

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

Case No. 8:17-cv-02896-T-02AAS

Plaintiffs,

v.

CITY OF TAMPA, FLORIDA, and  
SAL RUGGIERO, in his official capacity  
As Manager of the City of Tampa  
Neighborhood Enforcement Division

Defendants

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**DEFENDANT CITY OF TAMPA'S MOTION FOR PROTECTIVE ORDER,  
INCORPORATED MEMORANDUM OF LAW, AND REQUEST  
FOR EXPEDITED CONSIDERATION**

Defendant, City of Tampa, Florida ("City"), hereby moves this Court pursuant to Fed. R. Civ. P. 26(c) for a protective order in connection with the scheduled 30(b)(6) deposition that has been noticed by Plaintiffs. In support thereof, the City states as follows:

1. On April 6, 2017, Tampa City Council passed Ordinance No. 2017-47, relating to conversion therapy on patients who are minors ("Ordinance"). On April 10, 2017, the Ordinance was signed by Mayor Bob Buckhorn.
2. Plaintiffs' First Amended Complaint (Doc. 78) challenges the validity of the Ordinance by asserting that it: (1) abridges Plaintiffs' rights to free speech (Counts I and IV); (2) violates their clients' rights to receive such speech (Count II); (3) abridges their rights to the free exercise of religion (Counts III and V); is void as an ultra vires act (Count VI); violates

their rights under the Florida Patient's Bill of Rights and Responsibilities (Count VII); and violates their rights under Florida's Religious Freedom Restoration Act (Count VIII).

3. On August 9, 2018, Plaintiffs served their initial discovery upon the City. In an e-mail accompanying the discovery, Plaintiffs' counsel advised that they also desired to depose defendant Ruggiero and a Rule 30(b)(6) witness. The e-mail advised that while the topics for the Rule 30(b)(6) deposition would be identified "more fully" in a subsequent deposition notice, the deposition would seek testimony "on the same topics covered by the attached discovery requests."
4. The City never agreed to the proposed topics as articulated in Plaintiff's counsel's e-mail.
5. In the Court's Order, dated September 13, 2018, the Court narrowed search terms, date ranges, custodians, and devices the City had to search to determine the scope of materials responsive to Plaintiffs' discovery requests. In that regard, the Court limited the scope of discovery to the following: (a) the time period of October 1, 2016 to December 15, 2017; (b) 20 custodians identified in the Court's Order (Doc. 119); and (c) 30 search terms identified in the Court's Order (Doc. 119). At the hearing on September 13, 2018, the Court also made clear that the defined discovery period, relative to deposition inquiries, would also be limited to December 15, 2017. (Transcript, p. 40-44.) (A copy of the transcript is attached hereto as Exhibit "A".) In fact, the Court stated at the hearing that "**normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.**" (Transcript, p. 40:20-24.) (Emphasis supplied.) The Court further stated that "**what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.**"

(p.30.) (Emphasis supplied.) The Court also stated that: “So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017.” (p. 28-29).

6. On September 18, 2018, Plaintiffs served their formal Notice of Taking Depositions of Defendants, in which they noticed a Rule 30(b)(6) deposition of the City for October 30, 2018, and the deposition of Defendant Ruggiero for October 31, 2018. (A copy of the Notice of Taking of Depositions is attached hereto as Exhibit “B”.)
7. On September 24, 2018, the City served upon Plaintiffs’ its objections to the 30(b)(6) deposition. (A copy of the City’s objections is attached hereto as Exhibit “C”.)
8. On September 25, 2018, counsel for the parties conferred concerning the City’s objections to the 30(b)(6) deposition.
9. The City has no objection to the deposition of Defendant Ruggiero. However, for the reasons stated below, the City seeks a protective order from this Court with respect to the proposed Rule 30(b)(6) deposition.

### MEMORANDUM OF LAW

Pursuant to Rule 26(b)(1), “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case...” In assessing whether requested discovery is proportional, consideration is given to: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties’ relative access to relevant information; (4) the parties’ resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery

outweighs its likely benefit. *Id.*<sup>1</sup> “When discovery does not relate to the actual issues in the case, then it does not meet the relevance and proportionality requirements.” *Runton by and through Adult Advocacy & Representation v. Brookdale Senior Living, Inc.*, 2018 WL 1083493, \*7 (S.D. Fla. Feb. 27, 2018) (citation omitted). Thus, this Court has noted that in a case in which a governmental entity’s official action is challenged solely on constitutional and statutory grounds, little discovery should be needed. *See Men of Destiny Ministries, Inc. v. Osceola County, Florida*, 2006 WL 2048288, \*1 (M.D. Fla. July 20, 2006) (“the nature of the proceeding is a review of whether Defendant’s action taken on a Conditional Use Permit application constitutes violation of Plaintiff’s statutory and constitutional rights. As such, it appears that the proceeding is one in which little formal discovery should be needed, as the complaint is against official action, which is set forth in a formal administrative record.”). *See also Bill Salter Advertising v. City of Brewton*, 486 F. Supp.2d 1314, 1319 (S.D. Ala. 2007) (where motion for preliminary injunction turned on pure questions of law relating to a predominantly facial challenge to ordinance constitutionality, no preliminary discovery was reasonably necessary). Moreover, the court must limit the frequency or extent of discovery if it determines that “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(c)(i). Rule 26(c) provides that a party from whom discovery is sought may move for an order to protect the party “from annoyance, embarrassment, oppression, or undue burden or expense....”

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<sup>1</sup> This Court has noted that the list of factors identifies in Rule 26(b)(1) is non-exclusive. *See, e.g., Polycarpe v. Seterus, Inc.*, 2017 WL 2257571, \*4 (M.D. Fla. May 23, 2017).

As discussed below, Plaintiffs' request for a Rule 30(b)(6) deposition is premature, given that Plaintiffs have not yet received—let alone reviewed—the City's responses to Plaintiff's written discovery, nor has the Court ruled on any objections the City may assert in response to such discovery. Given that Plaintiffs' review and/or the Court's rulings may obviate the need for, or at least narrow the scope of, any Rule 30(b)(6) deposition, the purpose of Rule 26 is frustrated by Plaintiffs designating topics for testimony prior to such review. In addition to being premature, Plaintiffs' Rule 30(b)(6) notice includes topics that are inappropriate for Rule 30(b)(6) testimony. In that regard, Plaintiffs should be precluded from seeking any testimony concerning topics 7, 9, 10, 11, and 12.

1. Plaintiffs' Request for Rule 30(b)(6) Deposition is Premature

Because Plaintiffs' 30(b)(6) notice was served well before the deadline for the City to respond to Plaintiff's written discovery, Plaintiffs cannot assert that the desired Rule 30(b)(6) testimony cannot be obtained from another source "that is more convenient, less burdensome, or less expensive." Consistent with Plaintiffs' counsel's August 9, 2018 correspondence, Plaintiffs' Rule 30(b)(6) deposition notice largely "seek[s] testimony on the same topics covered by the attached discovery requests." By explicitly requesting duplicative discovery, Plaintiffs violate the requirements of Rule 26. *See, e.g., Bank of America, N.A. v. SFR Investments Pool 1 LLC*, 2016 WL 2843802, \* 3 (D. Nev. May 12, 2016) ("[D]efendant's approach in serving a duplicative Rule 30(b)(6) deposition notice contemporaneously with its initial written discovery requests violates the requirement of Rule 26(b) that discovery be reasonably tailored and proportional to the needs of the case."); *U.S. E.E.O.C. v. Source One Staffing, Inc.*, 2013 WL 25033, \*4 (N.D. Ill. Jan. 2, 2013) ("Defendant will be able to focus any future Rule 30(b)(6) Notice on the discovery of any facts that require further explication after the [plaintiff] has supplemented its interrogatory

answers. At this time, therefore, the Rule 30(b)(6) Notice is premature.”); *Taser Int’l, Inc. v. Morgan Stanley & Co., Inc.*, 2010 WL 11575279, \*2 (N.D. Ga. Dec. 17, 2010) (“the Court finds that it would be inefficient and unduly burdensome to require [defendant] to participate in a Rule 30(b)(6) deposition without first giving the company an opportunity to provide written discovery...”). Before declaring any topics of inquiry for a Rule 30(b)(6) deposition, Plaintiffs should be required to first review the City’s responses and objections to Plaintiffs’ written discovery requests, so that any such deposition—if needed at all—can be ‘reasonably tailored’ and not ‘unreasonably cumulative or duplicative.’

2. Plaintiffs Should be Precluded from Seeking Any Testimony Concerning Topic 7

Topic 7 of Plaintiffs’ Notice seeks testimony relating to “All communications and coordination, between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.” The City objects to this topic, reserving the right to assert additional objections, for the following reasons:

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs’ discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court stated that “**normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.**” (Transcript, p. 40:20-24.) (Emphasis supplied.) The Court further stated that “**what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.**” (p.30.) (Emphasis supplied.) The Court also

stated that: “ So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be the that December 15, 2017.” (p. 28-29). Topic 7 is contrary to the scope of discovery permitted by the Court in that it (1) does not limit the time period to the ordinance date, the filing of the Complaint, or even December 15, 2017, but rather is completely open-ended; (2) does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms. Pursuant to the Court’s Order, which narrowed the scope of materials responsive to Plaintiffs’ discovery requests, the Court authorized discovery of documents from only 20 custodians, during the period of October 1, 2016 to December 15, 2017 as it relates to the search term “Equality Florida.”

- b. The information requested in topic 7 is (a) irrelevant to the claims and defenses, and (b) is not proportional to the needs of the case. Moreover, particularly as it relates to the time period after the enactment of the Ordinance, and certainly after the filing of the Complaint, the requested information which is the subject of the topic is (a) irrelevant to the claims and defenses, and (b) is not proportional to the needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by City Council on April 6, 2017 and approved by the Mayor on April 10, 2017. Thus, any event after April 10, 2017, and particularly after the filing of the Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in this action, (b) the importance of the discovery in resolving the issues, and (c) the burden or the expense of the

proposed discovery significantly outweighs its likely benefit.<sup>2</sup> With respect to the latter, the proposed inquiry would potentially require that the City contact every City employee, of which there are more than 4,000, to ascertain whether any one of the City employees participated in any verbal or written communications or coordination between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors. This would require an extraordinary effort on the part of the City, generate an enormous waste of time, unduly burden the City, and cannot reasonably be accomplished in advance of the November 15, 2018 hearing, and is neither necessary nor relevant for the preliminary injunction hearing.

- c. Although the Court's Order, the lack of relevancy, and the lack of proportionality to the needs of the case are, in and of themselves, more than sufficient to object to this topic, the City further objects for the reason that City shares a joint defense and common interest privilege with Equality Florida. The joint defense privilege "extends work product protection to documents shared between entities who have a common interest in the outcome of litigation." *Fojtasek v. NCL (Bahamas) Ltd.*, 262 F.R.D. 650, 656 (S.D. Fla. 2009). *See also In re Pacific Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012) ("the 'common interest' or 'joint defense' rule is an exception to

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<sup>2</sup> Rule 26(b) of the Federal Rules of Civil Procedure governs the scope of discovery. The rule provides in relevant part that:

Parties may obtain discovery regarding any non-privileged matter that is **relevant** to any party's claim or defense and **proportional to the needs of the case**, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. (Emphasis supplied.)

ordinary waiver rules designed to allow attorneys for different clients pursuing a common legal strategy to communicate with each other....the parties must make the communication in pursuit of a joint strategy in accordance with some form of agreement—whether written or unwritten.”). This Court has previously found that “Equality Florida has a defense that shares a common question of law or fact with the City.” See Doc. 52, p. 10.<sup>3</sup> Consistent therewith, the City asserts that to the extent there may be any communication occurring after the filing of the Complaint on December 4, 2017, between the City of Tampa, including its attorneys, and Equality Florida, including its attorneys — specifically including, Sylvia H. Walbolt, Brian C. Porter, and other counsel with Carlton Fields Jordan Burt, P.A; Shannon Minter, Christopher Stoll, and other counsel at the National Center for Lesbian Rights; and Scott D. McCoy, David C. Dinielli, J. Tyler Clemons, and other counsel at Southern Poverty Law Center —such a communication is privileged pursuant to joint defense and/or common interest privilege.<sup>4</sup>

- d. The City further objects for the reason that the term “any other advocacy group” is ambiguous.
- e. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic which would potentially require contacting more than 4,000 City employees relative to ascertaining information concerning any verbal or written communications that any one of the employees may have ever had with respect to “all communications

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<sup>3</sup> This Court’s ruling was adopted by the District Court. (Doc 60.)

