Is It Prideful to Force Others to Comply With Your Desires?

By Paul Engel

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- Can a religious university be forced to recognize and support a student group who wishes to change the nature of the university?
- Do students have the right to change the nature of a private university?
- Does our nation’s obsession with the sexual agenda mean your rights must bow to it?

None of us want to be judged by our race, sex, or how we live our lives. So what right do we have to impose our views on others, even to the point of controlling their private property? That is the question in a complaint against Yeshiva University. Does the City of New York have the legal authority to make a private university recognize a student group? Can the state order a religious school to violate its core beliefs to accommodate the wishes of a student? If we wish to live at liberty, doesn’t that mean we have to allow others to enjoy their own liberty, even if we disagree with it?

When does protecting one person’s rights involve infringing on the rights of another? And when is it OK to do so? These are perennial questions in America, ones that have garnered a lot of attention and several Supreme Court cases over the last

decade or so. Today, I want to look at another example, one that is still making its way through the courts. The case of Yeshiva University v YU Pride Alliance questions whether or not New York City's Human Rights Law can be used to override the Freedom of Religion of a religious school, those who own and operate it, and even the students who attend it.

Yeshiva University v YU Pride.

The question of a conflict of rights is not only nothing new in America, but based on the questions I've been asked, it's also one of the most confusing topics to most Americas. The questions presented by Yeshiva University in this case all revolve around a single core question: Can the City of New York force a private university to recognize a student group that is antithetical to its religious beliefs?

The case started when Yeshiva University decided not to approve a Yeshiva Pride Alliance club. The university was sued by YU Pride in New York Superior Court, which granted a permanent injunction against Yeshiva University, ordering them to immediately approve the club. The University filed a motion to stay the injunction pending appeal, which was denied by the New York Appellate Court, and attempts to appeal the denial were not even heard by either the New York Appellate Division and New York Court of Appeals. This led Yeshiva to petition the Supreme Court for a stay of the permanent injunction until their appeal was resolved. This is where I first heard about this case, and this emergency application for a stay that I will be reviewing.

Freedom of Religion

As a deeply religious Jewish university, Yeshiva cannot comply with that order because doing so would violate its sincere religious beliefs about how to form its undergraduate students in Torah values.

Yeshiva Univ. v YU Pride – Emergency Application for Stay to

SCOTUS

Here we see the conflict of rights. On the one hand you have the students who wish to not only form a Pride Alliance club, but to have it recognized by the school. On the other, you have a school whose religious beliefs cannot condone the behavior related to the Pride Alliance. Can the school be forced to subject its religious liberty to the desires of the students who attend it? By what authority can the City of New York, along with the New York Judicial System, force those who own and operate an organization to violate their religious beliefs? There is even more to this case though, than allowing a club to be created on campus.

This extraordinary situation arises from what all parties—and the trial court— acknowledge was a religious decision not to approve a Yeshiva Pride Alliance club. All parties agree that Yeshiva made this decision in consultation with its Roshei Yeshiva, or senior rabbis. And all parties agree that Yeshiva has a deeply religious character as a Jewish university. In fact, Plaintiffs admit that they want to force the creation of a Yeshiva Pride Alliance precisely to alter Yeshiva's religiousenvironment—for example, by distributing school-sponsored "Pride Pesach" packages for Passover—and to upend Yeshiva's understanding of Torah, with which Plaintiffs disagree.

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This has become a common tactic among the sexual movements. Enter an organization or business you disagree with, then attempt to subvert it using so called SOGI (Sexual Orientation & Gender Identity) laws. The students that want to create a "Pride Alliance" club admit that their purpose is to change the university, and they have accomplices both in New York law and courts.

The trial court held that the decision whether to have an official Pride Alliance organization on campus can be made by the government rather than Yeshiva itself in consultation with its rabbis.

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In effect, the New York trial court claimed the government has power to assume control over a private religious university. Where did the court find such power?

Relying on the New York City Human Rights Law (NYCHRL), the court concluded that the government can force Yeshiva to recognize an official Pride Alliance club because Yeshiva purportedly offers too many secular degrees to qualify for the law's express exemptions for religious organizations.

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Many of you are probably thinking of an argument based on the First Amendment to the Constitution of the United States. This was the argument brought by Yeshiva to the Supreme Court, but there's a problem with this argument: Congress did not make this law.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

U.S. Constitution, Amendment I

That fact is very important. While the courts routinely "incorporate" the First Amendment against the States under the Fourteenth Amendment's Privileges and Immunities Clause,

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

U.S. Constitution, Amendment XIV

The First Amendment still says “Congress shall make no law…” What the trial court has done is effectively establish the standards for a religion to be recognized, at least when it comes to their schools. The trial court said the Yeshiva University is a religious school, just not religious enough to be treated as a religious organization.

