

# The Ghosts Have Become Alive: Yeshiva University and the Future of Religiously Affiliated Higher Education in America

By MICHAEL J. BROYDE

## Forward

Thank you, dear reader, for letting me share my thoughts on the legal status dilemmas that Yeshiva University faces concerning its charter as a secular institution during these complex and unusual times. I know that we are in the middle of a pandemic and there are much more important short-term concerns — numerous essential worries for Yeshiva and for us all — but I am confident that this pandemic crisis shall pass. “The sun will come out tomorrow” seems clear and when the sun shines again (in just a few short weeks, we all hope and pray) the same important problems brewing for many months about YU’s legal status will return to the forefront, maybe even with greater speed and urgency, having been put on hold for some time. Yeshiva will need to be prepared for that moment, and I publish this piece now — written many months ago — in that spirit. Finally, in the name of full disclosure, I reveal my biases here: I am not some neutral academic writing on some random “law and religion topic” of professional interest. I am a loyal YU alumnus — having graduated from MTA, YC, and RIETS (twice) — and a deep supporter of Yeshiva and its Modern Orthodox vision. One of my children is a fourth-generation alumnus and I hope to have grandchildren who are fifth-generation graduates in many years to come.

The current legal environment seems to me to challenge or even threaten the future, and I share my thoughts in the hopes that we can find the best way forward for YU.

## Introduction

During the Spring of 1970, the deeply rational Rabbi Dr. Joseph B. Soloveitchik *zt”l* spoke of ghosts. At the triennial ordination ceremony at Yeshiva University, the Rav — the leading Talmudic authority in America at the time, scion of a multi-generational rabbinic dynasty, and the person who signed the ordination certificates soon to be given — warned the president of Yeshiva, Rabbi Dr. Samuel Belkin (his friend and co-signer on the ordination certificates), not to change the legal charter of Yeshiva University from a religious institution to a secular one. Rabbi Soloveitchik — ever a visual speaker — claimed that he “saw ghosts.” Harvard, Yale and Princeton “all began as divinity schools,” he warned, “and Yeshiva, Heaven forbid, could also go the way of all these great and early citadels of American higher education”

and become a secular institution, having lost its moorings as a religious institution.<sup>1</sup>

So far, Rabbi Soloveitchik (d. 1993) has not been correct in his prediction of the future. For 50 years, Yeshiva managed to function as a religious undergraduate college with a dual curriculum of Jewish studies and secular studies, just like the model Rabbi Dr. Belkin had proposed: a secular college affiliated with a religious seminary, with the deep religious and ethical vision flowing from the seminary to the university. While only the seminary was formally exempt from the non-discrimination rules, both the college and the seminary functioned as if they were one — for example, almost all the students were traditional Orthodox Jews, an apparent violation of Title VII as well as many other statutes that govern secular institutions.

Yeshiva University avoided the many complexities in its undergraduate institutions that essentially serve a religious community<sup>2</sup> by employing a number of strategies (some of which I will outline below). Such cannot be said with regard to the graduate schools of Yeshiva University, which are (or were, in the case of the Albert Einstein College of Medicine, formerly Yeshiva’s medical school) essentially secular in their student body and academic orientation and never had either a critical mass of traditional Jewish students or a commitment to any significant study of Jewish law or text or values.<sup>3</sup> Other than Revel, all of Yeshiva’s graduate schools are indisputably secular in their orientation. They allow social, religious and student affinity clubs and organizations that no Orthodox Jewish organization would allow, and they have students with no connection to Judaism but who attend merely because of the lofty academic quality of the institution. When Yeshiva University sought to restrict the right to housing for married students at Einstein and not allow students in a same-sex relationship to have housing for the student and their partner, the New York Courts ruled that Yeshiva would be in violation of the New York City ordinances<sup>4</sup> that legally mandated that housing be given to such students.<sup>5</sup> With some squealing and moaning, handwringing and kvetching, Yeshiva complied with the mandate of the court and allowed housing in the Einstein dorms for same-sex couples who were not married.<sup>6</sup>

