UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, etc., et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 8:17-cv-2896-T-02AAS
v.	)	
	)	
CITY OF TAMPA, FLORIDA, et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' NOTICE OF FILING
PRELIMINARY INJUNCTION HEARING PRESENTATION SLIDES

Plaintiffs give notice of filing a copy of the following presentation slides used by Plaintiffs' counsel at the November 15, 2018 hearing (Doc. 136) on Plaintiffs' Motion for Preliminary Injunction (Doc. 85):

1. **Presentation of Horatio G. Mihet, Esq.** For the presentation slides (pages) that do not include record citations, the following citations are provided for the Court's convenience:

Slide	Record Citation
17	Ordinance, Doc. 134-4, at 6
18	Def. City of Tampa's Resps. Objs. Pls.' Disc. Reqs., Doc. 132-1, at 8
19	Dep. Guido Maniscalco, Doc. 133-2, at 41:3–22
20	Dep. Sal Ruggiero, Doc. 133-1, at 95:2–17
21	2009 Report of American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Report"), Doc. 134-17
22	APA Rpt., Doc. 134-17, at 9
23	*Guidelines for Psychological Practice with Transgender and Gender Nonconforming People,* 70(9) Am. Psychologist 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf ("APA Guidelines"), Doc. 135-1
24	APA Guidelines, Doc. 135-1, at 835

25	APA Guidelines, Doc. 135-1, at 842
26	APA Guidelines, Doc. 135-1, at 842
27	APA Guidelines, Doc. 135-1, at 843
28	*Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51(9) J. Am. Acad. Child Adolesc. Psychiatry 957 ("AACAP Statement"), Doc. 24-4 PageID 510–527
29	AACAP Statement, Doc. 24-4 PageID 510–527, at 968
30	AACAP Statement, Doc. 24-4 PageID 510–527, at 969
31	AACAP Statement, Doc. 24-4 PageID 510–527, at 969
32	Heino F. L. Meyer-Bahlburg, *Gender Identity Disorder in Young Boys: A Parent- and Peer-Based Treatment Protocol*, 7 Clinical Psychol. and Psychiatry 360 (2002), Doc. 135-2
33	Meyer-Bahlburg, Doc. 135-2, at 372
34	APA Rep., Doc. 134-17
35	APA Rep., Doc. 134-17, at 42
36	APA Rep., Doc. 134-17, at 42
37	APA Rep., Doc. 134-17, at 90–91
38	APA Rep., Doc. 134-17, at 41
39	APA Rep., Doc. 134-17, at 73
41	2014 Position Statement of American School Counselor Association (cited by Ordinance, Doc. 134-4, at 4)
42	2012 Position Statement of American Psychoanalytic Association, Doc. 24-4 PageID 508
43	Dep. Guido Maniscalco, Doc. 133-2, at 100:14–25
44	Dep. Guido Maniscalco, Doc. 133-2, at 101:1–25
45	Dep. Guido Maniscalco, Doc. 133-2, at 102:1–9

2. **Presentation of Roger K. Gannam, Esq.** For the presentation slides (pages) that do not include record citations, the following citations are provided for the Court's convenience:

Slide	**Record Citation**
2	Dep. Sal Ruggiero, Doc. 133-1, at 19:24–20:25
3	Dep. Sal Ruggiero, Doc. 133-1, at 69:16–70:7

4	Dep. Sal Ruggiero, Doc. 133-1, at 77:7–10
5	Dep. Sal Ruggiero, Doc. 133-1, at 78:17–79:8
6	Dep. Sal Ruggiero, Doc. 133-1, at 100:12–101:25
7	Dep. Sal Ruggiero, Doc. 133-1, at 101:1–25
8	Dep. Sal Ruggiero, Doc. 133-1, at 25:8–11
10	Dep. Sal Ruggiero, Doc. 133-1, at 34:10–15
11	Dep. Sal Ruggiero, Doc. 133-1, at 24:16–25:7
12	Dep. Jerrod Simpson, Doc. 133-3, at 67:20–68:17
13	Dep. Jerrod Simpson, Doc. 133-3, at 104:9–16
15	Pls. Resp. Defs.' Mot. Dismiss and Reply Supp. Mot. Preliminary Inj. ("Pls. Consolidated Resp."), Doc. 114, at 41
20	Pls.' Consolidated Resp., Doc. 114, at 42
21	Dep. Sal Ruggiero, Doc. 133-1, at 71:15–72:9
22	Dep. Jerrod Simpson, Doc. 133-3, at 111:13–25
23	Pls.' Consolidated Resp., Doc. 114, at 30–31
25	Am. V. Compl., Doc. 78, ¶¶ 113–115
26	Am. V. Compl., Doc. 78, ¶¶ 151, 156
27	Pls.' Consolidated Resp., Doc. 114, at 33–34
29	Am. V. Compl., Doc. 78, ¶¶ 100–102
30	Am. V. Compl., Doc. 78, ¶¶ 110–12
31	Am. V. Compl., Doc. 78, ¶¶ 126, 133–36

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this November 26, 2018, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Plaintiffs

"Behavior therapists tried a variety of aversion treatments, such as inducing nausea, vomiting, or paralysis; providing electric shocks; or having the individual snap an elastic band around the wrist when the individual became aroused to same-sex erotic images or thoughts."

APA Report, p. 22 (Pl. Dep. Exh. 17, dkt. 134-17)

BY MR. GANNAM:

Q. So, if the City determines that the therapist has adopted the client's goal of changing sexual orientation or gender identity, then it's the therapist at that point is subject to liability under the ordinance for providing therapy the goal of which is to change sexual orientation or gender identity?

A. If the therapist has adopted the goal of changing sexual orientation or gender identity, then they have violated the ordinance.

Q. And, just to clarify, that would be true even if the goal initially came from the client's request and not -- and was not initiated by the therapist?

A. Yes.

Simpson Dep., 66:8-21 [Dkt. 133 -3]

"The parties agree that modern-day SOCE therapy, and that practiced by Plaintiffs in this case, is 'talk therapy' that is administered wholly through verbal communication. Though verbal communication is the quintessential form of 'speech' as that term is commonly understood, Defendants argue that these particular communications are 'conduct' and not 'speech' for purposes of the First Amendment because they are merely the 'tool' employed by therapists to administer treatment. Thus, the question we confront is whether verbal communications become 'conduct' when they are used as a vehicle for mental health treatment."

King v. Governor, 767 F.3d 216, 224 (3d Cir. 2014), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

"**We hold that these communications are 'speech' for purposes of the First Amendment**. Defendants have not directed us to any authority from the Supreme Court or this circuit that have characterized verbal or written communications as 'conduct' based on the function these communications serve. Indeed, the Supreme Court rejected this very proposition in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 130 S.Ct. 2705, 177 L.Ed.2d 355 (2010)."

King v. Governor, 767 F.3d 216, 224–25 (3d Cir. 2014) (emphasis added), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018).

"Given that the Supreme Court had no difficulty characterizing legal counseling as 'speech,' we see no reason here to reach the counter-intuitive conclusion that the verbal communications that occur during SOCE counseling are 'conduct.'"

King v. Governor, 767 F.3d 216, 225 (3d Cir. 2014), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

"As we have explained, the argument that verbal communications become 'conduct' when they are used to deliver professional services was rejected by *Humanitarian Law Project.* Further, the enterprise of labeling certain verbal or written communications 'speech' and others 'conduct' is unprincipled and susceptible to manipulation."