Worse, the court ignored Yeshiva’s First Amendment church autonomy arguments entirely and cursorily rejected its Free Exercise arguments. In essence, the court found that Yeshiva is not a religious entity and has no right to control how its religious beliefs and values are interpreted or applied on its campuses.

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The term “church autonomy” refers to a Supreme Court precedent that supports the “independence of religious institutions”. Again, since Congress did not pass New York City’s Human Rights Law, this is not a First Amendment issue. This law, and the actions of the trial court, do violate the Constitution of the State of New York.

The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind;

Constitution of the State of New York, Article I, Section 3

Telling the University that they must allow the formation of an organization within their school whose purpose is to fundamentally change the religious nature of the school, certainly does infringe on the free exercise and enjoyment of religious professions and worship. By placing the rights of the students who wish to form a club as superior to those who own and operate the University, the court has clearly discriminated against the school because of its religious nature. Furthermore, by claiming that the owners of the school

have no right to control its own beliefs and values, the court has denied the owners both their liberty and the property they have in the school. This is a violation of the Due Process clause of both the Fifth and Fourteenth Amendments to the Constitution of the United States.

No person shall … be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment V

nor shall any State deprive any person of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment XIV

Although not part of the University's argument, some of you may be thinking about an Establishment Clause violation. As I noted before, the trial court has established a standard for what makes a school religious enough for recognition. This appears to be a clear case of establishing a religion. The Constitution of the State of New York, like the constitutions of many of our states, does not prohibit the the state from establishing a religion. And since only Congress is prohibited from establishing a religion, that argument doesn't apply here.

Yet because of the permanent injunction below, Yeshiva and its President are now being ordered to violate their religious beliefs or face contempt. That ruling is an unprecedented intrusion into Yeshiva's religious beliefs and the religious formation of its students in the Jewish faith. It is also an indisputably clear violation of Yeshiva's First Amendment rights.

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While I've already shown that the First Amendment claim is

flawed, federal courts have frequently ignored the language of the Constitution in an attempt to protect religious freedom. What we have here is a clear violation of Freedom of Religion, both of the operators of the university and of the students who attend specifically for its religious culture and instruction. The pcfermanent injunction is a grave injustice to the school and its students, which is why, failing in the New York State Courts, the university appealed for protection from the Supreme Court of the United States.

Supreme Court

When a petition like this comes to the Supreme Court, it is directed to one of the justices. This justice may deal with the petition themselves, or bring the matter up to the court as a whole. You may have noticed that there are nine justices on the Supreme Court and nine circuits in the court of appeals. Each justice has a circuit they are accountable for. (They are called circuit courts because justices used to ride a circuit every year.) The Second Circuit is overseen by Justice Sonia Sotomayor. Her response was brief, but strong:

UPON CONSIDERATION of the application of counsel for the applicants and the response and reply filed thereto,

IT IS ORDERED that the injunction of the New York trial court, case No. 154010/2021, is hereby stayed pending further order of the undersigned or of the Court.

Yeshiva Univ. v. YU Pride, Supreme Court Order

This means that the courts of the State of New York are prohibited from enforcing their injunction until further notice from the Supreme Court.

Conflicting Rights

Before I conclude, I want to take some time and deal with the question of conflicting rights. Here we have the religious

freedom of the school and the assembly of those who wish to have the club. There are many other examples I'm asked about, mandates to enter buildings, restrictions on the carrying of firearms, even the ability to express oneself. It all comes down to an understanding of rights.

I have an entire lecture on *What is a Right?* that I can summarize in two simple sentences. The legitimate exercise of a right cannot infringe on the rights of another. Therefore, for a right to be legitimate, you must be able to exercise it without infringing the rights of another.

How does that apply in this case? The operators and students of Yeshiva University have several rights in play here. We've focused on the free exercise of religion, but they also have the right to be at liberty to decide where they will attend school, the property they have in that school, and even the right to peaceably assemble with like-minded people. The students that wish to form a pride club also have the right to be at liberty in where they go to school and to peaceably assemble. In this conflict between two sets of rights, who should win? The question comes down to who is attempting to impose their will upon the other?

Some will argue that Yeshiva University is attempting to impose their religious viewpoint on the students who want to change it. Remember though, the school did not force the students to attend, neither did they hide their religious standards to trick the students when they were deciding where to go to school. So while the school does have its religious viewpoint, they are not attempting to force it on anyone, rather, they are trying to defend it from attempts to change it.

Now, let's look at this from the pride standpoint. Nothing I'm aware of is stopping these students from gathering together in a pride club. Instead, what they want is recognition by the school. So their right to peaceably assemble is not being

infringed. As I've already mentioned, the students are not forced to attend Yeshiva University, neither were they deceived about the religious environment it maintains. So their liberty has not been infringed. According to court records, these students wish to **force** the creation of this club specifically to **alter the religious environment** of the university. In other words, these students are attempting to illegitimately use their rights to infringe on the rights of the operators and other students of this school.

