

**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 behalf of his patients; and SOLI DEO GLORIA INTERNATIONAL, INC., d/b/a NEW HEARTS OUTREACH TAMPA BAY, individually and on behalf of its members, constituents, and clients,

Plaintiffs,

No. 8:17-cv-02896-CEH-AAS

v.

CITY OF TAMPA, FLORIDA; and SAUL RUGGIERO, in his official capacity as Manager of the City of Tampa Neighborhood Enhancement Division,

Defendants.

**EQUALITY FLORIDA’S AMICUS BRIEF IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs’ Second Motion for Preliminary Injunction should be denied. As Amicus Curiae Equality Florida Institute, Inc. demonstrates below, LGBTQ children—a highly vulnerable part of Tampa’s population—will be harmed if the Ordinance is enjoined and the dangerous therapeutic practices Plaintiffs seek to perform on children are allowed to be used. Both the balance of harms and the public interest tilt sharply in favor of avoiding harm to minors. Plaintiffs also cannot show that they are likely to succeed on the merits of their claims. Because

Plaintiffs cannot satisfy the high standard for a preliminary injunction, particularly for an injunction against enforcement of a government regulation, their motion should be denied.

### **INTEREST OF AMICUS CURIAE**

Equality Florida Institute, Inc. is the largest civil rights organization in the State of Florida that advocates on behalf of Florida's lesbian, gay, bisexual, and transgender (LGBT) residents. As part of Equality Florida's mission of combatting harassment and discrimination against LGBTQ Floridians, Equality Florida has supported the enactment of LGBTQ civil rights laws at the state, county, and municipal levels. Equality Florida and its staff and members were actively involved in the enactment of the Ordinance. Equality Florida has a strong interest in ensuring that the Ordinance continues to protect Tampa LGBT youth.

### **ARGUMENT**

A preliminary injunction is “an extraordinary and drastic remedy.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). The Eleventh Circuit has urged particular caution against “preliminary injunctions of legislative enactments—because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits.” *Ne. Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). Such injunctions “must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.” *Id.*

As Equality Florida's Amicus Brief in Support of the City's Motion To Dismiss, together with the City's filings, demonstrates, Plaintiffs' claims are not viable as a matter of law. Thus, Plaintiffs have no substantial likelihood of success on the merits.

In addition, as we now show, Plaintiffs also cannot make the requisite showing that they would suffer irreparable injury in the absence of a preliminary injunction. Moreover, any potential harm to Plaintiffs is far outweighed by the risk to Tampa’s LGBTQ young people from the prohibited conversion therapy, such that an injunction would be adverse to the public interest. We address each of these factors in turn.

**I. PLAINTIFFS HAVE NOT SHOWN ANY THREAT OF IRREPARABLE INJURY**

Irreparable injury is the “sine qua non of injunctive relief.” *Siegel*, 234 F.3d at 1176 (quoting *City of Jacksonville*, 896 F.2d at 1285). The asserted injury “must be neither remote nor speculative, but actual and imminent” to justify injunctive relief. *Id.* (quoting *City of Jacksonville*, 896 F.2d at 1285).

Importantly, as Plaintiffs themselves acknowledge, the Ordinance has been in effect since April 10, 2017. Dkt. 1 at 6. Plaintiffs waited nearly eight months to file their lawsuit. Plaintiffs then filed an amended complaint less than a week before the hearing on their original preliminary injunction motion, necessitating the filing of a new motion and causing further delay. *See* Dkt. 78, 85.

Plaintiffs’ delay weighs strongly against their assertion that they will suffer imminent and irreparable injury if the status quo that has been in place for more than a year is allowed to continue. *See Bensiek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (failure of party seeking preliminary injunction to show reasonable diligence defeats claim of irreparable injury); *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (“A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.”).