<sup>4</sup> Each of the aforesaid attorneys and entities are reflected on the signature page in the filings of Equality Florida.

and coordination between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.”

3. Plaintiffs Should be Precluded from Seeking Any Testimony Concerning Topic 9

Topic 9 seeks testimony concerning “Defendant’s drafting, consideration, debate, engagement, interpretation, application, and enforcement of the Ordinance, including Defendant’s internal and external communications regarding same.” The City objects to this topic, reserving the right to assert additional objections, for the following reasons:

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 15, 2018, the Court stated that **“normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.”** (Transcript, p. 40:20-24.) (Emphasis supplied.) The Court further stated that **“what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.”** (p.30). (Emphasis supplied.) The Court also stated that: “So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be the that December 15, 2017.” (p. 28-29). Topic 9 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017, but rather is completely open-ended; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each

and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.

b. As it relates to the time period after the enactment of the Ordinance and certainly after the filing of the Complaint, the information requested in topic 9 is: (a) irrelevant to the claims and defenses; and (b) not proportional to the needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by Tampa's City Council on April 6, 2017, and approved by the City's Mayor on April 10, 2017. Thus, any events after April 10, 2017, are irrelevant to this case, and any discovery in connection with the time period following the enactment of the Ordinance, and particularly after the filing of Plaintiffs' Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the discovery in resolving the issues; and (c) that the burden or expense of the proposed discovery outweighs its likely benefit. With respect to the latter, the proposed inquiry would potentially require that the City contact every City employee, of which there are more than 4,000, to ascertain whether any one of them has information regarding topic 9. This would require an extraordinary effort and one that could not reasonably be accomplished in advance of the hearing and is not necessary or relevant to the preliminary injunction hearing.

c. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic.

4. Plaintiffs Should be Precluded from Seeking Any Testimony Concerning Topic 10

Topic 10 seeks testimony concerning "[t]he factual matters disclosed in any declaration, affidavit, or request to take judicial notice filed by Defendants in opposition to Plaintiffs' Motion

for Preliminary Injunction (Doc. 3).” The City objects to this topic, reserving the right to assert any additional objections, for the following reasons:

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court stated that “**normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.**” (Transcript, p. 40:20-24.) (Emphasis supplied.) The Court further stated that “**what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.**” (p.30.) (Emphasis supplied.) The Court also stated that: “ So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be the that December 15, 2017.” (p. 28-29). Topic 10 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017, but rather is completely open-ended; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000, as well as numerous other individuals who are referenced in the attachments to the requests for judicial notice; and (3) goes well beyond the scope of the 30 search terms.
- b. The City further objects for the reason that the documents at issue, in support of the Defendants’ Opposition to Plaintiff’s Motion for Preliminary Objection, speak for themselves. These documents include requests to take judicial notice of: (1) the certified

copy of the Ordinance; (2) the certified of the City Clerk's file; (3) DVDs of the City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017, and April 6, 2017; and (4) excerpts of the Tampa City Council meeting, stenographically transcribed via DVD, relative to the City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017, and April 6, 2017.

- c. The City further objects for the reason that it would be extremely disproportional to the needs of the case, and an undue burden on the City, to require the City to contact each of the individuals who spoke at the City Council meetings, whose testimony is reflected in the DVDs of the City Council meetings, and each of the individuals who authored any article or publications which are attached to the certified copy of the Ordinance, and each of the individuals who submitted information which is contained within the City Clerk file. This would require an extraordinary effort, an enormous waste of time, unduly burden the City and cannot reasonably be accomplished in advance of the hearing.
- d. The City further objects to the extent that the Court has issued an Order concerning taking judicial notice of the aforesaid documents (Doc. 51) which speaks for itself. In that regard, the Order states that: "It is appropriate to take judicial notice of the City's certified copy of Ordinance 2017-47" (Doc. 51, p.4); that "legislative history is relevant in a case in which intermediate scrutiny may apply." (Doc. 51, p.6); that "the City's legislative materials, which include public testimony, are relevant to its defense of Ordinance 2017-47" (Doc. 51, p.6); and that "the court judicially notes that that the City Clerk's file, transcripts, or DVDs are official public materials related to Ordinance 2017-47. The court does not take judicial notice of the truth of the statements contained in the City Clerk file, transcripts, or DVDs." (Doc. 51, p.6).

e. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic.

5. Plaintiffs Should be Precluded from Seeking Any Testimony Concerning Topic 11

Topic 11 seeks testimony concerning “Defendant’s document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—

- a. the physical or digital/electronic locations of the documents produced;
- b. the time period(s) covered by the documents produced;
- c. the search terms used to locate potentially responsive, electronically stored documents;  
and
- d. The documents custodian(s) consulted for responsive documents for from whom the documents were obtained for production.”

The City objects to this topic, reserving the right to assert any additional objections, for the following reasons.

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs’ discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court stated that **“normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.”** (Transcript, p. 40:20-24.) (Emphasis supplied.) The Court further stated that **“what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the**

**ordinance.**” (p.30.) (Emphasis supplied.) The Court also stated that: “ So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be the that December 15, 2017.” (p. 28-29). Topic 11 is contrary to the scope of discovery permitted by the Court in that any inquiry concerning this topic implicates the period well beyond December 15, 2017. Indeed, the document request which is the subject of topic 11 was not even served on the City until August 9, 2018, approximately 8 months after the December 15, 2017 date which the Court identified at the September 13 hearing as the cutoff date for discovery. Moreover, the document request, which is the subject of topic 11, does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and goes well beyond the scope of the 30 search terms. Plaintiffs’ efforts to make any inquiry on this topic would be completely antithetical to the efforts made by the Court relative to narrowing the scope of discovery, particularly in advance of the preliminary injunction hearing which is scheduled for November 15, 2018.

- b. The information requested in topic 11 is (a) irrelevant to the claims and defenses; and (b) is not proportional to the needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by Tampa’s City Council on April 6, 2017, and approved by the City’s Mayor on April 10, 2017. Thus, any events after April 10, 2017, are irrelevant to this case, and any discovery in connection with the time period following the enactment of the Ordinance, and particularly after the filing of Plaintiffs’ Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the

discovery in resolving the issues; and (c) that the burden or expense of the proposed discovery outweighs its likely benefit. With respect to the latter, the proposed inquiry would potentially require that the City contact each and every City employee, of which there are more than 4,000, to ascertain a wide range of information concerning Plaintiffs' unduly burdensome and draconian document request which the Court has previously determined needed to be narrowed to the parameters of the Court's Order. Finally, inquiry into this topic would require an extraordinary effort and one which could not reasonably be accomplished in advance of the hearing and is not necessary or relevant to the preliminary injunction hearing, and is completely inconsistent with the Court narrowing and limiting the scope of the document production by the City.

- c. The City further objects that the Court has already identified the time period covered by the documents, the search terms used to locate potentially responsive electronically stored documents, and document custodians to be consulted for responsive documents. It would be completely contrary to the Court's ruling to further re-visit these issues which the Court has already addressed and resolved.
- d. The City further objects that the reason that such testimony would likely intrude upon the work product doctrine and attorney-client privilege, and is a "back door" attempt to depose opposing counsel.. *See, e.g., Smithkline Beecham Corp. v. Apotex Corp.*, 2000 WL 116082 (N.D. Ill. Jan. 24, 2000). In *Smithkline*, the defendants' 30(b)(6) notice requested the plaintiff to designate a witness to testify concerning "[plaintiff's] responses to Defendants' Interrogatories and request for production, along with the subjects identified therein." *Id.* at \*9. In rejecting the defendants' motion to compel such testimony, the court noted that "answering requests for production and interrogatories customarily is performed with the

assistance of counsel.” Thus, the court held that “the proposed area of inquiry improperly trespass[ed] into areas of work product and attorney-client privilege.” *Id.* (citation omitted). *See also Club v. BNSF Railway Co.*, 2016 WL 4528452, \*5 (W.D. Wash. Aug. 30, 2016) (granting a protective order precluding defendant from deposing a Rule 30(b)(6) witness concerning plaintiff’s interrogatory responses).

- e. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic which would potentially require contacting more than 4,000 City employees relative to ascertaining information concerning Plaintiffs’ unduly burdensome and draconian document request which the Court has previously determined needed to be narrowed to the parameters of the Court’s Order.

6. Plaintiffs Should be Precluded from Seeking Any Testimony Concerning Topic 12

Topic 12 of Plaintiffs’ Notice seeks Rule 30(b)(b) testimony concerning “the extent to which Defendant regulates: (a) any *other* clinical practice methods besides SOCE counseling; (b) any *other* types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any *other* mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any *other* professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d).” (emphasis added). The City objects to this topic, reserving the right to assert additional objections, for the following reasons:

- a. The Court's Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs' discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court's Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court stated that "normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date." (Transcript, p. 40:20-24.) The Court further stated that "what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance." (p.30.) The Court also stated that: " So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be the that December 15, 2017." (p. 28-29). Topic 12 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.
- b. As Plaintiffs are aware, the subject Ordinance is limited to only SOCE counseling. Thus, by explicitly seeking testimony relating to the regulation of methods/professions "besides SOCE counseling," this request seeks information that is neither relevant nor proportional to the present action. *See Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 773 n.25 (1976) (noting, in case involving first amendment challenge to regulation of pharmacists, that "the distinctions, historical and functional, between professions, may require consideration of quite different factors.")). Plaintiffs'

request would potentially require the City to prepare and put forth a deponent or deponents to research each and every City regulation relating to police officers, taxi drivers, property developers, food truck vendors, adult book store owners, and pain management clinic owners, to name just a few. Such information would not only be unduly burdensome to obtain, but entirely irrelevant and disproportionate to the constitutionality of the subject Ordinance that is limited to conversion therapy performed on minors by licensed practitioners.

7. Any Inquiry on the Remaining Topics Should be Limited Pursuant to this Court's Order

With respect to the remaining topics identified in Plaintiff's Notice, any inquiry should be limited to events and actions that occurred between October 1, 2016 and December 15, 2017, and the 20 custodians and 30 search terms identified in the Court's Order. Inquiry beyond that limited scope would not only be inconsistent with the Court's Order and the reasons articulated by the Court at the September 13, 2018 hearing, but also irrelevant and disproportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the discovery in resolving the issues; and (c) the burden or expense of the proposed discovery outweighs its likely benefit.

**CONCLUSION**

For the reasons stated herein, the City respectfully requests that this Court: (1) grant the within Motion; (2) defer scheduling of the 30(b)(6) deposition until after discovery responses are served and the Court rules on any objections asserted by the City; (3) prohibit any inquiry into the topics identified in the within Motion in which Plaintiffs should be precluded from seeking any testimony, to wit, topics 7, 9, 10, 11 and 12; and (4) otherwise limit the scope of any 30(b)(6) deposition as requested herein, to wit, (a) to limit any inquiry consistent with the Court's Order to

the time period of October 1, 2016 to December 15, 2017, the 20 custodians, and the 30 search terms identified in the Court's September 13, 2018 Order (Doc. 121). Finally, in the event that the Court is not inclined to grant all of the aforesaid relief, the City would respectfully request that the 30(b)(6) deposition be postponed for at least 4 months (120 days) to allow the City adequate time to gather information, and prepare necessary witness(es).