## The Present

Others have raised the concern in the years since the Rav did, since it was growing progressively harder to be both secularly chartered and religiously affiliated. As Rabbi

Chaim Dov Keller, a prominent rabbi and an alumnus wrote in 1995 in a public letter to the president of Yeshiva at that time, Rabbi Dr. Norman Lamm: “Are your undergraduate colleges, Yeshiva College and Stern College for Women, not under the same nondenominational charter? Sooner or later you will have to face the problem of gay students in these schools. How will you avoid the problem there? Whatever means you are presently using will soon become obsolete, if you are true to your duty as the head of a non-denominational institution to ‘conform to the secular law.’”<sup>7</sup> I myself wrote to Rabbi Lamm<sup>8</sup> *Shlita* about this in 2002 at some length as did many others.

Instead, beset by financial problems after the recession, Yeshiva continued to define itself as a secular institution as a matter of law, mostly to allow them to remain eligible for a great variety of financial assistance provided by the state and national government. When tensions arose (as they occasionally did), they were addressed in a discrete way without publicity or legal challenge. We all knew that this situation was both somewhat disingenuous and legally tenuous, since Yeshiva was not secular like NYU or Columbia or even Emory — its legal status did not reflect its seemingly discriminatory practices in admission or the conduct of its undergraduate colleges.

So how did Yeshiva’s undergraduate colleges manage to avoid the kinds of challenges its graduate divisions confronted? To answer this question, four historical realities are worth noting.

First, LGBTQ rights were less clearly established until recently — no one was exactly certain how they would interact with religious institutions or even secular institutions with a religious history. At the beginning of the LGBTQ movement, there was little stomach for that fight and much bigger — and clearly secular — fish to fry.<sup>9</sup> That era is over; the bigger fish are fried, and now the little fish are being primed for the fryer.

Second, Yeshiva University undergraduate colleges — Yeshiva College, Stern College and the Sy Syms School of Business — employed tight admission standards that selected only students who were deeply interested in an Orthodox life and lifestyle in a gender-separated institution. With a robust dual curriculum of morning Talmud study and required Bible, Hebrew and Jewish history coursework in its colleges, few applied who did not fit in. Furthermore, there was an admissions process that informally weeded out students who were a bad fit for

the religious mission of the undergraduate colleges. Yeshiva managed to discriminate without engaging in overtly discriminatory practices.

Third, until recently, the Orthodox community that attended YU treated the LGBTQ community as far outside its boundaries. The students who were LGBTQ stayed deeply in the closet, either due to their own choice or due to communal pressure (or both). This era too is over. Many in the Modern Orthodox community are comfortable with the political agenda of the LGBTQ community’s call banning discrimination based on sexual orientation and the extension of Title VII to prohibit such (I am, as I note here<sup>10</sup>) while exempting religious institutions from Title VII obligations. Furthermore, there is much more tolerance and sympathy regarding the LGBTQ movement within the Orthodox community now.

Fourth, Yeshiva College has expanded its admission base so that it has admitted many more students who are less committed to a complete and full Orthodox life than in other eras.<sup>11</sup> The number of students who are not Sabbath observant has gone up, and the number of male students who do not wear the customary head covering has increased as well. The number of hours of Jewish studies required per student has gone down, and there is a greater variety of programs for both men and women that are not classical text study. Furthermore, there are many more programs that compete with Yeshiva for classically yeshiva-trained students, decreasing the number of those who end up going to YU. These trends have brought to YU a higher percentage of students who are not traditionally “Orthodox.”

Of course, lurking in the background of all of this is the secular truth: the diverse pluralistic society that America has become has little tolerance for discrimination based on sexual orientation, and New York City’s Commission on Human Rights has flatly prohibited such discrimination for secular educational institutions.

