

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.

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF THE CITY OF
TAMPA'S MOTION TO DISMISS AND IN OPPOSITION TO THE
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

A. INTRODUCTION

In accordance with the Court's advice at the conclusion of the November 15, 2018 hearing in this case, this Supplemental Memorandum is limited to the Defendant's Motion to Dismiss Amended Complaint and Plaintiffs' Motion for Preliminary Injunction.¹

B. MOTION TO DISMISS

The City's Motion to Dismiss should be granted, with prejudice, because on its face, City of Tampa Ordinance 2017-47 (or, "the Ordinance") regulates a procedure, not speech, and,

¹ In order to avoid unnecessary repetition, citations to some legal points are omitted because those citations are already set forth in the City's previous filings.

therefore, is subject to the heightened scrutiny set forth in *Sorrell v. IMS Health, Inc.*, 564 U.S. 553 (2011). Applying heightened scrutiny, the Ordinance does not violate the First Amendment to the United States Constitution.²

The reasons supporting the City's position are fully set forth in its prior submissions to the court as augmented by the City's oral presentation at the November 5, 2018 hearing and need not be repeated here. One point, however, does warrant additional emphasis: The City provided a principled doctrinal basis for enacting the Ordinance which included supporting, and overwhelming, empirical data.

Despite what Plaintiffs seem to contend, the court's analysis of the constitutional issues in this case is not analogous to a medical malpractice case. The City need not reach its public policy decision that conversion therapy on a child is dangerous with metaphysical certainty or clinical perfection. Instead, for First Amendment purposes, the City need only provide a principled, doctrinal basis for its conclusion. When it enacted Ordinance 2017-47, the Tampa City Council did exactly that.

The fact that Plaintiffs disagree with the City Council's empirical data, its doctrinal methodology and, ultimately, its policy decision, does not alter the fact that the City Council purposely articulated its reasons for enacting the Ordinance and did so in a straight forward manner in the Ordinance itself. And, in doing so, it relied on peer reviewed data supporting the Ordinance which is, indeed, overwhelming.

Thus, this case is not a battle of experts. Instead, it is a case asking whether the City Council utilized a responsible and principled approach in crafting an ordinance that implemented

² It is the City's position that the Ordinance would also survive a strict scrutiny analysis but that is not the test applicable to this case.

the City's measured policy (i.e., minors only) which easily passes heightened scrutiny, which is all that is required under the United States Constitution and applicable decisional law. And, clearly, it did.

C. MOTION FOR PRELIMINARY INJUNCTION

The requirements for entry of a preliminary injunction are well known. Thus, the Court needs no instruction from counsel as to what is required, the burden of proof, and by whom. But it is important to note that the Eleventh Circuit, while using the traditional four factors test, does require the moving party to produce sufficient evidence to carry its burden of proof as to each factor, *United States v. Jefferson County*, 720 F. 2d 1511 (11th Cir. 1983). Moreover, under any circumstances, a preliminary injunction is a drastic remedy. *Crocket v. Housing Authority of Tampa*, 37 F. 3d. 607 (11th Cir. 1996). And here it would be drastic indeed. See C.2. *infra*.

Nevertheless, given the subject matter at issue (banning conversion therapy involving children) and the temporal history of this action (original complaint filed one year ago), the City briefly addresses two of the required factors below.

1. Irreparable Harm

The Ordinance became law on April 10, 2017. But this action was not filed until December 4, 2017, or almost eight months after the ordinance went into effect.

Yet having filed their complaint, along with their initial Motion for Preliminary Injunction, Plaintiffs made no diligent effort to prevent the alleged irreparable harm by seeking either a temporary restraining order or, alternatively, by obtaining a preliminary injunction on an expedited basis. And even though the hearing on Plaintiffs' Motion for Preliminary Injunction had been scheduled for June 8, 2017 (albeit more than six months after this action was filed) nevertheless, in late May of 2018, Plaintiffs decided to amend their complaint. Although Plaintiffs did file an

Amended Motion for Preliminary Injunction in conjunction with their Amended Complaint, the already scheduled hearing was necessarily cancelled and was not rescheduled until over five months later. Thus, the Plaintiffs tepid prosecution of their claim of irreparable harm speaks for itself such that if there was any irreparable harm obviously there was certainly no urgency to prevent it.

2. The Public Interest

The Supreme Court has held that where the public interest is affected, it must be considered in any injunction proceeding. *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). Thus, this Court's evaluation of the policy implications and consequences of the requested preliminary injunction in this case is mandatory.

Given the record before the Court, and the stakes involved, the City is deeply concerned that enjoining its Ordinance banning conversion therapy on minors could easily result in irreparable harm not to Plaintiffs but, instead, to minor children within the city limits of Tampa.

The public's interest is particularly poignant in this case because the empirical and anecdotal evidence supporting the Ordinance was, indeed, overwhelming. So much so that the City Council unanimously approved it at both public hearings leading to its enactment. The Ordinance, therefore, is the clear embodiment of the public's will as implemented by the public's duly elected representatives.

Moreover, the City carefully tailored its Ordinance to ensure that the subject matter of the Ordinance can be freely discussed and debated in the larger marketplace of ideas. Thus, the public interest factor has already been thoroughly addressed through the City Council's careful and principled determination that the procedure known as "conversion therapy" is, in fact, dangerous to minors. Given the Plaintiffs' less than urgent effort described in Section C.1, above, that public

interest will be best served in this case by denying Plaintiffs' request for preliminary injunctive relief.³

D. CONCLUSION

The City of Tampa's Motion to Dismiss should be granted and the Plaintiffs' Amended Complaint should be dismissed with prejudice. This, in turn, would make the requested injunctive relief moot. Alternatively, if the Court denies the City's Motion to Dismiss, the Plaintiffs' Motion for Preliminary Injunction should be denied pending a trial on the merits of this case.

Dated this 3rd day of December, 2018.

/s/ Robert V. Williams
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for Plaintiff, Horatio G. Mihet (hmihet@lc.org), Roger Gannam (rgannam@lc.org), and Daniel J. Schmid (dscmid@lc.org).

/s/ Robert V. Williams
Attorney

³ The City incorporates, by reference, the points and authorities provided by Equality Florida in its Supplemental Amicus Brief.