

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

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YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

**PLAINTIFFS YU PRIDE ALLIANCE AND JOHN DOE’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

Yeshiva University (“YU”) has privately acknowledged for decades that it cannot legally discriminate against LGBTQ¹ student groups: “[YU] is subject to the human rights ordinance of the City of New York *Under this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does to other student groups,*” the University wrote in a 1995 Fact Sheet titled “Gay Student Organizations.” Ex. 1 (1995 Fact Sheet) at 2 (emphasis added)²; see Weinreich Aff. ¶ 19. YU’s legal analysis is as correct today as it was in 1995, when it received this advice from its lawyers. It is bound by the New York City Human Rights Law (“NYCHRL”), just like any other university in the City. YU chose to register as a nonsectarian corporation fifty years ago—notwithstanding its historical affiliation with Judaism—in order to benefit from government funding that was and is unavailable to entities organized as religious corporations. Because it is now a legally non-sectarian institution, YU knows it has “no credible legal argument” to discriminate against LGBTQ student groups. Ex. 1 at 3.

No matter. YU refuses to recognize LGBTQ student organizations on its campus today. On three occasions in 2019 and 2020, YU denied official university recognition to an undergraduate student organization seeking to form an LGBTQ student club, only because of the group’s LGBTQ status, membership and mission of fostering a safe and inclusive community for LGBTQ students. YU will not allow a student club with the term “LGBT” or “gay” in the title, Dean of Students Chaim Nissel told students in February 2019. There will not be a club, the

¹ LGBTQ refers to people who are lesbian, gay bisexual, trans, queer, or have other non-cisgender or non-heterosexual identities. *What is LGBTQ*, The Lesbian, Gay, Bisexual & Transgender Community Center, <https://gaycenter.org/about/lgbtq/>.

² All references to “Ex.” refer to the Exhibits attached to the Declaration of Katherine Rosenfeld dated April 26, 2021.

administration announced in September 2020, because it would “cloud” the university’s “nuanced” position on the treatment of LGBTQ students.

Plaintiffs YU Pride Alliance (the “Alliance”), the unofficial LGBTQ student group at YU, and John Doe, a current LGBTQ student, move for a preliminary injunction enjoining Defendants from continuing to deny the Alliance official recognition and the same treatment YU gives to over 100 recognized student groups.

Plaintiffs easily meet all three requirements for a preliminary injunction. *First*, their NYCHRL public accommodations discrimination claim will succeed on the merits, as Defendants’ own counsel admitted in 1995. Defendants have denied the Alliance recognition and equal access to school facilities, funding, and other benefits YU provides to its 116 recognized student groups *because* of Alliance members’ sexual orientation and gender and the LGBTQ content of its mission and activities.

Second, the Alliance and its student members will be irreparably harmed absent a preliminary injunction. Without an injunction, the Alliance may wait years for recognition while this case proceeds, by which time many if not all of its current members will have graduated. Numerous courts have held that denying LGBTQ student groups equal access to school facilities satisfies the irreparable harm requirement. Plaintiffs’ expert, Professor Jason Garvey, has marshaled empirical evidence showing the concrete harms exacted when universities refuse to recognize LGBTQ student groups. Alliance members illustrate the irreparable harm best: “[YU] has shown that it does not believe that LGBTQ students need to be treated equally.” Emma Doe Aff. ¶ 6. “Mental illness and distress are prevalent among LGBTQ students at YU because they feel totally alone.” Jane Doe Aff. ¶ 8.

Third, the balance of the equities overwhelmingly favors Plaintiffs. Defendants suffer no harm at all by complying with the law to treat the Alliance the same as all other recognized student groups, but Plaintiffs will continue to suffer the discrimination, denial of access and opportunities in their college experiences, dignitary harms, and injuries to their well-being that result from YU's decision to bar a student club for LGBTQ students.

FACTS

Parties

Plaintiff Alliance is “an unofficial group of undergraduate YU students who seek to create a formal student club that will provide a supportive space on campus for all students, of all sexual orientations and gender identities, to feel respected, visible, and represented,” and “foster awareness and sensitivity to the unique experiences of being a LGBTQ+ person in YU and the Orthodox community.”³ Ex. 2 (Mission Statement). It has a President, Vice President, and eight-member board. Jane Doe Aff. ¶ 13.

Plaintiff John Doe⁴ is a current YU student and Alliance board member who identifies as LGBTQ. John Doe Aff. ¶¶ 1, 25. He would like to belong to a recognized club. “Without the funding and resources available to an official club, I have little to no access to safe spaces on campus to discuss my experiences as an LGBTQ Jewish student or seek community and support in person.” *Id.* ¶ 18. Official recognition “will allow the [Alliance] to bring in speakers who can relate to my experiences and provide thoughtful reflections on those experiences.” *Id.* ¶ 19.

³ The Alliance seeks to build a supportive community for both LGBTQ students and their allies. Throughout this brief, the term “LGBTQ students” refers to both LGBTQ students and their allies.

⁴ Throughout this brief, Plaintiff Anonymous is John Doe.

Plaintiffs Meisels, Miller and Weinreich are former Alliance members and/or recent graduates who were involved in rejected efforts to gain official recognition for an LGBTQ student club. Meisels Aff. ¶¶ 2, 17-44; Miller Aff. ¶¶ 2, 13-28; Weinreich Aff. ¶¶ 2, 14-33.