Plaintiffs claim that First Amendment injuries always are irreparable. *See* Dkt. 3 at 23. But, assertion of such an injury first requires Plaintiffs to demonstrate a reasonable likelihood that their First Amendment rights are, in fact, being impaired by the Ordinance. *See Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010) (finding irreparable First Amendment injury after determining substantial likelihood on the merits); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008) (emphasizing importance of closely scrutinizing claims of irreparably injury at the preliminary injunction stage). Plaintiffs have failed even to state viable First Amendment claims, much less to show a likelihood of success on them.

Plaintiffs' only other asserted injuries are purely economic, which, even if proved, are not irreparable. *See* Dkt. 3 at 6 (moving and leasing expenses, lost revenue). Not only are these alleged injuries purely speculative—Plaintiff Pickup is not even licensed to practice in Florida yet—they are also the classic type of injury that could be compensated via a damages award should Plaintiffs prevail at trial. *See City of Jacksonville*, 896 F.2d at 1286.

In reality, the only possible injury to Plaintiffs from the denial of a preliminary injunction is that they will be prevented from engaging in a single form of therapy (conversion therapy) with some of their Tampa patients (minors) until the claims in this case have been subjected to “the safeguards of the full legal process.” *See id.* at 1285. Plaintiffs have been abiding by the Ordinance since its enactment nearly one year ago. They will not be irreparably harmed by continuing to do so for the short time required to resolve their challenge to the Ordinance.

## **II. THE HARM TO TAMPA’S LGBTQ CHILDREN FAR OUTWEIGHS ANY HARM TO PLAINTIFFS**

In contrast to the absence of any irreparable harm to Plaintiffs, non-enforcement of the Ordinance would expose Tampa’s children to a risk of serious harm that would allow children and teenagers to be subjected to a mental health therapy the City has deemed unsafe--based on

the overwhelming consensus of major medical and mental health professional organizations. Indeed, the reality and severity of this risk of harm are precisely why the City enacted the Ordinance.

The “overwhelming research,” Tampa, Fla., Ordinance No. 2017-47, at 1, supporting the City’s conclusion that conversion therapy poses an unacceptable risk of harm to Tampa’s youth includes, among many others:

- A 2015 position paper from the American College of Physicians, which states: “The College opposes the use of ‘conversion,’ ‘reorientation,’ or ‘reparative’ therapy for the treatment of LGBT persons. . . . Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons. Research done at San Francisco State University on the effect of familial attitudes and acceptance found that LGBT youth who were rejected by their families because of their identity were more likely than their LGBT peers who were not rejected or only mildly rejected by their families to attempt suicide, report high levels of depression, use illegal drugs, or be at risk for HIV and sexually transmitted illnesses.”  
<http://annals.org/article.aspx?articleid=2292051>
- The American Academy of Child and Adolescent Psychiatry’s 2018 Policy on Conversion Therapies, which states that such therapies “lack scientific credibility and clinical utility. Additionally, there is evidence that such interventions are harmful. As a result, ‘conversion therapies’ should not be part of any behavioral health treatment of children and adolescents.”  
[http://www.aacap.org/AACAP/Policy\\_Statements/2018/Conversion\\_Therapy.aspx](http://www.aacap.org/AACAP/Policy_Statements/2018/Conversion_Therapy.aspx)
- The American Psychological Association’s 2000 Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies), which states: “The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction.”  
<http://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2000-therapies-change-sexual-orientation.pdf>
- A 1993 policy statement of the American Academy of Pediatrics, stating: “Therapy directed at specifically changing sexual orientation is contraindicated, since it can

provoke guilt and anxiety while having little or no potential for achieving changes in orientation.”

(<http://pediatrics.aappublications.org/content/pediatrics/92/4/631.full.pdf>)

Plaintiffs have brought this lawsuit precisely because they desire to practice this condemned practice of conversion therapy on children in Tampa. They assert that they are in contact with multiple young people in the City who purportedly are potential patients for conversion therapy. *See* Dkt. 3 at 6. There is thus every reason to believe that Plaintiffs would proceed to engage in conversion therapy with these minors and other minors if the Ordinance were enjoined.