King v. Governor, 767 F.3d 216, 228 (3d Cir. 2014), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

"To classify some communications as 'speech' and others as 'conduct' is to engage in nothing more than a 'labeling game.'"

***

"Simply put, speech is speech, and it must be analyzed as such for purposes of the First Amendment."

***

"Thus, **we conclude that the verbal communications that occur during SOCE counseling are not 'conduct,' but rather 'speech' for purposes of the First Amendment**."

King v. Governor, 767 F.3d 216, 228-29 (3d Cir. 2014) (emphasis added), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

"…we agree with Plaintiffs that A3371 **discriminates on the basis of content** [20] …"

Fn. 20

"**We have little doubt in this conclusion**. A3371, on its face, prohibits licensed counselors from speaking words with a particular content; *i.e.* words that 'seek[ ] to change a person's sexual orientation.' N.J. Stat Ann. § 45:1–55. Thus, as in *Humanitarian Law Project*, 'Plaintiffs want to speak to [minor clients], and whether they may do so under [A3371] depends on what they say.' 561 U.S. at 27, 130 S.Ct. 2705."

King v. Governor, 767 F.3d 216, 236, n.20 (3d Cir. 2014) (emphasis added), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

"Although the licensed notice is content based, the Ninth Circuit did not apply strict scrutiny because it concluded that the notice regulates 'professional speech.' Some Courts of Appeals have recognized 'professional speech' as a separate category of speech that is subject to different rules. See, *e.g.*, *King v. Governor of New Jersey*, 767 F.3d 216, 232 (C.A.3 2014); *Pickup v. Brown*, 740 F.3d 1208, 1227–1229 (C.A.9 2014); *Moore–King v. County of Chesterfield*, 708 F.3d 560, 568–570 (C.A.4 2013). These courts define 'professionals' as individuals who provide personalized services to clients and who are subject to 'a generally applicable licensing and regulatory regime.' *Id.*, at 569; see also, *King*, *supra*, at 232; *Pickup*, *supra*, at 1230. 'Professional speech' is then defined as any speech by these individuals that is based on '[their] expert knowledge and judgment,' *King*, *supra*, at 232, or that is 'within the confines of [the] professional relationship,' *Pickup*, *supra*, at 1228. So defined, these courts except professional speech from the rule that content-based regulations of speech are subject to strict scrutiny. See *King*, *supra*, at 232; *Pickup*, *supra*, at 1253–1256; *Moore–King*, *supra*, at 569.

But this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'"

Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2371–72 (2018) (emphasis added).

767 F.3d 216
United States Court of Appeals,
Third Circuit.

Tara KING, Ed. D. Individually and On Behalf of Her Patients; Ronald Newman, Ph. D., Individually and On Behalf of His Patients; National Association for Research and Therapy of Homosexuality, (Narth); American Association of Christian Counselors, Appellants

v.

GOVERNOR OF THE STATE OF NEW JERSEY; Eric T. Kanefsky, Director of the New Jersey

740 F.3d 1208
United States Court of Appeals,
Ninth Circuit.

David H. PICKUP; Christopher H. Rosick; Joseph Nicolosi; Robert Vazzo; National Association for Research and Therapy of Homosexuality, a Utah non-profit organization; American Association of Christian Counselors, a Virginia non-profit association; Jack Doe 1, Parent of John Doe 1; Jane Doe 1, Parent of John Doe 1; John Doe 1, a minor, guardian ad litem Jane Doe, guardian ad litem Jack Doe; Jack Doe 2, Parent of John Doe 2; Jane Doe 2, Parent of John Doe 2; John Doe 2, a minor, guardian ad litem Jack Doe, guardian ad litem Jane Doe, Plaintiffs–Appellants,

v.

Edmund G. BROWN, Jr., Governor of the State of California, in his official capacity; Anna M.

"This Court's precedents do not recognize such a tradition for a category called 'professional speech.' This Court has afforded less protection for professional speech **in two circumstances—**neither of which turned on the fact that professionals were speaking. **First, our precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their 'commercial speech.'** [citations omitted] Second, under our precedents, States may regulate professional conduct, even though that conduct incidentally involves speech. See, *e.g.*, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (opinion of O'Connor, KENNEDY, and Souter, JJ.). But neither line of precedents is implicated here."

Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2372 (2018)

"Although a professional may be viewed as engaged in the transaction of selling his professional advice, **one must, of course, distinguish between the offer and the actual presentation of the professional advice**, which is no more a 'commercial transaction' than is the actual writing or reading of a book or newspaper that is available for sale."

Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1309 n.4 (11th Cir. 2017) (en banc) (emphasis added) (quotations and alterations omitted).

"This Court's precedents do not recognize such a tradition for a category called 'professional speech.' This Court has afforded less protection for professional speech **in two circumstances—neither of which turned on the fact that professionals were speaking**. First, our precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their 'commercial speech.' [citations omitted] **Second, under our precedents, States may regulate professional conduct, even though that conduct incidentally involves speech**. See, *e.g.*, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (opinion of O'Connor, KENNEDY, and Souter, JJ.). But neither line of precedents is implicated here."

Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2372 (2018)

"There are serious doubts about whether *Pickup* was correctly decided. As noted earlier, characterizing speech as conduct is a dubious constitutional enterprise."

***

"Saying that restrictions on writing and speaking are merely incidental to speech is like saying that limitations on walking and running are merely incidental to ambulation."

Wollschlaeger v. Governor, Fla., 848 F.3d 1293, 1308-09 (11th Cir. 2017)

CONVERSION THERAPY

Why only licensed professionals?

- Under the First Amendment - Certain categories of speech receive lesser judicial protection.
- Conversion Therapy is a form of "professional speech".
- "Thus, we hold that a prohibition of professional speech is permissible only if it directly advances the State's substantial interest in protecting clients from ineffective or harmful professional services, and is not more extensive than necessary to serve that interest."

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

"Sec. 14-311. – Definitions.

(a) *Conversion therapy* or *reparative therapy* means, interchangeably, any counseling, practice or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides support and assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

REQUEST FOR ADMISSION 1:

Admit that the City has not received any Complaint that any Minor was harmed by any SOCE counseling provided within the City.

Response:

This request is denied as worded. However, the City does admit that the City of Tampa, Florida has received no complaint that any minor has been harmed by SOCE counseling provided within the city limits of the City of Tampa.

INTERROGATORY 1:

[If your response to RFA 1 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 1 is anything other than an unqualified admission, then for each Complaint received by the City that a Minor was harmed by any SOCE counseling provided within the City, Identify (per Definition #9): the Person(s) making the Complaint, the date of the Complaint, the nature of the conduct and harm alleged in the Complaint, the Person(s) receiving the Complaint, the Person(s) allegedly providing the SOCE counseling, the location(s) of the SOCE counseling, the date(s) of the SOCE counseling, the nature of the SOCE counseling, and the Person(s) allegedly harmed.

