

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

ROBERT L. VAZZO, LMFT, individually)	
and on behalf of his patients, DAVID H.)	
PICKUP, LMFT, individually and on)	Civil Action No.: <u>8:17-cv-02896-CEH-AAS</u>
behalf of his patients,)	
)	
Plaintiffs,)	INJUNCTIVE RELIEF SOUGHT
)	
v.)	
)	
CITY OF TAMPA, FLORIDA,)	
)	
Defendant)	

“While Rule 24 promotes judicial economy by facilitating, where constitutionally permissible, the participation of interested parties, the fact remains that a federal case is a limited affair, and not everyone with an opinion is invited to attend.”¹

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO PROPOSED
INTERVENOR EQUALITY FLORIDA’S MOTION TO INTERVENE**

Pursuant to M.D. Fla. Local Rule 3.01(c), Plaintiffs, Robert L. Vazzo, LMFT, and David H. Pickup, LMFT, individually and on behalf of their patients (collectively “Plaintiffs”), by and through the undersigned counsel, hereby submit their response in opposition to Proposed Intervenor Equality Florida’s (“Proposed Intervenor”) Motion to Intervene. (Dkt. 30, “EF Motion”). For the following reasons, Proposed Intervenor’s Motion should be denied.

INTRODUCTION

Proposed Intervenor’s argument for participation in this matter essentially boils down to one proposition: other courts considering a challenge to state-wide prohibitions on sexual orientation change efforts (“SOCE”) counseling have permitted various groups to intervene, so

¹ *Mausolf v. Babbitt*, 85 F.3d 1295, 1301 (8th Cir. 1996) (emphasis added).

this Court should too. Fatally for Proposed Intervenor's argument, the landscape under Rule 24 has fundamentally changed since intervention was permitted in Proposed Intervenor's cited cases. Indeed, the Supreme Court has now held, unequivocally, that a proposed intervenor must satisfy the irreducible constitutional minimums of Article III standing to justify intervention. *See Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1658 (2017). Naturally, any mention of this significant constitutional development is conspicuously absent from Proposed Intervenor's Motion, demonstrating that Proposed Intervenor cannot be counted upon to offer useful or trustworthy analysis to this Court. Proposed Intervenor has not even attempted to demonstrate that it satisfies the requirements of Article III, let alone actually clear that high hurdle. Therefore, its motion to intervene must be denied.

Moreover, even if Proposed Intervenor had attempted to satisfy the standing requirements of Article III, which it did not, and even if Proposed Intervenor could satisfy the standing requirements of Article III, which it cannot, intervention in this matter should still be denied because Proposed Intervenor cannot satisfy the requirements of Rule 24(b). Proposed Intervenor's participation in this matter is duplicative and unnecessary, its interests in this matter are adequately represented by the government Defendant, its claims do not share a common question of law or fact, and its participation would unduly delay and prejudice the adjudication of Plaintiffs' rights, which are currently suffering ongoing, immediate, and irreparable injury. This Court should deny Proposed Intervenor's Motion.

LEGAL ARGUMENT

I. PROPOSED INTERVENOR LACKS STANDING TO INTERVENE.

Proposed Intervenor claims that it is not required to demonstrate Article III standing to intervene in this action. (EF Motion at 6) (citing *Dillard v. Chilton Ctny. Comm'n*, 495 F.3d 1235

(11th Cir. 2007)). This claim is utterly devoid of merit, and it relies on authority decided long before the Supreme Court recently announced that proposed intervenors must possess standing to pursue their claims in federal court. Indeed, in *Town of Chester*, the Supreme Court recently stated unequivocally that “**an intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff.**” 137 S. Ct. at 1658 (emphasis added). Thus, Proposed Intervenor’s entire contention is based on stale authority that is no longer good law. *See Salvors, Inc. v. Unidentified Wrecked & Abandoned Vessel*, 861 F.3d 1278, 1290 (11th Cir. 2017) (noting that the Supreme Court held that “[f]or all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, coplaintiff, or an intervenor of right.”). Moreover, *Dillard* is not only stale, it is also inapposite.²

Town of Chester was the natural progression of the Supreme Court’s decision in *Hollingsworth v. Perry*, 570 U.S. 693, 133 S. Ct. 1652 (2013). There, the Court held that “standing must be met by persons seeking appellate review, **just as it must be met by persons appearing in courts of first instance,**” including intervenors. *Hollingsworth*, 133 S. Ct. at 2661 (emphasis added). Indeed, standing is required of intervenors because “Article III standing is not to be placed in the hands of concerned bystanders who will use it simply as a vehicle for the vindication of value interests.” *Id.*