REQUEST FOR EXPEDITED RULING

Because of the time sensitivity, the City respectfully request the Court adjudicate the within Motion on an expedited basis.

Certificate of Good Faith Compliance with Local Rule 3.01(g)

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

*/s/ Robert V. Williams*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September 2018, I caused a true and correct copy of the foregoing to be filed electronically with the Clerk of Court. Service will be effectuated on all counsel of record via the Court's ECF/Electronic Service System.

/s/ Robert V. Williams

Attorney

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

ROBERT L. VAZZO,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL 8:17-cv-2896
	:	NO.:
	:	
	:	DATE: 9/13/2018
CITY OF TAMPA, FLORIDA,	:	
et al,	:	TIME: 9:00 a.m.
	:	
Defendants.	:	PAGES: 1 - 47
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TRANSCRIPT OF TELEPHONIC STATUS HEARING  
BEFORE THE HONORABLE AMANDA ARNOLD SANSONE  
UNITED STATES MAGISTRATE JUDGE

Court Reporter: Lynann Nicely, RPR, RMR, CRR  
Official Court Reporter  
801 N. Florida Avenue  
Suite 13B  
Tampa, Florida 33602

Proceedings recorded and transcribed by computer-aided  
stenography.

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A P P E A R A N C E S

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P R O C E E D I N G S

THE COURT: Hi, this is U.S. Magistrate Judge  
Amanda Arnold Sansone. This is Case  
17-cv-2896-T-36AAS, Vazzo vs. City of Tampa. Could  
counsel state their appearances, starting with  
counsel for the plaintiffs?

MR. MIHET: Good morning, Your Honor, Horatio  
Mihet on behalf of the plaintiff.

THE COURT: Thank you, Mr. Mihet. Is there  
anybody else on the phone for the plaintiffs?

MR. GANNAM: Yes, Your Honor, good morning;  
Roger Gannam for the plaintiffs.

THE COURT: And anyone else?

MR. MIHET: I think that's it for us, Your  
Honor.

THE COURT: Thank you. And then for the  
defendants?

MR. WILLIAMS: Good morning, Your Honor,  
Robert Williams representing the City of Tampa.

MR. GEWIRTZ: Your Honor, Jerry Gewirtz on  
behalf of the City.

THE COURT: We're having difficulty hearing  
you. Are you on a land line or are you on a cell  
phone? Are you there? We're not hearing anything.  
No, it's coming in and out. Are you on

1 speakerphone? That could be the problem as well.

2 MR. WILLIAMS: Actually the connection is not  
3 very good on our end as well.

4 THE COURT: Do you want to try to hang up and  
5 then call back in?

6 MR. WILLIAMS: That's probably the right thing  
7 to do. Thank you.

8 THE COURT: We won't say anything, we'll just  
9 wait for you to call back in.

10 (Brief pause)

11 MR. GEWIRTZ: Your Honor, Rob Williams back  
12 on. Is this better?

13 THE COURT: That sounds great for me.  
14 Mr. Mihet, are you able to hear Mr. Williams better  
15 now?

16 MR. MIHET: Much better, thank you.

17 THE COURT: And who else is there with you,  
18 Mr. Williams?

19 MR. GEWIRTZ: Mr. Gewirtz and Mr. Harvey.

20 THE COURT: Perfect. Thank you, I'm not  
21 having any difficulty hearing you, so it seems that  
22 calling back in did the trick.

23 So we set this hearing so that you all,  
24 Mr. Williams, the city, and Mr. Ruggiero, that you  
25 all could let us know what happened in terms of the

1 number of hits based on my narrowing of the  
2 custodian, the search terms, the devices. And then  
3 I had proposed three different date ranges so that  
4 we could compare the number of hits as to each  
5 range. So have you been able to perform those  
6 searches and do you have that information?

7 MR. WILLIAMS: We have, Your Honor, actually  
8 my paralegal and I worked over the weekend, and I  
9 know that Mr. Gordsmith probably also did, to figure  
10 all this out. Let me, if I may, give you the  
11 information and make the suggestion from at least  
12 the defendant's point of view. The total number of  
13 hits starting with --

14 THE COURT: Mr. Williams, we can't hear you  
15 again, you're fading in and out again.

16 MR. MIHET: We can't hear either, Your Honor.

17 THE COURT: I think he hung up to try to dial  
18 back in again.

19 (Brief pause.)

20 MR. MIHET: Are we still connected?

21 THE COURT: Yes, we're still connected, I  
22 think we're just waiting for them to call back in.

23 MR. MIHET: Okay.

24 THE COURT: I'm guessing they're trying to  
25 find a different phone.

1 MR. MIHET: Perhaps if Your Honor would like I  
2 can try to call from a separate line Mr. Williams.

3 THE COURT: And try to conference him?

4 MR. MIHET: Yeah.

5 THE COURT: That's fine with me if you want to  
6 try that.

7 MR. MIHET: Okay. I'll be right back on the  
8 line.

9 THE COURT: Hello. Who joined? Hello?  
10 Hello? Who is on the line, is that you, Mr. Mihet,  
11 or is that Mr. Williams?

12 MR. GANNAM: Your Honor, Mr. Mihet --

13 MR. MIHET: I got back on. I was not able to  
14 reach Mr. Williams at the number that I have for  
15 him. Hopefully he's not still pleading his case,  
16 thinking we can hear him. But I thought I heard  
17 him -- that was not me dialing in, I never left the  
18 line and I thought I heard his voice just now.

19 THE COURT: I thought I did too. Sounded like  
20 maybe -- I heard something about going to another  
21 room so maybe they'll going to dial in from another  
22 room.

23 MR. MIHET: Perhaps.

24 THE COURT: I hear somebody talking. Is that  
25 from your office, Mr. Mihet, or is that from another

1 line?

2 MR. MIHET: No, Your Honor, I'm alone here so  
3 it must be from the other line. It almost sounds  
4 like we are on mute and they were not aware that we  
5 can hear.

6 THE COURT: We'll try to call them from the  
7 chambers too.

8 MR. WILLIAMS: Judge?

9 THE COURT: Yes.

10 MR. WILLIAMS: I apologize. We were in a  
11 conference room and I've never had a problem with  
12 that phone, but apparently there is a problem today.

13 THE COURT: That's okay, Mr. Williams. So are  
14 you now on a different phone, is that where you are?

15 MR. WILLIAMS: Yes, I'm in my office now and  
16 Mr. Gewirtz and Mr. Harvey are following me.

17 THE COURT: No problem.

18 MR. WILLIAMS: I don't know if you heard the  
19 prior presentation --

20 THE COURT: We did not. I will tell you, it  
21 was as if I was going to compare it to when you're  
22 watching a movie and the film runs out. These days  
23 it was like watching a Netflix show and then you're  
24 getting ready to find out exactly what the answer is  
25 and all of a sudden your internet goes out. So I

1 think the last thing we heard was the total was, and  
2 we didn't hear anything after that.

3 MR. WILLIAMS: All right. So let me, if I  
4 may, I apologize again, let me repeat what I said  
5 earlier. We obviously took the time over the  
6 weekend -- and kudos to my paralegal, she was here  
7 until 10:30 on Saturday night; I left at 6. So we  
8 have a total of 1,185 hits starting from October 1st  
9 of 2016 through August 31st of 2018, or about  
10 23 months.

11 The number of hits per period of the four  
12 periods, first period was October 1st of 2016 to  
13 4/15/17; that's 536 hits. April 16th, 2017, to  
14 12/04/2017, the date of the filing, is 259 hits.  
15 From 12/05/17 to 12/15/17 is 102. And from 12/16/17  
16 through 8/31/18 is 288. I realize I went pretty  
17 fast there, but the total is 1,185.

18 And so what we did, to repeat what I said  
19 earlier that unfortunately you didn't hear, we tried  
20 to decide what was the best way to approach this  
21 situation. So the number of pages that those hits  
22 generated for the entire timeframe, using Your  
23 Honor's order, is around 22,000, give or take  
24 5 percent. I don't have the exact number, we're  
25 still working on that, but 22,000 is a good round

1 number.

2 And the number of pages prior to the filing of  
3 the complaint and after the filing of the complaint  
4 is about the same, 11,000. And what we thought was  
5 an appropriate way to approach this, given the  
6 October 10th hearing, is that we could go through  
7 the 11,000 pages pre-filing because those likely  
8 will not include any privilege -- if there are any,  
9 it would be minimal. So that saves us the vetting  
10 process that can be very, very time consuming and we  
11 can produce those documents by October 1st. We  
12 believe we can get that done if we use the requisite  
13 people and then we can just go from there.

14 As to post filing, our position, as Your Honor  
15 knows, is that the city -- the defendants take the  
16 position that anything post filing is irrelevant  
17 from a discovery point of view, much less from an  
18 evidentiary point of view; and even if remotely  
19 relevant, it is disproportional and we shouldn't  
20 have to produce that. And there is a case out of  
21 the Middle District, Magistrate Judge Smith, that I  
22 think supports that.

23 But if Your Honor were to require us to  
24 produce those documents, then it would take us  
25 probably until December 10th to go through that

1 vetting process, given the hours that it would take  
2 to do it carefully, which we would do, and then we  
3 would need another 30 days until January 9th to --  
4 just as we put in our motion for extension.

5 But our proposal I suppose would allow the  
6 plaintiff to have the pre-filing documents in time  
7 for the October 10th hearing and we could go forward  
8 with the October 10th hearing. At a minimum we  
9 could go forward on the motion to dismiss on  
10 October 10th. Mr. Mihet mentioned something  
11 yesterday about possibly postponing the hearing and  
12 I'll let him speak to that. But hopefully that  
13 gives you an idea of what we've been able to  
14 accomplish.

15 THE COURT: Okay. And let me hear from you --  
16 I appreciate those efforts, Mr. Williams, and I  
17 actually appreciate you giving accolades to your  
18 paralegal. It seems that too often I'm hearing  
19 people blaming their paralegal and legal assistants  
20 for things and that tends to be like nails on a  
21 chalkboard to my ears. So to hear someone giving  
22 accolades to their paralegal is refreshing.

23 MR. WILLIAMS: Next to my wife and daughter,  
24 she's the most important woman in my life.

25 THE COURT: Well, hopefully you tell her that

1 too so that she'll stick around.

2 MR. WILLIAMS: I do.

3 THE COURT: Mr. Mihet, turning to you, what is  
4 your response? Obviously the city and Mr. Ruggiero,  
5 their counsel is recommending to cut it off at the  
6 filing of the complaint, which would be the  
7 December 4th, 2017 date, and that then to the extent  
8 that anything additional from after the filing of  
9 the complaint, that that would either require a much  
10 longer time because then there would be more  
11 privileged documents to review, and that also that  
12 it is largely irrelevant and even if it is somewhat  
13 relevant, it's not proportional to the needs of the  
14 case, given that the crux of the complaint is really  
15 more focused on the enactment of the ordinance. So  
16 let me hear your response, Mr. Mihet.

17 MR. MIHET: Thank you, Your Honor. I actually  
18 have several things to address, but I'll start with  
19 the fact that the total number of hits is 1,185.  
20 That is significantly lower than the 5,000 that we  
21 were trying to get under and that I believe the  
22 parties felt would be a reasonable number. So we  
23 have succeeded. 1,185, and the breakdown that I  
24 have is 795 of those hits are prior to the filing of  
25 the complaint and only 390 hits are after the filing

1 of the complaint.

