

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	)	Case No. 8:17-cv-2896-T-02AAS
SOLI DEO GLORIA INTERNATIONAL,	)	
INC. d/b/a NEW HEARTS OUTREACH	)	
TAMPA BAY, individually and on behalf of	)	
its members, constituents and clients,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CITY OF TAMPA, FLORIDA,	)	
	)	
Defendant.	)	
	)	

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**PLAINTIFFS’ OBJECTIONS TO  
AMICUS CURIAE EQUALITY FLORIDA’S SUPPLEMENTAL AMICUS BRIEF**

Plaintiffs file the following objections to Equality Florida’s Supplemental Amicus Brief (Doc. 142), filed by *amicus curiae* Equality Florida (“EF”), in opposition to Plaintiffs’ Motion for Preliminary Injunction (Doc. 85).

**Objection 1. The EF Amicus Brief Improperly Introduces New Factual Allegations and Materials Which Were Not Developed, Provided, or Tested in Discovery.**

EF sought to intervene as a party in this case, but was correctly denied and limited to the role of an *amicus curiae*. (Doc. 52.) Nevertheless, EF still attempts to behave as a party, not an *amicus*, by seeking to introduce late, untested, and unverified factual allegations and materials that were not provided in pre-hearing discovery. (Doc. 142.) But, “an *amicus* who argues facts should rarely be welcomed . . . .” *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970). Moreover, “[a]n *amicus* cannot initiate, create, extend, or enlarge issues.” *Waste Mgmt. of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). EF’s *amicus* brief improperly attempts to put

new factual matter before the Court to prop up the City's case. EF should not be allowed to introduce new, unverified factual allegations and materials that Plaintiffs have had no opportunity to investigate, cross examine, or rebut.

EF's new factual allegations and materials are primarily from two sources, the *Practice Guidelines for the Treatment of Unwanted Same-Sex Attractions and Behavior* (hereinafter, "NARTH Guidelines") (Doc. 142 at 2; Doc. 142-1), and the 2018 study article, *Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment* (Doc. 142 at 5; Doc. 142-3). But there is no record evidence, and EF does not aver, that these materials were considered by the City when it enacted its Ordinance. Even assuming the Ordinance is not a viewpoint-based restriction on speech and therefore unconstitutional *per se* (which it is), Tampa must still prove its content-based counseling ban was narrowly tailored to the City's purported government interests **when enacted**. (Doc. 145 at 10.) The Court should reject EF's attempt to create, by argument of counsel, an *ex post facto* evidentiary record to bolster the City's justification for enacting of the Ordinance.

EF makes a specific attempt to undermine Plaintiffs' case by highlighting Plaintiff Pickup's alleged participation in creating the NARTH Guidelines. (Doc. 142 at 2.) But even if this fact were properly before the Court, and it is not, it is irrelevant. The actual content of the Guidelines (as opposed to Equality Florida's misrepresentation of their content, *see infra* Objection 2) in no way contradicts the verified allegations of Plaintiffs' Amended Complaint (Doc. 85) describing the talk therapy Plaintiffs actually have provided, and want to provide in Tampa. These verified allegations regarding Plaintiffs' talk therapy are the only facts properly before the Court.

The City made a strategic decision to forego **all discovery**, and not to rebut any allegations in the Amended Complaint (Doc. 85). *Amicus* EF was not involved in discovery, and rightfully so.

It would be unfair and prejudicial to Plaintiffs for the Court to consider new, unauthenticated and unverified evidence now, at the post-hearing stage, and especially from a non-party.

**Objection 2. The EF Amicus Brief Misrepresents Its New Factual Submissions.**

Not only are EF's new materials ineligible for the Court's factual consideration as improper (and late) *amicus* submissions, not to mention irrelevant, but EF also misrepresents their content.

EF's misrepresentation of the NARTH Guidelines begins with EF's false characterization of "conversion therapy" as a single "treatment" to which the Guidelines are devoted. (Doc. 142 at 2.) But the Guidelines do not promote any kind of monolithic "conversion therapy" or even use the term.<sup>1</sup> Rather, the Guidelines expressly recognize, "The varieties of change-oriented **counseling** are numerous, and there is no consensus on the best approach." (Doc. 142-1 at 40 (emphasis added).) The Guidelines promote their use "to supplement accepted principles of psychotherapy, not to replace them." (Doc. 142-1 at 7.) For example, Guideline 6 provides, "*Clinicians are encouraged to utilize accepted psychological approaches to psychotherapeutic interventions that minimize the risk of harm when applied to clients with unwanted same-sex attractions.*" (*Id.* at 27.) Thus, the Guidelines are written for "change oriented" clinicians "who . . . believe change is possible" (*id.* at 11), **and** for "clinicians with **a strong gay-affirming position**" (*id.* at 13), **and** for "[c]linicians who adopt a primarily more flexible position than either gay-affirmative or change-oriented clinicians" (*id.* at 15 (emphasis added)). In other words, the Guidelines do not prove the existence of a separate and distinct "treatment" called "conversion therapy" that can be regulated as non-speech conduct, as represented by Equality Florida. (Doc. 142 at 2.) And the Guidelines do absolutely nothing to rebut Plaintiffs' verified allegations in the

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<sup>1</sup> The term "conversion therapy" appears in the References section of the Guidelines within the titles of some of the authorities cited.

Amended Complaint that the only thing they do, or wish to do, is to **talk** with and **listen** to, their patients as they engage in client-centered and client-directed counseling. (*See, e.g.*, Doc. 85, ¶¶ 60–66.)

Equality Florida also misrepresents the 2018 *Parent-Initiated* study article as supportive of EF’s and the City’s patently false but persistent causal narrative—that “conversion therapy” **causes** harm—despite the “several limitations” self-identified by the article, including the most important: “**causal claims cannot be made[!]**” (Doc. 142-3 at ECF 13 (emphasis added).) A close second is the admission that only persons currently identifying as LGBT were recruited to participate in the study. (Doc. 142-3 at ECF 12–13.) Thus, the study excluded **by design** any person who positively experienced change as a minor and never identified as LGBT or no longer identifies as LGBT as an adult. Finally, the title of the study itself (*Parent-Initiated Sexual Orientation Change Efforts*) demonstrates that it is inapplicable to what Plaintiffs do and wish to do in Tampa, which is to provide voluntary, client-centered counseling that their minor patients seek and wish to receive.

In sum, the 2018 study offers the same unempirical, unrigorous aspersions already contained in the APA Report, and would not have justified the Ordinance even if Tampa could have considered it at the time of enactment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this December 5, 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  
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