While the Supreme Court’s decision in *Town of Chester* dealt specifically with intervention as of right, its analysis is equally applicable to permissive intervention. “Our decisions make clear

² *Dillard* answered the inapposite question of whether intervention, permissive or as of right, was possible for intervenors who did not have Article III standing in their own right, but who sought to “piggyback” on the standing of the original parties after those parties were no longer in conflict. 496 F.3d at 1330. Although the Eleventh Circuit, a decade before *Town of Chester*, surmised in *dicta* that “piggyback standing” might be appropriate elsewhere, it answered the question before it in the negative as to both, permissive and as-of-right intervention. *Id.* at 1340.

that standing is not dispensed in gross.” *Town of Chester*, 137 S. Ct. at 1650. While reciting the irreducible constitutional minimum of standing, the Court noted that “[t]he same principle applies to intervenors.” *Id.* at 1651. Indeed, “[f]or all relief sought, there must be a litigant with standing.” *Id.* “Thus, **at the least**, an intervenor of right must demonstrate Article III standing when it seeks additional relief **beyond that which the plaintiff requests.**” *Id.* (emphasis added). This is precisely why **courts analyzing this question post-*Town of Chester* have uniformly required Article III standing even in the permissive intervention context.** See, e.g., *City of Chicago v. Sessions*, No. 17 C 5720, 2017 WL 5499167, *4 (N.D. Ill. Nov. 16, 2017) (proposed intervenor must have standing for both, intervention of right and permissive intervention); *Zimmerman v. GJS Gro., Inc.*, No. 2:17-cv-00304-GMN-GWF, 2017 WL 4560136, *8-9 (D. Nev. Oct. 11, 2017) (post-*Town of Chester*, examining whether there was an “independent jurisdictional basis” for permissive intervention by proposed intervenor).

That Article III standing is required not only in as-of-right interventions but also in permissive interventions makes intuitive sense, and is the only logical application of the Supreme Court’s teaching in *Town of Chester*. As this Court is aware, **other than the requirement of Article III standing**, permissive intervention is much easier to obtain because it is “wholly discretionary” and reviewed for abuse of discretion. *Worlds v. Dep’t of Health & Rehab. Servs., State of Fla.*, 929 F.2d 591, 595 (11th Cir. 1991). Intervention as of right, by contrast, is reviewed *de novo*. *Huff v. Comm’r*, 743 F.3d 790, 795 (11th Cir. 2014). But, once any intervention is granted, the intervenor becomes a full party to the suit, and its rights and responsibilities do not at all depend on, or vary with, the type of intervention that was granted – *i.e.*, permissive or as of right. See Fed. R. Civ. P. 24(a)-(b). In other words, there is nothing that an intervenor as of right may do in a lawsuit that a permissive intervenor may not do. *Id.*

For this reason, would-be intervenors almost always seek both as-of-right and permissive intervention. Indeed, even where an intervenor forgets to seek permissive intervention, this District will often consider it *sua sponte*. See, e.g., *In re: Fiddler's Creek, LLC*, No. 2:14-CV-379-FTM-29CM, 2016 WL 3906927, at *14 (M.D. Fla. July 19, 2016) (“Although Mrs. Carter only argued mandatory intervention under Rule 24(a), the Court will consider the requirements of Rule 24(b).”). Accordingly, if permissive intervention would not require Article III standing, as mandatory intervention indisputably does after *Town of Chester*, would-be intervenors who lack Article III standing, like Proposed Intervenor here, will bootstrap their way into federal lawsuits via permissive intervention, achieving the exact same thing they could not achieve via mandatory intervention – only easier and subject to more deferential review. The Supreme Court could not possibly have intended to allow such a gaping hole in its *Town of Chester* crackdown on federal interlopers. Any other result would render *Town of Chester*'s Article III standing requirement merely an academic concept and an outright nullity.