2 Now, we have asked Mr. Williams to tell us two  
3 key pieces of information that I think are still  
4 necessary and he was not able to: Number one, have  
5 these hits been de-duplicated, and he does not know;  
6 and number two --

7 MR. WILLIAMS: I do now, Eric.

8 MR. MIHET: Okay. All right.

9 MR. WILLIAMS: Why don't you [inaudible] the  
10 questions and I'll answer them.

11 MR. MIHET: Okay. So that was a question that  
12 we asked yesterday afternoon and we didn't have an  
13 answer to. And number two, how many of the 390 hits  
14 post filing of the complaint have an attorney as a  
15 recipient or a CC or a BCC on them. That was also  
16 something that we thought could be gathered  
17 automatically without reviewing every document, but  
18 they didn't have that information.

19 Now, if the city is trying to obtain an  
20 additional three months to review 390 documents,  
21 Your Honor, they would have the burden of showing  
22 you that all of those include attorneys in them,  
23 which we don't even know at this point. So they  
24 haven't met the burden to obtain the excessive  
25 extension that they are seeking.

1 I would point out, Your Honor, that as of  
2 right now the city and the defendants are  
3 represented not only by the city's in-house  
4 attorneys but also by two outside firms, two  
5 separate outside private firms.

6 And so we're talking about reviewing 390  
7 documents post filing of the complaint. We don't  
8 see how that could be such an insurmountable burden  
9 to require an extension until January.

10 I'm sorry, let me pause for just a second, I'm  
11 hearing some feedback. I wonder if I could ask  
12 Mr. Williams to put his phone on mute; I think that  
13 may be causing it.

14 MR. WILLIAMS: If I do it on mute, then you  
15 can't hear me.

16 MR. MIHET: When you want to speak you can  
17 unmute it.

18 MR. WILLIAMS: All right.

19 THE COURT: Was there any more you wanted to  
20 say? Go ahead, Mr. Mihet, anything more you wanted  
21 to say?

22 MR. MIHET: Yeah, just a couple of things,  
23 Your Honor. Because Mr. Williams has raised the  
24 issue, we have -- I would like to give the court  
25 four authorities, very briefly, standing for the

1 proposition that discovery post filing of the  
2 complaint is not only relevant and permissible but  
3 also warranted.

4 He mentioned a Middle District of Florida case  
5 involving Magistrate Judge Smith. I think he may  
6 have misread the import of that case. It is Badger  
7 Auctioneers Inc. vs. Ali, and the cite is 2017 WL  
8 4423618. In that case -- if that's the case  
9 Mr. Williams was thinking about, in that case  
10 Magistrate Judge Smith recounts the arguments made  
11 by the party opposing post complaint discovery and  
12 perhaps that may be the section that Mr. Williams  
13 has read. However, Magistrate Smith then goes on to  
14 reject that argument and to hold that post complaint  
15 discovery can be just as relevant as pre complaint  
16 discovery and ordering the parties to produce post  
17 complaint emails.

18 Very quickly, I would add to that a couple of  
19 other authorities. We have King vs. E. F. Hutton &  
20 Co, that's 117FRD2, it's a DC district case. And  
21 the court there again deals with exactly the same  
22 argument that the defendants are making here. And  
23 the court says that the documents which were  
24 generated after the filing of the complaint may shed  
25 issues on facts and things that occurred prior to

1 the filing of the complaint and are therefore  
2 relevant.

3 And I'll just give you one more, Your Honor,  
4 Charvat vs. Valente, 82 F.Supp. 3d 713. That's a  
5 Northern District of Illinois case. And the court  
6 there again rejects the same argument that the  
7 defendants are making here and it says "it is common  
8 sense that information and documents created after  
9 filing the complaint can be relevant and must be  
10 produced." That was a quote.

11 And so Your Honor, I just bring you back to  
12 the fact that we have 390 hits that we're talking  
13 about. We don't think that's an insurmountable  
14 burden, even if they included attorneys in the  
15 communications which we don't know.

16 And so we would ask the court to do then,  
17 rather than the extension that Mr. Williams  
18 contemplates, we would ask the court to do this.  
19 We've already said September 17th we would have the  
20 written responses from the defendant. Then  
21 Mr. Williams has said that October 1st could be the  
22 date when he would produce the 795 pre-filing hits,  
23 so we would be okay with that. Then we would ask  
24 the court to give the defendant until October 15th  
25 to produce the additional 390 hits, to the extent

1           that we are not actually privileged.

2                       Then we would ask the court to allow us to  
3           take the two depositions that we seek during the  
4           week of October 28th to be scheduled at the parties'  
5           mutual convenience.

6                       And then lastly, we would ask the court to  
7           have the preliminary injunction and a motion to  
8           dismiss hearing sometime in the week of  
9           November 12th.

10                      And so, Your Honor, I have some arguments on  
11           the idea that we should decouple the motion to  
12           dismiss versus the preliminary injunction hearing,  
13           but I won't go into that unless the court is  
14           actually contemplating that.

15                      I would note that under our proposal the  
16           defendants would have over an additional month to  
17           respond to this discovery.

18                      And I would also note that under their  
19           proposal, dumping all of these documents that they  
20           intend to dump on us eight days before the hearing  
21           as currently scheduled would not work for us and it  
22           certainly wouldn't allow us to take the two  
23           depositions that we need to take for the hearing in  
24           order to avoid an evidentiary -- a full-on  
25           evidentiary hearing.

1           So thank you, Your Honor, that's all I have  
2           for now.

3           THE COURT:   Okay.   Let me turn back to  
4           Mr. Williams.   Mr. Williams, go ahead and first  
5           answer the two questions.   So one is have they been  
6           deduplicated?

7           MR. WILLIAMS:   The answer to both questions,  
8           Your Honor, is no and no, and I'm going to let  
9           Mr. Harvey provide a little more detail because he  
10          had a specific conversation with the person at the  
11          city that answered those questions.

12          THE COURT:   Go ahead Mr. Harvey.

13          MR. HARVEY:   Good morning, Judge.   I did speak  
14          to our IT person and he advised that we do not have  
15          the capability to run a -- there is no software to  
16          do a de-duping, and then there is no way for him to  
17          exclude certain email recipients, or senders for  
18          that matter, to narrow down in attempt to try to  
19          exclude things that were sent to or where attorneys  
20          were copied on.

21          THE COURT:   Okay.

22          MR. WILLIAMS:   And in response to Mr. Mihet's  
23          argument as to the case by Magistrate Judge Tom  
24          Smith, that's not the case that I was referring to.  
25          The case that I'm referring to, Your Honor, is

1 Teledyne Instruments Inc., vs. Cairns, 2013 WL  
2 5781274. And in that decision Magistrate Judge  
3 Smith says -- I'll just paraphrase -- at least two  
4 federal district courts have adopted Local Rules  
5 exempting post complaint communications from the  
6 scope of discovery. He cites the Southern District  
7 Local Rule 26.1(g)(3)(C), and Northern District of  
8 Oklahoma Local Rule 26.4.

9 He goes on to say one judge explained that the  
10 Southern District of Florida's rules reflects, "A  
11 policy that despite the relevancy of a given  
12 document in most cases there is no good reason to  
13 require a party to go through the expense of a  
14 privilege log with respect to documents created  
15 after the commencement of the case." And he cites  
16 Stearn vs. O'Quinn, 253 FRD 663, a Southern  
17 District, a 2008 decision.

18 Now, in our case, while Mr. Mihet talks about  
19 390 hits, that's 11,000 pages, not -- so the hits  
20 are not exactly the accurate barometer to use at  
21 all. And so it would be a laborious process for us,  
22 and particularly laborious because as Magistrate  
23 Judge Smith, there is really no reason to do that.

24 And this case is probably a quintessential  
25 example of why it's not necessary because we're

1 talking about the constitutionality of an ordinance  
2 that was passed well before the filing of the suit.  
3 So anything that's really relevant in my opinion is  
4 going to take place prior to the enactment and  
5 certainly prior to the filing of the lawsuit. After  
6 that, I submit it's utterly irrelevant as to the  
7 constitutionality issues that the plaintiffs have  
8 raised.

9 Last, let me address the written discovery.  
10 We have to go through documents in order to properly  
11 respond to those written documents, the request for  
12 production, we can make progress there, but the  
13 interrogatories and the request for admissions. And  
14 we're going to need at least until October 1st for  
15 that as well.

16 Your Honor's ruling the other day, and your  
17 order reflects it, is that it wasn't a hard and fast  
18 ruling as far as the 17th, next Monday. And so I  
19 think October 1st we could probably get that done if  
20 at all possible, but we'd like to have longer than  
21 that, given Mr. Mihet's proposal. I would suggest  
22 that we extend it out until probably November 1st  
23 and that would allow us to do a number of things  
24 that would assure Mr. Mihet and his clients that we  
25 have done a thorough job of going through that.

1           So we'd like to stick to the December 10th  
2           date as we requested in our motion and the  
3           January 9th date as we requested, but I'm giving you  
4           some thoughts as to what I think would be absolutely  
5           necessary in order for us to do our job correctly  
6           and particularly given his proposal.

7           I see no reason, frankly, why that isn't  
8           workable because I would remind the court and  
9           Mr. Mihet, they filed this in December of '17, they  
10          filed a motion for preliminary injunction with their  
11          complaint. That preliminary injunction, before I  
12          got involved in the case, was scheduled for hearing  
13          in April. Then it was postponed to June at their  
14          request, I think.

15          They filed an amended complaint. That led to  
16          the hearing being bumped all the way up to October.  
17          And they made no effort to take any discovery prior  
18          to those two earlier dates. And they waited until,  
19          as I said in our last hearing, until August 9th to  
20          do anything from a discovery point of view. So I  
21          would submit that I don't think this motion for  
22          preliminary injunction is quite as urgent as they  
23          would suggest it is.

24          So I think that --

25          MR. MIHET: [Inaudible]

1 [Overlapping speakers]

2 MR. WILLIAMS -- [inaudible] date and the  
3 January 9th date are fair, reasonable, would  
4 certainly give us the time to do it thoroughly, as I  
5 said at our hearing the other day, and give the  
6 court assurance that we have done a thorough job,  
7 without really unfairly prejudicing the plaintiff at  
8 all.

9 THE COURT: And Mr. Mihet, before you speak,  
10 let me ask Mr. Williams a couple follow-up  
11 questions.

12 Mr. Williams, Mr. Mihet has also mentioned the  
13 issue of taking two depositions. Is that something  
14 that you all have discussed and what is the city's  
15 position on that? I'm assuming they're corporate  
16 rep depositions or maybe it's a corporate rep and a  
17 deposition of Mr. Ruggiero, I'm not sure. Have you  
18 all discussed that?

19 MR. WILLIAMS: We talked yesterday, I don't  
20 know, for 20 minutes. Mr. Mihet didn't raise that  
21 at all. So no, we haven't discussed it. That would  
22 be a problem. And the reason it would be a problem  
23 to discuss it even is because I haven't received any  
24 30(b)(6) notice yet. So it's impossible for me to  
25 evaluate and analyze a potential 30(b)(6) deposition

1 without the notice in front of me. The specifics of  
2 a 30(b)(6) notice in my experience -- and I've done  
3 a lot of them -- are very important in terms of how  
4 you address that, particularly when you're talking  
5 about a public entity like the City of Tampa. So  
6 that would take some time, but if he sends us a  
7 notice, we would be prepared to address it and  
8 communicate with him as soon as possible.

9 MR. MIHET: May I respond, Your Honor?

10 THE COURT: You may, go ahead, Mr. Mihet.

11 MR. MIHET: Taking the last issue that  
12 Mr. Williams just raised about the 30(b)(6) notice,  
13 the court will find at Docket 111-4, the  
14 communication, the written exchange that  
15 Mr. Williams and I have had, and on page 6 of that  
16 communication, item number 5, I specifically  
17 identified for Mr. Williams the topics that we  
18 wished to have a 30(b)(6) witness on. And I invited  
19 him to let me know availability, as I believe the  
20 Local Rules require us to coordinate.