Response:

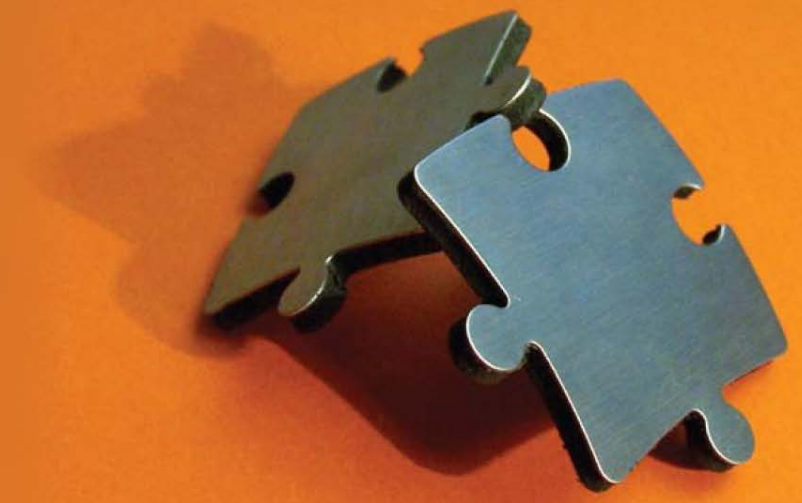
The City deems its response to Request for Admission 1 to be an unqualified admission and, therefore, there is no need to respond to Interrogatory 1.

into the City?
A. I don't know.
Q. At the time that you first brought this ordinance forward and asked for the staff report, did you request anyone to investigate whether there had been any complaints in the City of Tampa of harm from conversion therapy?
A. No, I did not. I simply made that request for information to look at a ban. That was it.
Q. And would it have been your expectation in making that request for the City Attorney's Office or someone else within the City to conduct that kind of investigation --
A. No --
Q. -- to find out?
A. -- no. I specifically requested a report on a conversion therapy ban, and that was it.
Q. Do you know whether -- regardless of your expectations, whether anyone within the City did, in fact, undertake to investigate whether there had been any complaints of harm?
A. No, I don't know.

A. Correct.
Q. Let's talk about another example. Instead of the seventeen-year-old adolescent girl, we've got a prepuberty child, say a ten-year-old, born as a boy but has expressed a female gender identity.
MR. WILLIAMS: At the age of ten?
MR. MIHET: Yes. Okay?
BY MR. MIHET:
Q. Would the ordinance prohibit a therapist in the City of Tampa from encouraging that child to embrace his given male -- biological male identity --
MR. WILLIAMS: Same objection.
BY MR. MIHET:
Q. -- and to align with his gender role?
A. Yes.
Q. It would?
A. Yes.

Report of the American Psychological Association Task Force on

Appropriate Therapeutic Responses to Sexual Orientation



searches. Due to our charge, we limited our review to sexual orientation and did not address gender identity, because the final report of another task force, the APA Task Force on Gender Identity and Gender Variance, was forthcoming (see APA, 2009).

Guidelines for Psychological Practice With Transgender and Gender Nonconforming People

American Psychological Association

Transgender and gender nonconforming[1] (TGNC) people are those who have a gender identity that is not fully aligned with their sex assigned at birth. The existence of TGNC people has been documented in a range of historical cultures (Coleman, Colgan, & Gooren, 1992; Feinberg, 1996; Miller & Nichols, 2012; Schmidt, 2003). Current population estimates of TGNC people have ranged from 0.17 to 1,333 per 100,000 (Meier & Labuski, 2013). The Massachusetts Behavioral Risk Factor Surveillance Survey found 0.5% of the adult population aged 18 to 64 years identified as TGNC between 2009 and 2011 (Conron, Scott, Stowell, & Landers, 2012). However, population estimates likely underreport the true number of TGNC people, given difficulties in collecting comprehensive demographic information about this group (Meier & Labuski, 2013). Within the last two decades, there has been a significant increase in research about TGNC people. This increase in knowledge, informed by the TGNC community, has resulted in the development of progressively more trans-affirmative practice across the multiple health disciplines involved in the care of TGNC people (Bockting, Knudson, & Goldberg, 2006; Coleman et al., 2012). Research has documented the extensive experiences of stigma and discrimination reported by TGNC people (Grant et al., 2011) and the mental health consequences of these experiences across the life span (Bockting, Miner, Swinburne Romine, Hamilton, & Coleman, 2013), including increased rates of depression (Fredriksen-Goldsen et al., 2014) and suicidality (Clements-Nolle, Marx, & Katz, 2006). TGNC people's lack of access to trans-affirmative mental and physical health care is a common barrier (Fredriksen-Goldsen et al., 2014; Garofalo, Deleon, Osmer, Doll, & Harper, 2006; Grossman & D'Augelli, 2006), with TGNC people sometimes being denied care because of their gender identity (Xavier et al., 2012).

In 2009, the American Psychological Association (APA) Task Force on Gender Identity and Gender Variance (TFGIGV) survey found that less than 30% of psychologist and graduate student participants reported familiarity with issues that TGNC people experience (APA TFGIGV, 2009). Psychologists and other mental health professionals who have limited training and experience in TGNC-affirmative care may cause harm to TGNC people (Mikalson, Pardo, & Green, 2012; Xavier et al., 2012). The significant level of societal stigma and discrimination that TGNC people face, the associated mental health consequences, and psychologists' lack of familiarity with trans-affirmative care led the APA Task Force to recommend that psychological practice guidelines be developed to help psychologists maximize the effectiveness of services offered and avoid harm when working with TGNC people and their families.

Purpose

The purpose of the *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (hereafter *Guidelines*) is to assist psychologists in the provision of culturally competent, developmentally appropriate, and trans-affirmative psychological practice with TGNC people. Trans-affirmative practice is the provision

The American Psychological Association's (APA's) Task Force on Guidelines for Psychological Practice with Transgender and Gender Nonconforming People developed these guidelines. lore m. dickey, Louisiana Tech University, and Anneliese A. Singh, The University of Georgia, served as chairs of the Task Force. The members of the Task Force included Walter O. Bockting, Columbia University; Sand Chang, Independent Practice; Kelly Ducheny, Howard Brown Health Center; Laura Edwards-Leeper, Pacific University; Randall D. Ehrbar, Whitman Walker Health Center; Max Fuentes Fuhrmann, Independent Practice; Michael L. Hendricks, Washington Psychological Center, P.C.; and Ellen Magalhaes, Center for Psychological Studies at Nova Southeastern University and California School of Professional Psychology at Alliant International University.

The Task Force is grateful to BT, Robin Buhrke, Jenn Burleton, Theo Burnes, Loree Cook-Daniels, Ed Delgado-Romero, Maddie Deutsch, Michelle Emerick, Terry S. Gock, Kristin Hancock, Razia Kosi, Kimberly Lux, Shawn MacDonald, Pat Magee, Tracee McDaniel, Edgardo Menvielle, Parrish Paul, Jamie Roberts, Louise Silverstein, Mary Alice Silverman, Holiday Simmons, Michael C. Smith, Cullen Sprague, David Whitcomb, and Milo Wilson for their assistance in providing important input and feedback on drafts of the guidelines. The Task Force is especially grateful to Clinton Anderson, Director, and Ron Schlittler, Program Coordinator, of APA's Office on LGBT Concerns, who adeptly assisted and provided counsel to the Task Force throughout this project. The Task Force would also like to thank liaisons from the APA Committee on Professional Practice and Standards (COPPS), April Harris-Britt and Scott Hunter, and their staff support, Mary Hardiman. Additionally, members of the Task Force would like to thank the staff at the Phillip Rush Center and Agnes Scott College Counseling Center in Atlanta, Georgia, who served as hosts for face-to-face meetings.

This document will expire as APA policy in 2022. After this date, users should contact the APA Public Interest Directorate to determine whether the guidelines in this document remain in effect as APA policy.

Correspondence concerning this article should be addressed to the Public Interest Directorate, American Psychological Association, 750 First Street, NE, Washington, DC 20002.