Moreover, that Proposed Intervenor seeks to intervene as a **defendant** in this matter does not alter this constitutionally required conclusion. See, e.g., *Seneca Res. Corp. v. Highland Twp.*, No. 16-cv-289 Erie, 2017 WL 4168472 (W.D. Penn. Sept. 20, 2017) (**defendant** intervenors must satisfy Article III standing after *Town of Chester*); *Zimmerman* 2017 WL 4560136 at *8-9 (post-*Town of Chester*, ensuring that proposed intervenor **defendant** had established “independent jurisdictional basis” for permissive intervention). The reason for this constitutional mandate is simple: a defendant's request for relief that differs from that sought by the plaintiff requires independent standing. Indeed, “an intervenor must meet the requirements of Article III standing if the intervenor wishes to pursue relief not requested by the Plaintiff.” *Town of Chester*, 137 S. Ct. at 1658; see also *Salvors*, 861 F.3d at 1290 (same); *Oregon Prescription Drug Monitoring*

Program v. DEA, 860 F.3d 1228, 1233-34 (9th Cir. 2017) (proposed intervenors must possess article III standing to intervene when relief sought is different).

In sum, “judicial economy and the Rules of Civil Procedure notwithstanding, Congress cannot circumvent Article III’s limits on judicial power.” *Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) (citing *Seminole Tribe of Fl. v. Florida*, 517 U.S. 44 (1996); *Valley Forge Christian College v. Am. United for Separation of Church & State*, 457 U.S. 464, 471-75 (1982)). Indeed, “Congress could no more use Rule 24 to abrogate Article III standing requirements than it could expand the Supreme Court’s original jurisdiction by statute.” *Id.* (citing *Marbury v. Madison*, 5 U.S. 137 (1803)). Permitting a proposed intervenor lacking Article III standing to enter a suit removes it from the limited scope of the federal court’s jurisdiction. “[A]n Article III case or controversy, once joined by intervenors who lack standing, is—put bluntly—no longer an Article III case or controversy.” *Id.* Moreover, “[a]n Article III case or controversy is one where **all parties have standing, and a would-be intervenor, because he seeks to participate as a party, must have standing as well.**” *Id.* (emphasis added). It is axiomatic that “those who do not possess Article III standing may not litigate as suitors in the courts of the United States.” *Valley Forge*, 454 U.S. at 475-76. Here, Proposed Intervenor does not have standing, and its motion therefore must be denied.

A. Proposed Intervenor Has Not And Cannot Demonstrate Injury In Fact.

“Article III requires more than a desire to vindicate a value interest . . . It requires an injury in fact that distinguishes a person with a direct stake in the outcome of the litigation—even though small—from a person with a mere interest in the problem.” *Diamond v. Charles*, 476 U.S. 54, 66-67 (1986). “[A] private party whose own conduct is neither implicated nor threatened by a [challenged] statute has no judicially cognizable interest in the statute’s defense.” *Id.* at 56.

Indeed, “[b]ecause the State alone is entitled to create a legal code, **only the State has the kind of direct stake in defending the standards embodied in that code.**” *Id.* at 65 (emphasis added) (citations omitted).

The Supreme Court affirmed this principle in *Hollingsworth v. Perry*. In *Hollingsworth*, the intervenors seeking to defend the law at issue were the official proponents of an initiative in California who sponsored the petition to place the measure on the ballot, succeeded in having it placed on the ballot, and ultimately succeeded in having the initiative passed. *Hollingsworth*, 133 S. Ct. at 2660. On appeal, the Ninth Circuit certified the question of the proponents’ standing to the California Supreme Court, which held that the proponents did have standing to defend its constitutionality, and the Ninth Circuit relied on that answer to reach the merits. *Id.* at 2660-61. The Supreme Court determined that both the California Supreme Court and the Ninth Circuit were incorrect and held that the proponents of the law did not have standing to defend the law’s constitutionality because they had not suffered any injury in fact. *Id.* at 2664. If official proponents of a law have no standing to defend the constitutionality of the law they sponsored and succeeded in enacting, then certainly mere supporters of a law passed by the legislature or those who simply agree with it have no standing to defend its constitutionality in federal court. Proposed Intervenor therefore does not have standing to defend the Ordinance.