## The Reality

All of these trends culminated in a student’s recent request to form a “gay-straight” alliance club at YU, as well as the filing of a civil rights complaint against Yeshiva with the City of New York Commission on Human

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<sup>1</sup> For more on this, see Rabbi Zevulun Charlop, “The Rav and Dr. Belkin,” in *Mentor of Generations: Reflections on Rabbi Joseph B. Soloveitchik*, ed. Zev Eleff (Jersey City: Ktav, 2008), 85 and Andrew Geller, “Rav Responds to Secularization; Sympathizes with Student Rally,” *The Commentator* 35, no. 13 (April 15, 1970). For a thoughtful discussion of this in the context of the times, see Jeffrey S. Gurock, “The Men and Women of Yeshiva” (Columbia University Press, 1988) at pages 236-245. In the course of writing this article, Yosef Lemel of The Commentator shared with me that *The [Stern College] Observer* published what seems to be close to a transcription of Rabbi Soloveitchik’s remarks on April 15, 1970 in an article entitled “Rav Soloveitchik Speaks Out on YU Crisis” (This article is found in volume 12, issue 12 of *The Observer*, dated Wednesday, April 15, 1970).

<sup>2</sup> I hesitate to compare the approach YU has taken to this topic with many Christian universities nationwide, as both New York State and New York City law and funding play an important role here. It is worth noting that St. John’s University and Fordham University are both still religious corporations, as Yeshiva was up until 1970. Indeed, one is hard-pressed to find a Catholic institution that adopted the legally secular path chosen by Yeshiva. This could also be explained by the unique difficulties of running a medical school, a dilemma that is no longer part of the YU calculus.

<sup>3</sup> Rather, the graduate schools merely accommodated traditional Jewish practice by providing kosher food and scheduling class around the vacation days of both the Jewish and the secular holidays. For more on this, and Rabbi Soloveitchik’s observations about why this is proper, see the remarks of Rabbi Soloveitchik entitled “On the Creation of Yeshiva University’s Albert Einstein College of Medicine found at Rabbi Joseph B. Soloveitchik, “Community, Covenant and Commitment: Selected Letters and Communications” pages 85-92 (Nathaniel Helfgot, editor) (Ktav, 2005).

<sup>4</sup> Basically, secular institutions in New York City could not discriminate against same-sex unmarried couples in 2000 based on the combination of three laws: (1) NY Roommate Law (Real Property Law, section 235(f)); (2) New York City Human Rights Law sections 296(2-a), 296(4) and 296(5); (3) New York City Administrative Code 8-197(5). The law has changed slightly since the legalization of same sex marriage, but the differences are not important in this context.

<sup>5</sup> *Levin v. Yeshiva University* 96 N.Y.2d 484 (NY Ct of Appeals 2001). (In New York, the Court of Appeals is the highest court in the State.) For a popular recounting of the win by the students, see “Yeshiva Lesbians Win Ok To Sue Over Dorms” NY Post July 3, 2001 at <https://nypost.com/2001/07/03/yeshiva-lesbians-win-ok-to-sue-over-dorms/>

<sup>6</sup> See Adam Dickter “Yeshiva University Changes Housing Policy: Medical School To Allow Same-Sex Couples To Share Housing” (August 16, 2002) in *Voices of New York* at [https://voicesofny.org/2002/08/nycma-voices-31-news-news\\_2/](https://voicesofny.org/2002/08/nycma-voices-31-news-news_2/).

<sup>7</sup> See Rabbi Chaim Dov Keller, “A Letter That Should Never Have Been Published” *The Jewish Observer* pages 31-32 (Summer 1995) also found at <https://agudah.org/wp-content/uploads/2016/08/JO1995-V28-No5.pdf>.

<sup>8</sup> May the One Above comfort Rabbi Lamm and his family for the recent sad loss of his wife Mindella as well as grant Rabbi Lamm himself a full and complete recovery.

<sup>9</sup> It could be that the reason for this was even more profound. There might have been an implicit understanding that religious institutions could be officially nonsectarian and still impose religious values indirectly, and it was also in the interest of the city and state to host such institutions. The consensus perhaps has changed in regard to LGBTQ issues and religiously affiliated but legally secular institutions.