21 So I didn't serve a formal 30(b)(6) notice,  
22 but I did spell out in detail the topics as to we  
23 seek testimony. And this took place on August 9th,  
24 Your Honor, and so what I just heard from him is  
25 simply not factual.

1           Number two, the authority that he cited from  
2           Judge Smith is completely opposite because it deals  
3           with the separate issue of whether or not a party  
4           has an obligation to provide a privilege log for a  
5           post complaint communication. That is what that  
6           case deals with and that is what the local rule in  
7           the Southern District of Florida that was cited in  
8           that case deals with.

9           It does not deal with whether or not a party  
10          must produce nonprivileged communications that took  
11          place after the filing of the complaint. The  
12          authority that I provided to the court deal with  
13          that specific issue and all of them indicate that it  
14          should be provided.

15          And number three and last, Your Honor,  
16          Mr. Williams has already indicated that his clients  
17          intend to assert various objections to our written  
18          discovery. They have had our written discovery  
19          since August 9th, more than a month ago. We do not  
20          want to wait another two weeks or three weeks or  
21          four weeks for them to provide our -- to provide the  
22          written responses because we will have -- more than  
23          likely we will have to litigate the objections that  
24          the defendant intend to raise and there is no reason  
25          why they cannot provide those responses by

1           September 17th as the court has articulated.

2                       On that point, Your Honor, it just doesn't  
3           make any sense to us that the city is prepared to  
4           provide the 795 hits prior to filing of the  
5           complaint by October 1st. They have said they're  
6           willing and able and ready to do that, but then they  
7           need another three or four months, I lost count,  
8           from there to provide just an additional 390 hits to  
9           review them. Your Honor, I don't think that makes  
10          any sense, I don't think that they have made out a  
11          case for that kind of an extension. I think that  
12          the schedule that we proposed is reasonable, would  
13          allow for this discovery to be completed on more  
14          than double the timeframe that the litigants in  
15          South Florida have been able to complete it, and  
16          would allow us to come to the court with a record  
17          that has the deposition testimony, that has the  
18          relevant documents, and that I think would be able  
19          to avoid a full on evidentiary hearing.

20                   MR. WILLIAMS: Well, if I may respond very  
21          quickly, Your Honor, I don't want to take up a lot  
22          of time, but I'm familiar with what Mr. Mihet was  
23          talking about, but that's a theory when I get a  
24          notice, a 30(b)(6) notice, then I address it. I've  
25          had too many experiences where the 30(b)(6) notice

1 was different from what people said it was going to  
2 be. That's why I said what I said and I'll stand by  
3 that.

4 And to require a 30(b)(6) deposition before  
5 the completion of the written discovery is contrary  
6 to a number of cases. I can cite them to Your  
7 Honor. Bank of America v. SFR Investments Pool,  
8 2016 WL 2843802. United States EEOC v. Force One  
9 Staffing, 2013, WL2433, and Taser International Inc.  
10 vs. Morgan Stanley & Company Inc., 2010, WL  
11 11575279. And I have other cases.

12 To take a 30(b)(6) notice of deposition prior  
13 to the completion of the written discovery is just  
14 contrary to the rule, duplicative, and it would be  
15 violative of the case law that I just described.

16 MR. MIHET: Just so we're clear, we're not  
17 proposing that, Your Honor. Under our proposal the  
18 written discovery as to the PI issues would be  
19 completed prior to the 30(b)(6), and the 30(b)(6)  
20 would be limited to the PI issues that we believe  
21 are necessary and that we identified in our email to  
22 Mr. Williams. So we're not proposing what he just  
23 rebutted.

24 THE COURT: Okay. Now it's my turn. So with  
25 regard to the issue of the case law that you all

1 have cited, I have not had a chance to read it. So  
2 far what has been cited to me though is all district  
3 court -- well, Magistrate Judge out of the Middle  
4 District, the two cases, and then one out of I  
5 believe it was Illinois and DC district court.

6 So while -- even if I did have a chance to  
7 read them on the fly during this hearing, they  
8 would -- none of them would be binding on me,  
9 although I do have the utmost respect for Magistrate  
10 Judge Smith who perhaps I would be persuaded by what  
11 he has to say.

12 That said, my general rule of thumb with cases  
13 and discovery in general is that you cut off at the  
14 complaint. Now, are there cases where there are  
15 exceptional circumstances and where you need to go  
16 past the complaint, sure, there is exceptions it  
17 seems to most rules, which is where most of the  
18 fights end up being when we're having discovery  
19 disputes. But that said, again, the general rule is  
20 that it's cut off at the filing of the complaint.

21 Here the reason that I was persuaded and the  
22 reason that I had the city run the search for post  
23 complaint up to August 31, 2018, was simply because  
24 that was what had been agreed to and permitted in  
25 the Southern District. It does not seem that that

1 was a contested issue in the Southern District,  
2 though, so it doesn't seem that it was one that the  
3 court addressed the merits of that dispute.

4 But again, the idea here being that I wanted a  
5 comparison, a point of comparison. If it had been  
6 very few hits, if it had been very few pages, then  
7 by all means I would have told the city go ahead and  
8 do that work and then you've got at least a similar  
9 date range that's been reviewed in both the Southern  
10 District and the Middle District. Not because I  
11 think it is necessary in this case nor do I find  
12 this case to be one of the exceptional cases that  
13 would fall within the minority of cases that do need  
14 that post filing discovery, but simply because it  
15 was what was being done in the Southern District, so  
16 why not have them run the hits to see where the hits  
17 stand.

18 Now, I do appreciate that the hits number is  
19 relatively low, it's about half of the hits in the  
20 pre-filing numbers, and then I also do appreciate  
21 that it is -- that as the city is saying, there is  
22 the same number of pages of documents. And while  
23 that may mean that there is one hit in an email, if  
24 it's a 20-page email string, the city is having to  
25 review all 20 of those pages.

1           Now, I also appreciate that these have not  
2           been deduplicated. I would assume, given the  
3           custodians to which I limited the searches, that  
4           you're going to have multiple of the same emails  
5           being reviewed because they have been sent among the  
6           group of custodians and so there will be some  
7           familiarity that once whoever is reviewing these  
8           documents starts reviewing these documents, they'll  
9           be able to do so in a timely manner.

10           So that does -- obviously I'm sure the city  
11           would prefer that these had been deduplicated  
12           because then it's going to result in extra work on  
13           their part. Also, even when emails are  
14           deduplicated, you end up with email strings that  
15           unless they have been deduplicated in such a way  
16           that you have the complete string, they're going to  
17           be looking at a lot of the same emails over and over  
18           again.

19           In the one range that I had required, it was  
20           the cut-off of December 15, 2017. So in a sense  
21           that would give the plaintiff a bit of a sneak peek  
22           of what type of email traffic was occurring right  
23           the day of the filing of the complaint and the  
24           subsequent days afterwards.

25           So for purposes of merits discovery in this

1 case, should this case get to that point, then I do  
2 find that it is necessary at this time to have the  
3 cut-off be that December 15th, 2017. That way post  
4 preliminary injunction hearing, post motion to  
5 dismiss hearing, if the plaintiffs can make an  
6 argument to me based on the sneak peek of what they  
7 have been able to see in the emails for those  
8 11 days after the filing of the complaint, they will  
9 then have the tools to make that argument and I  
10 don't view that as such an onerous additional review  
11 for the city because that would include the original  
12 795 hits.

13 So what I will require that the city do is  
14 that they review the hits for the date range of the  
15 October 1, 2016, through the December 15, 2017,  
16 range and then provide a privilege log for any  
17 documents that are being withheld on the basis of  
18 privilege, and then otherwise produce those  
19 documents.

20 Now, the city is saying that they can do that  
21 by October 1st. I will say too, in looking,  
22 Mr. Mihet, at what you've identified as the  
23 Rule 30(b)(6) topics, those topics that were  
24 identified in that paragraph 5 of that email  
25 attached at 111, that just further impresses upon me

1 that what is appropriate in terms of the discovery  
2 for the PI hearing is frankly the pre enactment of  
3 the ordinance and up to the enactment of the  
4 ordinance.

5 So in a sense, based on that -- the topics  
6 that have been identified at 30(b)(6), even getting  
7 the documents post ordinance, so post the April 2017  
8 date, by me permitting you to have and requiring  
9 them to review the April to December 2017, you're  
10 already getting a range of documents that appears to  
11 be beyond the topics that you identified in the  
12 30(b)(6) -- not notice but at least preview that you  
13 provided to the city.

14 So my understanding then in looking back at my  
15 notes of what you said, Mr. Williams, is that by  
16 October 1, 2018, that you would be able to have  
17 reviewed and produced those documents, again, as  
18 well as a privilege log, so that to the extent that  
19 Mr. Mihet wishes to challenge the privilege on any  
20 of those, he may have the information that he needs  
21 to do that.

22 In terms of the written --

23 MR. WILLIAMS: Correct, Your Honor,  
24 October 1st is the date.

25 THE COURT: Okay, great. So October 1st will

1 be the deadline for the review of those 795 hits.  
2 And am I accurate that the 795 -- that actually may  
3 be a little bit more than 795 because I think that  
4 was through December 4, 2017, and I'm requiring  
5 through December 15, 2017. So I think --

6 MR. WILLIAMS: I'm sure it will be a little  
7 more. Not a whole lot though, I don't think.

8 MR. MIHET: I think Mr. Williams told us it  
9 was 102 additional hits from the December 5th to  
10 December 15th.

11 THE COURT: Okay. So then we're talking about  
12 897 hits. And again, because those are -- I think  
13 there will be a lot of duplication and a lot of  
14 review of the same emails, I'm still comfortable  
15 that even those additional 102 documents, that that  
16 review can occur by October 1, 2018.

17 So again, that's the 897, approximately, give  
18 or take, hits by the October 1, 2018.

19 Now, with regard to the written responses, the  
20 written responses for the RFPs, the requests for  
21 production of documents, just for purposes, I really  
22 at this point want you all to be focused on  
23 reviewing these documents and not trying to crank  
24 out a document with a bunch of objections in it and  
25 responses between now and September 17th.

1           So consistent with the requirement that you  
2           produce the documents in a privilege log by  
3           October 1, 2018, I'm also going to require that you  
4           provide the written response to the request for  
5           production of documents by October 1, 2018.

6           And then just to give you a little bit more  
7           time after that to have reviewed the documents and  
8           better understand them so that you can provide  
9           appropriate interrogatory responses and appropriate  
10          requests for admission responses, I'm going to give  
11          you an additional week to October 8, 2018, for the  
12          requests for admission responses and the request for  
13          the interrogatory responses.

14          Now, let me think out loud for a minute.  
15          Given the way that the RFAs and the interrogatories  
16          are drafted with the requests for production of  
17          documents following afterwards, that schedule  
18          actually probably doesn't make sense. So let's do  
19          this. Because again, I don't want -- to the extent  
20          that you're able, once you review the documents, to  
21          answer the requests for admissions and to answer the  
22          interrogatories, that's what it's appropriate for  
23          you to be doing, as opposed to simply providing  
24          objections or without knowledge responses.

25          So rather than having the request for

1 production of documents written be due on  
2 October 1st, I will give you some additional time so  
3 that you're able to provide -- simply because of the  
4 way that plaintiffs have asked them, you're able to  
5 do the RFA, the interrogatories, and the requests  
6 for production, written responses, by October 8,  
7 2018.

8 So again, the documents themselves and the  
9 privilege log by October 1st so that then plaintiffs  
10 can start reviewing those documents, and then the  
11 actual written discovery responses by October 8,  
12 2018.