[1] For the purposes of these guidelines, we use the term *transgender and gender nonconforming* (TGNC). We intend for the term to be as broadly inclusive as possible, and recognize that some TGNC people do not ascribe to these terms. Readers are referred to Appendix A for a listing of terms that include various TGNC identity labels.

 0003-066X/15/$12.00
Vol. 70, No. 9, 832–864 http://dx.doi.org/10.1037/a0039906

Guideline 2. Psychologists understand that gender identity and sexual orientation are distinct but interrelated constructs.

Rationale. The constructs of gender identity and sexual orientation are theoretically and clinically distinct, even though professionals and nonprofessionals frequently conflate them. Although some research suggests a potential

Due to the evidence that not all children persist in a TGNC identity into adolescence or adulthood, and because no approach to working with TGNC children has been adequately, empirically validated, consensus does not exist regarding best practice with prepubertal children. Lack of consensus about the preferred approach to treatment may be due in part to divergent ideas regarding what constitutes optimal treatment outcomes for TGNC and gender-questioning youth (Hembree et al., 2009). Two distinct approaches exist to address gender identity concerns in children (Hill, Menvielle, Sica, & Johnson, 2010; Wallace & Russell, 2013), with some authors subdividing one of the approaches to suggest three (Byne et al., 2012; Drescher, 2014; Stein, 2012).

In the second approach, children are encouraged to embrace their given bodies and to align with their assigned gender roles. This includes endorsing and supporting behaviors and attitudes that align with the child's sex assigned at birth prior to the onset of puberty (Zucker, 2008a; Zucker, Wood, Singh, & Bradley, 2012). Clinicians using

175). It is hoped that future research will offer improved guidance in this area of practice (Adelson & AACAP CQI, 2012; Malpas, 2011).

and clients' parents. Emphasizing to parents the importance of allowing their child the freedom to return to a gender identity that aligns with sex assigned at birth or another gender identity at any point cannot be overstated, particularly given the research that suggests that not all young gender nonconforming children will ultimately express a gender identity different from that assigned at birth (Wallien, & Cohen-Kettenis, 2008; Zucker & Bradley, 1995). Psychologists are encouraged to acknowl-

Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents

Children and adolescents who are growing up gay, lesbian, bisexual, gender nonconforming, or gender discordant experience unique developmental challenges. They are at risk for certain mental health problems, many of which are significantly correlated with stigma and prejudice. Mental health professionals have an important role to play in fostering healthy development in this population. Influences on sexual orientation, gender nonconformity, and gender discordance, and their developmental relationships to each other, are reviewed. Practice principles and related issues of cultural competence, research needs, and ethics are discussed. J. Am. Acad. Child Adolesc. Psychiatry, 2012;51(9):957–974. **Key Words:** sexual orientation, homosexuality, bisexuality, gender identity disorder, gender discordant.

Scientific studies demonstrating the healthy, adaptive functioning of the great majority of gay and lesbian adults paved the way toward removal of homosexuality as an illness from the *DSM* in 1973.[1] Homosexuality is now recognized as a nonpathological variant of human sexuality. Although the great majority of gay and lesbian individuals have normal mental health, as a group they experience unique stressors and developmental challenges. Perhaps in part as a consequence of these challenges, adult and adolescent members of sexual minorities (defined below) develop depression, anxiety disorders, substance abuse, and suicidality at rates that are elevated in comparison with those in the general population.[2,3] Thus, psychosocial distress may account for the different rates in depression, hopelessness, and current suicidality seen between gay, lesbian, and bisexual adolescents and their heterosexual peers.[4] Studies in the U.S. and the Netherlands document this problem continuing into adulthood, and show a significant association among stigma, prejudice, discrimination, and poor mental health.[2,5,6]

Sexual development comprises biological, psychological, and social aspects of experience. Extensive scientific research, described below, has been conducted on the influence of these factors on sexual orientation and gender in recent years. Much of what has been learned scientifically about sexual orientation and gender development in the last generation has occurred in parallel with societal changes in attitudes toward sexual orientation and gender roles. While bias against sexual minorities is declining in many segments of society, intolerance is still widespread. Children and adolescents are exposed to these negative attitudes and are affected by them. This Practice Parameter is intended to foster clinical competence in those caring for children and adolescents who are growing up to be gay, lesbian, bisexual, gender variant, or transgender, reflecting what is currently known about best clinical practices for these youth.

METHODOLOGY

The list of references for this Practice Parameter was developed by online searches of Medline and PsycINFO. A search of PsycINFO articles published since 1806 and Medline articles published from 1950 through April 27, 2010, of key-word terms "sexual orientation," "gay," "homosexuality," "male homosexuality," "lesbianism," "bisexuality," "transgender," "transsexualism," "gender variant," "gender atypical," "gender identity disorder," and "homosexuality, attitudes toward" limited to English language, hu-

Children. Different clinical approaches have been advocated for childhood gender discordance. Proposed goals of treatment include reducing the desire to be the other sex, decreasing social ostracism, and reducing psychiatric comorbidity.[14] There have been no randomized controlled trials of any treatment. Early treatments for gender discordance developed in the 1970s included

Recent treatment strategies based upon uncontrolled case series have been described that focus on parent guidance and peer group interaction. One seeks to hasten desistence of gender discordance in boys through eclectic interventions such as behavioral and milieu techniques, parent guidance and school consultation aimed at encouraging positive relationships with father and male peers, gender-typical skills, and increased maternal support for male role-taking and independence.[100] Another approach encourages tolerance of gender discordance, while setting limits on expression of gender-discordant behavior that may place the child at risk for peer or community harassment.[101] Desistence of gender discordance has been described in both treatment approaches, as it is in untreated children.

Given the lack of empirical evidence from randomized, controlled trials of the efficacy of treatment aimed at eliminating gender discordance, the potential risks of treatment, and longitudinal evidence that gender discordance persists in only a small minority of untreated cases arising in childhood, further research is needed on predictors of persistence and desistence of childhood gender discordance as well as the long-term risks and benefits of intervention before any treatment to eliminate gender discordance can be endorsed.

Gender Identity Disorder in Young Boys: A Parent- and Peer-Based Treatment Protocol

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ABSTRACT

Gender identity disorder (GID) as a psychiatric category is currently under debate. Because of the psychosocial consequences of childhood GID and the fact that childhood GID, in most cases, appears to have faded by the time of puberty, we think that a cost-effective treatment approach that speeds up the fading process would be beneficial. Our treatment approach is informed by the known psychosocial factors and mechanisms that contribute to gender identity development in general, and focuses on the interaction of the child with the parents and with the same-gender peer group. To minimize the child's stigmatization, only the parents come to treatment sessions. A review of a consecutive series of 11 families of young boys with GID so treated shows a high rate of success with a relatively low number of sessions. We conclude that this treatment approach holds considerable promise as a cost-effective procedure for families in which both parents are present.