An injury in fact sufficient for Article III standing must be “an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). Here, Proposed Intervenor has not and cannot establish a concrete and particularized injury. Proposed Intervenor’s sole claim for having an interest in this litigation is that it supported passage of the Ordinance and has members opposed to the type of counseling prohibited under the

challenged Ordinance. (EF Motion at 6). Proposed Intervenor specifically states that it desires to intervene to protect minors “who are at risk of being subjected to conversion therapy.” (*Id.* at 1). But this argument must fail, as it does not rise to the level of certainty mandated by Article III. “We have repeatedly reiterated that the threatened injury must be *certainly* impending to constitute injury in fact, and that allegations of *possible* future injury are not sufficient.” *Clapper v. Amnesty Int’l*, 568 U.S. 398, 409 (2013) (emphasis original) (internal quotation marks omitted). Indeed, the Court has “been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment.” *Id.* at 1149.

Here, however, Proposed Intervenor’s entire basis for intervention is to protect a **speculative** group of **potential** future members who **might** receive SOCE counseling against their will. This rampant and “unadorned speculation will not suffice to invoke the federal power.” *Diamond*, 476 U.S. at 66. Proposed Intervenor’s alleged interest and injury is essentially the same argument put forward by the physician in *Diamond*, which the Supreme Court squarely rejected. “Although *Diamond*’s allegation may be cloaked in the nomenclature of a special professional interest, it is simply the expression of a desire that the [law] as written be obeyed.” *Id.* at 66. Proposed Intervenor’s purported injury and interest in seeing the Ordinance upheld is identical, and its request for intervention should meet the same fate.

Moreover, Proposed Intervenor’s conduct is neither implicated nor threatened by the law, which makes its participation merely a value interest without a concrete stake in the litigation. *Id.* at 67 (“*Diamond* has an interest but no direct stake” in the outcome of the case). Proposed Intervenor’s “abstract concern does not substitute for the concrete injury required by Article III.” *Id.* It is merely seeking to see a law upheld, which is insufficient as a matter of law to justify Article III standing. Proposed Intervenor has not and cannot demonstrate injury in fact.

B. Because Proposed Intervenor Cannot Establish Article III Injury, Any Decision From This Court Will Not Provide Any Redress.

In addition to the requirement that Proposed Intervenor establish a concrete and particularized injury, which it has not and cannot do, it is required to satisfy the element of redressability. “[I]t must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 561; *I.L. v. Alabama*, 739 F.3d 1273, 1280 (11th Cir. 2014) (same). Because Proposed Intervenor cannot show that it has a concrete injury, no matter what determination is made by this Court, it cannot obtain any relief. Proposed Intervenor’s potential for likely redress of injuries is not merely speculative in this case, which itself would be sufficient to defeat intervention, but it is **impossible** for its purported injuries to be redressed, as there is no legally sufficient Article III injury. *See, e.g., Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1266 (11th Cir. 2011) (if court cannot ascertain the legally cognizable injury from the record then it is impossible to determine how “a favorable decision would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered”). Proposed Intervenor does not have members that engage in this counseling and does not have members whose practice would somehow be restricted or impacted by the Ordinance. Nor is its conduct or interest impacted by the Ordinance. As such, Proposed Intervenor has not and indeed cannot establish the third element of the irreducible constitutional requirements of standing.

Even Proposed Intervenor’s desire to purportedly protect its **future** members who **might** be “subjected” to forced SOCE counseling against their will could not result in concrete, as opposed to speculative, redress. What Proposed Intervenor seeks is “not remediation of its own injury . . . but vindication of the rule of law—the undifferentiated public interest in faithful execution of [the Ordinance].” *Steel Co. v. Citizens for a Better Env.*, 523 U.S. 83, 106 (1998).

This cannot be questioned because Proposed Intervenor admits that its ultimate objective is to see the Ordinance upheld and enforced. (EF Motion at 8). As the Supreme Court said, “[t]his does not suffice.” *Steel Co.*, 523 U.S. at 106 (emphasis added). If an interest in seeing a law upheld were sufficient to demonstrate that a favorable judgment would remedy an alleged injury, “the redressability requirement would vanish.” *Id.* Indeed,

every plaintiff demonstrates his belief that a favorable judgment will make him happier. But although a suitor may derive great comfort and joy from the fact that the [Ordinance is upheld], that a wrongdoer gets his just deserts, or that the Nation’s laws are faithfully enforced, **that psychic satisfactions is not an acceptable Article III remedy because it does not redress cognizable Article III injury.**

Id. at 107 (bold emphasis added; italics original). To permit such a contention to satisfy the redressability requirement would be to permit “[r]elief that does not remedy the injury suffered [to] bootstrap a plaintiff into federal court.” *Id.* Permitting Proposed Intervenor to satisfy the requirement of redressability merely by being content that the Ordinance is upheld and enforced would violate “the very essence of the redressability requirement.” *Id.* Proposed Intervenor’s psychic satisfaction with a prohibition on the psychological satisfaction of those minors who seek counseling that Proposed Intervenor dislikes is not sufficient to establish standing. Its motion should therefore be denied.