Defendant YU is a private, nonsectarian university that “integrates the knowledge of Western civilization and the rich treasures of Jewish culture.” YU, *Our History*, <https://www.yu.edu/about/history>. It offers undergraduate students a dual curriculum of academic study and Jewish studies. Defendant Ari Berman is YU’s President. Defendant Chaim Nissel is YU’s Vice Provost of Student Affairs and former Dean of Students.

The Urgent Need for the YU Pride Alliance

Over the years, YU’s LGBTQ students have repeatedly attempted to form a student club. Compl. ¶ 38. Students reinvigorated these efforts in 2018, seeking to create an organization where LGBTQ students could meet on campus, share experiences, socialize, create community, host speakers and events on topics of interest to their members, and support each other. Miller Aff. ¶¶ 13-15; Jane Doe Aff. ¶ 49. Just as the Sephardic Club exists as an affinity group for students with a Sephardic identity, LGBTQ students wanted the same. Miller Aff. ¶ 11. Professor Jason Garvey, an expert on the campus experiences of LGBTQ collegians, explains that the benefits of such organizations for LGBTQ students are enormous. Garvey Report § III.f

The environment at YU is not an easy one for LGBTQ students. The main form of existing community for students today is a WhatsApp chat group. Emma Doe Aff. ¶¶ 7-11. That is not enough. “YU has put a barrier that is preventing the students from easily meeting others who are similarly struggling and could show them that they are not alone.” *Id.* ¶ 11. YU’s unequal treatment fuels an unhealthy campus climate. “Students feel emboldened to tell me and other LGBTQ students that we do not have any rights on campus and should leave YU.” John Doe Aff. ¶ 18. “I could never ‘just’ be a student of [YU]. I always had to fight for my right

to have a community like my fellow students.” Meisels Aff. ¶ 8. Club recognition would be an important step for the quality of students’ experience.

Club Recognition’s Significant Benefits

Official recognition confers significant material and dignitary benefits, which YU has denied the Alliance and its members. YU’s recognized student groups, among other tangible benefits, can use classrooms and campus facilities to host meetings and events; bring speakers of their choice to campus; use bulletin boards, email listservs, and the student event calendar to promote activities; receive funding from student councils; are listed on YU’s club list; and have access to YU’s premium Zoom account during the pandemic. Jane Doe Aff. ¶¶ 35-42 (reviewing benefits of club recognition); Ex. 12 (Beren Student Council Constitution) art. IX §§ I(A)(vii) III(A)(vii), & V(A)(ix) (describing clubs’ funding); Ex. 13 (Wilf Student Council Constitution) art. III § 5 (same).

Together, these material benefits add up to the right to participate on campus. YU’s Undergraduate Student Bill of Rights gives every student this right: “Students who are otherwise qualified have the right to participate fully in the University community without discrimination as defined by federal, state, and local law” and to “be treated fairly with respect and dignity at all times,” including to “organize and join clubs and participate in events *in all cases* in accordance with applicable rules and procedures.”⁵ By denying the Alliance recognition and violating its own Bill of Rights, YU sends a clear message that LGBTQ students are unworthy of equality and dignity on campus.

⁵ YU Undergraduate Student Bill of Rights and Responsibilities, https://www.yu.edu/sites/default/files/legacy/uploadedFiles/Student_Life/Resources_and_Services/Standards_and_Policies/Updated%20Bill%20of%20Rights%2011.29.12.pdf (emphasis added).

Winter 2019 – Fall 2020: Defendants Deny LGBTQ Student Groups Recognition Three Times

The Alliance’s organizers have applied for official recognition three times in the past two years alone. Defendants have rejected each request, even though their applications met all procedural requirements. Defendants have sometimes danced around their plain discriminatory intent by avoiding explicit statements denying the club recognition. But on each application, Defendants unmistakably denied the club recognition and made statements confirming their discriminatory purpose.

In February 2019, YU overruled the Student Council Presidents’ approval of the Gay-Straight Alliance (“GSA”), an Alliance predecessor. Miller Aff. ¶ 17. That same month, Dean Nissel had told Miller that the school would not permit a student club with the terms “LGBT” or “gay” in the title. *Id.* ¶ 16. The Office of Student Life (“OSL”) told Miller that a club addressing tolerance in general on campus would be allowed, but a club specifically addressing LGBTQ inclusion would not. *Id.* ¶ 19.

In January 2020, the Alliance applied for club recognition. It met all the prerequisites, including a mission statement, 25 student signatures, and faculty advisor signature. Ex. 3 (Jan. 2020 Club Application); *see* Meisels Aff. ¶¶ 25-27. But on February 9, four days after meeting with YU administrators to discuss the club’s recognition, the Student Council Presidents, whom the administration designates to process student club requests, abstained from voting on recognition for the Alliance because “[t]he decision about a club focusing on LGBTQ matters at [YU] is too complex and nuanced to be voted on by Student Council Presidents. We are not administrators” Ex. 4 (Feb. 9, 2020 Abstention Letter). The unprecedented abstention left the club recognition decision in Defendants’ hands, but they refused to act, denying the Club recognition. Meisels Aff. ¶¶ 34-38; Jane Doe Aff. ¶¶ 20-21. The Alliance was not granted recognition throughout spring 2020. Jane Doe Aff. ¶ 22.