KEYWORDS

assessment, childhood, gender identity disorder, peer relations, risk factors, therapy

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Results

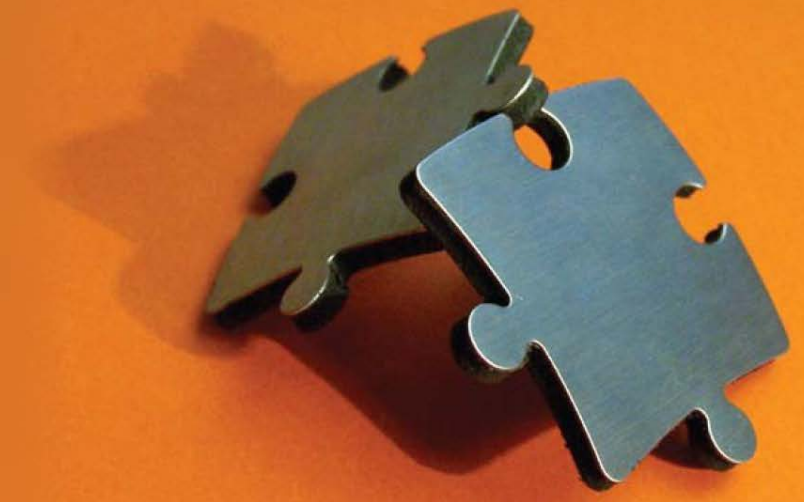
The sample consisted of 11 boys, 10 non-Hispanic Caucasian and 1 Hispanic. Age at evaluation ranged from 3 years, 11 months to 6 years, 3 months, with a median at 4 years, 9 months. All families were middle-class. The mother was present in the household in all families, the father in 10 of the 11 families (although this was not a selection criterion for treatment). Eight boys were diagnosed as having GID of childhood, and three as GID NOS.

Treatment of the GID was terminated in most cases when the goals (Table 4) were fully reached. Ten of the 11 cases showed such marked improvement; only one did not and was, therefore, judged to be unsuccessful. The total number of treatment visits per family ranged from 4–19 (median 10). In some cases, treatment for other family problems

American Psychological Association

Report of the American Psychological Association Task Force on

Appropriate Therapeutic Responses to Sexual Orientation



We conclude that there is a dearth of scientifically sound research on the safety of SOCE.

Early and recent research studies provide no clear indication of the prevalence of harmful outcomes among people who have undergone efforts to change their sexual orientation or the frequency of occurrence of harm because no study to date of adequate scientific rigor has been explicitly designed to do so.

Thus, we cannot conclude how likely it is that harm will occur from SOCE.

… the nature of these studies precludes causal attributions for harm or benefit to SOCE …

We concluded that research on SOCE (psychotherapy, mutual self-help groups, religious techniques) has not answered basic questions of whether it is safe or effective and for whom. Any future research should conform to best-practice standards for the design of efficacy research. Additionally, research into harm and safety is essential. Certain key issues are worth highlighting. Future research must use methods that are prospective and longitudinal, allow for conclusions about cause and effect to be confidently drawn, and employ sampling methods that allow proper generalization.[71]

Reports of Harm

Determining the efficacy of any intervention includes examination of its side effects and evidence of its harm (Flay et al., 2005; Lilienfeld, 2007). A central issue in the debates regarding efforts to change same-sex sexual attractions concerns the risk of harm to people that may result from attempts to change their sexual orientation. Here we consider evidence of harm in early and recent research.

EARLY STUDIES

Early research on efforts to change sexual orientation focused heavily on interventions that include aversion techniques. Many of these studies did not set out to investigate harm. Nonetheless, these studies provide some suggestion that harm can occur from aversive efforts to change sexual orientation.

"We found no empirical research on adolescents who request SOCE …"

Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts

RESEARCH SUMMARY

The longstanding consensus of the behavioral and social sciences and the health and mental health professions is that homosexuality per se is a normal and positive variation of human sexual orientation (Bell, Weinberg, & Hammersmith, 1981; Bullough, 1976; Ford & Beach, 1951; Kinsey, Pomeroy, & Martin, 1948; Kinsey, Pomeroy, Martin, & Gebhard, 1953). Homosexuality per se is not a mental disorder (APA, 1975). Since 1974, the American Psychological Association (APA) has opposed stigma, prejudice, discrimination, and violence on the basis of sexual orientation and has taken a leadership role in supporting the equal rights of lesbian, gay, and bisexual individuals (APA, 2005).

APA is concerned about ongoing efforts to mischaracterize homosexuality and promote the notion that sexual orientation can be changed and about the resurgence of *sexual orientation change efforts* (SOCE).[1] SOCE has been controversial due to tensions between the values held by some faith-based organizations, on the one hand, and those held by lesbian, gay, and bisexual rights organizations and professional and scientific organizations, on the other (Drescher, 2003; Drescher & Zucker, 2006). Some individuals and groups have promoted the idea of homosexuality as symptomatic of developmental defects or spiritual and moral failings and have argued that SOCE, including psychotherapy and religious efforts, could alter homosexual feelings and behaviors (Drescher & Zucker, 2006; Morrow & Beckstead, 2004). Many of these individuals and groups appeared to be embedded within the larger context of conservative religious political movements that have supported the stigmatization of homosexuality on political or religious grounds (Drescher, 2003; Drescher & Zucker, 2006; Southern Poverty Law Center, 2005). Psychology, as a science, and various faith traditions, as theological systems, can acknowledge and respect their profoundly different methodological and philosophical viewpoints. The APA concludes that psychology must rely on proven methods of scientific inquiry based on empirical data, on which hypotheses and propositions are confirmed or disconfirmed, as the basis to explore and understand human behavior (APA, 2008a, 2008b).

In response to these concerns, APA appointed the Task Force on Appropriate Therapeutic Responses to Sexual Orientation to review the available research on SOCE and to provide recommendations to the Association. The Task Force reached the following findings.

Recent studies of participants in SOCE identify a population of individuals who experience serious distress related to same sex sexual attractions. Most of these participants are Caucasian males who report that their religion is extremely important to them (Beckstead & Morrow, 2004; Nicolosi, Byrd, & Potts, 2000; Schaeffer, Hyde, Kroencke, McCormick, & Nottebaum, 2000; Shidlo & Schroeder, 2002, Spitzer, 2003). These individuals report having pursued a variety of religious and secular efforts intended to help them to change their sexual orientation. To date, the research has not fully addressed age, gender, gender identity, race, ethnicity, culture, national origin, disability, language, and socioeconomic status in the population of distressed individuals.

There are no studies of adequate scientific rigor to conclude whether or not recent SOCE do or do not work to change a person's sexual orientation. Scientifically rigorous older work in this area (e.g., Birk, Huddleston, Miller, & Cohler, 1971; James, 1978; McConaghy, 1969, 1976; McConaghy, Proctor, & Barr, 1972; Tanner, 1974, 1975) found that sexual orien-

Adopted by the American Psychological Association Council of Representatives on August 5, 2009.
For more information, please see **www.apa.org/pi/lgbt**

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AMERICAN SCHOOL COUNSELOR ASSOCIATION

The Professional School Counselor and LGBTQ Youth

(Adopted 1995, Revised 2000, 2005, 2007, 2013, 2014)

American School Counselor Association (ASCA) Position

Professional school counselors promote equal opportunity and respect for all individuals regardless of sexual orientation, gender identity or gender expression. Professional school counselors work to eliminate barriers that impede student development and achievement and are committed to the academic, personal/social and career development of all students.

The Rationale

Lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth often experience challenges to their academic and personal/social development related to a negative school climate. Students report feeling unsafe in school due to their sexual orientation, perceived orientation, gender identity or gender expression and report experiencing homophobic remarks, harassment and bullying (GLSEN, 2011). LGBTQ individuals often face multiple risk factors that may place them at greater risk for suicidal behavior (SPRC, 2008). Professional school counselors realize these issues impact healthy student development and psychological well-being.