<sup>10</sup> See Michael J. Broyde, “The Equality Act Is Good For The Jews” *The Jewish Press*, 3 July 2019 at <https://www.jewishpress.com/indepth/opinions/>

point-counterpoint-2/2019/07/03/

<sup>11</sup> See for example “How Bare Heads Are More Than Just Bare Heads, and Why It Matters for YU” which notes “Indeed, Yeshiva University accepts students spanning a wide range of religious commitment and does not enforce any religious observance on its students. It is an open institution that welcomes non-religious students who want to connect to and learn from Judaism in their own way, allowing everyone to feel comfortable in his own level of observance.” at <https://yucommentator.org/2018/10/bare-heads-just-bare-heads-matters-yu/> and <https://yucommentator.org/2018/10/response-ask-bareheaded-students-wear-kippot/>. This is a far cry from the historical policies and social practices of many other eras of YU.

<sup>12</sup> See the Sexual Orientation Non-Discrimination Act (SONDA) which is New York law that prohibits discrimination on the basis of actual or perceived sexual orientation in employment, housing, public accommodations, education, credit, and the exercise of civil rights. Let me add that this complaint and the general focus on Yeshiva in the LGBTQ world is coordinated and not coincidental, as is noted in many places. This means that these matters will not go away.

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Rights. This complaint notes a violation of the New York City Human Right Law, which certainly on its face applies to secularly chartered Yeshiva.<sup>12</sup>

The New York Jewish Week reported simply: “The move intensifies a long-simmering battle for gay recognition at Modern Orthodoxy’s flagship institution . . . The complaint, filed last week, states that YU has ‘refused to allow an official LGBTQ student group’ over the course of many years, and has ‘suppressed LGBTQ-themed events.’ The complaint also stated that a senior vice president at the university ‘tried to pressure student council leaders to reject’ the club’s second bid for approval in two consecutive years . . . **Though it is easy to ‘feel like the underdogs,’ Alberstone said, he is confident that the grassroots student club has the upper hand. ‘YU is a non-sectarian institution, with no legal basis for discriminating against LGBTQ students.’**”<sup>13</sup> (emphasis added)

What should Yeshiva University do in this situation? Yeshiva simply cannot view same-sex relations as consistent with Jewish law as it understands it,<sup>14</sup> and yet the New York City law directly denies secular institutions the right to engage in the religiously driven LGBTQ discrimination.

#### Possible Responses by Yeshiva

In response to this dilemma, Yeshiva University has four reasonable options and one unreasonable option, as I will describe below.

First, it can allow such clubs to open and permit students to conduct themselves in a manner not consistent with Jewish law. This approach is not only consistent with their secular charter but also legally the easiest to do. This was the action that Rabbi Soloveitchik feared the most when he spoke 50 years ago.<sup>15</sup> It would mean the abandonment of the historical mission of Yeshiva University — to meld the best of Western culture with traditional Jewish law and run an educational institution that was consistent with both the vision of Harvard and Volozhin.<sup>16</sup>

Second, it can seek to continue its current policy of being nominally secular while acting functionally like an Orthodox Jewish institution. It can double down on its practice of adopting *pro forma* secular policies that comply with the law’s calls for neutrality while functionally reinforcing YU’s religious mission. For example, it could prohibit all student clubs that are not academic in nature

and not under the aegis of an academic department in order to prevent the opening of a “gay-straight alliance” club. It could tighten its enrollment policies to reduce the likelihood of students being interested in these clubs, and it could raise the threshold of student signatures needed to form a social club to such a high number so as to reduce the likelihood of such a club being able to be formed consistent with the neutral secular rules as they exist now. Religious student clubs could be re-chartered under RIETS, the religious seminary generally exempt from these laws. The advantages of this approach are three-fold. It is a tried and true method that YU has employed before, and all of its administrators are familiar with it. It continues to allow access to the pools of money provided to secularly chartered institutions. Finally, it seems at first glance to be ideologically more consistent with the basic message of a yeshiva that is a university, which is that one can be both. One can be both an Orthodox Jew and a secular person.