13 MR. WILLIAMS: Your Honor, if I may add  
14 something to this discussion, in reviewing the  
15 requests for admissions, like so many requests for  
16 admissions, to the extent that they are not  
17 specific, it was obvious to me that Mr. Mihet was  
18 getting at a certain issue. But the way the request  
19 for admission was worded, I have a problem with it.

20 So my solution to that is to work on -- and I  
21 have done that -- a stipulation as to those issues,  
22 using I think more accurate and appropriate  
23 language. And if we can get the stipulation done,  
24 that may obviate the necessity of some of those RFA.  
25 If Mr. Mihet is interested in going in that

1 direction.

2 THE COURT: It sounds like something that's  
3 worthwhile to discuss with Mr. Mihet. And then also  
4 obviously the parties have a duty to meet and confer  
5 both under the rules; and to the extent that  
6 anything is unclear, to try to reach a resolution  
7 and reach language that provides more clarity for  
8 both sides. That's under the Middle District  
9 discovery manual as well as the rules. So by all  
10 means feel free to have that discussion.

11 I don't intend to have the parties provide me  
12 with the written discovery responses unless of  
13 course they are provided in the course of the  
14 hearing or if there is a dispute over them. So you  
15 both seem like excellent and reasonable attorneys  
16 and I'm sure you can reach some agreements on some.  
17 I don't expect you to reach agreements on  
18 everything, but I'm sure there is some things that  
19 you will be able to reach agreement on.

20 MR. GEWIRTZ: Your Honor, this is Mr. Gewirtz.  
21 Just by way of clarification, in connection with  
22 October 1st the word we're talking relates to the  
23 search terms as it relates to the 20 individuals  
24 that were identified as the custodians relative to  
25 the period up into December 15th. Am I

1 understanding that correctly?

2 THE COURT: Correct. So the rest of my order  
3 still -- of my September 6, 2018, order still holds.  
4 So it's those 20 custodians that were listed. It's  
5 the devices that I had ordered that hopefully that's  
6 what's within this 800 or so hits. It's these  
7 search terms. And then also the date range is  
8 number 2 on page 2, so the October 1, 2016, to  
9 December 15, 2017.

10 And to be clear, my intent, with giving that  
11 what I'm calling a bit of a sneak peek, is that then  
12 gives Mr. Mihet, once when you're in merits  
13 discovery or when there is any further requests or  
14 further negotiations among the parties or a motion  
15 brought to the court, that's giving Mr. Mihet at  
16 least a preview of what occurred in the days  
17 immediately following the filing of the complaint.

18 MR. WILLIAMS: Correct, Your Honor. And our  
19 objective here frankly is to simplify; it's not as  
20 complicated as I think counsel may think it is.

21 THE COURT: Then in terms of the depositions,  
22 looking back at that email it looks like that the  
23 plaintiffs would like to take the deposition of  
24 Mr. Ruggiero and then Mr. -- excuse me, a 30(b)(6),  
25 and those are at least the topics he outlined at

1 that point, which based on what Mr. Mihet says today  
2 it sounds like it's still those topics that are at  
3 issue.

4 Consistent with Mr. Mihet's proposed schedule,  
5 I agree with everybody on the phone that it makes  
6 sense for that 30(b)(6) deposition to occur after  
7 all of this discovery has occurred. So at this  
8 point -- and I agree also that it's pointless to  
9 keep the October 10, 2018 hearing on the calendar.

10 Mr. Mihet, I do think it's appropriate to go  
11 ahead and keep the motion to dismiss with the  
12 preliminary injunction hearing. I know you said you  
13 had some reasons for not doing that. I'm happy to  
14 listen to them, but my inclination is to keep the  
15 two matters together simply because they have both  
16 been referred to me.

17 Now, I realize that the motion to dismiss is  
18 the four corners of the complaint, versus you intend  
19 to put on additional information for the preliminary  
20 injunction. I'm fairly confident I can keep those  
21 two separate and I did not intend to convert the  
22 motion to dismiss into a motion for summary  
23 judgment, but if there is anything you would like to  
24 say on that issue, otherwise I was going to go ahead  
25 and come up with a plan for when we should move that

1 hearing date.

2 MR. MIHET: Your Honor, perhaps I misspoke. I  
3 would very much want and insist that the two  
4 hearings be kept together. It was my understanding  
5 that Mr. Williams was advocating decoupling them and  
6 I would have arguments to oppose that request. But  
7 it sounds to me like that's not necessary.

8 THE COURT: Okay. And Mr. Williams, I  
9 misunderstood, Mr. Williams, if you want to be heard  
10 on that, you can. Frankly for me it's just a matter  
11 of the simplicity of hearing the issues together.  
12 Mr. Williams, if you have a different proposal, I'm  
13 willing to hear it.

14 MR. WILLIAMS: I did suggest that they could  
15 be decoupled, Your Honor, but I have no real  
16 objection to keeping them together. Certainly if  
17 that makes it better for the court -- probably makes  
18 it better for all.

19 THE COURT: Because otherwise -- the other  
20 alternative would be I just rule on the motion to  
21 dismiss on the papers and then have the PI hearing  
22 or vice versa -- it just seems to me when I've had a  
23 similar First Amendment case, we handled it all  
24 together. Granted it wasn't an evidentiary hearing,  
25 but that process seemed to be appropriate because

1 then there is one order that can then have an  
2 interlocutory appeal. And maybe both sides would  
3 want -- depending on how I rule, both sides may want  
4 to appeal. But we can cross that bridge when we get  
5 to it.

6 MR. WILLIAMS: As I told Mr. Mihet yesterday  
7 afternoon, he suggested that we may need to postpone  
8 the hearing and I said I have no real objection to  
9 it. So I don't want the court to think that I'm an  
10 obstacle; I'm not.

11 THE COURT: So October 1st and October 8th are  
12 the two deadlines I've given so far. There is -- I  
13 know the parties have the issue to discuss in terms  
14 of these two depositions.

15 I know that you, Mr. Mihet, had proposed the  
16 week of November 12th. That is a week I could do  
17 the hearing if you all want to go ahead and set it  
18 now. Right now the dates I could do that week are  
19 the 15th or the 16th of November. I could also do  
20 the week before, the week of November 5th.

21 MR. WILLIAMS: Your Honor, November 15th works  
22 for me perfectly.

23 MR. MIHET: Your Honor, November 15th works  
24 for the plaintiff as well. I think it's probably  
25 necessary to do it the week of the 12th just so that

1 we have enough time to get the deposition transcript  
2 if the depositions are to take place in that last  
3 week of October.

4 THE COURT: And Mr. Gewirtz, I think I heard  
5 you wanting to speak as to the date as well.

6 MR. GEWIRTZ: Yeah, November 15th is fine as  
7 well. Just so we're clear, the city is not  
8 conceding that any 30(b)(6) depositions [inaudible].  
9 Mr. Williams was simply making the point that it's  
10 premature now, given the fact that we haven't even  
11 received the notice and given the case law. We  
12 don't want to take Your Honor's time. But just so  
13 the record is clear, it is the city's position that  
14 there are several topics that have been identified  
15 if in fact the 30(b)(6) were to limit those,  
16 including such items as the city's responses to  
17 discovery requests, items such as [inaudible]  
18 responsive documents, information concerning facts  
19 that support the city's motion to dismiss. There  
20 are several topics there that the city would take  
21 the position are inappropriate inquiries, I just  
22 didn't want this conference to be concluded without  
23 the city stating for the record that it takes issue  
24 with several of the topics that are separate and  
25 apart from the issue of the prematureness.

1           Also, Your Honor, if I may, while we're on the  
2 phone, do I correctly apprehend that unless and  
3 until Your Honor changes Your Honor's ruling, that  
4 the defined discovery period, subject to Your Honor  
5 revisiting it, is not beyond September 15th and that  
6 that would also apply as it would relate to any  
7 deposition inquiries.

8           THE COURT: Correct. So the time frames -- in  
9 other words, if there is some emails that post date  
10 the filing of the complaint by a couple of days and  
11 if that is -- assuming the parties are able to reach  
12 an agreement on a 30(b)(6) -- again, I'm not  
13 prejudging the issue of the 30(b)(6). What I was  
14 just trying to do was build in enough time to the  
15 schedule so that you all could address that if there  
16 needs to be some type of motion practice as to that,  
17 it can be addressed in an expedited manner, but to  
18 still build in enough time for the November 15th  
19 hearing.

20           But yes, I view the cut-off -- while normally  
21 I would frankly view the cut-off as the date of the  
22 filing of the complaint, and frankly here even I  
23 think there is an argument to be made that the  
24 cut-off should really be the ordinance date.

25           But that said, I was compelled that the date

1 should at least go to the filing of the complaint.  
2 And then I was further compelled by Mr. Mihet that  
3 perhaps there may have been some chatter post the  
4 filing of the complaint. And so in light of that,  
5 I've extended the date to December 15, 2017, rather  
6 than a December 4, 2017 filing date, so that  
7 Mr. Mihet at least is given some view of what post  
8 filing chatter may have occurred.

9 MR. WILLIAMS: So I can augment what  
10 Mr. Gewirtz just said, my earlier commentary on the  
11 30(b)(6) really relates to this hearing because  
12 until we had this hearing and Your Honor made  
13 definitive rulings, the breadth and depth of those  
14 depositions really it would be unknown.

15 Your Honor has added a lot of clarity here, so  
16 hopefully that will assist Mr. Mihet and myself in  
17 resolving any 30(b)(6) issues. But I reiterate what  
18 Mr. Gewirtz just said because those are right on  
19 point. He and I will have to do well with that --  
20 "he" being Mr. Mihet.

21 THE COURT: Sure. And I'm confident that you  
22 all will. I don't view having a 30(b)(6)  
23 deposition, in light of what's being provided and  
24 what has been requested, it seems to me that perhaps  
25 a 30(b)(6) deposition would benefit both sides in

1 terms of providing clarity, as opposed to Mr. Mihet  
2 just trying to offer a bunch of documents into  
3 evidence in the course of a hearing.

4 But again, I'm not prejudging it, there may be  
5 issues with the topics. I was just looking at the  
6 topics in totality in terms of the timing and the  
7 general thrust of the topics. I was not doing a  
8 topic by topic review and trying to even determine  
9 the appropriateness of any of the separate topics.  
10 Frankly, I figure that's an issue that you all will  
11 be discussing and debating and then hopefully coming  
12 up with a 30(b)(6) notice that is agreeable to both  
13 sides.

14 MR. MIHET: Your Honor, this is Mr. Mihet, if  
15 I may very briefly. We understand the court's  
16 cutting off of the discovery for purposes of the  
17 preliminary injunction hearing at December 15th.  
18 And because the court has made clear that this is  
19 without prejudice to our seeking post complaint  
20 discovery in the merits phase of the litigation, I  
21 think we can live with the court's ruling for  
22 present purposes as to the written discovery.

23 Now, Mr. Gewirtz just raised the issue with  
24 Your Honor about the deposition questioning being  
25 somehow cut off at December 15th as well. That I

1 think we would have a major objection to because,  
2 for example, defendants' interpretation, application  
3 and enforcement of the ordinance is quite relevant  
4 to the preliminary injunction hearing. And to the  
5 extent that some of that took place this year in  
6 April or May of this year, if they have had occasion  
7 to interpret, enforce, apply the ordinance, we don't  
8 see why we shouldn't be allowed to ask about that at  
9 the deposition so that we can bring that critical  
10 information to the court.

11 So we're okay with the documents being cut  
12 off, but we don't believe that questioning of a  
13 witness should be cut off at December 15th. I hope  
14 that makes sense.

15 THE COURT: I understand your position. And  
16 if that becomes an issue that you all are fighting  
17 over, you can bring that to my attention. I will  
18 just point out that right now you're getting  
19 six months of enforcement. Even with the current  
20 ruling on the document discovery, you're getting  
21 six months of the enforcement of the ordinance.

