

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, individually
and on behalf of his patients, DAVID H.
PICKUP, LMFT, individually and on
behalf of his patients,

CASE NO. 8:17-cv-02896-CEH-AAS

Plaintiffs,

v.

CITY OF TAMPA, FLORIDA,

Defendant.

DEFENDANT, CITY OF TAMPA'S, NOTICE OF FILING, AND REQUEST THAT
COURT TAKE JUDICIAL NOTICE, OF CERTIFIED COPY OF ORDINANCE
NUMBER 2017-47, AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Defendant, City of Tampa ("City"), hereby gives notice of filing, and requests that the Court take judicial notice, of the attached certified copy of Ordinance No. 2017-47. In support thereof, the City alleges as follows:

Background

1. On April 6, 2017, Tampa City Council passed Ordinance No. 2017-47 relating to conversion therapy on patients who are minors ("the Ordinance"), and on April 10, 2017, Mayor Buckhorn approved the Ordinance.

2. A certified copy of the Ordinance from the City Clerk ("certified copy of the Ordinance") is attached hereto.

3. The City requests that the Court take judicial notice of the certified copy of the Ordinance which is attached hereto.

Argument

Pursuant to Federal Rule of Evidence 201(b), the Court “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.” This Court has held, moreover, that “§ 90.202 of the Florida Statutes permits the court to judicially notice ‘[f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned,’” *Taylor v. Sec’y, Fla. Dep’t of Corr.*, 2015 WL 1538114, at *6 (M.D. Fla. 2015) (alteration in original). Subsection (10) of § 90.202, Fla. Stat. further provides that the Court may take judicial notice of “[d]uly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies.” Thus, this Court may take judicial notice of the certified copy of the Ordinance which is attached hereto.

The certified copy of the Ordinance is clearly central to Plaintiffs’ claims, and judicial notice thereof is also necessary under the doctrine of completeness. *See Fed. R. Evid. 106; Fed. R. Evid. 106, Advisory Committee Notes.* Plaintiffs’ lawsuit expressly challenges the Ordinance, and Plaintiffs have attached to their Complaint and incorporated by reference an uncertified copy of the Ordinance as exhibit “A” to the Complaint. (See Doc. 1, ¶22.) The uncertified copy of the Ordinance, attached to the Complaint, cites to sixteen documents (including two judicial decisions) that were relied upon by the City in the enactment of the Ordinance. The sixteen documents are referenced in the legislative

findings in the “Whereas Clauses” at pages 1-4 of the Ordinance; and each of these “Whereas Clauses” are adopted by reference into section 1 of the Ordinance. Indeed, section 1 of the Ordinance expressly states “That the Whereas Clauses are adopted as if set forth fully herein.” (Page 5 of Ordinance.) Yet, Plaintiffs only refer to and attach one of those sixteen documents to their Complaint – the Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation. (See Doc. 1, ¶¶29-39, and exhibit “B” to Doc. 1.) Accordingly, the Court should judicially notice the complete, certified copy of the Ordinance, which is attached hereto, so that the Court can properly consider the Ordinance in its entirety during the course of the litigation.

It should further be noted that the Eleventh Circuit Court of Appeals – in addressing judicial notice – has stated that:

A district court may take judicial notice of certain facts without converting a motion to dismiss into a motion for summary judgment. *See Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999). Public records are among the permissible facts that a district court may consider. *See Stahl v. U.S. Dep’t of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003) (‘The district court may take judicial notice of public records and may thus consider them on a motion to dismiss.’)

Universal Express, Inc. v. United States Securities and Exchange Commission, 177 Fed. Appx. 52, 53 (11th Cir. 2006). *See also Parker v. Hurley*, 514 F.3d 87, 90 (1st Cir. 2008) (in disposing of a motion to dismiss, the Court considered - in addition to the complaint - three books plaintiffs found objectionable and statewide curricular standards).

Finally, it is also significant to note that at least some of the documents that were relied upon by the City in enacting the Ordinance, and which are part of the certified copy of the Ordinance attached hereto, were apparently referenced in and considered by the

Courts in addressing legislative findings in four federal appellate decisions that have upheld laws prohibiting licensed professionals from engaging in sexual orientation change efforts therapy with minors. See *King v. Governor of the State of New Jersey*, 767 F.3d 216, 221-222 (3d Cir. 2014) *cert. den.* 135 S. Ct. 2048 (2015); *Doe v. Governor of the State of New Jersey*, 783 F.3d 150, 152-153 (3d Cir. 2015) *cert. den.* 138 S. Ct. 1155 (2016); *Pickup v. Brown*, 740 F.3d 1208, 1223-1224 (9th Cir. 2014) *cert. den.* 134 S. Ct. 2871 (2014); *Welch v. Brown*, 834 F.3d 1041, 1046 (9th Cir. 2017) *cert. den.* 137 S. Ct. 2093 (2017).

Conclusion

For all of the aforesaid reasons, the City respectfully requests that this Honorable Court take judicial notice of the attached certified copy of the Ordinance, and that the consideration of the certified copy of the Ordinance on the City's Motion to Dismiss not convert said Motion into one for summary judgment.

Consultation with Plaintiffs' Counsel

In accordance with Local Rule 3.01(g), City's counsel has conferred with Plaintiffs' counsel concerning the relief set forth herein and counsel for Plaintiffs object to the relief requested herein.

/s/ Jerry M. Gewirtz

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 12, 2018 the foregoing was electronically filed with the Clerk of Court and a copy is being furnished by email to the following: Roger K. Gannam, Esquire at rgannam@lc.org; Horatio G. Mihet, Esquire at hmihet@lc.org; Mathew D. Staver, Esquire at mat@lc.org and court@lc.org; and Daniel J. Schmid, Esquire at dschmid@lc.org (Liberty Counsel, P.O. Box 540774, Orlando, FL 32854).

By: /s/ Jerry M. Gewirtz

Jerry M. Gewirtz, Esquire