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The third approach is to recharter the undergraduate colleges or even the whole university as a religious institution and seek shelter from the Human Rights Laws of New York City in that way, which explicitly do not apply to religious institutions.<sup>17</sup> The advantages of this approach are clear: they allow a direct and unmanipulated assertion of the values of Yeshiva University untampered by the New York Human Rights Law. The law school and other secular divisions could remain with their secular charter, but any divisions that are intended to serve Orthodox Jews will clearly be defined as religious. The disadvantages are also clear: as a religious institution, Yeshiva will lose access to a few pots of money only granted to secular institutions — the exact reason Rabbi Dr. Belkin sought a secular charter to begin with.

Let me add that it is clear that this chartering as a religious institution is not an “all or nothing activity”; rather, this needs to be done with a great deal of care so as to accomplish two central goals. First, leave those parts of Yeshiva that are secular as secular. Nothing is gained by chartering the law school (for example) as religious. Division by division, Yeshiva needs to examine itself to honestly determine which portions have central religious values and which merely adhere to the Jewish holiday calendar and

provide kosher food. Only the former should have a religious charter. Second, enough of the university needs to be left secular to allow for robust access to those benefits uniquely provided to secular programs. A close look at what the Dormitory Authority of the State of New York calls the “Touro College and University System” reveals that Touro has a complex corporate structure with many distinctly different corporate statuses and corporate forms in order to address these issues well.<sup>18</sup> Countless “religious institutions” have learned to do this, as anyone can see from the diverse institutional bond-issuing practices of the New York Dormitory Authority.

The fourth approach is to fight: Yeshiva can argue for an extension of the basic holding of *Hobby-Lobby* and argue that religiously influenced secular institutions should be granted exceptions from secular laws that are contradictory to their religious traditions, just as individuals are granted such exemptions.<sup>19</sup> In its weak form, it would argue that

resistance to oppressive laws with a great deal of success. New York State could imprison Yeshiva’s president for contempt of court, but it would create a “prisoner of conscience” in that act. The British lost India to a resistance movement that never fired a shot — religious sacrifice is a compelling narrative.<sup>21</sup>

Related to this approach (but very different) is another option: YU can close its doors in a grand way, sell its New York City assets, and move to a more sympathetic jurisdiction like Israel or New Jersey or Utah. In this approach, it would announce to the community that the ideas and ideals that Yeshiva University was crafted around — that the best of secular culture and Orthodox Judaism actually can co-exist in a yeshiva which is a university — can still be done, but it cannot be done in New York City anymore. Like the legendary Volozhin Yeshiva of lore,<sup>22</sup> which was putatively forced by the government in Czarist Russia to offer secular studies and choose to close rather than comply, YU can announce that in light of the oppressive attacks on its religious values, it will cease to function in New York City.

#### So, What Would I Recommend?

Yeshiva has positioned itself uniquely inadequately for the current legal reality. It is a secularly chartered but religiously affiliated institution, a status both unrecognized by secular law and unprotected by the rights granted to religious institutions. Furthermore, it is in a city with a vibrant Human Rights Commission dedicated to making secular institutions comply with the letter and spirit of the Human Rights law. I think that resistance is an awful idea, even as it has some emotional appeal. While the aphorism of “it is better to die on your feet than living on your knees” sounds courageous, it actually is mistaken in this case, since there are many other standing opportunities. The costs of litigation — social, economic and practical — will be high, and the likelihood of vindication is low. Thus, I am opposed to a policy of resistance and litigation.