In September 2020, the Alliance applied again for recognition and again met all the prerequisites. *Id.* ¶ 24; Ex. 5 (Fall 2020 Application). On September 3, 2020, YU sent a statement to the entire YU community that feigned goals of inclusivity but nonetheless denied the Alliance recognition: “forming a new [LGBTQ] club as requested under the auspices of YU will cloud” the school’s “nuanced” position about full acceptance for its LGBTQ students because of “timeless prescriptions” in the Torah that are in tension with “accepting each individual.” Ex. 6 (“Fostering an Inclusive Community”); *see* Meisels Aff. ¶¶ 41-42. The statement suggested the students instead “socialize in gatherings as they fit” without the benefits of club recognition. *Id.* On information and belief, President Berman approved this statement. Compl. ¶ 103. The Alliance was not granted recognition throughout fall 2020. Jane Doe Aff. ¶¶ 28-34.

Winter 2020: Defendants Admit They Will Not Recognize the Alliance

In December 2020, Dean Nissel, responding to a student’s internal Title IX complaint on this issue, wrote that “Yeshiva’s decision to not approve the YU Alliance student group on its undergraduate campuses . . . due to its religious tenets and foundations is a permitted determination.” Ex. 7 (Dec. 9, 2020 Nissel Letter) at 1.

Unproductive and Demeaning Meetings

Alliance members have met many times with Berman, Nissel, and other YU administrators over the last two years seeking official recognition. The students entered these discussions in earnest. YU dodged questions about why it will not recognize the club and belittled the students’ requests for equal rights.

- December 2019: YU Vice President Josh Joseph told Alliance members (incorrectly) that no faith-based institutions in the United States have LGBTQ

clubs. Meisels Aff. ¶ 23. The City’s two major Jesuit universities, Fordham and St. John’s, both have undergraduate LGBTQ student groups.⁶

- February 2020: Dean Nissel and Vice President Joseph suggested the Alliance’s advocates were opposed to Judaism and the Torah and refused to answer questions about if or when they would approve the club. Weinreich Aff. ¶ 26.
- September 2020: A University Dean, parroting the wording of the “Fostering an Inclusive Community” statement, told a student who asked why YU refused to recognize the Alliance that recognition would “cloud the issues being considered.” Jane Doe Aff. ¶ 32.⁷

YU Pressures Plaintiffs to Join a non-LGBTQ Affinity Group Instead

Administrators have repeatedly pressed Plaintiffs to join the “Jewish Activism Club” instead of forming an LGBTQ affinity group, claiming that this club would “provide the space you are hoping to create.” Ex. 14 (Feb. 14, 2019 Email); *see* Miller Aff. ¶ 18. Denying a discrimination complaint filed by Weinreich, YU wrote that the Jewish Activism Club’s use of the word “LGBTQ” in its mission statement shows that YU does not discriminate on the basis of sexual orientation. Weinreich Aff. ¶ 31.

The Jewish Activism Club is not a substitute for the Alliance. Its purpose is to advocate on social issues important to marginalized communities, such as people of color, women, and LGBTQ people. Herszage Aff. ¶ 3. Crucially, it does not share the Alliance’s core mission to

⁶ Fordham Univ., *Pride and Rainbow*, https://www.fordham.edu/info/20913/lgbtq_resources/1729/pride_and_rainbow; St. John’s Univ., *Spectrum*, <https://www.stjohns.edu/life-st-johns/new-york-city-your-campus/queens-campus-life/spectrum>.

⁷ Miller had a similarly unproductive meeting with President Berman in April 2019. Miller Aff. ¶ 20.

provide a supportive community for students of all sexual orientations and gender identities. *Id.* ¶¶ 5-6.

The Alliance's Fight for Existence

YU's years of denying the club has left the Alliance has been unable to operate as an equal student club. It may not hold meetings on campus; students must travel off-campus for meetings. It cannot choose panels and speakers on issues of its choice. It receives no funding and has had to fundraise from outside sources. During the pandemic, it did not have a premium Zoom account from YU like all other student groups. It is not listed on YU's student group list. It is not invited to the annual club fairs for new students. Jane Doe Aff. ¶¶ 35-42. And intangibly, each day, the message from YU to the students is reinforced: you are not welcome, you do not belong here. YU can issue statements that it affirms tolerance, but its actions tell a different story.

On the other hand, if the student group was recognized, the Alliance would host “an official campus welcoming event; several LGBTQ-related speaker events; book club meetings to discuss books with LGBTQ relevant themes”—the list goes on. *Id.* ¶ 49; Meisels Aff. ¶¶ 38-39. These opportunities would meaningfully improve the experience of being an LGBTQ student at YU: “[H]aving a club on campus is essential to showing LGBTQ students that they belong at YU.” Emma Doe Aff. ¶ 12. “If a club existed, I would not have had to push myself so hard mentally and physically just for a space on campus to be myself.” Meisels Aff. ¶ 8.