II. PROPOSED INTERVENOR CANNOT AND DOES NOT SATISFY THE REQUIREMENTS FOR PERMISSIVE INTERVENTION.

Even if Proposed Intervenor could satisfy the constitutionally mandated standing to intervene in this action, which it cannot, Proposed Intervenor should still be denied permissive intervention because it cannot satisfy the requirements of Rule 24(b). Federal Rule of Civil Procedure 24(b) states that “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B); *see also Georgia v. U.S. Corps. of Eng’rs*, 302 F.3d 1242, 1250 (11th Cir.

2002). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Notably, even if “there is a common question of law of fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention.” *Worlds v. Dep’t of Health & Rehab. Serv.*, 929 F.2d 591, 595 (11th Cir. 1991); *Premier Foods of Bruton, Inc. v. City of Orlando*, 192 F.R.D. 210, 213 (M.D. Fla. 2000) (same).

A. Proposed Intervenor’s Claims Do Not Share A Common Question Of Law Or Fact.

Proposed Intervenor contends that its claims share a common question of law or fact with that asserted by the parties. (EF Motion at 6). However, its justification eviscerates its request for intervention. If a proposed intervenor has merely a generalized interest in upholding an ordinance but no enforcement authority or responsibility, it does not share a common question of law or fact. *See, e.g., Norris v. Detzner*, No. 3:15cv343-MCR/EMT, 2015 WL 12669919, *2 (N.D. Fla. Sept. 17, 2015).

In *Norris*, the proposed intervenors included civil rights organizations that desired to permissively intervene as defendants to argue for upholding a law they viewed as protective of their constituents’ voting rights. *Id.* at *1. The proposed intervenors argued, much like Proposed Intervenor here, that their mission was to fight for the rights of their members and eliminate gerrymandering. *Id.* at *2. Also like here, the plaintiffs in *Norris* were attempting to enjoin enforcement of a law they viewed as infringing their First Amendment rights. *Id.* But, **the proposed intervenors there, like the Proposed Intervenor here, did not have any authority or responsibility to enforce the challenged law.** *Id.* Because of that, the court held that permissive intervention would be improper:

Proposed Intervenor have not alleged a sufficient basis for permissive

intervention. The Proposed Intervenors are attempting to assert a generalized interest in avoiding political gerrymandering, but **they have no enforcement role in upholding the challenged amendments or in opposing the asserted speech rights, and thus they do not share a claim or defense in this suit.**

Id. at *2 (emphasis added).

Proposed Intervenor's contentions here must likewise fail. It asserts merely a generalized interest in upholding the Ordinance because it purportedly drafted the Ordinance and has members who testified in support of it. (EF Motion at 3-4). Proposed Intervenor does not and cannot allege that it has any enforcement authority under the Ordinance, that it has any enforcement role in the Ordinance, or that it has any responsibility whatsoever under the Ordinance. (*Id.*). Thus, its sole premise for seeking intervention is a desire to see the Ordinance upheld by this Court. As the *Norris* court said of such a claim: "Proposed Intervenors have not alleged a sufficient basis for permissive intervention." *Norris*, 2015 WL 12669919 at *2.

Moreover, Proposed Intervenor does not share a common question of law or fact because it seeks to inject highly speculative issues that are unsupported by the evidence, and, more importantly, that **are not necessary for the resolution of Plaintiffs' facial and pre-enforcement as-applied constitutional challenges.** See *United States v. Alabama*, No. 2:06-cv-392-WKW, 2006 WL 2290726, *9 (M.D. Ala. Aug. 8, 2006) (proposed intervenor does not have common question of law or fact where they seek to inject "speculative" issues that are "wholly unsupported by any evidence"). Here, Proposed Intervenor has already demonstrated that it intends to inject speculative issues that are the subject of wide-spread dispute. (EF Motion at 8) (noting that ideological supporters of this type of legislation will file briefs and testimony in support of the Ordinance); (*id.*) (noting that Proposed Intervenor desires to "significantly contribute to the development of the record" in this matter). Proposed Intervenor's desire to inject immaterial issues to this matter unquestionably removes its interest from a common question of law or fact.

