to and which might enable them to argue that summary judgment is premature (CPLR § 3212[f]). As for depositions, plaintiffs are entitled to depose a Yeshiva witness, but the court is not convinced that any further defendants' depositions are necessary to resolve the issue of whether Yeshiva is a religious corporation. If the parties cannot agree to a deposition schedule, they will have to make an appropriate motion. In light of the briefing schedule for the underlying converted motion (*infra*), such a motion must be made within 10 days and by order to show cause so that it can be heard in an expedited manner.

Accordingly, it is hereby **ORDERED** that the motions are granted as follows:

[1] Plaintiffs' deadline to submit a surreply is adjourned to December 17, 2021;

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[2] Defendants' deadline to submit a surreply is adjourned to January 21, 2022;

[3] The converted motion for summary judgment, presently scheduled for October 19, 2021, is hereby adjourned for oral argument to February 8, 2022 at 3pm.

And it is further **ORDERED** that if the parties cannot agree to a deposition schedule, they shall make an appropriate motion within 10 days from the date of this decision/order by order to show cause.

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.

/o IV U New York, New York Dated:

So Ordered:

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

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# Exhibit G

#### FILED: NEW YORK COUNTY CLERK 04/27/2021 11:15 AM

NYSCEF DOC. NO. 7

#### YU Pride Alliance Mission Statement

The Yeshiva University Pride Alliance is an unofficial 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. Part of achieving this is working with the administration to officially recognize our club.

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.

#### Club Application Mission Statement

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.

# Exhibit H

# Yeshiva University



- I. Undergraduate Student Bill of Rights and Responsibilities
- **II.** Undergraduate Student Disciplinary Procedures

#### **Undergraduate Student Bill of Rights and Responsibilities**

Yeshiva University strives to maintain a community which supports intellectual growth, learning from others, mutual respect, and freedom of thought and expression. Yeshiva University undergraduate students are encouraged to take advantage of the academic and non-academic opportunities available to them, to deepen their intellectual insights through formal instruction, and to expand their educational experience through and beyond their academic programs.

Respect for one another is essential to preserving the spirit of community at Yeshiva University. Membership in the Yeshiva University community entails certain rights and responsibilities. All members of this community are accorded these rights, and are equally accountable to uphold their responsibilities. It is therefore important to maintain a clear statement of basic rights, obligations and responsibilities concerning both academic and personal conduct.

#### **<u>Rights of Undergraduate Students</u>**

Yeshiva University undergraduate students have the following rights:

#### > Citizenship

Students have the right to exercise their rights as citizens of the University. They have the right to partake in the student government in their respective school(s) as well as to organize and join clubs and to participate in their events, in all cases in accordance with applicable rules and procedures. (For more information, see Student Government Constitutions.)

#### > Expression

Students have the right to examine and exchange diverse ideas, consistent with the mission of the University, in an orderly, respectful and lawful manner inside and outside the classroom.

#### > Association

Students have the right to associate and interact freely with other individuals, groups of individuals, organizations and institutions in a manner

that does not infringe on the rights of others or interfere with the mission of the University.

#### > Freedom from Discrimination

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.

#### > Environment

Students have the right to be treated fairly with respect and dignity at all times. Every member of the community (faculty, administration and student alike) has the right to courteous and professional conduct in interactions with all other members of the community.

#### > Safety

Students have the right to an environment that is conducive to learning and without unreasonable concerns for personal safety. Behavior which is intimidating, threatening or hostile to individuals or groups is therefore regarded as a serious offense. Abusive or harassing behavior, verbal or physical, which demeans, threatens or injures another is subject to University disciplinary action. (See Undergraduate Disciplinary Procedures)

#### > Discipline

Students who are subject to University disciplinary action have the right to be treated with fundamental fairness. (See Undergraduate Disciplinary Procedures)

#### > Privacy

Students have the right to have their educational records maintained on a confidential basis by the University, in accordance with the Family Educational Rights and Privacy Act (FERPA).

#### > Disabilities

Students who are otherwise qualified to attend the University have the right to reasonable accommodation of their physical or learning disabilities as provided by the Americans with Disabilities Act.

#### > High Quality Resources

Students have the right to educational resources which may be furnished by the University to support intellectual and social development.

#### > Advisement

Students have the right to receive advice in making various education related decisions. This includes career planning, and personal and academic advisement.

#### > Prompt Response from Administration

Students have the right to prompt and courteous responses to their reasonable inquiries to the University's academic and administrative departments.

#### > Academic and Administrative Policies

Students have the right to academic and administrative policies that support intellectual inquiry, learning and growth, as well as the proper functioning of the University. The University strives to have all student policies, both academic and administrative, accessible to all students at all reasonable times.

# Exhibit I

#### FILED: NEW YORK COUNTY CLERK 06/07/2021 11:02 PM

NYSCEF DOC. NO. 87

INDEX NO. 154010/2021

RECEIVED NYSCEF: 06/07/2021

Staff: David Walker

#### <u>THE COUNCIL</u> REPORT OF THE LEGAL DIVISION RICHARD M. WEINBERG, DIRECTOR AND GENERAL COUNSEL

#### COMMITTEE ON GENERAL WELFARE

<u>PROPOSED INT. NO. 465-A:</u> By Council Member Horwitz (by request of the Mayor) also Council Members Foster and Maloney

TITLE: In relation to the Human Rights Law.

ADMINISTRATIVE CODE: Amends various sections of Chapter 1 and adds new Chapter 4, 5, 6 and 7 to title 8.

PROPOSED INT. NO. 536-A: By Council Member Horwitz (By request of the Mayor) also Council Members Eldridge, Fields and Michels

TITLE:

In relation to the Human Rights Law.

ADMINISTRATIVE CODE: Amends various sections of Chapter 1 and adds new Chapters 4, 5, 6 to title 8.

BACKGROUND AND INTENT: During the late 1980's the City of New York (hereafter "NYC" or "the City") was plagued by notorious incidents of racially motivated violence. In the first four months of 1990, the City experienced a 14% increase in bias crimes as compared with the same four month period of 1989.<sup>1</sup> The general

1

Coleman, As Bias Crime Seems to Rise, Scientists Study Roots of Racism, N.Y. Times, May 29, 1990.

- 2 -

consensus is that conditions have worsened and, according to a June 12, 1990 New York Times/WCBS-TV News Survey, over 70% of the Black and White New Yorkers polled feel that race relations in New York City are generally bad.<sup>2</sup> As was recently stated by Dennis de Leon, Commissioner of the New York City Commission on Human Rights (hereafter "CCHR" or "the commission");

> relationship between There is a bias-motivated violence and the deeply entrenched patterns of institutional bigotry that persist in contemporary society. Patterns of segregation in housing, lending, and employment, education all relate in important ways to the "bush fires" of hate crime. For example, many racially-motivated assaults are based upon notions of neighborhood "turf" and intrusion of 3 "outsiders" in segregated neighborhoods.

Proposed Int. No. 465-A and Proposed Int. No. 536-A address the City's race relations problem by attacking entrenched patterns of segregation, discrimination and bigotry. The city's current human rights law covers discrimination in employment, housing, education, training programs, and public accommodations. The bills under consideration install enhanced protection against discrimination in the aforementioned areas plus provide additional protection against systemic discrimination, prohibit discriminatory harassment, and bring the city into conformity with

Morgan, Many in Poll See Worsening in Race Relations, N.Y. Times, June 27, 1990.

3

Testimony Given by Commissioner/Chair Dennis de Leon to the General Welfare Committee of the City Council, June 1, 1990, pg. 2.

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Local Law 52 of 1989 which included discrimination based on alienage or citizenship as an unlawful activity.

#### I. DIFFERENCES BETWEEN THE TWO BILLS

Upon introduction, Int. No. 465 (submitted June 22, 1990 by Council Member Horwitz) differed from Int. No. 536 (submitted October 10, 1990 by Council Member Horwitz at the Mayor's request) in several ways. Few of these differences were contentious and were readily addressed in an early amended version of the bills. There, however, are two among the may initial differences that are noteworthy. They are:

- (1) Int. No. 465 empowered both the city commission on human rights and the corporation counsel to appear in state court, whereas under Int. No. 536 only corporation counsel was given this power (the "commission autonomy" issue); and
- (2) Under Int. No. 536, all civil penalties would be paid into the city's general fund, whereas under Int. No. 465 civil penalties levied against a city agency would be paid to the prevailing party (the "disposition of civil penalties" issue).