ARGUMENT

Plaintiffs YU Pride Alliance and John Doe move for a preliminary injunction on their First Cause of Action, discrimination based on sexual orientation and gender in violation of New York City Administrative Code § 8-107(4). *See* Compl. ¶¶ 142-45. Plaintiffs seek to restrain

Defendants from continuing their unlawful refusal to officially recognize the Alliance and grant it the same benefits YU gives to all recognized student groups.

The Court should grant a preliminary injunction when the moving party shows (1) a likelihood of success on the merits, (2) irreparable injury absent granting the preliminary injunction, and (3) a balancing of the equities in the movant's favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990). Plaintiffs meet all three requirements.

I. PLAINTIFFS HAVE SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

A. YU Admits the NYCHRL Requires It to Recognize LGBTQ Student Groups

In 1995, YU's Department of Public Relations distributed a four-page "Fact Sheet About Gay Student Organizations at Yeshiva University" in which it unequivocally acknowledged that the NYCHRL requires it to recognize LGBTQ student groups: "Yeshiva University is subject to the human rights ordinance of the City of New York, which provides protected status to homosexuals. *Under this law, YU cannot ban gay student clubs. It must make facilities available to them in the same manner as it does to other student groups.*" Ex. 1 at 2 (emphasis added). YU reached this conclusion after an "exhaustive review of the ordinance and applicable case law" by "YU's General Counsel and Weil Gotshal & Manges, special counsel engaged to review this issue." *Id.* at 3. YU since acknowledged to the New York Court of Appeals that it must comply with the NYCHRL. *Levin v. Yeshiva Univ.*, 96 N.Y.2d 484, 491 (2001) ("Yeshiva concedes that it is subject to the City Human Rights Law.").

This 1995 Fact Sheet did not mince words about YU's view of its LGBTQ students. "YU does not approve of homosexual conduct," it explained, citing then-YU President Norman Lamm's "considered repudiation of homosexual conduct as utterly immoral." Ex. 1 at 2-3. But even so, President Lamm knew that "as president of a nondenominational institution that must accommodate people who reflect a wide range of backgrounds and beliefs, it is my duty to assure

that the policies and procedures of Yeshiva University conform to the applicable provisions of non-sectarian law, even in the rare instances in which these may offend my own religious beliefs and personal convictions.” *Id.* at 3. President Lamm’s legal analysis is correct. The NYCHRL requires YU to recognize the Alliance. The University cannot claim a religious exemption from the law because it is incorporated as a nondenominational institution. And it has no defense based on the free exercise of religion because the NYCHRL is a valid and neutral law of general applicability.

Twenty-six years later, YU has discarded its own accurate legal analysis in service of its institutional intolerance.

B. YU Is Correct: Its Refusal to Recognize the YU Pride Alliance Violates the NYCHRL

The NYCHRL makes it an “unlawful discriminatory practice” to deny equal access to “any of the accommodations, advantages, facilities, or privileges of a place or provider of public accommodations” based on a person’s sexual orientation or gender. N.Y.C. Admin. Code § 8-107(4)(1)(a). This provision must be given a “liberal construction in all circumstances” to fulfill the law’s “uniquely broad and remedial purposes.” *Bennett v. Health Mgmt. Sys., Inc.*, 92 A.D.3d 29, 34 (1st Dep’t 2011) (cleaned up). YU’s refusal to officially recognize the Alliance because of its members’ sexual orientation and gender and the LGBTQ content of its mission has deprived Plaintiffs of numerous “accommodations,” “advantages,” “facilities,” and “privileges” given to YU’s 116 recognized student organizations. *See* N.Y.C. Admin. Code § 8-107(4)(1)(a).

1. The Alliance Has Standing

In addition to Plaintiff John Doe, who as a current student seeking to join the Alliance has standing to seek relief, the Alliance has standing as an organization. An organization has “standing in its own right to seek judicial relief from injury to itself and to vindicate whatever

rights and immunities the association itself may enjoy.” *Mental Hygiene Legal Serv. v. Daniels*, 33 N.Y.3d 44, 51 (2019) (cleaned up). The Alliance is an “organization,” making it a “person” protected from public accommodations discrimination by the NYCHRL. N.Y.C. Admin. Code § 8-107(4)(1)(a) (prohibiting discrimination against any “person”); *id.* § 8-102 (defining “person” to include “organizations”).

Because it is protected by the NYCHRL, the Alliance, “just like an individual[,] must show that it has suffered an ‘injury in fact’” that is fairly traceable to Defendants’ conduct and redressable by a favorable decision. *Mental Hygiene Legal Serv.*, 33 N.Y.3d at 51.

The Alliance satisfies these standing requirements. Its inability to meet and host events on campus, promote events on campus, access funding available to recognized groups, and appear on the club list are “concrete and demonstrable injuries” beyond its “abstract social interests.” *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (impairment to housing organization’s “ability to provide counseling and referral services for low-and moderate-income homeseekers” satisfies injury-in-fact requirement). Without these resources, the Alliance has been forced to organize groups on social media where “students who do not know each other” have “difficult, heartbreaking, and painful conversations” that “would be much more easily shared and moderated in person.” *Emma Doe Aff.* ¶¶ 9-11; *see also Meisels Aff.* ¶ 38 (“If we [were] a recognized student club . . . we would have hosted pizza meet-and-greets on campus [and] would have invited speakers to campus talking about being Jewish and queer.”).