22 Now, if that enforcement changed after the  
23 filing of the complaint, I mean, perhaps you could  
24 ask that type of a general question. But it's not  
25 going to then open the door to being able to get

1           discovery after that December 15, 2017, deadline.

2                   And to be clear, Mr. Mihet, you are correct,  
3           this is for the purposes of the preliminary  
4           injunction hearing, this is not general merits  
5           discovery. I fully anticipate that merits discovery  
6           would, in the event -- when it occurs, I would  
7           expect it would be long from now simply because I  
8           fully expect whichever side loses or is not happy  
9           with the outcome after Judge Honeywell addresses the  
10          report and recommendation that I provide -- and  
11          again I'm not prejudging my ruling, but I would  
12          suspect that as always one side will be happy and  
13          one side will not be happy and perhaps even both  
14          sides will be unhappy.

15                   So I fully expect there to be an interlocutory  
16          appeal, I expect the case to be stayed pending that  
17          interlocutory appeal, and so again, a merits  
18          discovery may very well be a long way away. And  
19          even if it's not, there is plenty of months after  
20          this preliminary injunction hearing and the hearing  
21          on the motion to dismiss to address merits  
22          discovery.

23                   MR. MIHET: Understood.

24                   MR. WILLIAMS: Thank you, Your Honor.

25                   THE COURT: Is there anything else we need to

1 address today?

2 MR. WILLIAMS: No, Your Honor.

3 MR. MIHET: Just so we're clear, have we  
4 settled on November 15th as the hearing date?

5 THE COURT: Yes. And our order will do a new  
6 notice for the November 15th hearing date. And I  
7 will block off the entire day for that.

8 MR. MIHET: Thank you, Your Honor.

9 MR. WILLIAMS: Thank you, Your Honor.

10 MR. MIHET: I do have one other point of  
11 clarification, Your Honor. Am I to understand that  
12 the court's initial ruling as I understood it still  
13 requires the defendants to search for paper copies  
14 and to search for documents housed on computers that  
15 may not have been completed in the ESI search?

16 THE COURT: Correct. Correct. And part of  
17 why I set this hearing so far off from last week's  
18 hearing -- because obviously running the hits could  
19 have even occurred faster, but yes, I mean, part of  
20 it is so that they could do that homework and  
21 determine if there were any feasibility issues with  
22 that. But yes, that does include asking these  
23 custodians if they have any hard paper files that  
24 would include responsive documents or if they have  
25 any Word files or Excel spreadsheets or anything

1 else that's saved on their computers that would not  
2 have been pulled as a results of the searches on the  
3 Tampa.gov server.

4 MR. WILLIAMS: We're in the process of doing  
5 exactly that, Your Honor.

6 THE COURT: Perfect. Okay. I'm hesitant when  
7 I ask this, anything else to address?

8 MR. WILLIAMS: No, Your Honor.

9 MR. MIHET: Not from the plaintiff.

10 THE COURT: Thank you. Then I will enter a  
11 written order and we will be in recess. Thank you  
12 very much.

13 (The proceedings adjourned at 10:06 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA )  
COUNTY OF HILLSBOROUGH )

I, Lynann Nicely, RMR, CRR, Official Court Reporter for the United States District Court, Middle District, Tampa Division,

DO HEREBY CERTIFY, that I was authorized to and did, through use of Computer Aided Transcription, report in machine shorthand the proceedings and evidence in the above-styled cause, as stated in the caption hereto, and that the foregoing pages, numbered 1 through 47, inclusive, constitute a true and correct transcription of my machine shorthand report of said proceedings and evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in the City of Tampa, County of Hillsborough, State of Florida, September 19, 2018.

/s/ Lynann Nicely

Lynann Nicely, RPR, RMR, CRR, CRC  
Official Court Reporter

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	)	Civil Action No. 8:17-cv-02896-CEH-AAS
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,	)	<b>INJUNCTIVE RELIEF SOUGHT</b>
	)	
v.	)	
	)	
CITY OF TAMPA, FLORIDA, and	)	
SAL RUGGIERO, in his official capacity as	)	
Manager of the City of Tampa	)	
Neighborhood Enhancement Division,	)	
	)	
Defendants.	)	

**PLAINTIFFS’ NOTICE OF TAKING DEPOSITIONS OF DEFENDANTS**

PLEASE TAKE NOTICE that, pursuant to Rule 30, Federal Rules of Civil Procedure, Plaintiffs will take the following depositions upon oral examination before a court reporter or some other officer duly authorized by law to take depositions, at the dates, times, and locations shown for the witnesses (or at such other date(s), time(s), and location(s) as to which the parties may mutually agree), for the purpose of discovery or as evidence in this action, which depositions will be recorded by stenographic and/or video graphic means:

WITNESS	DATE, TIME	LOCATION
CITY OF TAMPA, FLORIDA (Rule 30(b)(6), Fed. R. Civ. P.)	October 30, 2018 9:00 A.M.	Burr & Forman LLP 201 N. Franklin Street, Ste. 3200 Tampa, Florida 33602

WITNESS	DATE, TIME	LOCATION
SAL RUGGIERO	October 31, 2018 9:00 A.M.	Burr & Forman LLP 201 N. Franklin Street, Ste. 3200 Tampa, Florida 33602

Each deposition will commence on the date and time specified and continue thereafter until the deposition has been completed.

**DESCRIPTION OF MATTERS FOR EXAMINATION**

Defendant CITY OF TAMPA, FLORIDA, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, will designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on Defendant’s behalf, regarding the matters for examination set forth below, subject to the definitions also set forth below.

**DEFINITIONS**

The following definitions apply to the matters for examination below:

- A. “**Minor**” means an individual under eighteen (18) years of age.
- B. The “**Ordinance**” means Tampa City Ordinance 2017-47, “An Ordinance Of The City Of Tampa, Florida, Relating To Conversion Therapy On Patients Who Are Minors,” enacted by the Tampa City Council on April 6, 2017, and approved by Tampa Mayor Bob Buckhorn on April 10, 2017.
- C. “**SOCE**” means sexual orientation change efforts, including without limitation any counseling, practice, or treatment that assists an individual in changing his or her sexual orientation or gender identity, and further including without limitation any efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex.

### **MATTERS FOR EXAMINATION**

1. Defendant's purported interest in banning SOCE counseling for minors, including without limitation any complaint or other evidence of alleged harm Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

2. Any evidence that any minor within Defendant's jurisdiction was subjected to SOCE counseling against his or her will, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

3. Any evidence of alleged harm posed by voluntary SOCE counseling for minors who desire, request, or willingly consent to SOCE counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

4. Any evidence of alleged harm caused by voluntary SOCE counseling for minors within Defendant's jurisdiction who desired, requested, or willingly consented to SOCE counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

5. Any evidence that minors lack the ability to consent to voluntary SOCE counseling, or have the ability to consent to other treatments or procedures such as abortions, gender transition/reassignment, or same-sex relationship-affirming counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

6. Defendant's efforts to narrowly tailor the Ordinance, including without limitation any alternative to the Ordinance which Defendant considered, and all reasons for rejecting any such alternative.

7. All communications and coordination, between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.

8. Any study or research Defendants conducted, commissioned, reviewed or relied upon to enact the Ordinance.

9. Defendant's drafting, consideration, debate, enactment, interpretation, application, and enforcement of the Ordinance, including Defendant's internal and external communications regarding same.

10. The factual matters disclosed in any declaration, affidavit, or request to take judicial notice filed by Defendant in opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 3).

11. Defendant's document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—

- a. the physical or digital/electronic locations of the documents produced;
- b. the time period(s) covered by the documents produced;
- c. the search terms used to locate potentially responsive, electronically stored documents; and
- d. the document custodian(s) consulted for responsive documents or from whom the documents were obtained for production.

12. The extent to which Defendant regulates: (a) any other clinical practice methods besides SOCE counseling; (b) any other types of clients or services that mental health

professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)–(d).

Respectfully submitted,

/s/ Horatio G. Mihet  
Mathew D. Staver  
Horatio G. Mihet  
Roger K. Gannam  
Daniel J. Schmid  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Fax: (407) 875-0770  
E-mail: rgannam@LC.org  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this September 18, 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including: Robert V. Williams (rwilliams@burr.com; pturner@burr.com), Jerry M. Gewirtz (jerry.gewirtz@tampagov.net; Kimber.spitsberg@tampagov.net), and Robin Horton Silverman (robin.horton-silverman@tampagov.net; leticia.mckinney@tampagov.net).

/s/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Plaintiffs*

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

Case No. 8:17-cv-02896- T-02AAS

Plaintiffs,

v.

CITY OF TAMPA, FLORIDA, and  
SAL RUGGIERO, in his official capacity  
As Manager of the City of Tampa  
Neighborhood Enforcement Division

Defendants

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DEFENDANT, CITY OF TAMPA'S, OBJECTIONS TO 30(b)(6) DEPOSITION

Defendant, City of Tampa ("City"), objects to Plaintiffs' 30(b)(6) deposition notice for numerous reasons including, but not limited to, the following, and reserve the right to assert any additional objections as may be appropriate:

Plaintiffs' request for Rule 30(b)(6) deposition is premature

Plaintiffs' efforts to schedule a 30(b)(6) deposition is premature given that Plaintiffs have not yet received, let alone reviewed, the City's responses to Plaintiffs' written discovery, nor has the Court ruled on any objections the City may assert to the discovery requests.

Topics 1 – 5 are deficiently worded

The City objects to topic number 1 because phrase “purported interest” is vague and ambiguous and would have to be clarified in order for the City to respond appropriately.

With respect to the term word “evidence” as contained in topics 1 through 5, the City objects to that term unless Plaintiffs agree that that term refers to facts as being synonymous with the term “evidence”.

Plaintiffs should be precluded from seeking testimony concerning topics 7, 9, 10, 11, and

12

Plaintiffs Should be Precluded from Seeking Testimony Concerning Topic 7

Topic 7 of Plaintiffs’ Notice seeks testimony relating to “[a]ll communications and coordination between Defendant and Equity Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.” The City objects to this topic, reserving right to assert any additional objections, for the following reasons:

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs’ discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017, (2) 20 custodians identified in Court’s Order (Doc. 119) and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court made clear that the defined discovery period, relative to deposition inquiries, would also be limited to period up to December 15, 2017. (p.40-44). In fact, the Court stated at the hearing that “normally the Court would view the cut-off as of

the date of the filing of the Complaint, and **frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.**" (p.40:20-24). (Emphasis supplied.) The Court further stated that **"what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance."** (p.30.) (Emphasis supplied.) The Court also stated that: "So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017." (p. 28-29). Topic 7 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017 but rather is completely open ended, (2), it does not limit it to the 20 custodians identified by the Court but rather potentially implicates every City employee, of which there are more than 4,000, and (3) goes well beyond the scope of the 30 search terms. Pursuant to the Court's Order, which narrowed the scope of materials responsive to Plaintiffs' discovery requests, the Court authorized discovery of documents from only 20 custodians, during the period of October 1, 2016 to December 15, 2017, as it relates to the search term Equality Florida.

- b. The information requested in topic 7 is (a) irrelevant to the claims and defenses, and (b) is not proportional to the needs of the case. Moreover, particularly as it relates to the time period after the enactment of the Ordinance, and certainly after the filing of the Complaint, the requested information which is the subject of the topic is (a) irrelevant to the claims and defenses, and (b) is not proportional to the

needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by City Council on April 6, 2017 and approved by the Mayor on April 10, 2017. Thus, any event after April 10, 2017, and particularly after the filing of the Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in this action, (b) the importance of the discovery in resolving the issues, and (c) the burden or the expense of the proposed discovery significantly outweighs its likely benefit. With respect to the latter, the proposed inquiry would necessarily require that the City contact every City employee, of which there are more than 4,000, to ascertain whether they participated in any verbal or written communications or coordination between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors. This would require an extraordinary effort, an enormous waste of time, unduly burden the City, and cannot reasonably be accomplished in advance of the hearing, and is neither necessary or relevant for the preliminary injunction hearing.