The Professional School Counselor's Role

The professional school counselor works with all students through the stages of identity development and understands this may be more difficult for LGBTQ youth. It is not the role of the professional school counselor to attempt to change a student's sexual orientation or gender identity. Professional school counselors do not support efforts by licensed mental health professionals to change a student's sexual orientation or gender as these practices have been proven ineffective and harmful (APA, 2009). School counselors provide support to LGBTQ students to promote academic achievement and personal/social development. Professional school counselors are committed to the affirmation of all youth regardless of sexual orientation, gender identity and gender expression and work to create safe and affirming schools. School counselors:

2012 - Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression

The American Psychoanalytic Association affirms the right of all people to their sexual orientation, gender identity and gender expression without interference or coercive interventions attempting to change sexual orientation, gender identity or gender expression.

As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice.

Psychoanalytic technique does not encompass purposeful attempts to “convert,” “repair,” change or shift an individual’s sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.

Q. So I'll ask the same question then just to make sure we've covered all the possibilities. Am I correct that the City did not consider banning only aversive treatments versus non-aversive treatments?

A. No. We were specific in asking for a conversion therapy ban. We looked at other cities; and it was comprehensive where it covered the therapy in general, not one or the other. It was just a comprehensive ban that covered everything.

Q. So I am correct that the City did not consider banning only aversive treatments versus non-aversive treatments?

A. We specifically asked for a comprehensive ban.
Q. From the very beginning?
A. From the beginning, it was a ban on conversion therapy, in general.
Q. And so -- and I'm sorry if I am beating a horse. I just want to make sure the record is clear. The City did not consider at any point banning only aversive treatments?
A. We didn't -- we didn't ask that. We specifically asked for a ban on everything.
Q. And I understand you've said that.
A. Yeah.
Q. But, given that this ordinance was considered, debated to some extent, commented on over a period of weeks between four different meetings, at any point did the City consider only banning aversive treatments?
A. No.
Q. At any point, did the City consider banning only coercive treatment while leaving voluntary treatment allowed?
A. No.
Q. At any point, did the City consider banning only involuntary treatments as opposed to voluntary treatments?
A. No. It was a general ban covering everything.

Q. From the beginning when you first proposed looking into the ordinance to the time of enactment, it was always a comprehensive ban of everything that was considered?

A. Yes. And that would reflect in the unanimous votes all the way through. So I think there was a general understanding by all council members that we want a complete ban. We never debated anything else because we specifically wanted the complete ban.

> The government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience. Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. **But by demanding a close fit between ends and means**, the tailoring requirement prevents the government from too readily "sacrific[ing] speech for efficiency."

McCullen v. Coakley, 134 S. Ct. 2518, 2534 (2014) (emphasis added).

Q. Okay. So, to be a code enforcer in the City of
Tampa, including a senior inspector or a supervisor, all

you need is a high school diploma or the equivalent and the code inspector certification?
A. Correct.
Q. Okay. And, just for clarity, from now on when I refer to a code enforcer, I mean to include the three senior inspectors and the six supervisors in that umbrella unless I say otherwise. Okay?
A. Understood.
Q. Have the City of Tampa code enforcers received any training on any mental health issues?
A. No.
Q. Have the code enforcers of the City of Tampa received any training on any issues that might arise in family therapy?
A. No.
Q. Have they received any training with respect to any issues that might arise in the context of counseling?
A. No.
Q. Okay. And, if I asked the same questions for yourself, would the answer be no, as well?
A. Yeah. Correct.
Q. You haven't had any training in those fields either?
A. No.

Q. Okay. Your code enforcers are trained to deal with tangible things they observe, like, the tallness of the grass or the existence of trash on a particular property, right?
A. Yes.
Q. They're not trained to deal with things that are in the arena of mental health, correct?
A. Correct.
Q. They're not trained to know whether a particular mode of therapy is conversion therapy or something else?

A. I would -- I would agree.
Q. Okay. They're not trained to know whether or not a child struggling with gender identity confusion has already reached a point where they embraced the identity of an opposite sex or whether they're still exploring it, correct?
A. Correct.

Q. Now, is it necessary for you to know what the ordinance prohibits in order for you to be able to carry out your duties and responsibilities in enforcing it?

A. Yes.

Q. Okay. Does -- I don't see in the -- in the ordinance a definition for sexual orientation or gender identity. What do you understand those terms to mean as the person entrusted with enforcing the ordinance?

A. What was the question, again?

Q. Sure. I don't see a definition in the ordinance for sexual orientation or for gender identity. My question is: What do you understand those terms to mean?

THE WITNESS: To me, it's a decision by an individual that -- who they want to identify with, a male or a female. Who they want to be their partner.

BY MR. MIHET:

Q. And what about gender identity? What does that term mean?

A. Well, a particular individual that wants to identify themselves -- maybe they're a female. They want to identify themselves as a male or vice versa. That's the best I can do.

Q. How are the two terms different, if they are? Sexual orientation, how is it different from gender identity?

A. I don't think I'm qualified to answer that.

Q. Okay. Why not?

A. Because it's not something that I deal with every day. I'm not involved with that determination of, you know, what you're getting at. I'm not involved in that.

Q. So I believe your testimony was that, if this boy that we've been talking about hasn't yet reached a decision to identify as a girl and receives counseling and decides to remain a boy, there is no violation of the ordinance, right? Is that what you told me earlier?
A. Yeah. I'm just going to say it's like -- in my opinion, it's exploratory --
Q. Okay.
A. -- and nothing -- yeah.
Q. Okay. I understood that. We're clear.
But, if the same boy actually reaches the point where he identifies as a girl --
A. Okay.
Q. -- and then seeks and receives voluntary

counseling to assist him to change back to be a boy, I believe, in that scenario, you testified earlier that that would be a violation of the ordinance?

A. Yes.

Q. Right?

A. Yes.

Q. So, in those two examples then, the difference is whether or not the boy has actually reached the point where he identifies as a girl or whether he's still exploring, right?

A. Yes.

Q. Okay. Is that a determination that you would be able to make based on your expertise and your training and your qualifications?

A. No.

MR. WILLIAMS: Objection. Overly vague.

THE WITNESS: Sorry.

MR. WILLIAMS: It's overly vague.

BY MR. MIHET:

Q. Is that a determination that any of your Code Enforcement officers would be able to make based on their training and experience and expertise?

MR. WILLIAMS: Same objection.

Calls for speculation, as well.

THE WITNESS: No.

Q. Whose responsibility is it under the -- the City code to issue a notice of a violation when there is a Code Enforcement violation?

A. Oh, it's us. Yeah, it would be my folks.

CONVERSION THERAPY

ALL possible Conversion Therapy cases must be referred to legal for review – PRIOR to the issuance of a Notice of Violation.

Q. Okay. What did this training that Mr. Simpson provided in August 2017 for the Code Enforcement officials consist of?

A. Basically, an overview of the ordinance and then basically the determination that, if we do get a case, bring it to the legal department first.

Q. And why is it that complaints under this ordinance would be routed through to the legal department?

A. Well, number one, this is a situation where the code investigators, they're not -- they don't handle this type of thing. The legal department would be the ones that would -- if it went to prosecution, you know, they would oversee it. So we would get them involved to see, you know, number one, do we have a complaint here? Does it meet any -- any probable cause under the

ordinance? Any other questions that we might have to get involved in, things that he would have -- he could answer that when he comes. But just things that he would have to prove if there was going to be a case made --

Q. Okay.

A. -- that type of thing.

Q. Well, what does gender identity mean in this ordinance?
A. Gender identity isn't defined in the ordinance.
Q. How does the City interpret it?
A. The City would interpret it based on Webster's Ninth Dictionary.