Along the same lines, I am opposed to the policy of continuing to thread the needle of being nominally secular while actually being substantively religious. I think too many people are watching closely for YU to have an announced policy at tension with its implemented policy.<sup>23</sup> Of course, it could

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<sup>13</sup> The Jewish Week, LGBTQ Students File Complaint Against Yeshiva U: Battle for gay rights intensifies as students take discrimination grievance to NYC Human Rights Commission. (Feb 18, 2010) also at <https://jewishweek.timesofisrael.com/battle-for-gay-recognition-intensifying-at-yeshiva-u/>. See also <https://nypost.com/2020/03/07/lgbtq-students-file-discrimination-complaint-against-yeshiva-university/>.

<sup>14</sup> This is not the place to address this issue in detail. See for example “Statement of Principles on the Place of Jews with a Homosexual Orientation in Our Community” at <https://statementofprinciplesny.blogspot.com/> or Michael J. Brody and Shlomo Brody “Homosexuality And Halacha: Five Critical Points” at <http://text.rcarabbis.org/homosexuality-and-halacha-in-tradition-and-beyond/> or many other fine articles written.

<sup>15</sup> See note 1.

<sup>16</sup> What exactly is this mission is beyond the scope of this short note. My favorite short essays that encapsulate the Yeshiva University experience can be found in essays by Rabbi Aharon Lichtenstein and Rabbi Norman Lamm at Menachem Butler and Zev Nagel (editors) “My Yeshiva College: Seventy-Five Years of Memories.” Rabbi Lamm’s essay is entitled

“There is only One Yeshiva College (pages 219-225) and Rabbi Lichtenstein’s essay is entitled “Looking Before and After” (pages 231-239). I have an essay in that volume entitled “Truth Seeking as the Mission” (pages 325-328).

<sup>17</sup> As the New York State Attorney General notes simply:

Some exemptions that preexisted SONDA — and apply to discrimination on any of the grounds listed in the law, not only sexual orientation — affect SONDA’s application. A “religious or denominational institution,” or an “organization operated for charitable or educational purposes” that is “operated, supervised or controlled by or in connection with a religious organization,” may:

1. Limit employment, sales or rental of housing accommodations, and admission to persons of the same religion.
2. Give preferences to persons of the same religion or denomination; and
3. Take “such action as is calculated by such organization to promote the religious principles for which it is established or maintained.”

<https://ag.ny.gov/civil-rights/sonda-brochure>

<sup>18</sup> Yeshiva needs to examine in more detail what Touro does and why, as well as deeply understand

how to do this. This is discussed in not enough detail later in this letter.

<sup>19</sup> In its strongest form, it is an argument that the majority decision by Justice Scalia in *Employment Division v. Smith* (1990) is wrong, and in its weaker forms it is an argument that Religious Land Use and Institutionalized Persons Act (RLUPA) should apply to such institutions. This is not the place to review all such plausible arguments other than to note that the consensus is that the argument that the New York City Human Rights Law does not apply to secularly chartered, but religiously valued institutions is not generally considered the state of the law now. See also note 18 confirming that this is the opinion of the NY Attorney General.

<sup>20</sup> Related to this, of course, is seeking special legislative status or exemption from the State of New York. Since I see this approach as practically unlikely, I will not address this here. I do see the possibility that if (big word) we all supported a “fairness for all” type of proposal, maybe these proposals would exempt even religiously affiliated secular institutions, and maybe Congress would also preempt local increases. None of this will help Yeshiva in the short term.

<sup>21</sup> For an example of a fight, see <https://www.evangelicalfellowship.ca/Resources/Court-cases/2018/>

Trinity-Western-University-School-of-Law-2013-201, although this is in Canada.

<sup>22</sup> For a more historically accurate portrayal of why the Yeshiva in Volozhin closed, see Jacob J. Schacter “Haskalah, Secular Studies and the Close of the Yeshiva in Volozhin in 1892” in *Torah Umaddah* 1:76-133 (1990) or see Shaul Stampfer, *Lithuanian Yeshivas of the Nineteenth Century. Creating a Tradition of Learning* Translated by Lindsey Taylor-Guthartz. Oxford: Littman Library of Jewish Civilization, 2007.