Defendants caused these injuries by refusing to recognize the Alliance, and those injuries would be redressed by the relief the Alliance seeks—an injunction restraining Defendants from continuing to unlawfully deny it official recognition. Accordingly, the Alliance has standing to bring its public accommodations claim under the NYCHRL.

2. YU Is a “Place or Provider of Public Accommodation” Under the NYCHRL

The NYCHRL defines a “place or provider of public accommodation” expansively to include any “place or provider” that “extend[s]” or “offer[s]” access to “goods, services, facilities, accommodations, advantages, or privileges of any kind.” N.Y.C. Admin. Code § 8-102. A private, nonsectarian university like YU meets this definition. *See Novio v. N.Y. Acad. of Art*, 286 F. Supp. 3d 566, 583 (S.D.N.Y. 2017) (graduate school is a place of public accommodation under the NYCHRL); *Bahl v. N.Y. College of Osteopathic Medicine of N.Y. Institute of Tech.*, No. 14 Civ. 4020, 2015 WL 4603210, at *9-10 (E.D.N.Y. July 28, 2015) (same). Indeed, the numerous benefits of official recognition that YU has denied the Alliance—meeting space, bulletin board access, funding opportunities, and club lists, among others—are paradigmatic examples of “services,” “facilities,” “advantages,” “privileges,” and “accommodations” under the NYCHRL. *See Jane Doe Aff.* ¶¶ 35-42; N.Y.C. Admin. Code § 8-102; *Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1 (D.C. 1987) (Georgetown, a Jesuit university, cannot deny LGBTQ student group equal access to outreach mechanisms, funding opportunities, and other benefits of student group recognition because these are “facilities and services” under D.C. Human Rights Law).

3. The Individual Defendants Are Subject to the NYCHRL

The NYCHRL prohibits any “owner . . . superintendent, agent, or employee of any place or provider of public accommodation” from denying equal access to public accommodations based on a protected characteristic. N.Y.C. Admin. Code § 8-107(4). Berman and Nissel are both YU employees.

4. Defendants Refuse to Recognize the Alliance Because of Sexual Orientation and Gender

Defendants communicated their discriminatory purpose all three times they rejected Plaintiffs' applications to form an LGBTQ affinity group at YU.⁸

- February 2019 Rejection of GSA: That month, Dean Nissel told Miller that the school would not permit a club with the words "LGBT" or "gay" in the title, and the OSL told Miller the school would not allow a club focused on LGBTQ inclusion. Miller Aff. ¶¶ 16-19.
- February 2020 Rejection of the Alliance: After the Student Council Presidents (understandably) placed the decision about permitting or denying a "club focusing on LGBTQ matters" in Defendants' hands, Defendants refused to respond to the Alliance's requests for recognition and did not recognize the club that semester. Ex. 8 (Feb. 11, 2020 Email); *see* Meisels Aff. ¶¶ 31-37.
- September 2020 Rejection of the Alliance: YU's September 2020 public letter rejecting the club's fall 2020 application for recognition stated that "forming a new [LGBTQ] club as requested under the auspices of YU will cloud" the school's "nuanced" position about full acceptance for its LGBTQ students. Ex. 6.

Dean Nissel laid YU's rejection of the Alliance bare in December 2020: "Yeshiva's decision to not approve the YU Alliance student group on its undergraduate campuses . . . due to its religious tenets and foundations is a permitted determination." Ex. 7 at 1.

⁸ Discrimination against LGBTQ people and groups constitutes sexual orientation and gender discrimination under the NYCHRL. The law defines "sexual orientation" to include "actual or perceived romantic, physical or sexual attraction to other persons . . . on the basis of gender," and "gender" to include "actual or perceived sex, gender identity and gender expression . . . regardless of the sex assigned to that person at birth." N.Y.C. Admin. Code § 8-102.

YU's insistence that the students join the Jewish Activism Club instead of the Alliance seals the point. YU claims its recognition of the club, which focuses on a range of social justice issues, proves YU's absence of discrimination. Weinreich Aff. ¶ 28. The University has this backwards. It proves that YU's discrimination is targeted directly against an LGBTQ affinity group and its LGBTQ members.

C. YU Is Not Exempt from the NYCHRL on Any Ground

As its lawyers advised YU in 1995, and as remains equally true today, YU cannot claim a religious exemption to evade compliance with the NYCHRL.

1. By Registering as a Nonsectarian Corporation, YU Chose Not to Exempt Itself from the NYCHRL

YU is not entitled to NYCHRL's exemption from the definition of "place or provider of public accommodation" for a "religious corporation incorporated under the education law or the religious corporation law," N.Y.C. Admin. Code § 8-102, because it is not a religious corporation. YU incorporated as a non-sectarian institution in December 1969, when it amended its Charter to end its incorporation as a religious corporation and become "an educational corporation under the Education Law of the State of New York." Ex. 9 (Dec. 1969 YU Charter Amendment) ¶ 1. At the same time, YU separated its yeshiva (Jewish seminary) into a distinct entity, the Rabbi Isaac Elchanan Theological Seminary ("REITS"). Ex. 10 (Jan. 1970 YU Charter Amendment); Ex. 11 (Feb. 1970 REITS Charter).