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The current version of Proposed Int. No. 465-A resolves both the commission autonomy and disposition of civil penalties issue. With respect to commission autonomy, section 3(b) of Proposed Int. No. 465-A states:

> Within twelve months after the enactment of this local law, the corporation counsel and the chairperson of the city commission on human rights shall issue a report to the council on the operation and results of the procedures implemented by the corporation counsel and such chairperson relating to the effective legal representation of the commission and the enforcement of the city human rights law, and relating to the prevention of any potential conflicts of interest.

With respect to the disposition of civil penalties, \$8-127 of Proposed Int. No. 465-A state:

a. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the city.

Nothwithstanding the foregoing provision, b. where an action or proceeding is commenced against a city agency for the enforcement of a final order issue by the commission pursuant to section 8-120 of the code after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, any civil penalties which are imposed by the court against such agency shall be budgeted in a separate account. Such account shall be used solely to support city agencies' anti-bias education activities city programs, sponsored by agencies that are designed to eradicate discrimination or to fund remedial programs that are necessary to address the city's liability discriminatory for acts or practices. Funds in such account shall not be used to support or benefit the commission. The disposition of such funds shall be under the direction of the mayor.

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By addressing the commission autonomy and disposition of civil penalties issues, Proposed Int. No. 465-A resolves all outstanding differences between early versions of Int. No. 465 and Int. No. 536. In this fashion, Proposed Int. No. 465-A stands as a consolidation of the two bills. Thus, the analysis contained on this report and the annexed section-by-section analysis will refer only to Proposed Int. No. 465-A. A brief summary of the bill's provisions follows below.

#### **II. SUMMARY OF PROVISIONS**

Proposed Int. No. 465-A embodies a complete overhaul of the city's human rights law and a strengthening of the CCHR. A section-by-section analysis which is annexed to this report addresses all of the changes in detail. There are, however, seven key areas addressed by the bill that will be examined in this report. These areas are:

- (1) employment and employer liability;
- (2) housing;
- (3) public accommodations;
- (4) private right of action;
- (5) systemic discrimination;
- (6) discriminatory harassment; and
- (7) penalties and injunctive relief.

- 6 -

An examination of these seven areas, plus an overview of some of the bill's other important provisions follows below.

#### (1) <u>Employment and Employer Liability</u>

The bill's employer liability standard is designed to provide an incentive to establish a policy against discrimination, hold employers to a high level of liability for employment discrimination, and present employers with a fair opportunity to mitigate the amount of civil damages imposed for discriminatory conduct. Under \$8-107(13):

- (a) an employer will be liable for an employee's act if:
  - (i) the employee exercised managerial or supervisory responsibility; or
  - (ii) the employer knew of the act, acquiesced in the conduct and failed to take immediate and appropriate action; or
  - (iii) the employer should have known of the act but was not diligent in preventing such conduct.

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- (b) an employer may be held immune from civil penalties and punitive damages if she implements an anti-discrimination policy that is approved by the commission and her liability is based solely on the act of an employee or agent; and
- (c) if an employer is found liable for an employee's act, she may mitigate damages by showing that no other such incidents had occurred in the past or she had a meaningful anti-discrimination policy or program in place.

This standard of liability would apply to all aspects of employment including hiring and admittance into training programs.

#### (2) <u>Housing</u>

Proposed Int. No. 465-A limits the existing exemption for owner-occupied two family houses to accommodations for which vacancies are not publicly advertised. \$8-107(5)(a)(4)(1). In this manner, the bill does not infringe upon the individual's right of association, but sharply restrict landlords' ability to discriminate.

#### (3) <u>Public Accommodations</u>

Under Proposed Int. No. 465-A, the commission's power to combat discrimination is expanded through the inclusion of educational institutions within the definition of provider of public accommodations. \$8-102(11). This inclusion will not affect educational institutions' pedagogical policies or practices. \$8-107(4). Also:

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- (a) gender distinctions that are permitted under federal or state law are exempted under \$8-107(4); and
- (b) distinctions founded on religious beliefs are protected under §8-107(12).

#### (4) Private Right of Action

Currently, all claims arising under the city's human rights law may be enforced only by bringing an action before the commission. This limitation denies complainants the right to a jury trial and forecloses the possibility of recovering attorney's fees or punitive damages which could be recovered in state court.

Based on the recommendations contained in the January 1988 report of the Koch Task Force on the New York City - 9 -

Commission on Human Rights,<sup>4</sup> the bill being considered will empower individuals to enforce the city's human rights law by bringing an action in state court. §8-502. An individual who files such a claim would be able to recover all costs, attorney's fees and punitive damages. Anyone who files a claim with the commission or the state division on human rights will have effectively chosen not to exercise this right and not be able to bring an action in state court.

#### (5) Systemic Discrimination

As is asserted in Proposed Int. No. 465-A, "the existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon the city that is economic, social and moral in character, and is distinct from the individuals incident of such by as an injury sustained discrimination." **§8-401**. Systemic discrimination or a discriminatory pattern or practice is often hard to combat because of the difficulties entailed in accumulating evidence. This type of discrimination is particularly injurious because it is not simply an isolated incident but a repeated act founded upon a discriminatory policy, method of operating, or institutionalized procedure.

Task Force Report on the New York City Commission on Human Rights, Jeremy Travis, Chair, Edward I. Koch, Mayor, January 1988, pg. 23.

There are three aspects of the bill that enhance or clarify the commission's power to combat systemic discrimination. They are:

- (a) Chapter 4 of Proposed Int. No. 465-A empowers the corporation counsel to investigate and bring a civil action in state court to eliminate unlawful discriminatory practices.
- (b) \$8-105(4)(b) and \$8-114 detail the commission's investigatory powers. Among these powers is the ability to compel the maintenance of records relevant to determining whether a person is engaging in a discriminatory pattern or practice; and
- (C) \$8-107(17) establishes that in a claim alleging that a policy has a discriminatory disparate impact, a person need not specify what specific element of the policy produces the disparate impact. Also, the same subsection allows a person to counter a charge of disparate impact discrimination by showing, "that each such policy or practice bears a significant relationship to a significant business objective or does not contribute to the disparate impact." §8-108(a)(2). This provision assures that recent Supreme Court

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decisions that have been viewed by some human rights advocates as imposing an undue burden upon claimants are not incorporated into local law.

#### (6) <u>Discriminatory Harassment</u>

Chapter 6 of Proposed Int. No. 465-A specifically addresses discriminatory harassment. Under the bill's provisions, the city may bring a civil action against a person who allegedly attempts to threaten or intimidate anyone seeking to exercise a right guaranteed by the human rights law. §8-602. This empowers the city to act vigorously against anyone who attempts to prevent an individual from filing a claim with the commission or in state court.

#### (7) <u>Penalties and Injunctive Relief</u>

Under current law, the commission is authorized to seek a preliminary injunction only with respect to a housing discrimination claim. Proposed Int. No. 465-A will permit the city to commence a special proceeding before the Supreme Court to seek to enjoin all types of discrimination covered by the law. \$8-122.

In addition to its expanding ability to seek injunctive relief, Proposed Int. No. 465-A will empower the commission to seek in state court civil penalties of up to \$250,000 in systemic discrimination cases and \$50,000 cases

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#### - 12 -

alleging discriminatory harassment. §8-404 and §8-604 respectively. Also, in proceedings brought before the commission, it will be able to impose up to \$50,000 as a penalty for engaging in discrimination and a \$100,000 penalty for willful or wanton acts of perjury.

#### CONCLUSION

. In addition to the seven areas analyzed above, there are two other aspects of Proposed Int. No. 465-A that should be noted. They are:

- (1) discrimination based on perceived characteristics will now be covered as well as acts based on actual traits; and

It is clear that Proposed Int. No. 465-A will put the city's law at the forefront of human rights laws. Faced with restrictive interpretations of human rights laws on the state and federal levels, it is especially significant that the city has seen fit to strengthen the local human rights law at this time. Particular attention should be given to section 8-130 of Proposed Int. No. 465-A which provides that, "the provisions of this chapter shall be construed liberally for the accomplishment of the - 13 -

purposes thereof." It is imperative that restrictive interpretations of state or federal liberal construction provisions are not imposed upon city law.

#### UPDATE

Proposed Int. No. 465-A passed by a 7-0 vote. Proposed Int. No. 536-A filed by a 7-0 vote.