Enjoining the Ordinance would therefore expose these minors—and other LGBTQ youth in Tampa—to a practice that the City legislatively determined, based on a broad consensus of medical and mental health professional organizations, to put youth at risk of

confusion, depression, guilt, helplessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

Tampa, Fla., Ordinance No. 2017-47, at 1–2 (citing Am. Psychological Ass’n, *Appropriate Therapeutic Responses to Sexual Orientation* 42 (2009) (hereinafter “APA Report”).

The APA Report detailed evidence that such therapy is based upon inaccurate, unscientific views of sexual orientation and gender identity. APA Report, *supra*, at 74–75. Moreover, conversion therapy is often coercive and based on fear. *Id.* Adolescents and children often “agree” to such practices out of fear of disapproval, loss of love, rejection, or outright abandonment by their family, community, and/or peer group. APA Report at 75. Minors’ lack of

legal and economic independence renders them especially vulnerable to pressure to engage in conversion therapy. *Id.*

Citing the APA report, the District Court for the Eastern District of California concluded in 2012 that “no small quantum of information” supported the California Legislature’s finding that conversion therapy is harmful to minors. *Pickup v. Brown*, 42 F. Supp. 3d 1347, 1376 (E.D. Cal. 2012). Reviewing similar evidence in 2014, the Third Circuit noted that

[i]t is not too far a leap in logic to conclude that a minor client might suffer psychological harm if repeatedly told by an authority figure that her sexual orientation—a fundamental aspect of her identity—is an undesirable condition. Further, if [conversion therapy] is ineffective—which, as we have explained, is supported by substantial evidence—it would not be unreasonable for a legislative body to conclude that a minor would blame herself if her counselor’s efforts failed.

*King v. Governor of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014).

The evidence and consensus that conversion therapy harms minors continues to grow. In 2015, the Substance Abuse and Mental Health Services Administration (SAMHSA), an agency within the U.S. Department of Health and Human Services, released a report—also relied upon by the City—detailing the particular vulnerability of LGBTQ youth, who are already at risk of higher rates of mental health problems due to high rates of family rejection, stigma, and discrimination. *See* Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth 20* (2015) (hereinafter “SAMHSA Report”).

As did the APA, SAMHSA concluded that “[i]nterventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatments.” *Id.* at 11.

Finally, it bears emphasis that the Ordinance does not deprive minors of access to competent, ethical mental health care. As both the APA and SAMSHA reports explain, there are appropriate therapeutic interventions for individuals experiencing distress due to their sexual orientation or gender identity. These effective, ethical approaches focus on providing accurate information about sexual orientation and gender identity, reducing internalized negative attitudes, and strengthening family and community ties. SAMHSA Report, *supra*, at 26–27; APA Report, *supra*, at 76–78.

In short, enforcement of the Ordinance will ensure that Tampa’s minors continue to have access to effective and appropriate mental health treatment, while protecting them from the risk of severe harm arising from the dangerous and discredited practice of conversion therapy.

### **III. ENJOINING THE ORDINANCE IS ADVERSE TO THE PUBLIC INTEREST**

For similar reasons, enjoining the Ordinance would impair rather than advance the public interest. The City of Tampa enacted the Ordinance because it determined that protecting minors from these dangerous and harmful practices was in the public interest. *See* Ordinance No. 2017-47, *supra*, at 4; *see also Pickup*, 42 F. Supp. 3d at 1362 (noting government’s compelling interest in protecting physical and emotional well-being of youth), *aff’d*, 740 F.3d 1208 (9th Cir. 2014).

Permitting licensed therapists to engage in harmful practices with respect to minors is, by definition, contrary to that public interest.

**CONCLUSION**

Equality Florida respectfully requests that the Court deny Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted,

/s/ Sylvia Walbolt

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on July 24, 2018, the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system, which will also send a notice of electronic filing to all counsel of record.

*/s/ Sylvia Walbolt* \_\_\_\_\_  
Attorney