YU has maintained its legal status as a non-sectarian institution ever since, a conscious choice motivated by its desire to receive public funds that other private research universities receive. Yeshiva University, *Consolidated Financial Statements: June 30, 2020 and 2019*, at 6 ("YU Financial Statement"), https://www.yu.edu/sites/default/files/inline-files/USDP-0195928%20Yeshiva%20University%2012.23.20_FINAL_1.pdf; Michael J. Brovide, *The*

Ghosts Have Become Alive, YESHIVA UNIV. COMMENTATOR, May 10, 2020 (discussing YU’s continued incorporation “as a non-sectarian institution as a matter of law, mostly to allow them to remain eligible for financial assistance provided by the state and national government”). YU has reaped many governmental financial benefits because of its legal status as a nonsectarian institution.⁹ “The University derives its revenues principally from student tuition and fees, government appropriations, contributions, and investment earnings.” YU Financial Statement at 6.

YU knows full well that its incorporation as a nonsectarian institution means it is not exempt from the NYCHRL’s definition of a “place or provider of public accommodations.” The 1995 Fact Sheet where YU acknowledged that the NYCHRL required it to treat LGBTQ student groups equally also explained that YU’s attorneys “*firmly* believe that YU would not qualify for a religious exemption, based on its charter and its actions over the course of decades, including representations that have been made concerning the University’s *legal status as a nondenominational institution.*” Ex. 1 at 3 (emphasis added). Nothing material about YU’s legal status has changed since then. It is still incorporated as a non-sectarian institution and is still not exempt from the NYCHRL’s definition of a “place or provider of public accommodations.”

⁹ For example, YU has received hundreds of millions of dollars in tax-exempt bonds from the Dormitory Authority of the State of New York (“DASNY”), including \$90 million in bond financing in 2011. See \$90,000,000: DASNY, Yeshiva University Revenue Bonds (Sept. 21, 2011) (“DASNY Bond Report”), https://www.dasny.org/sites/default/files/inline-files/Yeshiva_University%20Final_OS.pdf. Presumably because the New York State Constitution prohibits public funding of religious educational institutions, N.Y. CONST. art. IX, § 3, access to DASNY bonds comes with “Restrictions on Religious Use,” specifically that the funds “shall not be used for sectarian religious instruction or in connection with a school or department of divinity for any religious denomination,” DASNY Bond Report, *supra*, at C-8 (cleaned up).

2. YU Cannot Claim a “Religious Principles” Exemption

YU also does not qualify for the NYCHRL’s narrow “religious principles” exemption, which provides that a religious institution or affiliated organization may “limit[] employment or sales or rentals of housing accommodations or admissions to or giv[e] preference to persons of the same religion or denomination . . . to promote the religious principles for which it is established or maintained.” N.Y.C. Admin. Code § 8-107(12).

By its plain language, this provision applies only to certain religious organizations giving preference to people with shared religious affiliations in “employment,” “housing,” and “admission” decisions. *Id.*

The New York Court of Appeals, construing the New York State Human Rights Law’s (“NYSHRL”) nearly identical exemption, called it a “narrow exception for preference in employment, housing, and admissions in order to promote the religious principles of such institutions.” *Scheiber v. St. John’s Univ.*, 84 N.Y.2d 120, 126 (1994) (cleaned up); *accord Logan v. Salvation Army*, 809 N.Y.S.2d 846, 849 (Sup. Ct. N.Y. Cnty. 2005) (NYCHRL’s “limited exemption” does not apply in workplace harassment claim based on sexual orientation).

YU’s denial of recognition and equal benefits to an LGBTQ student organization is not a preference to persons of a particular denomination in a housing, employment, or admissions decision, to which the limited exemption applies—even if YU’s incorporation as a nondenominational institution would not bar it from availing itself of the exemption to begin with. That ends the inquiry.

D. The Alliance Is Entitled to Injunctive Relief

The NYCHRL expressly permits individuals aggrieved by an unlawful discriminatory practice under § 8-107 to pursue “injunctive relief and such other remedies as may be appropriate.” N.Y.C. Admin. Code § 8-502(a).

The injunctive relief envisioned by the NYCHRL is broad. The “law anticipates the vigilant enforcement of rights thereunder and explicitly states that ‘any person claiming to be aggrieved by an unlawful discriminatory practice as defined in [§ 8-107]’ shall have a cause of action in any court of competent jurisdiction for injunctive relief.” *Wilson v. Phoenix House*, 42 Misc. 3d 677, 708 (Sup. Ct. Kings Cnty. 2013) (quoting N.Y.C. Admin. Code § 8-502). Injunctive relief advances the NYCHRL's strong purpose to root out “prejudice, intolerance, bigotry, discrimination, sexual harassment and bias-related violence or harassment in any form.” N.Y.C. Admin. Code § 8-101; *see also Wilson*, 42 Misc. 3d at 707. Accordingly, injunctive relief “should be crafted to prevent future violations and remove the lingering effects of past discrimination.” *Short v. Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375, 402 (S.D.N.Y. 2012) (adopting injunction requiring defendants to follow the law and to implement anti-discrimination policies and training).

The injunctive relief Plaintiffs seek serves these core purposes. Recognizing the Alliance and granting it the same benefits as other recognized student groups puts an end to Defendants’ ongoing violation of the NYCHRL and alleviates the lingering stigma placed on Alliance members as a result of Defendants’ years-long unlawful refusal to recognize the club.