Plaintiffs here are bringing primarily a **facial** challenge to the Ordinance. When the facial constitutionality of the statute is challenged, facts related to other underlying issues are immaterial. *See, e.g., Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009) (a facial challenge “does not require a developed factual record”). Indeed, “facial challenges by their nature are not dependent on the facts surrounding [the particular statute].” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 770 n.11 (1988); *see also Field Day, LLC v. Cnty. of Suffolk*, 463 F.3d 167, 174 (2d Cir. 2006) (“A facial challenge to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual.”).

Plaintiffs are also bringing an as-applied challenge, but because this challenge is brought **pre-enforcement**, it also does not depend on the factual “record” which Proposed Intervenor seeks to “develop.” *See GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1255 n.20 (11th Cir. 2012) (pre-enforcement as-applied challenges are permitted where, as here, “the factual context of the challenge is so clear and uncontroverted that there is no question as to how the statute would be applied,” and the Complaint “include[s] all of the factual allegations necessary to clearly illustrate the context in which the statute will be applied.”)

If Proposed Intervenor is permitted to intervene and create its factual record of anecdotal evidence unrelated to the question of whether censoring a particular counseling message, **willingly provided and received**, violates the First Amendment, then it will significantly alter the scope of Plaintiffs’ claims and create **different** questions of law and fact. As Plaintiffs’ filing of a Motion for Preliminary Injunction attests, time is of the essence in resolving their claims. The censorship imposed by the Ordinance is currently ongoing, and Plaintiffs’ speech is being silenced each day the unconstitutional Ordinance is permitted to remain in effect. The chilling effects on Plaintiffs’ cherished First Amendment liberties are immediate and irreparable. Proposed Intervenor’s desire

to inject immaterial issues into this matter would fundamentally transform Plaintiffs' First Amendment challenge. This Court's discretion to permit a third party to intervene does not extend to transformative modification of the essence of Plaintiffs' claims.

B. Proposed Intervenor's Interest Are Adequately Represented.

The Eleventh Circuit and this District have held that permissive intervention is inappropriate where, as here, the interests of the proposed intervenor are already being adequately represented. *See, e.g., United States v. Jefferson Cnty.*, 720 F.2d 1511, 1517 (11th Cir. 1983) (holding that intervention, both permissive and as of right, is proper where "the judge finds that although the movant has an **identical** interest with a party, he has a sufficiently **greater** stake than the party that **the party's representation may be inadequate to protect the movant's interest,**" and, conversely, both types of intervention are not be proper "where the movant has no identity of interest with a party and thus could not be bound, **or where his interest is identical with a party and consequently he is adequately represented**") (emphasis added); *In re Fiddler's Creek, LLC*, No. 2:14-cv-379-FtM-29CM, 2016 WL 3906927, *14 (M.D. Fla. July 19, 2016) ("**permissive intervention is not necessary because [proposed intervenor's] interests are being adequately represented**") (emphasis added). Thus, Proposed Intervenor here also must overcome the high hurdle of demonstrating that the City's representation of its interest is inadequate. It cannot do so.

Where, as here, the proposed intervenor and the government defendant share the same ultimate objective or where their interests are aligned, the government's representation is **presumed** adequate. *See, e.g., Athens Lumber Co, Inc. v. FEC*, 690 F.2d 1364, 1466 (11th Cir. 1982) (when both the government and proposed intervenor share the interest in upholding the constitutionality of a challenged law, "we **presume** that the [proposed intervenor's] interest is adequately represented") (emphasis added); *Fed. Savings & Loan Ins. Corp. v. Falls Chase Special*

Taxing Dist., 983 F.2d 211, 215 (11th Cir. 1993) (“This court will presume that a proposed intervenor’s interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention”); *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989) (same). Here, there can be no dispute that Proposed Intervenor shares the same interest and ultimate objective of the government Defendant. Indeed, Proposed Intervenor admits this much when it states that: **“Equality Florida fully shares with the City the objective of defending the Ordinance.”** (EF Motion at 6) (emphasis added). Thus, Proposed Intervenor’s candid admission is fatal to its intervention.