<sup>23</sup> In addition, this type of policy has internal social costs of some complexity as. Even at the time of the 1970 events “Rav Lichtenstein voiced the problem of presenting one image to the outside world while trying to preserve another general direction” (as mentioned in *The Observer* article cited in note 1) as an ethical issue. Indeed, in conversation with people about this topic over many years, this has been a common ethical theme. Dr. Zev Eleff notes this as well in his alternate history “What if Rav Aharon Had Stayed? A Counter-History of PostWar Orthodox Judaism in the United States” at <http://www.thelehrhaus.com/scholarship/2017/3/9/what-if-rav-aharon-had-stayed-a-counter-history-of-postwar-orthodox-judaism-in-the-united-states>.



The Rav outlined the many dangers of secularization in his “Ghosts” speech.

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have a set of actual policies that reduce this issue (such as “no social clubs at all”), but I suspect that these matters will not go away in the current environment. So too, changing enrollment policies might or might not be a good idea, but doing so to address this issue seems unwise and economically untenable.

So, I see only two real options for Yeshiva: re-charter it as a religious institution in part

or move to more hospitable jurisdiction (or both). The economic costs of having a religious charter are complex and require a very tight and detailed look at the various losses and gains suffered by that chartering. Calculating this is complex, since sometimes the gains and losses are subtle.<sup>24</sup> Moving the institution out of New York would be difficult, heart-rending, and dislocating for the legions of students, faculty and staff at Yeshiva. However, it might be the approach most consistent with its mission, actually. Having defined itself as an institution committed to the harmonization of Torah values

and Western ideal, when one is living in a place where that is not possible, one looks for a new place to live.<sup>25</sup>

**In summary: Yeshiva University seems to need (if it wishes to preserve its Orthodox Jewish identity) to re-charter some of itself as a sectarian or religious corporation,<sup>26</sup> rather than remain a completely non-sectarian or secular institution, and Yeshiva should even consider moving to a more legally friendly jurisdiction. If it does neither of these, it is going to have a very rough ride preserving the status quo. Or even**

**worse, if Yeshiva does not act, it will have its religious agenda determined by a secular court and not by its own religious sensibilities.**

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<sup>24</sup> It is clear to me that the real issue is hardly “Bundy Money,” which has gone down every year since 1990 and is now a total allocation of only \$35M to a slightly less than 100 schools. For more on this, see <https://www.cicu.org/legislation-policy/state-aid-programs/direct-institutional-bundy-aid>. (I was told that Fordham was approved for Bundy money in 1970, although I have not been able to verify that.) The much more complex issue is access to the bond-issuing authority of the New York State Dormitory Authority to issue tax-free bonds as well as other state

and federal funding. For example, see this \$90M bond issued just by Yeshiva University. I have not been able to get a complete picture of the bond issuances of Yeshiva, but since 2010, it seems that Yeshiva has issued only that one bond. Let me add that it is clear that there is a mechanism for parochial colleges to receive funding from the authority, as both St. Joseph’s College and St John’s University have been funded. Unlike Yeshiva, they do not define themselves as non-sectarian. This is a crucially important issue, and further research is required. Indeed, the Touro

College and University System has the practice of having multiple units apply, only some of which are secularly chartered; that is clearly acceptable. Let me add that being religiously chartered has many advantages that need to be factored in as well. For example, a religious charter allows the granting of parsonage to many more people, which both saves on payroll taxes and increases take-home pay while also reducing costs. So too, religious institutions have a less robust regulatory environment allowing for a smaller administrative staff. They are less open

to legal claims, allowing a smaller General Counsel’s office and so on. Each and every upside and downside needs to be calculated closely.

<sup>25</sup> Let me add, as one early reader noted, that Manhattan real estate is still very expensive. Yeshiva could sell its holding and relocate to a much more idyllic location and rebuild its depleted endowment.

<sup>26</sup> See the paragraph accompanying note 19.