DW/rt DG-reports Pro. Intros. 465, 536 DG-reports

#### Section-by-Section Analysis

#### Introduction

The City's Human Rights Law (§8-101 et seq. of the Administrative Code of the City of New York) has been in the forefront of civil rights laws, providing protection for all persons from invidious discrimination. As part of a generation of Federal and State discrimination laws which created vital substantive rights and institutions charged with enforcing those rights, the City's law has made a valuable contribution to advancing civil rights in the City. While the law has been amended on numerous occasions to expand its substantive scope, the basic enforcement mechanism of the law has remained virtually unchanged since 1965. The benefits of twenty-five years of experience in enforcing this law, as well as the collective wisdom gained from the enforcement of Federal and State laws, now make it clear that the enforcement mechanisms of the City's law must be strengthened and expanded and that many of the substantive provisions should be expanded, harmonized or clarified. In recognition of the vital role served by the City in protecting civil rights, it is time now to move the City's law into the next generation of civil rights laws. The following is a section-by-section analysis of all of the provisions of the bill.

#### <u>§8-101 Policy</u>

This section, which is in current law, expresses the policy reasons for enacting the Human Rights Law. The amendment would update this section by referring to all of the prohibited grounds for discrimination. It would make clear the broad authority conferred upon the Commission to prevent discrimination from playing any role in actions relating to employment, public accommodations, housing and other real estate. It is intended that the Human Rights Law be liberally construed to recognize the Commission's broad authority to prevent discrimination.

#### <u>§8-102 Definitions</u> "Person" (subd. 1)

The amendment makes clear that "person" includes natural persons, group associations, organizations and governmental bodies or agencies.

# "Employer" (subd. 5)

Current law prohibits an "employer" from engaging in all forms of employment discrimination and defines "employer" to exclude employers with fewer than four employees. The amendment would clarify that the definition of "employer" applies only to the employment discrimination provisions. When employer is used in other provisions of the bill, i.e., §8-107(13) (employer's liability for the discriminatory acts of its employees), it is intended to have its ordinary meaning. The amendment would also provide that certain persons employed as independent contractors would be counted as persons employed for purposes of determining whether an employer employs four or more persons and is thus subject to the employment discrimination provisions. It should be noted that employees who are parents, spouses, or children of the employer will also be counted as persons employed for this purpose. See §8-107(1)(f).

"Employee" (former subd. 6)

The purpose of the definition of the term "employee" in the current law is to exclude certain family members and domestic workers from the employment discrimination provisions of the law. Technically the definition did not achieve this purpose since in the current law the term "employee" is not used in these provisions. The inappropriate definition of "employee" is deleted and the employment discrimination provisions are amended to carry out the intended purpose of the deleted definition with respect to the parents, spouse or child of an employer. See §8-107(1)(f). The proposed amendment does not exclude domestic workers from the employment discrimination provisions.

## "Educational Institution" (new subd. 8)

The bill would add a definition of educational institution. "Place or Provider of Public Accommodation" (subd. 9)

The amendment to this subdivision would change the term "place of public accommodation" to "place or provider of public accommodation." This change is intended to clarify the term "place of public accommodation" to make clear that it is intended to include of providers goods, services, facilities, accommodations or The amendment would streamline the definition by advantages. eliminating the long list of specific types of public accommodations and replace that with a generic definition.

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The amendment would also eliminate the current exclusion public libraries, schools, colleges and other educational of institutions. This results in the implicit inclusion of these institutions in the definition of public accommodation, and thereby subjects them to the prohibitions on discrimination by public accommodations. See §8-107(4). The term "place or provider of public accommodation" would now include both public and private educational institutions. Although a variety of other laws including the State Civil Rights Law \$40 and the Education Law \$\$ 313, 3201 and 3201-a cover certain aspects of discrimination in schools and the Board of Education has adopted a nondiscrimination policy and an internal procedure for resolving complaints of discrimination by students, the City has an independent and overriding interest in routing out discrimination from its schools. Extension of the City Human Rights Law in this area would make available to aggrieved persons the administrative remedies provided by the Commission as well as the right to bring a private action and recover attorneys fees.

The amendments to this subdivision also narrow the exclusion for places of accommodation that are distinctly private by providing that only clubs could be considered distinctly private. This would foreclose doctors, dentists and other professionals from arguing that their practices are distinctly private and thus not subject to the prohibitions against discrimination.

"Housing Accommodation" (subd. 10)

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The amendment would include publicly-assisted housing accommodations within the definition of "housing accommodation," (except where otherwise expressly provided) thereby reflecting the consolidation of provisions governing public and private housing discrimination effected in a subsequent section. <u>See</u> §8-107(5).

"Publicly-assisted Housing Accommodations" (subd. 11)

The only substantial difference which remains in the provisions of the Human Rights Law which cover private housing and those which cover publicly-assisted housing is that the exemptions from the prohibition of housing discrimination for the rental of owner-occupied one and two family homes and for the rental of rooms in owner-occupied apartments do not apply to publicly-assisted housing. See \$-107(5)(a)(4)(1) and (2). Thus, the definition of publicly-assisted housing serves to limit the applicability of these exemptions. The amendment to this subdivision would broaden the definition of publicly-assisted housing to include certain tax-exempt homes or publicly financed homes sold after July 1, 1991 and all homes with mortgages financed, guaranteed or insured at any time by a government agency whether or not the mortgage is still outstanding. By broadening the definition, the bill would thus subject the rental of certain owner-occupied one and two family homes and owner-occupied apartments, which are not covered by the current law, to the housing discrimination provisions.

"Multiple Dwelling" and "family" (subd. 12)

The definition of "multiple dwelling" is deleted because the only reference to it is in the definition of publicly-assisted housing

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accommodation and that reference is deleted. See \$8-102(11)(d). Under current law, "family" is defined for purposes of defining multiple dwellings and for purposes of certain exemptions from the housing discrimination provisions including the rental of owner-occupied one and two family housing. See \$8-107(5)(a)(4). With the deletion of the term "multiple dwelling", the amendment makes clear that family is defined only for purposes of those exemptions.

#### "Real Estate Salesperson" (subd. 15)

The amendment makes clear that the term real estate salesperson includes persons who have been appropriately authorized by a licensed real estate broker.

# "Disability" (subd. 16)

The term "handicap" is changed to "disability", a more modern and less stigmatizing term used in the State Human Rights Law. The definition is amended to clarify that any person with a physical, medical, mental or psychological impairment or a history or record of such an impairment is protected by the law. Those impairments are defined broadly so as to carry out the intent that persons with disabilities of any type be protected from discrimination. The amendments also retain the provision in the existing definition of "otherwise qualified person" (subd. 16(e)) that in the case of alcoholism, drug addiction or other substance abuse, "disability" only applies to a person who is recovering or has recovered and currently is free of the abuse (new paragraph (c)). The amendments also make clear that "disability" does not apply to persons who currently are

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illegally using controlled substances when the person subject to the law acts on the basis of such use.

## "Covered Entity" (new subd. 17)

This term is added to the law for ease of reference to persons who are required to comply with the provisions of §8-107.

# "Reasonable Accommodation" (new subd. 18)

This definition is added for purposes of a new provision which makes explicit the requirement implicit in the existing law that employers and other persons subject to the City's law make "reasonable accommodation" to enable a person with a disability to satisfy the essential requisites of a job or enjoy the rights in question. See §8-107(15)(a). The exception in the definition for accommodations which cause undue hardship represents existing Commission case law. See e.g. Tartaglia v. Jack LaLanne Fitness Centers, NYCCHR Complaint No. 04153182-PA (June 9, 1986) at p. 21 (public accommodations discrimination); New York City Commission on Human Rights v. United Veterans Mutual Housing, Motion Decision NYCCHR Complaint No. EM00936-08/14/87-DE (April 4, 1990) at p. 5. (housing discrimination); see also Doe v. Pleasure Chest Ltd., NYCCHR Complaint No. GA-00167020389-DN (July 19, 1990) at p. 29-30 (employment discrimination).

# "Sexual Orientation" (new subd. 20)

The bill moves the definition of sexual orientation currently found in §8-108.1 to the definitional section. This amendment is technical in nature and reflects the insertion of this protected category in the lists of protected categories in §8-107.

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#### **§8-105** Powers and Duties

The amendments to this section would expand the powers of the Commission as well as clarify existing powers. Specifically, the Commission would be authorized to require persons or companies under investigation to preserve records in their possession and to continue to make the type of records made by such person or company in the ordinary course of business where the records are relevant to determining whether discrimination has taken place (subd. 6).

The amendment expressly states the Commission's existing power to investigate and file complaints of pattern or practice discrimination, and authorizes the Commission to refer to the Corporation Counsel information on which a civil action (pursuant to Chapter 4) could be based (subd. (4)(b)).