Lastly, if we look at the City of New York and the courts of the State of New York, both are attempting to impose their will on the University. While the state does have an interest in preventing discrimination, that is not what is happening here.

it is undisputed that Yeshiva has recently emphasized continued enforcement of its policies prohibiting "any form of harassment or discrimination"; updated its "diversity, inclusion and sensitivity training" to better reflect concerns of LGBTQ students; ensured that there are staff in its counseling center "with specific LGBTQ+ experience"; "appoint[ed] a point person to oversee a Warm Line that will be available" for anyone to "report any concerns pertaining to non-inclusive behavior"; and continued "to create a space for students, faculty and Roshei Yeshiva to continue this conversation."

Yeshiva Univ. v. YU Pride, Supreme Court Order

Yeshiva University has continued to protect all communities, including the LGBTQ community, from harassment or discrimination. What the City and courts of New York are attempting to do is harass a religious organization into endorsing a lifestyle that is opposed to their beliefs and discriminating against the university because, in the eyes of the court, it is not religious enough.

Based on these three viewpoints, who is attempting to impose their will on whom?

Conclusion

While the stay from the Supreme Court is good news, it doesn't mean that Yeshiva University is out of the woods. My guess is there will be plenty of opinions, appeals, and legal maneuvering before this case is finally decided. As Thomas Jefferson said:

Eternal vigilance is the price of liberty.

Thomas Jefferson, Thomas Jefferson Papers

I can only hope that Yeshiva University will remain vigilant, and the freedom loving people of America will stand with them in their struggle.

Update

After writing this article, the Supreme Court offered an opinion overturning Justice Sotomayor's stay on the permanent injunction issued by the New York State trial court. The reasons for this reversal are stated by the court below.

The application is denied because it appears that applicants have at least two further avenues for expedited or interim state court relief. First, applicants may ask the New York courts to expedite consideration of the merits of their appeal. Applicants do not assert, nor does the Appellate Division docket reveal, that they have ever requested such relief. Second, applicants may file with the Appellate Division a corrected motion for permission to appeal that court's denial of a stay to the New York Court of Appeals, as the Appellate Division clerk's office directed applicants to do on August 25. Applicants may also ask the Appellate Division to expedite consideration of that motion.

Yeshiva University v. YU Pride Alliance – On Application for

Stay

I must admit that my first reaction was disappointment in the court, a feeling with which I am well familiar. Reading the opinion though, that disappointment has lessened. It appears the court did not consider the merits of the application for stay, but rather decided that the case was not "ripe" for the high court. The court noted that there are at least two further actions Yeshiva University can take for relief in the state court system. I generally agree that such cases are better served in state courts than in federal. However, I am still unsettled. Having seen in this case the general distain the New York State courts have shown Yeshiva University's petitions, I do not expect further appeals to the same courts that have summarily rejected even considering previous petitions to fare any better than their predecessors.

Justice Alito dissented from this decision, and was joined by Justices Thomas, Gorsuch, and Barrett. (Are you interested in the fact that Justice Sotomayor who originally issued the stay, joined with the majority to rescinding it.) In his dissent, Justice Alito stated:

The First Amendment guarantees the right to the free exercise of religion, and if that provision means anything, it prohibits a State from enforcing its own preferred interpretation of Holy Scripture. Yet that is exactly what New York has done in this case, and it is disappointing that a majority of this Court refuses to provide relief.

Yeshiva University v. YU Pride Alliance – On Application for Stay

While I agree that the state is establishing religious standards, I would not put it quite that way. What the State of New York has done through its courts is determine whether or not a religious school is religious enough for the protection of its rights. By ordering the school to recognize

a student group whose purpose, as shown in previous court proceedings, is to fundamentally change Yeshiva into a University that complies with the YU Pride Alliance's interpretation of the Torah. In effect, the State of New York has ordered the hens to bring the fox into the hen-house. Now the Supreme Court has decided force the hens to wait while they petition the wolf for protection.

If anyone at Yeshiva University or involved on in this case should see these words, I can only offer you my support and hope it gives you some comfort, and possibly an argument to be used to support your position. Though I know these words cost me nothing, the fight you are in may cost you everything, I wish to remind you of the words of Hananiah, Mishael, and Azariah, or as they are better known, Shadrach, Meshach, and Abed-Nego.

Shadrach, Meshach, and Abed-Nego answered and said to the king, "O Nebuchadnezzar, we have no need to answer you in this matter. If that is the case, our God whom we serve is able to deliver us from the burning fiery furnace, and He will deliver us from your hand, O king. But if not, let it be known to you, O king, that we do not serve your gods, nor will we worship the gold image which you have set up."

The New King James Version (Da 3:16–18). (1982). Thomas Nelson.

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