Moreover, Proposed Intervenor does nothing to rebut the presumption that its interests are adequately represented by the City. Proposed Intervenor certainly does not suggest that the City will not mount a spirited and comprehensive defense of the Ordinance. Such a suggestion would not fly in any event, given that the City has already amassed and filed a pile of 660 pages in opposition to Plaintiffs’ Complaint and Motion for Preliminary Injunction. (Dkt. 22-26).

In sum, Proposed Intervenor’s participation in this lawsuit is wholly redundant and unnecessary, and is defeated by its own admissions. Accordingly, the motion to intervene should be denied.

C. Proposed Intervenor’s Participation Would Unduly Delay And Prejudice The Adjudication Of Plaintiffs’ Claims Of Immediate And Irreparable Injury.

A party seeking urgent relief “deserves refuge from the undue delay that would result from intervention.” *Manasota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990). Here, Plaintiffs have sought injunctive relief to halt the ongoing, immediate, and irreparable injury being inflicted on their cherished First Amendment freedoms each day the challenged Ordinance is allowed to remain in effect. Proposed Intervenor seeks to intervene in such a manner that will only prejudice and delay the timely adjudication of those rights, and its participation should therefore be denied.

Intervention results in undue delay and prejudice when the intervenor's participation would inject "duplicative claims" into the parties' dispute. *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989); *see also Bodden v. Cole*, No. 3:11-cv-127-J-20MCR, 2012 WL 12895740, *5 (M.D. Fla. Feb. 13, 2012) (permissive intervention should be denied where the arguments presented are "duplicative" of the parties' claims and where there is a "likelihood that no 'new light will be shed on the issues to be adjudicated.'") (quoting *Chiles*, 865 F.2d at 1215). This Court need look no further than Proposed Intervenor's own admissions to determine that its participation is entirely duplicative. (EF Motion at 6) (admitting that its only interest is upholding the Ordinance that Defendant is already vigorously defending). Proposed Intervenor will bring nothing new to light concerning the constitutionality of the Ordinance. Its participation is therefore duplicative, and intervention should be denied.

Intervention will also unduly delay and prejudice the proceedings when a proposed intervenor seeks to inject collateral issues requiring additional discovery, witnesses, and litigation. *See, e.g., United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704 (11th Cir. 1991) (upholding district court's denial of intervention because the addition of witnesses and collateral issues constitutes an undue delay and prejudice to the rights of the original parties); *Office Depot, Inc. v. Nat'l Union Fire Ins. Co.*, No. 09-80554-CIV, 2010 WL 431886, *2 (S.D. Fla. Feb. 3, 2010) (proposed intervention imposes prejudice where "intervenor would attempt to multiply issues" or "when intervention would require additional discovery"); *Bumble Bee Foods, LLC v. Malo, Inc.*, No. CV 109-042, 2009 WL 2762683, *4 (S.D. Ga. Aug. 31, 2009) (proposed intervention causes undue delay and prejudice where "intervention would delay the discovery process and necessitate additional discovery"); *Fla. Clean Water Network, Inc. v. U.S. EPA*, No. 4:09-cv-1650SOM/WCS, 2009 WL 10674045, *2 (N.D. Fla. Sept. 29, 2009) (proposed intervention should not be granted

where proposed intervenor would add witnesses and corollary issues to the litigation). Yet again, Proposed Intervenor has admitted that it desires to create a “significant” record and will submit testimony and briefing on side issues. (EF Motion at 8). These additional burdens on Plaintiffs will undeniably result in undue delay.

Finally, intervention unduly delays and prejudices a proceeding when the proposed intervenor seeks to inject interests of a “remote and general nature.” *Athens Lumber Co., Inc. v. FEC*, 690 F.2d 1364, 1367 (11th Cir. 1982). Proposed Intervenor’s argument demonstrates that it desires to inject such issues into this matter. As demonstrated *supra* Section II.A, Proposed Intervenor seeks to inject wholly speculative issues relating to its potential future members who might someday receive **forced** SOCE counseling absent its participation here. Such issues have no place in Plaintiffs’ constitutional challenge to an Ordinance which prohibits even **desired** SOCE counseling, and are impermissibly remote and general. Proposed Intervenor’s participation will unduly delay and prejudice adjudication of Plaintiffs’ claims.

CONCLUSION

Because Equality Florida has not demonstrated and cannot demonstrate Article III standing, and because it cannot satisfy the requirements of Rule 24(b), its motion to intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2018, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic service system.

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