The amendment clarifies the Commission's existing authority, in the course of investigating clubs which are or may be places or providers of public accommodation, to subpoena names of persons when such subpoena would not be inconsistent with applicable statutory and case law (subd. (5)(c)). As under existing law, the Commission's power to investigate clubs would continue to encompass the power to obtain information which is relevant to the determination of whether a club qualifies as a place or provider of public accommodation.

The Commission's authority to delegate its powers, functions and duties to its employees or agents is made explicit with the proviso that certain powers, i.e., rule making, issuing orders

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relating to records and making a final determination that a respondent has engaged in discrimination, could be delegated only to Commission members (subd. (8)). The amendment also makes explicit that the Commission's power to appoint employees and assign them duties may be exercised by the Chairperson.

#### **§8-106** Relations With City Departments and Agencies

The amendments to this section would enable the Commission to require a city agency to furnish information without first consulting the Mayor.

#### **§8-107 Unlawful Discriminatory Practices**

#### **Protected Categories**

The provisions in current law describing unlawful discriminatory practices are amended to make clear that the law prohibits discrimination based on perceived, as well as actual, age, race, creed, color, national origin, disability, marital status, gender, sexual orientation and alienage or citizenship status. The term "gender" is used to replace the term "sex" (with no intent to change the meaning of the term). This section is also amended to include sexual orientation and disability, which are covered in separate sections of the current law, in the list of protected categories so that the law will now provide in one place a list of all the prohibited types of discrimination.

# Employment and Apprentice Training Programs (subds. 1 and new subd. 2)

The amendments to these provisions would prohibit employment discrimination based on marital status, and thus would conform the City's law to the State Human Rights Law. Currently,

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these subdivisions prohibit employers, employment agencies and labor organizations from engaging in discriminatory employment practices but are silent as to the individual liability of their employees and agents for such practices. The amendment would make explicit such individual liability.

The language which permits advertisements, statements or inquiries to express limitations and discrimination based upon a bona fide occupational qualification is deleted from paragraph (d) of subdivisions one and two. The employment discrimination provisions of the current law have been construed by the courts and the Commission to allow limitations or discrimination which are based upon a "bona fide occupational qualification", although the specific language which sets forth the defense is contained only in the provisions prohibiting discriminatory advertisements or inquiries. See §8-107(1)(d). "Bona fide occupational qualification" is not defined in those provisions and thus the courts and the Commission are left to determine on a case by case basis whether a particular limitation is a bona fide occupational qualification. While the bill deletes the specific language "unless based upon a bona fide occupational qualification" in \$-107(1)(d) and (2)(d), it is not intended to eliminate the defense. The intent is to allow the defense to continue to develop through case law made by courts or the Commission with the expectation that the defense will be upheld only in circumstances where distinctions based on the criteria covered by the law are logical and necessary for the job or occupation.

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The amendment would delete language in paragraph (e) of subdivision one which duplicates the general prohibition against retaliation in §8-107(6). New language would be added to paragraph (e) to provide that the age discrimination provisions would not apply to employee benefit plans covered by the federal Employment Retirement Income Security Act of 1974 ("ERISA") where that federal law would be preemptive (subd. (1)(e)(i)). This recognizes the decisional law that has held ERISA to preempt State and local discrimination laws in certain circumstances. See Shaw v. Delta Airlines, Inc., 463 U.S. 85 (1983). Provisions allowing the varying of insurance coverage based on an employee's age and allowing certain retirement policies or systems would also be added to paragraph (e). These provisions are derived from language in the existing subdivision (3-a) of section 8-107 which is being deleted. See \$8-107(3-a)(c).

A new paragraph (f) of subdivision one would continue the present exemption for the hiring, firing and terms and conditions of employment of parents, spouses and children but would require those persons to be counted as persons employed for purposes of determining whether the employer is subject to the law with regard to other persons employed.

## Public Accommodations (new subd. 4)

This subdivision is amended to prohibit places or providers of public accommodation from discriminating on the basis of age (para. (a)). In recognition of the fact that certain distinctions based on age are in the public interest (e.g., senior citizen discounts,

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restrictions on viewing adult films and age limits on membership in peer groups), the Commission is given authority to grant exemptions from this prohibition when it is in the public interest to do so (para. (b)). The amendment adding age would not take effect until the Commission promulgates rules setting forth such exemptions. Bill Section 4(1).

Certain exemptions are added permitting educational institutions (public and private) to make gender distinctions permitted under specified state or federal laws (i.e., separate housing, bathroom and locker room facilities, certain physical education classes and certain athletic teams) (para. (c)). Private schools would be allowed to limit admissions to persons of one gender (para. (d)). Educational institutions would not be subject to the prohibitions on discrimination as they relate to matters that are strictly educational or pedagogic in nature (para. (f)). In addition, educational institutions would not be prohibited from using standardized tests which may have a disparate impact on protected groups if the tests are used in the manner and for the purpose prescribed by the test agency which designed the test (para. (e)).

#### Subds. 3 and 3-a (deleted)

Subdivision 3, which currently prohibits discrimination in publicly-assisted housing accommodations, is deleted and incorporated into subdivision 5, which covers all housing accommodations. Subdivision 3-a, which currently prohibits age discrimination by employers and licensing agencies, is deleted and incorporated into subdivision 1 (Employment) and a new subdivision 8 (Licenses and

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Permits). In addition, the limitation in subdivision 3-a on age discrimination, providing that individuals older than 65 are not protected thereunder, is removed from the law. This would conform the City's law to the State Human Rights Law and to the Federal Age Discrimination in Employment Act.

#### Tax-Exempt Non-sectarian Education Corporations (former subd. 4 deleted)

The bill would delete this provision governing private schools as unnecessary in view of the implicit coverage of educational institutions (whether public or private) in the public accommodations provisions (§ 8-102, subd. 9). In bringing private schools within those provisions, the legislation would have the effect of changing current law by adding national origin, gender and marital status to the prohibited grounds for discrimination.

# Housing Accommodations, Land and Commercial Space (subd. 5)

#### Generally

provisions prohibiting discrimination in The publicly-assisted housing (former subd. 3) are incorporated into this subdivision except that the provision which permits inquiries relating to children in publicly-assisted housing is deleted. The amendments to this subdivision would make the City's law consistent with the State Human Rights Law by prohibiting age discrimination in the sale, rental or purchase of all housing accommodations, land and commercial The amendments would also clarify the applicability of this space. subdivision to cooperatives and condominiums by prohibiting

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discrimination in the "approval of the sale" of housing accommodations "or an interest therein".

## Para. (a) Subpara. (4)

Current law exempts from the housing discrimination provisions the rental of housing in one and two family owner-occupied housing. The amendment would allow the exemption only if the available housing has not been publicly advertised or listed or otherwise offered to the general public (Subpara. (4)(1)).

The bill would delete the language creating a general exemption for restricting rooms in a rooming house, dormitory or residence hotel to one sex (Subpara. (4)(3)). This amendment is intended to bring the City's law into conformity with the federal Fair Housing Act, which does not contain such a general exemption.

# Para. (c)

A new subparagraph (3) would prohibit real estate brokers from blockbusting, i.e. inducing persons to sell or rent housing, land or commercial space by representations regarding the entry into the neighborhood of any members of a protected group. This provision is derived from the federal Fair Housing Act (42 U.S.C. 3604(e)) but goes further than that law in its application to commercial space and in the number of protected groups.

# Para. (d) and (f)

Amendments to paragraph (d) and the new paragraph (f) make clear that the law prohibits discrimination in the appraisal of any housing accommodation, land and commercial space. This

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provision is also derived from the federal Fair Housing Act. See 24 CFR 115.3(a)(5)(ix)(B).

#### <u>Para. (e)</u>

This new provision prohibits the discriminatory denial of access to or membership in a multiple listing service or real estate brokers organization. It is derived from the federal Fair Housing Act. See 24 CFR 115.3(a)(5)(x).

#### Para. (h)

The amendments to this paragraph are designed to bring the City's law into conformity with the federal Fair Housing Act, which allows owners and operators of housing for older persons (as defined therein) to discriminate in the rental or sale of such housing on the basis of whether children are or would be residing in such housing. See 42 USC 3607(b)(2) and (3).

#### <u>Para. (i)</u>

This provision would allow restriction of the sale or rental of housing or land exclusively to persons 55 or over. It would clarify that such persons could not be discriminated against on the basis of whether children are, may be, or would be, residing with them, unless such housing qualifies as housing for older persons as defined in the federal Fair Housing Act.