Q. And what does Webster's Ninth Dictionary say?
A. I don't know off the top of my head. But I -- if you want to pull it up, we can look at it.
Q. I'm asking you, you know, as the City's designee to answer questions about interpretation of the ordinance.
A. Right.
Q. So, as we sit here right now, do you know how the City would interpret gender identity as that term is used in this ordinance?
A. Based on Webster's Ninth Edition.
Q. Is that something you've looked at before?
A. I have not looked -- I mean, I think, at some point, I looked at the definition of gender identity in Webster's Ninth. But I can't recall -- you know, I can't recite to you what Webster's Ninth says about gender identity.

Q. Are any of the special masters currently on the City's roster roll for special masters licensed mental health providers?

A. I don't know.

Q. Is there any plan in connection with the conversion therapy ordinance to recruit or appoint a special master who is a licensed mental health provider?

A. There's no -- not that I'm aware of.

> **Preemption is implied when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.** Implied preemption is found where the state legislative scheme of regulation is pervasive and **the local legislation would present the danger of conflict with that pervasive regulatory scheme**. In determining if implied preemption applies, the court must look to the provisions of the whole law, and to its object and policy. The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination.

Sarasota All. For Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010) (emphasis added) (citations and internal quotation marks omitted).

2. Florida has enacted a pervasive regulatory scheme concerning the entire subject area of mental health professionals, not simply the City's erroneous circumscription to individual issues.

Second, the City's attempt to limit the analysis to whether the State has enacted a specific statute prohibiting a locality from enacting a ban on SOCE counseling ignores the proper question at issue under Article VIII, §2(b). The proper inquiry is whether the State has "preempted **a particular subject area**," not one individual form of counseling. *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010) (emphasis added). The City contends that the question should be whether there is any "legislative statement expressly prohibiting local governments in the state from enacting ordinances **prohibiting conversion therapy**." (City MTD at 21) (emphasis added). The subject area in this matter is regulation of mental health professionals, not the narrow view the City urges, *i.e.*, one subset of an entire course of counseling for one subset of a particular issue relating to that course of counseling. Under the City's logic, a municipality would be empowered to enact any regulation it desires if the State has not passed minute legislation prohibiting a specific act, regardless of whether the statutory scheme regulating a particular **area** is overwhelmingly pervasive. This is not the law.

> (2) The Legislature further believes that such **professions shall be regulated** only for the preservation of the health, safety, and welfare of the public **under the police powers of the state**. Such professions shall be regulated when:
>
> . . . .
>
> (b) **The public is not effectively protected by other means, including, but not limited to**, other state statutes, **local ordinances**, or federal legislation.

Fla. Stat. § 456.003.

- **Chapter 491** more specifically regulates professionals in clinical social work, marriage and family therapy, and mental health counseling. For example, **§ 491.003 defines** the "'practice of marriage and family therapy,'" **identifies** who "[m]arriage and family therapy may be rendered to," and **restricts** the "use of specific methods, techniques, or modalities within the practice of marriage and family therapy . . . to marriage and family therapists appropriately trained in the use of such methods, techniques, or modalities." Fla. Stat. § 491.003(8). The section similarly regulates the practices of clinical social work and mental health counseling.
- **§ 491.004** creates within the State Department of Health the **Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling** (the "State Board") composed of nine members, **six of which must be licensed professionals in the three practice fields**. Fla. Stat. § 491.004(1), (2). The section also grants rulemaking authority to the Board to implement Chapter 491. Fla. Stat. § 491.004(5).
- **§ 491.005** imposes **licensure requirements** for clinical social work, marriage and family therapy, and mental health counseling professionals, **including requirements for education, experience, passage of a "theory and practice examination," and "knowledge of the laws and rules governing the practice** of clinical social work, marriage and family therapy, and mental health counseling." Fla. Stat. § 491.005(1), (3), (4).
- **§ 491.009** specifies **grounds for discipline** of licensed clinical social work, marriage and family therapy, and mental health counseling professionals, including **"False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed,"** and **"Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance**, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience." Fla. Stat. § 491.009(1)(d), (r).

- **Florida Administrative Code Subtitle 64B4** contains the rules implemented by the State Board to implement Fla. Stat. Ch. 491. For example, **§ 64B4-3.003** specifies the respective **"theory and practice"** licensure examinations to be administered to social work, marriage and family therapy, and mental health counseling professionals, such as the **"examination developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB)"** for marriage and family therapists. F.A.C. § 64B4-3.003(2)(c).

- **§ 64B4-5.001** provides for the **determination of violations and imposition of discipline** on the grounds provided by Fla. Stat. § 491.009, such as "False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed," and "Failing to meet the MINIMUM standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience." F.A.C. § 64B4-5.001(1)(d), (s). Such **determinations of violations and imposition of discipline** against licensed social work, marriage and family therapy, and mental health counseling professionals are made by **the State Board, six members of which are licensed professionals** in the respective fields.

- **§ 64B4-3.0035** additionally specifies how the three types of professionals **"shall demonstrate knowledge of the laws and rules for licensure:"**

> (1) An applicant shall complete an approved course consisting of a minimum of eight (8) hours which shall include the following subject areas:
>
> > (a) **Chapter 456, Part II, F.S.**, (Regulation of Professions and Occupations, General Provisions)
> >
> > (b) **Chapter 90.503**, F.S., (Psychotherapist-Patient Privilege)
> >
> > (c) **Chapter 394**, F.S., (Part I Florida Mental Health Act)
> >
> > (d) **Chapter 397**, F.S.
> >
> > (e) **Chapters 415 and 39**, F.S., (Protection from Abuse, Neglect and Exploitation)
> >
> > (f) **Chapter 491**, F.S., (Clinical, Counseling and Psychotherapy Services)
> >
> > (g) **Chapter 64B4, F.A.C.**, (Rules of the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling)
>
> (2) **The laws and rules course must provide integration of the above subject areas into the competencies required for clinical practice and must include interactive discussion of clinical case examples applying the laws and rules that govern the appropriate clinical practice**.

The Court should not be surprised by such a lack of support, because the City's contention is demonstrably fallacious as a matter of well-settled law. Indeed, since time immemorial it has been recognized that the regulation of licensed professionals, including medical and mental health professionals, has always been a matter of **state concern**. *See, e.g.*, *Watson v. Maryland*, 218 U.S. 173, 176 (1910) ("It is too well settled to require discussion at this day that the police power of the **states** extends to the regulation of certain trades and callings, particularly those which closely concern the public health." (emphasis added)); *Dent v. West Virginia*, 129 U.S. 114, 122 (1889) ("it has been the practice of different **states**, from time immemorial, to exact in many pursuits a certain degree of skill and learning" to practice a profession (emphasis added)); *McNaughton v. Johnson*, 242 U.S. 344, 348-49 (1917) ("It is established that **a state** may regulate the practice of medicine." (emphasis added); *see also Betancur v. Fla. Dep't of Health*, 296 F. App'x 761, 763 (11th Cir. 2008) ("**States** retain the police power to regulate professions, such as the practice of medicine." (emphasis added)). Thus, the City's contention that the regulation of mental health professionals is primarily a local concern is historically, legally, and logically incorrect.

