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Religious Freedom or Freedom to Discriminate?

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Religious Freedom or Freedom to Discriminate?

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In April of 2021, students seeking to create a LGBTQ group on the campus of Yeshiva University (“YU”) filed suit against the institution for its flagrant violations of New York City Human Rights Law (“NYCHRL”) when repeatedly rejecting the formation of an LGBTQ student group on campus.[1] Plaintiffs applied to be school-sponsored clubs through the proper channels and were denied recognition at YU by the highest levels of leadership, including Yeshiva’s President Rabbi Dr. Ari Berman.[2] The university argues it is a religious institution, exempt from the NYCHRL. YU’s religious freedom defense fails when considered in light of its primary purpose and incorporation status as an educational institution and given the language of the NYCHRL.[3]

The Supreme Court of New York ruled that YU is not “a religious corporation within the meaning of the NYCHRL.”[4] The statute requires public accommodations cannot discriminate or withhold “the full and equal enjoyment...of any of the accommodations” from any person on the basis of that individual’s protected class status, including gender and sexual orientation.[5] NYCHRL carves out an exception to this rule when the public accommodation is “distinctly private [in its] nature,” like a “religious corporation incorporated under the education law or the religious corporation law . . .”[6] Looking at YU’s own amended Charter, and internal knowledge, the court determines YU is not a religious corporation under the meaning of NYCHRL.[7] YU’s 1967 Amendment to its Charter states, in relevant part: “[t]his corporation . . . is hereby continued as an educational corporation...” and “Yeshiva University is and continues to be organized and operated **exclusively for educational purposes...**”[8] The court recognizes there is evidence that YU had knowledge it was bound to NYCHRL since 1995.[9] Judgment is entered in favor of the plaintiffs, ordering that YU is estopped from refusing to officially recognize YU Pride Alliance and must immediately grant YU Pride Alliance full and equal accommodations afforded to all other student groups.[10]

Following this judgment, YU sought emergency relief to stay the trial court’s order.[11] The New York Appellate Division denied the motion, and YU appealed to the United States Supreme Court.[12] After Justice Sotomayor released an order temporarily granting stay, the Court released a later decision denying stay and ordered YU to comply with the trial court’s ruling.[13] The Court denied the application because YU had failed to pursue two avenues available at the state level before appealing to the Supreme Court.[14] Regardless, the majority and dissent recognize the case could end up in the Supreme Court after YU attempts the procedures outlined, or if those procedures are not undertaken expeditiously.[15] Notably, the dissent indicates certiorari could be granted and “Yeshiva would likely win if its case came before us.”[16] Although the current posture of the

case requires YU to officially recognize YU Pride Alliance, and to grant them full enjoyment of student organizations, the win is tenuous and the dissent's language ominous.

Following the Supreme Court's denial, YU decided to pause all student clubs on campus.[17] This move allows YU to comply with the Courts' respective rulings, by treating all clubs the same, and still bar YU Pride Alliance from being officially recognized by the school. YU has chosen to ignore the law of New York, hide behind a claim for religious freedom, and further isolate those they harm with their homophobic driven actions. YU's actions present a party interested in finding a way to keep LGBTQ students from organizing and creating safe spaces on campus, and not one seeking to assert its religious freedoms. This approach, and the Supreme Court's reaction to it, raise serious concerns about the future of religious freedoms and how far they're willing to extend.

[1] Complaint, *YU Pride Alliance v. Yeshiva University*, No. 154010/2021 (N.Y. Sup. Ct. 2021).

[2] *Id.*

[3] N.Y.C. Admin. Code §8-102 (2002) (“The term ‘place or provider of public accommodation’ . . . does not include any club which proves that it is in its nature distinctly private . . . For the purposes of this definition, a corporation . . . a religious corporation incorporated under the education law or the religious corporation law is deemed to be in its nature distinctly private”).

[4] *YU Pride Alliance v. Yeshiva University*, No. 154010/2021, 2022 WL 2158381, at *2 (N.Y. Sup. Ct. 2022).

[5] N.Y.C. Admin. Code §8-107(4) (2002).

[6] N.Y.C. Admin. Code §8-102 (2002).

[7] *Yeshiva University*, 2022 WL 2158381, at *2.

[8] *Yeshiva University*, 2022 WL 2158381, at *2 (emphasis added).

[9] *Id.*

[10] *Id.*

[11] Adam Liptak, *Jewish University Loses Ruling in Suit Over L.G.B.T. Group*, N. Y. Times, Sept. 15, 2022, at A16.

[12] *Id.*

[13] *Id.*

[14] *Yeshiva University v. YU Pride Alliance*, 2022 WL 4232541 (U.S., Sept. 14, 2022, No. 22A184)

[15] *Id.*

[16] *Id.* at *2.

[17] Hurubie Meko, *Yeshiva University Halts All Student Clubs to Block L.G.B.T.Q. Group*, N.Y. Times, Sept. 17, 2022, at A22.