#### <u>Para. (j)</u>

Although the federal Fair Housing Act on its face prohibits educational institutions from making gender distinctions in dormitory residences, the agency administering that law (the Department for Housing and Urban Development, or "HUD") has construed the law to

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permit the gender distinctions allowed under another federal law for separate housing, bathrooms and locker rooms. <u>See 45 CFR §§86.32</u> and 86.33. This new provision would allow such distinctions to be made under the City's law to the same extent that they are allowed under HUD's interpretation of the federal Fair Housing Act.

<u>Para. (k)</u>

This provision would allow distinctions to be made with regard to gender and children in dormitory-type residences (e.g. shelters for the homeless), to protect personal privacy or the health, safety or welfare of families with children. HUD's interpretation of the federal Fair Housing Act has allowed some distinctions such as these although the Act and its regulations are silent as to these issues.

#### Para. (l)

This provision restates and clarifies current law.

#### Para. (m)

This new provision clarifies that the owners of publicly-assisted housing accommodations (such as the Housing Authority) may utilize criteria or qualifications of eligibility for the sale, rental or occupancy of public housing which are required to comply with Federal or State law or are necessary to obtain the benefits of a Federal or State program, and use statements, advertisements, applications and inquiries which state criteria or qualifications necessary to determine eligibility for such housing.

<u>Para. (n)</u>

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The provisions relating to housing discrimination on the basis of occupation are moved from §8-102.2 to this paragraph without intent to make any substantive change.

## Retaliation (subd. 7)

This subdivision prohibits retaliation against persons who file complaints of discrimination. The amendments would broaden this subdivision by also prohibiting retaliation against persons who commence civil actions, assist the Corporation Counsel or the Commission in investigations or provide information pursuant to the terms of a conciliation agreement.

## Licenses and Permits (subd. 9) (new)

Under the current law, discrimination by licensing agencies is prohibited only where the discrimination is based on age (former subd. 3-a). This new subdivision would broaden current law by prohibiting licensing agencies from discriminating against applicants on the basis of any of the protected categories (paras. (a) and (b)). An exception is provided which allows age or disability to be used as a criterion for determining eligibility for a license or permit where such use is specifically required by another provision of law (para. Thus, the issuance of special parking permits to disabled (c)). persons pursuant to New York City Charter \$2903(b)(15), the granting of preferences to disabled or elderly persons in the issuance of newsstand licenses pursuant to Administrative Code §20-230, and the issuance of rifle and shotgun permits only to persons 18 years of age or over pursuant to Ad. Code \$10-303(a)(1) would still be allowed.

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#### Criminal Conviction (subd. 10) (new)

Article 23-A of the Correction Law prohibits discrimination in employment and licensing on the basis of an applicant's record of criminal convictions except in certain specified circumstances. That article provides for enforcement against private employers by the State Division of Human Rights and concurrently by the Commission. This new subdivision merely incorporates the Article 23-A prohibition into the City's Human Rights Law in the same manner as it is incorporated into the State Human Rights Law. <u>See</u> Executive Law \$296(15). The amendment is intended to encompass within the City's law all of the substantive provisions which are already within the Commission's jurisdiction and would effect no substantive change in the Commission's jurisdiction over this type of discrimination.

## Arrest Record (subd. 11) (new)

The State Human Rights Law, with certain exceptions, prohibits discrimination in connection with licensing, employment and providing of credit on the basis of an applicant's arrest record. <u>See</u> Executive Law §296(16). This new subdivision is identical to the State law provision.

# Employer Liability for Discriminatory Conduct by Employee, Agent and Independent Contractor (subd 13) (new)

The current City Human Rights Law is silent on the standard to be applied in deciding whether an employer can be held liable for the discriminatory conduct of its employees. The State Human Rights Law, upon which much of the City law is modeled, is also silent on this question. However, the State law provisions prohibiting discrimination in employment and in public accommodations

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have been narrowly construed by the courts of this State to impose liability upon an employer for its employee's unlawful conduct only when the employer knew of or condoned the conduct.

The proposed bill would set forth standards which must be satisfied for an employer to be held liable for the unlawful conduct of employees, agents and certain independent contractors. The standards proposed would make the City's law unique among civil rights laws in that the standards are designed not only to deter discriminatory conduct by holding employers accountable but, of equal significance, they are designed to provide employers with an incentive to implement policies and procedures that reduce, and internally resolve, discrimination claims.

Paragraph (a) of this subdivision provides that with respect to all types of discrimination other than employment discrimination, an employer would be held liable for the discriminatory conduct of an employee or agent. Paragraph (b) provides that with respect to employment discrimination, an employer would be held liable for the discriminatory conduct of an employee or agent only where the employee or agent who committed the discriminatory act exercised managerial or supervisory responsibility or the employer knew of the conduct and failed to take corrective action or should have known of the conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct. Under paragraph (c), an employer would be held liable for the conduct of certain persons employed as independent contractors only where the employer had actual knowledge of and acquiesced in the conduct.

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Employers could mitigate their liability for civil penalties or punitive damages or liability for the act of an employee or agent which they should have known about by proving they had instituted policies, programs, and procedures for the prevention and detection of discrimination, and by showing a record of no, or relatively few, prior incidents of discrimination (para (d) and (e)). Finally, the Commission would be authorized to promulgate rules establishing policies, programs, and procedures for the prevention and detection of discrimination, which if instituted by an employer would insulate him or her from liability for civil penalties which could be imposed by the Commission or punitive damages or civil penalties which could be imposed by a court based on the conduct of an employee, agent or person employed as an independent contractor (para (f)).

# Alienage or Citizenship Status (new subd. 14, former subd. 11)

Current law allows distinctions and preferences based upon alienage or citizenship status and inquiries as to a person's alienage or citizenship status in very narrow circumstances ("when... required or when... expressly permitted by any law... and when such law... does not provide that state or local law may be more protective of aliens, §8-107(11)). These circumstances do not cover distinctions or inquiries made by banks and lending institutions who seek to sell mortgages to the Federal Home Mortgage Insurance Corporation ("FHMIC"). A FHMIC directive provides that the "[FHMIC] will purchase mortgages made to aliens who are <u>lawful permanent residents</u> <u>of the United States</u> under the same terms that are available to U.S. citizens... We will purchase mortgages made to <u>non-permanent</u>

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<u>resident aliens</u> as long as the borrower occupies the property and the loan-to-value ratio does not exceed 75%." See Fannie Mae, Lending Requirements, §203.02 (emphasis in original).

The proposed amendment to this subdivision is intended to allow banks and lending institutions to make such inquiries or determinations based upon alienage or citizenship status as are necessary to enable them to obtain the benefits of selling their mortgages to FHMIC. It will also allow inquiries and distinctions to be made for other purposes related to federal programs, but only insofar as such actions are necessary to obtain the benefits of such programs.

#### Applicability; Persons With Disabilities (new subd.15)

Paragraph (a) of this new subdivision would make explicit the requirement implicit in existing law that persons subject to the City's Human Rights Law make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the rights in question. Paragraph (b) establishes an affirmative defense to a claim of discrimination based on disability that the claimant could not, with reasonable accommodation, satisfy those requisites or enjoy those rights. Paragraph (c) makes clear that work place restrictions on the illegal use of drugs and the use of alcohol and drug testing programs are not prohibited.

#### Former §8-108 and §8-108.1 subd(1) (deleted)

These provisions are deleted because the protected categories, disability and sexual orientation, have been inserted in the lists of protected categories in §8-107.

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# Applicability; Sexual Orientation (subd. 16, formerly paragraphs a through e of subd. 2 of §8-108.1)

Former section 8-108.1, subd. 2, sets forth certain provisions relating to the applicability of the law with respect to discrimination based on sexual orientation. These provisions have been retained and are set forth in the revised law as paragraphs a through e of subdivision 16 of section 8-107.

#### Disparate Impact (new subd. 17)

Certain discriminatory practices or policies, though not intended to discriminate, may be actionable because they result in a disparate impact to a person who is the member of a group protected by the City's law. Like Title VII of the Civil Rights Act (which prohibits employment discrimination), the City's law has been construed by the Commission to apply to disparate impact cases although it does not explicitly provide as such. In 1989, the U.S. Supreme Court in Wards Cove Packing Co. v. Antonio, 109 S.Ct. 2115, 2125-26 (1989) made it significantly more difficult for an aggrieved person to prove a disparate impact case under Title VII. The Court held that when a plaintiff has made out a prima facie case of disparate impact, the defendant has the burden of producing evidence of business justification but the burden of persuasion always remains with the plaintiff. Commentators viewed this holding as a departure from previous decisions which were read to place the burden of proving business necessity upon the defendant. The Commission and the courts are not bound to follow Wards Cove in their interpretation of the burdens of proof in disparate impact cases under the City Human Rights Law. After the Wards Cove decision,

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the Commission and the administrative law judges adjudicating disparate impact cases have continued to apply the burdens of proof (as set forth in <u>Griggs v. Duke Power Co.</u>, 401 U.S. 424 (1971)) that most courts applied in Title VII cases decided prior to <u>Wards</u> <u>Cove. See Fitzgibbons v. New York City Police Department</u>, NYCCHR Complaint No. 12141485-EG (April 26, 1990) at p. 4.