- c. Although the Court's Order, the lack of relevancy, and the lack of proportionality to the needs of the case are, in and of themselves, more than sufficient to object to this topic, the City further objects for reason that any inquiry concerning communications between the City and Equality Florida, post-dating the filing of the Complaint on December 4, 2017, intrudes upon the joint defense and/or common interest privilege. The Court has previously found that "Equality Florida has a defense that shares a common question of law or fact with the City," (See

Doc. 52. P.10.) Consistent therewith, the City asserts that to the extent that there may be any communication occurring after the filing of the Complaint on December 4, 2017, between the City, including its attorneys, and Equality Florida, including its attorneys, such communication is privileged pursuant to joint defense and/or common interest privilege.

- d. The City further objects for the reason that the term “any other advocacy group” is ambiguous.
- e. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic which would require contacting more than 4,000 City employees relative to ascertaining information concerning any verbal or written communications that any one of the employees may have ever had with respect to “all communications and coordination between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.”

Plaintiffs Should be Precluded from Seeking Testimony Concerning Topic 9

Topic 9 seeks testimony concerning “Defendant’s drafting, consideration, debate, engagement, interpretation, application, and enforcement of the Ordinance, including Defendant’s internal and external communications regarding same.” The City objects to this topic, reserving the right to assert any additional objections, for the following reasons.

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery in response to the discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119);

and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court made clear that the defined discovery period, relative to deposition inquiries, would also be limited to the period up to December 15, 2017. (Transcript, p.40-44). In fact, the Court stated at the hearing that “normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.” (Transcript, p. 40:20-24.) The Court further stated that “what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.” (p.30.) The Court also stated that: “So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017.” (p. 28-29). Topic 9 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017, but rather is completely open-ended; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.

- b. As it relates to the time period after the enactment of the Ordinance and certainly after the filing of the Complaint, the information requested in topic 9 is: (a) irrelevant to the claims and defenses; and (b) not proportional to the needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by Tampa’s City Council on April 6, 2017,

and approved by the City's Mayor on April 10, 2017. Thus, any events after April 10, 2017, are irrelevant to this case, and any discovery in connection with the time period following the enactment of the Ordinance, and particularly after the filing of Plaintiffs' Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the discovery in resolving the issues; and (c) that the burden or expense of the proposed discovery outweighs its likely benefit. With respect to the latter, the proposed inquiry would necessarily require that the City contact every City employee, of which there are more than 4,000, to ascertain whether any one of them has information regarding topic 9. This would require an extraordinary effort and one that could not reasonably be accomplished in advance of the hearing, and is not necessary or relevant to the preliminary injunction hearing.

- c. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic.

Plaintiffs Should be Precluded from Seeking Testimony Concerning Topic 10

Topic 10 seeks testimony concerning "[t]he factual matters disclosed in any declaration, affidavit, or request to take judicial notice filed by Defendants in opposition to Plaintiffs' Motion for Preliminary Injunction (Doc. 3)." The City objects to this topic, reserving the right to assert any additional objections, for the following reasons.

- a. The Court's Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs' discovery requests to the following: (1) the time period of October 1,

2016 to December 15, 2017; (2) 20 custodians identified in the Court's Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court made clear that the defined discovery period, relative to deposition inquiries, would also be limited to the period up to December 15, 2017. (p,40-44). In fact, the Court stated at the hearing that "normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date." (Transcript, p. 40:20-24.) The Court further stated that "what is appropriate in terms of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance." (p.30.) The Court also stated that: "So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017." (p. 28-29). Topic 10 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017, but rather is completely open-ended; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.

- b. The City further objects for the reason that the documents at issue, in support of the Defendants' Opposition to Plaintiff's Motion for Preliminary Objection, speak for themselves. These documents include requests to take judicial notice of: (1) the certified copy of the Ordinance; (2) the certified of the City Clerk's file; (3) DVDs

- of the City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017, and April 6, 2017, and (4) excerpts of the Tampa City Council meetings, stenographically transcribed via DVD, relative to the City Council meetings held on February 16, 2017, March 2, 2017, March 16, 2017, and April 6, 2017.
- c. The City further objects for the reason that it would be extremely disproportional to the needs of the case to require the City to contact each of the individuals who spoke at the City Council meetings, whose testimony is reflected in the DVDs of the City Council meetings, and each of the individuals who authored any article or publication which is attached to the certified copy of the Ordinance, and each of the individuals who submitted information contained in the City Clerk file.
- d. The City further objects to the extent that the Court has issued an Order concerning taking judicial notice of the aforesaid documents (Doc. 51) which speaks for itself. In that regard, the Order states that: "It is appropriate to take judicial notice of the City's certified copy of Ordinance 2017-47" (Doc. 51, p.4); that "legislative history is relevant in a case in which intermediate scrutiny may apply." (Doc. 51, p.6); that "the City's legislative materials, which include public testimony, are relevant to its defense of Ordinance 2017-47" (Doc. 51, p.6); and that "the court judicially notes that that the City Clerk's file, transcripts, or DVDs are official public materials related to Ordinance 2017-47. The court does not take judicial notice of the truth of the statements contained in the City Clerk file, transcripts, or DVDs." (Doc. 51, p.6).

Plaintiffs Should be Precluded from Seeking Testimony Concerning Topic 11

Topic 11 seeks testimony concerning “Defendant’s document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—

- a. the physical or digital/electronic locations of the documents produced;
- b. the time period(s) covered by the documents produced;
- c. the search terms used to locate potentially responsive, electronically stored documents; and
- d. The documents custodian(s) consulted for responsive documents for from whom the documents were obtained for production.”

The City objects to this topic, reserving the right to assert any additional objections, for the following reasons:

- a. The Court’s Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs’ discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court’s Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court made clear that the defined discovery period, relative to deposition inquiries, would also be limited to the period up to December 15, 2017. (p. 40-44). In fact, the Court stated at the hearing that “normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date.” Transcript, p. 40:20-24. The Court further stated that “what is appropriate in terms

of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.” (p.30.) The Court also stated that: “So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017.” (p. 28-29). Topic 11 is contrary to the scope of discovery permitted by the Court in that any inquiry concerning this topic implicates the period well beyond the December 15, 2017 cut-off date. Indeed, the document request at issue was not even served on the City until August 9, 2018, approximately 8 months after the cut-off date for discovery; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.

- b. The information requested in topic 11 is (a) irrelevant to the claims and defenses; and (b) is not proportional to the needs of the case. The singular issue in this case is the constitutionality and validity of the subject Ordinance, which was passed by Tampa’s City Council on April 6, 2017, and approved by the City’s Mayor on April 10, 2017. Thus, any events after April 10, 2017, are irrelevant to this case, and any discovery in connection with the time period following the enactment of the Ordinance, and particularly after the filing of Plaintiffs’ Complaint on December 4, 2017, is not proportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the discovery in resolving the issues; and (c) that the burden or expense of the proposed discovery outweighs its

likely benefit. With respect to the latter, the proposed inquiry would necessarily require that the City contact every City employee, of which there are more than 4,000, to ascertain whether they may have any documents, and if so, where they are located. This would require an extraordinary effort and one which could not reasonably be accomplished in advance of the hearing and is not necessary or relevant to the preliminary injunction hearing, and is completely inconsistent with the Court narrowing and limiting the document production by the City.

- c. The City further objects for the reason that the Court has already identified the time period covered by the documents, the search terms used to locate potentially responsive electronically stored documents, and the document custodians to be consulted for responsive documents. It would be completely contrary to the Court's ruling to further re-visit these issues which the Court has already addressed and resolved.
- d. The City further objects for the reason that such testimony would likely intrude upon the work product doctrine and/or attorney-client privilege.
- e. Finally, a protective order is appropriate to protect the City from annoyance, oppression, undue burden and expense associated with the breadth and scope of this topic which would require contacting more than 4,000 City employees relative to ascertaining information concerning Plaintiffs' unduly burdensome document request which the Court has previously determined needed to be narrowed to the parameters of the Court's Order.

Plaintiffs Should be Precluded from Seeking Testimony Concerning Topic 12

Topic 12 of Plaintiffs' Notice seeks Rule 30(b)(b) testimony concerning "the extent to which Defendant regulates: (a) any *other* clinical practice methods besides SOCE counseling; (b) any *other* types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any *other* mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any *other* professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d)." (emphasis added). The City objects to this topic, reserving the right to assert any additional objections, for the following reasons.

- a. The Court's Order (Doc. 121) expressly limits the scope of discovery in response to Plaintiffs' discovery requests to the following: (1) the time period of October 1, 2016 to December 15, 2017; (2) 20 custodians identified in the Court's Order (Doc. 119); and (3) 30 search terms. Moreover, at the hearing on September 13, 2018, the Court made clear that the defined discovery period, relative to deposition inquiries, would also be limited to the period up to December 15, 2017. (p. 40-44). In fact, the Court stated at the hearing that "normally I would frankly view the cut-off as of the date of the filing of the complaint, and frankly here even I think there is an argument to be made that the cut-off date should really be the ordinance date." Transcript, p. 40:20-24. The Court further stated that "what is appropriate in terms

of the discovery for the PI hearing is frankly the pre enactment of the ordinance and up to the enactment of the ordinance.” (p.30.) The Court also stated that: “So for purposes of merits discovery in this case, should this case get to that point, then I do find that it is necessary at this time to have the cut-off be that December 15, 2017.” (p. 28-29). Topic 12 is contrary to the scope of discovery permitted by the Court in that (1) it does not limit the scope of inquiry to December 15, 2017; (2) it does not limit the testimony or inquiry to the 20 custodians identified by the Court but rather potentially implicates each and every City employee, of which there are more than 4,000; and (3) goes well beyond the scope of the 30 search terms.

- b. As Plaintiffs are aware, the subject Ordinance is limited to only SOCE counseling. Thus, by explicitly seeking testimony relating to the regulation of methods/professions “besides SOCE counseling,” this request seeks information that is neither relevant nor proportional to the present action. Plaintiffs’ request would potentially require the City to prepare and put forth a deponent or deponents to research each and every City regulation relating to police officers, taxi drivers, property developers, food truck vendors, adult book store owners, and pain management clinic owners, to name just a few. Such information would not only be unduly burdensome to obtain, but entirely irrelevant and disproportionate to the constitutionality of the subject Ordinance that is limited to conversion therapy performed on minors by licensed practitioners.

Any Inquiry on the Remaining Topics Should be Limited Pursuant to this Court's Order

With respect to the remaining topics identified in Plaintiff's Notice, any inquiry should be limited to events and actions that occurred between October 1, 2016 and December 15, 2017, and the 20 custodians and 30 search terms identified in the Court's Order. Inquiry beyond that limited scope would not only be contrary to the scope of discovery permitted by the Court, but also irrelevant and disproportional to the needs of the case given: (a) the importance of the issues at stake in the action; (b) the importance of the discovery in resolving the issues; and (c) that the burden or expense of the proposed discovery outweighs its likely benefit.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email on Plaintiffs' counsel Mathew D. Staver, Esquire at [mat@lc.org](mailto:mat@lc.org); Horatio G. Mihet, Esquire at [hmihet@lc.org](mailto:hmihet@lc.org); Daniel Schmid, Esquire at [dschmid@lc.org](mailto:dschmid@lc.org); and Roger K. Gannam, Esquire at [rgannam@lc.org](mailto:rgannam@lc.org) on this 24th day of September, 2018.

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