E. Defendants Have No Free Exercise Defense

“[T]he right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’” *Catholic Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 521 (2006) (quoting *Emp. Div., Dep’t of Human Res. of Ore. v. Smith*, 494 U.S. 872, 879 (1990)). There can be no dispute that the NYCHRL is a valid and neutral law of general of applicability that Defendants must follow even if it has the “incidental effect” of burdening their religious exercise. *Id.* at 522 (cleaned up). Indeed, the Third

Department has already held that the NYSHRL, the NYCRHL's statewide counterpart, is a valid and neutral law of general applicability because it does not "target[] religious beliefs" and its objective is not to "infringe upon or restrict practices because of religious motivation." *Gifford v. McCarthy*, 137 A.D.3d 30, 39 (3d Dep't 2016) (cleaned up) (wedding venue owners cannot refuse to host same-sex wedding despite religious objection). Defendants cannot cloak their unlawful discrimination in the guise of free exercise.

In fact, recognizing the Alliance does not burden Defendants' religious exercise at all. It is well established that permitting a club to exist on equal terms with other student clubs does not imply the institution's endorsement of the club's mission, convey a message that the club's beliefs are favored, or indicate school support for the club's message. *See, e.g., Bd. of Educ. of Westside Cmty. Schs. v. Mergens By and Through Mergens*, 496 U.S. 226, 250 (1990) ("We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis."); *Widmar v. Vincent*, 454 U.S. 263, 274 (1981) ("An open forum in a public university [with over 100 student groups] does not confer any imprimatur of state approval. Such a policy would no more commit the University to religious goals than it is now committed to the goals of the Students for a Democratic Society, Young Socialist Alliance or any other group eligible to use its facilities." (cleaned up)).

That is precisely the case here. Club recognition allows students to organize on campus and access certain resources to advance *their own* interests, not those of YU or its administrators. YU's website describing its "Student Clubs and Organizations" acknowledges this—the University's "numerous clubs offer programs and events indicative of the vast interests of the students." YU, *Student Clubs and Organizations*, <https://www.yu.edu/student-life/student->

organizations (emphasis added). Indeed, YU's 116 recognized student groups organize around interests and identities as diverse as poetry and private equity, video games and the outdoors, and College Democrats and College Republicans. YU Club List Fall 2020, https://docs.google.com/spreadsheets/d/1N_Jao6nYxFBOYSvGMpy8awSmho6SZWAWPIUgv7amcQM/edit?_ga=2.92446173.115941488.1619301732-1212899715.1617635385#gid=0. No one reading YU's club list would think it endorses or takes any view on these organizations' conduct or message. How could it? The College Democrats and Republicans have diametrically opposed political missions, yet YU recognizes both.¹⁰ As YU acknowledged, "[t]he New York City ordinance states explicitly that institutions acting in compliance with the law are not thereby endorsing homosexual behavior or organizations involved with gay issues." Ex. 1 at 2.

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY ABSENT A PRELIMINARY INJUNCTION

"[I]rreparable injury means injury for which a monetary award cannot be adequate compensation." *Jackson Dairy, Inc. v. H. P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979); accord *J.O.M. Corp. v. Dep't of Health of State of N.Y.*, 173 A.D.2d 153, 154 (1st Dep't 1991). The Alliance brings its NYCHRL public accommodations discrimination claim exclusively for injunctive relief because a monetary award is not an adequate remedy here. And the harm to Plaintiffs is not only "imminent," but *currently ongoing*. *White v. F.F. Thompson Health Sys., Inc.*, 75 A.D.3d 1075, 1076-77 (4th Dep't 2010) (cleaned up). Students seek to form a club that can function in the 2021-2022 school year; to do so, the Club must be approved at the start of the fall semester in August 2021. Ex. 12 art. VII § I(B) (club applications submitted within first

¹⁰ YU also recognizes other "Political and Activism" student organizations, such as the "YU Feminist's Club." YU Club List Fall 2020, *supra*. As with the College Democrats and Republicans, YU allows these organizations to meet and organize events on campus to further their own interests, not YU's or its administrators'.

three weeks of semester); Ex. 13 art. III § 4(1) (club applications submitted within first two weeks of semester). Absent immediate relief, another year will pass where the Alliance is denied the right to form as a club. This means another year where students lack access to the benefits of a chosen student club, whether to hold leadership positions, foster connections important for career and academic development, create new friendships, gain expertise in political or social issues, or any of the myriad important benefits of belonging to a chosen student organization.