The proposed provisions are intended to clearly set out the burdens of proof in disparate impact cases brought under the City Human Rights Law so that it will not be necessary for the courts or the Commission to seek guidance in federal case law to interpret the City law in this area. The provisions make clear that the respondent or defendant has the burden to affirmatively plead and prove that a policy or practice bears a significant relationship to a significant business objective (business necessity) or does not contribute to the disparate impact (para. (a)(2)). The legislation also provides that a policy or practice shown to have a disparate impact will be found unlawful where the Commission or a plaintiff produces substantial evidence that an alternative policy or practice with less disparate impact is available and the respondent or defendant fails to prove that it would not serve them as well (<u>id</u>.).

#### Unlawful Boycott or Blacklist (new subd. 18)

This new subdivision incorporates the provisions of the State Human Rights Law which prohibits boycotts and blacklists based on discriminatory animus. However, it goes further than State law by adding disability, age, marital status, sexual orientation and alienage or citizenship status to the protected categories. The

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subdivision is also different from the State law in that it specifies that it does not apply to any form of expression that is protected by the First Amendment of the U.S. Constitution.

#### Interference with Protected Rights (new subd. 19)

This new subdivision prohibits threats, harassment, coercion, intimidation and interference with a person's exercise or enjoyment of any rights granted or protected under §8-107 or attempts to engage in those acts. It is derived, in part, from a similar provision of the federal Fair Housing Act.

#### Relationship or Association (new subd. 20)

This subdivision makes clear that the City's Human Rights Law prohibits discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation or alienage or citizenship status of a person with whom such person has a known relationship or association. It would also codify the Commission's interpretation of the existing law. This provision is similar to provisions in the Federal Fair Housing Act (42 USC 3604(f)) and the Americans with Disabilities Act (102(b)(4) and 202(b)(1)(E)).

#### Former §8-109 Procedure (deleted)

This section, which prescribes the current procedures for filing and processing complaints of discrimination with the Commission, is deleted and replaced by new sections 8-109 through 8-122.

#### §8-109 Complaint (new)

This section describes in detail the requirements and procedure for filing a complaint of discrimination with the Commission.

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It includes the content of the complaint and a requirement that the Commission acknowledge the filing of the complaint (subd. a), a requirement that the Commission serve a copy of the complaint on the respondent and advise the respondent of his or her procedural rights and obligations under the law (subd. d), the time limit for filing a complaint (subd. e), and amendment of the complaint (subd. h). This section would preclude the Commission from adjudicating a complaint if prior to filing such a complaint the complainant had initiated a civil action alleging the same act of discrimination, if a complaint involving the same grievance is pending before an administrative agency, or if the State Division of Human Rights issued a final determination on such complaint (subd. f). With regard to complaints filed on or after September 1, 1991, this section would require the Commission to commence proceedings, investigate and make a final disposition promptly and within the time periods prescribed by rule of the Commission or explain the reasons for not doing so (subd. g).

#### <u>§8-111 Answer (new)</u>

This section requires a respondent to file an answer within 30 days after the complaint is served (subd. a). Under current law, there is no requirement that a respondent answer a complaint of discrimination until he or she appears at a hearing. Respondents have no incentive to answer prior to such time. This requirement would assist the Commission in the timely processing of complaints. The failure to file an answer would result in a default and the hearing would proceed without the respondent. See §8-119(e). The

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administrative law judge could open the default and allow the respondent to present an answer only upon a finding that there was good cause for the failure to file a timely answer. This section also prescribes the contents of the answer (subds. b, c and d) and provides for extension of the 30-day period for good cause (subd. e). Allegations not specifically denied or explained in the answer are deemed admitted (subd. c).

#### <u>§8-112 Withdrawal of Complaints (new)</u>

This section provides that a complaint may be withdrawn at any time prior to service of a notice that it has been referred to an administrative law judge (subd. a) or after service of such notice, at the discretion of the Commission (subd. b). Unless the complaint is withdrawn pursuant to a conciliation agreement, withdrawal is without prejudice to further prosecution of the alleged discriminatory acts by the Commission or the Corporation Counsel (subd. c).

# §8-113 Dismissal of Complaint (new)

This section prescribes the circumstances under which the Commission may dismiss a complaint for administrative convenience (subds. a and b). Dismissal for administrative convenience includes a dismissal requested by the complainant where 180 days have passed since the filing of a complaint which had not been actively investigated (subd. (a)(6)), as well as dismissal prior to the filing of an answer where no investigation or conciliation had taken place (subd. b). The section also provides for dismissal upon a finding of no probable cause (subd. d) or lack of jurisdiction (subd. c), and for appeal of any dismissal to the chairperson (subd. f).

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#### §8-114 Investigations and Investigative Recordkeeping (new)

This section provides that where the Commission has conducted an investigation it could demand that the person or entity under investigation preserve records in its possession or continue to make the type of records previously made where the records are relevant to a determination of whether discrimination has taken place (subd. b). A person or entity upon whom a demand is made may file objections with the Commission and get a determination in 30 days (subd. c). During the 30-day period, the person or entity upon whom a demand is made would be required to maintain the status quo, i.e., preserve existing records and continue to make records (subd. c). A proceeding may be brought in court to enforce an order relating to records (subd. e) or the Commission may impose administrative sanctions for non-compliance (see §8-118).

# <u>§8-115 Mediation and Conciliation (new)</u>

This section makes explicit the Commission's authority to engage the parties in mediation or conciliation at any time after the filing of a complaint (subd. a). It also provides that a conciliation agreement may be embodied in a consent decree (subd. b). All conciliation agreements shall be embodied in orders and violation of such orders would be subject to a civil penalty (subd. d). Efforts at mediation and conciliation shall not be publicly disclosed (subd. c) but all conciliation agreements shall be made public unless the complainant, respondent and the Commission agree otherwise (subd. d).

#### **§8-116** Determination of Probable Cause (new)

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This provision sets out the procedure to be followed after a finding of probable cause, including notice (subds. a and b) and referral to an administrative law judge (subd. c). It also provides that Commission-initiated complaints shall not require a determination of probable cause.

#### §8-117 Rules of Procedure (new)

This section requires the Commission to adopt rules for hearing and prehearing procedure, including rules for discovery. The rules shall require that the Commission be a party to any proceeding and that the complainant shall be a party only if he or she has formally intervened.

# <u>§8-118 Noncompliance with Discovery Order or Order Relating to</u> <u>Records (new)</u>

To discourage persons under investigation from resisting the Commission's discovery requests, this provision would make express the Commission's authority to impose administrative sanctions upon the resisting party. The section would also authorize the Commission to impose administrative sanctions upon parties who fail to comply with Commission orders to preserve records and/or to continue to make records. After affording the resisting party an opportunity to make objections to an order compelling discovery or relating to records and upon non-compliance with the order, the Commission could sanction that party by drawing adverse inferences, precluding the introduction of evidence or testimony and striking out pleadings.

#### \$8-119 Hearing (new)

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This section describes the essential elements of the hearing process. It is similar to the current law except that it allows an administrative law judge to enter a default if the respondent has failed to file a timely answer without good cause (subd. c). If a default is entered, only the evidence in support of the complaint may be presented at the hearing (<u>id</u>.).