Q. Okay. Does your Code Enforcement division enforce any other ordinances with respect to mental health counselors?
A. No.
Q. Okay. The only ordinance that you enforce with respect to mental health counseling is the conversion therapy ordinance?
A. Yes.
Q. Does your department enforce any ordinances that attempt to regulate other modes of therapy besides conversion therapy?

A. No.
Q. Conversion therapy is the only mode of therapy that your department enforces and regulates?
A. Yes.
Q. Is it fair to say then that your code enforcers have no experience or expertise in enforcing other regulations against mental health counselors and mental health professionals?
A. Yes.

Q. Would you consider a complaint of a violation of the conversion therapy ban to be a complicated or unusual case?

A. Yes.

Q. And why?

A. Well, it's unusual because it's the only thing in the code that deals with this -- things of this nature for the department.

Q. When you say, "things of this nature," do you mean mental health issues or counseling issues?

A. Right, with mental health and with LGBT issues. Those are not -- those are obviously not day-to-day, everyday issues for the Code Enforcement department.

2. Pickup Has Sufficiently Pled Standing.

Defendants contend that Pickup has no standing. (MTD at 11). However, Defendants' concession that Vazzo and New Hearts have standing is fatal to their effort to dismiss Pickup. Once the Court establishes the standing of at least one plaintiff for the relief sought, it need not consider the standing of other plaintiffs. *See, e.g.*, *Carey v. Population Serv., Int'l*, 431 U.S. 678, 682 (2010) (once standing of one plaintiff is established, the court need not decide the standing of other plaintiffs); *Vill. of Arlington Heights v. Metro Housing Dev. Corp.*, 429 U.S. 252, 264 & n.9 (1977) (where "we have at least one individual plaintiff who has demonstrated standing to assert these rights as his own," "we need not consider whether the other individual and corporate plaintiffs have standing to maintain suit"); *Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993, 1003 n.10 (11th Cir. 2004) (holding that it is "sufficient if one plaintiff has standing"); *In re Florida Cement & Concrete Antitrust Litig.*, No. 09-2387-CIV-ALTONAGA/Brown, 2011 WL 13174536, *1 (S.D. Fla. Feb. 24, 2011) ("**It is settled law that as long as one plaintiff has standing, the Court has subject matter jurisdiction over the case**." (emphasis added)).

To demonstrate standing,

> the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (alterations in original) (citations omitted).

G. PLAINTIFF DAVID H. PICKUP, LMFT

113. Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to provide mental health counseling in California and Texas. Pickup is also currently seeking licensure in Florida and is currently engaged in the process required for licensure as a marriage and family therapist in Florida.

114. Pickup has only one more requirement to complete to satisfy the requirements for becoming a licensed marriage and family therapist in Florida, which is taking the National Marriage and Family Therapist Exam. Pickup is sitting for this examination in August 2018, which has a testing window of August 18-August 25. Pickup has completed all other requirements for licensure in Florida as a Licensed Marriage and Family Therapist. Pickup will be licensed to provide marriage and family therapy in Florida immediately after passing the August examination.

115. Pickup has a Master of Arts degree in Counseling Psychology. He is a member of the National Association of Research and Therapy of Homosexuality ("NARTH"), where he served as the Chairman of the NARTH Clients Rights Committee; a member of the California Association of Marriage and Family Therapists; an associate member of the American Psychological Association; the Co-founder of the National Task Force for Therapy Equality; and a member of the American Association of Christian Counselors.

151. Vazzo and Pickup have incurred monetary expense to lease office space in the City to offer and provide SOCE counseling to clients in the City, including minors.

156. Both Vazzo and Pickup have received inquiries from various potential clients in the City, including minors, who desire to receive SOCE counseling.

c. Plaintiffs' clients face obstacles to litigation.

Plaintiffs' clients face substantial obstacles to bringing these claims. Indeed, "[f]or one thing, [they] may be chilled from such assertion by a desire to protect the very privacy of [their] decision from the publicity of a court suit." *Singleton*, 428 U.S. at 117. "[T]he psychotherapist-patient privilege is rooted in the imperative need for confidence and trust." *Jaffree v. Redmond*, 518 U.S. 1, 10 (1996). "[D]isclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment." *Id.*

"The stigma associated with receiving mental health services presents a considerable deterrent to litigation." *Penn. Psychiatric Soc'y*, 280 F.3d at 290 (citing *Parham v. J.R.*, 442 U.S. 584 (1979) (Stewart, J., concurring)). This consideration is only increased when such counseling involves intimate details concerning a minor's development, growth, and sexuality. Indeed, even the fear of stigmatization associated with bringing claims in a public forum "operates as a powerful deterrent to bringing suit." *Id.* As the Tenth Circuit has held, "**adolescents seeking health care related to sexuality or mental health care may be chilled from asserting their own rights by a desire to protect the very privacy of the care they seek from the publicity of a court suit**." *Aid for Women v. Foulston*, 441 F.3d 1101, 1114 (10th Cir. 1990) (emphasis added).

In certain circumstances, however, a court permits a plaintiff who has suffered some concrete injury to assert the rights of a third party because (1) the plaintiff and the third party have a close relationship and (2) the third party faces some obstacle to asserting his own rights.

Planned Parenthood Ass'n of Atlanta Area, Inc. v. Miller, 934 F.2d 1462, 1465 n.2 (11th Cir. 1991).

F. PLAINTIFF ROBERT L. VAZZO, LMFT

100. Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio. Vazzo is also a Licensed Professional Counselor in California.

101. Vazzo received his Master of Marriage and Family Therapy from the University of Southern California in 2004. He is a member of the American Association of Marriage & Family Therapists, the California Association of Marriage and Family Therapists, the Alliance for Therapeutic Choice, and the National Task Force for Therapeutic Equality.

102. In his current practice, Vazzo specializes in SOCE counseling, including the areas of unwanted same-sex attractions, pedophilia, hebephilia, ephebophilia, and transvestic fetishism. His practice includes approximately 17-25 clients each week and ten percent of those clients are minors seeking SOCE counseling.

110. Vazzo currently has a minor client who is fifteen years old and desires SOCE counseling from Vazzo in the City. Vazzo's client desires to receive SOCE counseling from a licensed professional counselor with expertise in this particular area.

111. Vazzo's client struggles with unwanted same-sex attractions, behaviors, and identity and desires to engage in SOCE counseling with Vazzo to assist in helping to reduce or eliminate those unwanted same-sex attractions, behaviors, and identity.

112. Vazzo is prohibited from engaging in SOCE counseling with his minor client because of the Ordinance, and his client is currently prohibited from receiving such counseling from a licensed professional.

H. PLAINTIFF NEW HEARTS OUTREACH

126. New Hearts Outreach is a confidential healing and discipleship ministry fostering sexual and relational wholeness in people's lives through the hope of Jesus Christ.

133. As part of its ministry, New Hearts Outreach offers referrals to individuals, including minors, who are struggling with unwanted same-sex attractions, behaviors, and identity.

134. New Hearts Outreach is approached by minors desiring to receive counseling to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, and many of those minors desire to receive counseling from licensed mental health professionals.

135. New Hearts Outreach desires to be able to refer these minors and their families to Plaintiffs Vazzo and Pickup, but are unable to offer such referrals because Vazzo and Pickup are prohibited from offering such counseling under the Ordinance.

136. As part of its ministry, New Hearts Outreach offers its annual Pastors and Counselors Luncheon, which is an event provided to families in Tampa free of charge.