The only way to prevent irreparable harm to the YU Pride Alliance is to preliminarily enjoin Defendants from continuing their refusal to recognize the club. No amount of money can compensate the Alliance or its members for the harm Defendants have imposed on the organization's ability to advance its mission of building a community that supports YU's LGBTQ students—the toll is a dignitary, social, emotional, and educational one that cannot be distilled to dollars and cents. John Doe Aff. ¶ 17 (“I have no official space where I can gather with other LGBTQ students to form a community, share our similar experiences, and provide support to each other.”); *see also* Emma Doe Aff. ¶¶ 9-11. Professor Garvey's research confirms that “queer and trans student organizations provide space where students experience belonging and connect with support, both of which have positive impacts on queer and trans student retention.” Garvey Report § III.f. Such “spaces that promote kinship and community are vital for student success.” *Id.*

Because of the purely non-compensable and ongoing nature of Plaintiffs' injuries, numerous courts have granted preliminary injunctions ordering schools to recognize LGBTQ affinity groups or give them equal access to facilities. *See Boyd Cnty. High Sch. Gay Straight All. v. Bd. of Educ. of Boyd Cnty., KY*, 258 F. Supp. 2d 667, 692 (E.D. Ky. 2003) (“Absent a preliminary injunction, Plaintiffs will be unable to meet at school, unable to benefit from a forum

for discussion with other students who are suffering the effects of harassment based on sexual orientation, and unable to work with other students to foster tolerance among all students.”); *see also Straights and Gays for Equality (SAGE) v. Osseo Area Schs.*—*Dist. No. 279*, 471 F.3d 908, 913 (8th Cir. 2006); *Gay-Straight All. of Okeechobee High Sch. v. Sch. Bd. of Okeechobee Cnty.*, 483 F. Supp. 2d 1224, 1228, 1231 (S.D. Fla. 2007) (“*Okeechobee Cnty.*”) (collecting cases); *White Cnty. High Sch. Peers in Diverse Educ. v. White Cnty. Sch. Dist.*, No. 06 Civ. 29, 2006 WL 1991990, at *13 (N.D. Ga. July 14, 2006) (“*White Cnty.*”).

The irreparable harm to Plaintiffs absent a preliminary injunction is magnified because many of its members are likely to graduate long before a final judgment in this case. *E.g.*, Jane Doe Aff. ¶ 3 (current YU senior). Without a preliminary injunction, the Alliance cannot offer the benefits of being an officially recognized student group to these students at all. *See Okeechobee Cnty.*, 483 F. Supp. 2d at 1231 (irreparable harm to unrecognized Gay-Straight Alliance because “the end of the school year is approaching and seniors who desire equal access of the [club] will graduate prior to resolution on the merits” (cleaned up)); *Boyd*, 258 F. Supp. 2d at 692 (same).

III. THE BALANCE OF EQUITIES FAVORS PLAINTIFFS

The balance of the equities strongly supports entering a preliminary injunction “since the irreparable injury to be sustained by [P]laintiff[s] is more burdensome to [them] than the harm caused to defendants through imposition of the injunction.” *Burmax Co. v. B & S Indus., Inc.*, 135 A.D.2d 599, 601 (2d Dep’t 1987) (cleaned up).

Plaintiffs face irreparable harm if YU is not required to recognize their student organization. *See supra* Section II. The harm is both dignitary and material. YU’s refusal to recognize the Alliance stigmatizes YU’s LGTBQ students as unworthy of equal treatment. John Doe Aff. ¶¶ 11-14; Douglas Nejaime & Reva Siegel, *Religious Exemptions and*

Antidiscrimination Law in Masterpiece Cakeshop, 128 YALE L.J. FORUM 201, 214 (2018) (“[The Supreme Court] is especially concerned to emphasize that public accommodations laws protect against the dignitary as well as the material harm of refusals.”). The clock is also ticking down on many of the Alliance members’ college years. The organization has an urgent interest in serving these students with on-campus events and speakers, using resources available to recognized student groups, so that an inclusive, welcoming space can be part of their college experience.

By contrast, YU is not harmed at all by allowing the formation of the student group. Injunctive relief would simply require Defendants to comport with its duty to treat the Alliance and its student members the same as YU’s other clubs.¹¹ YU will argue that permitting the Club burdens its free exercise of religion. But YU faces no burden on its religious exercise. *See supra* Section I.D.

Courts have resoundingly rejected claims that educational institutions are burdened by the recognition of an LGBTQ club and found the balance of equities favors the students and organizational plaintiffs. *See, e.g., Okeechobee Cnty.*, 483 F. Supp. 2d at 1231 (“The balance of hardships favors the Plaintiffs. Compliance with a preliminary injunction will require only that the Defendant recognize the OHS GSA and grant it the same access and privileges it already grants many other clubs.”); *White Cnty.*, 2006 WL 1991990, at *13.

CONCLUSION

YU has denied its LGBTQ undergraduate students equal treatment for far too long. But the University’s opportunity to become a safer, more welcoming, and more *equal* place for

¹¹ Notably, several of YU’s graduate schools, including Cardozo School of Law, recognize LGBTQ student groups on campus. Cardozo Student Bar Ass’n, Student Clubs & Organizations, <https://www.sbacardozo.com/clubs-orgs#outlaw>.

LGBTQ students remains. Alliance recognition will give students “a space to meet others like them, feel less alone, and get the support the need to successfully continue their college careers.”

Jane Doe Aff. ¶ 8.

For the reasons stated above, Plaintiffs’ motion for a preliminary injunction should be granted.

Date: April 27, 2021
New York, NY

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

----- X

YU PRIDE ALLIANCE, et al.,

Index No.: 154010/2021

Plaintiffs,

-against-

YESHIVA UNIVERSITY, et al.,

Defendants.

-----X

CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Plaintiffs’ Memorandum of Law in Support of Preliminary Injunction has 7,000 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

Date: April 27, 2021
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