## §8-120 Decision and Order (new)

This section gives the Commission the same broad authority as the existing law to grant injunctive relief and compensatory damages if it finds that a respondent has engaged in any unlawful discriminatory practice. The section gives examples of certain types of remedies but is not designed to be all inclusive. It makes clear the Commission's authority to order front pay, as well as back pay, to compensate victims of employment discrimination. Like back pay, front pay is a "make whole" remedy. Where back pay covers the time between the injury and the date of judgment, front pay offers prospective relief, providing compensation until the victim obtains the position he or she would have earned but for the discrimination. Without the remedy of front pay, the injuries of past discrimination This can occur, for example, in a situation where might continue. rightful promotion cannot take place immediately upon a favorable judgment. Thus, federal courts have found front pay useful under Title VII where reinstatement at the proper level is inappropriate because "the hostility between the parties precludes the possibility of a satisfactory employment relationship." Shore v. Federal Express Corp., 777 F.2d 1115 (6th Cir. 1985). In such cases, front pay can

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be ordered until the plaintiff obtains the appropriate level with his or her new employer. Courts have also used the front pay remedy where the position has already been filled, and promoting the plaintiff would, therefore, require "bumping" an incumbent. Here, front pay can enable the victim of discrimination to draw a rightful wage while awaiting the availability of his or her rightful place. Edwards v. <u>Occidental Chemical Corp.</u>, 892 F.2d 1442 (9th Cir. 1990) (ordering front pay from the date of the judgment until the date of promotion). §8-121 Reopening of Proceeding by Commission (new)

This provision authorizes the Commission to reopen its proceedings or vacate or modify its orders in the interest of justice. \$8-122 Injunction and Temporary Restraining Order

Under the City's current law, after a complaint of housing discrimination has been filed, the Commission is authorized to seek a preliminary injunction to enjoin the respondent from engaging in acts which would render ineffectual a final order of the Commission (e.g. renting the subject housing to another person). The Commission is not similarly authorized with regard to complaints involving other forms of discrimination, and thus, pending the adjudication of such complaints and during the lengthy court review process, respondents will often engage in acts which make meaningless the relief imposed in Commission final orders. This section would broaden the Commission's authority to seek preliminary injunctive relief to include all types of discrimination covered by the City Human Rights Law. It allows the Commission to seek such relief where it is necessary to restrain the respondent or persons acting in concert with the respondent from

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committing acts tending to render ineffectual a remedy that the Commission might impose in a final order.

## <u>§8-123 Judicial Review</u> <u>§8-124 Civil Penalties for Violating Commission Orders (new)</u>

§8-125 Enforcement (new)

Under current law, the provisions relating to judicial review of Commission orders and enforcement of Commission orders are combined in one section. As a consequence, courts have construed these provisions to permit a respondent in an enforcement proceeding to question the evidentiary basis for the issuance of the order which the Commission is seeking to enforce even where he or she had failed to commence a timely proceeding for judicial review of that order. under current law there Also, are no civil penalties for non-compliance with Commission orders. Thus, a respondent who has been found guilty of a violation of the Human Rights Law has no incentive to seek judicial review of, or to comply with, a Commissionordered remedy until the Commission commences an enforcement proceeding.

The proposed new sections separate the procedures for judicial review (§8-123) and the procedures for enforcement of Commission orders (§8-125), and make clear that unless the respondent commences a timely proceeding for judicial review of a Commission order, he or she may not challenge the evidentiary basis for the issuance of the order when the Commission seeks to enforce that order (§8-125 (b)). In addition, civil penalties could be imposed in amounts up to \$50,000 and \$100 per day for non-compliance with Commission orders (§8-124).

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# <u>§8-126 Civil Penalties Imposed by Commission for Unlawful</u> Discriminatory Practices (new)

In addition to its existing authority upon a finding of discrimination to order equitable relief and award compensatory damages to a complainant, this section would give the Commission the power to impose civil penalties to vindicate the public interest. The penalties could be in amounts up to \$50,000, and for willful and wanton conduct, up to \$100,000.

# <u>§8-127 Disposition of Civil Penalties (new)</u>

Civil penalties would be paid into the general fund, except that civil penalties assessed by a court against a city agency for violation of a final order issued by the Commission pursuant to section 8-120 after a finding that the agency has engaged in an unlawful discriminatory practice would be budgeted in a separate account. Monies from the account could be used only for anti-bias education programs or programs to redress discrimination by city agencies.

# <u>§8-128</u> Institution of Actions and Proceedings (new)

This section specifies that actions or proceedings on behalf of the Commission may be instituted by the Corporation Counsel or Commission attorneys designated by the Corporation Counsel or other attorneys designated by the Corporation Counsel.

#### **§8-129** Criminal Penalties

This section is amended to increase the criminal fine for willful violation of final Commission orders from \$500 to \$10,000. <u>\$8-130 Construction</u> This section expresses the legislative intent that the Human Rights Law be liberally construed for the accomplishment of its purposes. The amendment deletes unnecessary and duplicative language.

# <u>Chapter 4 Civil Action to Eliminate Unlawful Discriminatory Practices</u> (new)

### **§8-401** Legislative Declaration

This provision contains an express recognition of the economic, social and moral harm imposed upon the City and its inhabitants by the existence of systemic discrimination.

#### §8-402 Civil Action

This provision expressly authorizes the Corporation Counsel to bring a civil action on behalf of the Commission or the City to eliminate particular instances of systemic discrimination. The relief which may be sought in such action includes injunctive relief and damages (including punitive damages) as well as civil penalties.

#### §8-403 Investigation

This section authorizes the Corporation Counsel to make any investigation necessary for the commencement of the civil action provided for above, and would also allow the issuance of subpoenas to compel the attendance of witnesses or the production of documents.

#### **§8-404 Civil Penalty**

This provision would authorize a court in addition to ordering a defendant found to have engaged in systemic discrimination to pay damages and provide other relief to the City, to impose upon the defendant civil penalties (recoverable by the City) of up to \$250,000.

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# <u>Chapter 5 Civil Action By Persons Aggrieved By Unlawful</u> <u>Discriminatory Practices §8-502 (new)</u>

Under the City's Human Rights Law, claims of discrimination are currently adjudicated through the administrative procedure available at the Commission. An aggrieved person may resort to court only to seek review of the Commission's final decision in the matter. Where the type of discrimination alleged is also prohibited under the State Human Rights Law, an aggrieved person may bring a civil action in State court under that law. The State law, however, does not authorize a court to award costs and attorney's fees to a prevailing party.

In consideration of the policy inherent in the State Human Rights Law that a judicial forum is an appropriate alternative forum for the enforcement of discrimination laws, this chapter would permit aggrieved persons to bring a civil action in court for violation of the City law. Alternatively, aggrieved persons could file a complaint with the Commission, and having chosen one avenue of relief over another, would be deemed to have elected their remedy. §8-502(a). The bill provides generally that the filing of a complaint with the Commission or the State Division of Human Rights would preclude a person from going to court except if the complaint had been dismissed for administrative convenience. §8-502(b). Dismissal by the Commission for administrative convenience could include a dismissal requested by the complainant where 180 days have passed since the filing of a complaint which had not been actively investigated, as well as dismissal prior to the filing of an answer where no investigation or

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conciliation attempts had taken place. <u>See</u> \$8-113(a)(6) and \$8-113(b).

In the civil action proposed by the bill, an aggrieved person could seek equitable relief and any appropriate damages including punitive damages. §8-502(a). In addition, the proposed bill provides for a court, in its discretion, to award costs and reasonable attorney's fees to a prevailing party. §8-502(f).

#### Chapter 6 Discriminatory Harassment (new)

Sometimes discrimination takes the form of threats. harassment or intimidation by persons who are not employers, owners of housing accommodations or persons who operate public accommodations and thus in circumstances not covered by the current City Human Rights Law, which although broad in its scope, prohibits discrimination by certain persons in certain defined contexts, e.g., employment, public accommodations, housing, etc. While harassment based upon discriminatory animus can theoretically be addressed by either criminal prosecution or by a civil action commenced by the victim, these methods are often ineffective.

This new chapter would add provisions derived from similar laws in Massachusetts and California. The chapter would authorize the Corporation Counsel to seek a court order enjoining a person from interfering by threats, intimidation or coercion with an individual's rights secured by any Federal, State and City laws. §8-602(a). A violation of the court order would constitute contempt and be subject to the imposition of civil penalties of up to \$10,000 per day. §8-602(c). Harassment involving force or a threat of force or the

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damaging of property could result in the imposition of civil penalties of up to \$50,000. §8-603.

# Chapter 7 Discriminatory boycotts

This new chapter would require the Commission to begin investigation of a complaint alleging a discriminatory boycott or blacklist within 24 hours after the filing of the complaint and to make reports to the mayor and the council relating to the actions taken to resolve the dispute. If disclosure of any information in such reports would compromise the investigation or mediation or conciliation efforts, such information may be excluded from the report.

#### Bill Section 3

This section calls for the Commission to hold a hearing within 180 days of enactment, and to submit recommendations, if any, to the Mayor and the Council, on whether the City's Human Rights Law should be amended to authorize the Commission to impose reasonable requirements involving generation of records upon persons or classes of persons subject to the law.

The section also requires the Corporation Counsel and the Chairperson of the City Commission on Human Rights to issue a report to the Council within 12 months after the bill's enactment on the operation and results of procedures for effective legal representation of the Commission and enforcement of the City Human Rights Law and prevention of potential conflicts of interest.

# **Bill Section 4 - Effective Date**

The bill would take effect 90 days after its enactment except that the provisions which prohibit discrimination on the basis

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of age in public accommodations will take effect on the effective date of rules to be promulgated by the Commission which set forth exemptions to such provisions based on considerations of public policy. In addition, no action may be commenced in court for violation of the City Human Rights Law until 270 days after the effective date. The bill also specifies which of its provisions apply to complaints filed with the Commission prior to the effective date.

# Exhibit J

# FILED: NEW YORK COUNTY CLERK 04/27/2021 11:15 AM

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INDEX NO. 154010/2021 RECEIVED NYSCEF: 04/27/2021

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

----- X

YU PRIDE ALLIANCE, et al.,

Plaintiffs,

Index No.: 154010/2021

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

# **AFFIDAVIT OF EMMA DOE**

STATE OF NEW YORK ) ) COUNTY OF NEW YORK )

EMMA DOE, being duly sworn, states that the following is true under the penalty of perjury:

ss.:

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 January 2019.

4. There has been no recognized student organization for LGBTQ students during the entirety of my enrollment at YU.

5. Since I arrived at YU, there has been no obvious or official place where I could find an LGBTQ community. The lack of official space made me feel like there would never be a place where I could fully feel comfortable or be myself at YU.

6. Without an official LGBTQ club on campus, I have felt isolated and unsupported by my university. I have been afraid to come out to students and faculty. I have no place to gather with other LGBTQ students to form a community, share our similar experiences, and provide support to each other. I fear that if students and faculty know I am LGBTQ they will feel free to discriminate against me, because Yeshiva University has shown that it does not believe that LGBTQ students need to be treated equally with other students. I also fear that if my supervisor for my on-campus job finds out I am part of the LGBTQ community I will be treated differently or even fired. It is for these reasons that I am submitting this statement to the Court using the name Jane Doe instead of my real name.

## Virtual WhatsApp Chats Are the Only Community Forum for LGBTQ Students

7. I have dedicated significant time to being an unofficial social media manager of LGBTQ students on campus, including by managing the LGBTQ WhatsApp chat groups. These chat groups represent one of the few existing sources of community for LGBTQ students at YU. Students message each other anonymously in these groups using the WhatsApp messaging app. Because there is no official LGBTQ club listing or contact information anywhere on YU's website, students looking for an LGBTQ community come to me first as a well-known affiliate (within the LGBTQ community) of the YU Pride Alliance and LGBTQ social media spaces. Instead of having official welcoming events where we can explain the YU Pride Alliance and campus LGBTQ resources to many students at once, I am the sole person who explains all this

information to each interested student, one by one. I am responsible for adding these students to the appropriate WhatsApp chat group and moderating discussions within those groups.

8. The popularity of the WhatsApp chats show how much an official LGBTQ space is needed at YU. At any given time, I am moderating LGBTQ-related chats for up to 42 people from every class year and of a range of LGBTQ identities. The chats are constantly active with students sharing difficult personal stories and engaging in sensitive conversations, which would be much more easily shared and moderated in person.

9. While helpful to students, WhatsApp is not a substitute for human connection. Students seeking community and support must rely on social media chats with students who they often have never met in person. I am left moderating difficult, heartbreaking, and painful conversations among students I do not know and who do not know each other, since we have not built any relationships beyond chatting on WhatsApp. Without an official club, the students on these chats have little to no access to safe spaces on campus to discuss their struggles as LGBTQ Jewish students or enjoy much-needed community and support in person.

10. These students and I need an official space to safely gather; we need speakers who can relate to our experiences and provide thoughtful reflections on those experiences; and we need to be able to share our existence with the student body so that interested students have multiple available points of contact.

11. In short, having a club on campus is essential to showing LGBTQ students that they belong at YU. It is clear that there is a powerful interest and need for the Alliance as a club. YU's refusal to let us form one tells the students that it views their needs as less important than those of non-LGBTQ students.

# My Path to Joining the YU Pride Alliance

12. I became involved in the LGBTQ community on campus during orientation in January 2019. I was lucky to be sitting at a table with a senior who I recognized from a queer Facebook group. She introduced me to the WhatsApp group for LGBTQ students at YU, which started a just few years before my time. I immediately became involved with the underground LGBTQ community at YU and was a part of many conversations on how we can get a club started, as well as the heartbreaking conversations when the administration let us down time and time again.

13. In the summer of 2020, I became one of the administrators of the main LGBTQ WhatsApp group. In February 2021, I then created a WhatsApp group for LGBTQ undergraduates only, since the other chat had graduates on it as well.

14. I joined the Pride Alliance in the Spring of 2021 when I was selected as a board member.

# <u>September 2020: Yeshiva University Communicates Refusal to Allow LGBTQ Student</u> <u>Clubs</u>

15. On September 3, 2020, Yeshiva University administrators sent a statement to the entire YU community, titled "Fostering an Inclusive Community," that denied the application of the YU Pride Alliance to form a club.

16. Even though I was not yet a member of the Pride Alliance, YU's public denial of the club again showed me and the rest of the LGBTQ community that YU does not care for us nor do they want us as a part of their school. This news was beyond hurtful, especially because YU really prides itself on being a place of community and family. Being a part of the YU community is such a big thing in the Jewish community and opens many doors for students in their personal and professional lives. This rejection from YU pushes LGBTQ students out of

that YU community and family. I and other members of the LGBTQ WhatsApp chats did not feel like YU's message of "inclusivity" actually wanted us to feel welcome. Instead, it told us that that YU is willing to do whatever it can to try to maintain a good image while hurting me and the rest of the LGBTQ community at YU.

## Effect of Yeshiva University's Denial of the YU Pride Alliance

17. Because YU refuses to approve an official LGBTQ club, I have had to seek out and sometimes host informal meetings and activities for support and community of LGBTQ students. As a main WhatsApp administrator and moderator, I have had the extra responsibility of actively seeking out and publicizing LGBTQ events through the WhatsApp groups 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 both the club and add them to the WhatsApp group 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.

## No Approval Forthcoming

18. On or around February 15, 2021, a YU Pride Alliance board member asked me to attend a meeting with Dean Nissel and YU rabbis to discuss our experiences of being LGBTQ students on campus.

19. My meeting with Dean Nissel left me deeply frustrated and discouraged. I spoke about the need for LGBTQ students to have space and resources to form a supportive community, and how students are harmed by not having these things. I felt that Dean Nissel did not take the harms to LGBTQ students seriously and did not show any willingness to approve an official LGBTQ club.

20. Based on Yeshiva University's September 3, 2020 email prohibiting official LGBTQ student clubs, other board members' previous negative experiences with the YU administration, and my February 15, 2021 meeting with Dean Nissel, I firmly believe that any further applications for the YU Pride Alliance to receive official student club status will be rejected or blocked by the university.

# Harm to Me and Other LGBTQ Students

21. My efforts to provide virtual spaces for the LGBTQ community and ensure vulnerable LGBTQ students have a place to go while the YU Pride Alliance and its allies work to become an official club has consumed a great deal of my time as a student at YU. Because I have spent 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, attending other events that interest me, engaging in my hobbies, and building and maintaining relationships with my friends and family.

22. I am exhausted from being a main point of contact for students who are looking for a safe space at YU to discuss their LGBTQ identities and LGBTQ issues. While I am glad to provide them with resources, I am tired of the mental and emotional toll of being the one person who is always available to direct interested students to LGBTQ campus resources.

#### **Urgency of Requests**

23. LGBTQ students have spent years trying to negotiate and work with the YU administration to gain recognition of our student club. My work to gain recognition for the YU Pride Alliance is only the latest chapter in this years-long effort. But the club is no closer today than we were two years ago. Each semester that passes, another group of LGBTQ students and their allies are deprived of the benefits of the club. I am afraid of what kind of community the

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students will be left with when I graduate and can no longer moderate the WhatsApp group. We

ask the Court to order YU to follow the law and allow our club to exist on campus.

Emma Doe (Apr 26, 2021 16:13 EDT)

EMMA DOE

Sworn to before me this <u>26th</u>day of April, 2021

NOTARY PUBLIC

AVANIKA SHARDA NOTARY PUBLIC-STATE OF NEW YORK No. 01SH6365179 Qualified in Kings County My Commission Expires 10-02-2021

R. App. 1153