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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Docket No. 8:17-cv-2896-T-36-AAS

ROBERT L. VAZZO,	:	
DAVID H. PICKUP,	:	
	:	
Plaintiffs,	:	Tampa, Florida
	:	April 2, 2018
vs.	:	10:00 - 10:13 a.m.
	:	
CITY OF TAMPA,	:	
	:	
Defendant.	:	
	:	
EQUALITY FLORIDA	:	
INSTITUTE, INC.	:	
	:	
Movant.	:	
	:	

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE AMANDA ARNOLD SANSONE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

Counsel for Plaintiff:	Horatio Mihet, Esquire Liberty Counsel Post Office Box 5407774 Orlando, Florida 32854
Counsel for Defendant:	Jerry M. Gewirtz, Esquire City of Tampa Attorney's Office 315 East Kennedy Boulevard 4th Floor Tampa, Florida 33602
Counsel for Movant:	Sylvia H. Walbolt, Esquire Brian C. Porter, Esquire Carlton Fields Jordan Burt, P.A. 4221 West Boy Scout Boulevard Suite 1000 Tampa, Florida 33601

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P R O C E E D I N G S

THE COURT: Good morning. This is U.S. Magistrate Judge Amanda Arnold Sansone. And we are here on Case No. 17-cv-2896-T-36-AAS, the case of Vazzo and Pickup versus City of Tampa. And Equality Florida, at least for the current time, under a report and recommendation, is amicus.

Could counsel please state their appearances, starting with counsel for the Plaintiffs.

MR. MIHET: Good morning, Your Honor. It's Horatio Mihet on behalf of the Plaintiffs.

THE COURT: Thank you, Mr. Mihet.

And for City of Tampa?

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

THE COURT: Thank you, Mr. Gewirtz.

And then for Equality Florida.

MS. WALBOLT: Good morning, Your Honor. Sylvia Walbolt and Brian Porter of Carlton Fields for Equality Florida.

THE COURT: Thank you, Ms. Walbolt and Mr. Porter.

So we are here -- I set this up as a status conference. This has been my practice with cases involving a preliminary injunction. A couple of topics I wanted to

1 cover with everyone, and I believe this was provided to you
2 in advance of the hearing in terms of what topics I thought
3 needed to be discussed. That said, if there's anything
4 further, we can address that during this hearing as well.

5 Currently pending before me are the motion to
6 dismiss and then also the motion for preliminary injunction.
7 I know there is a motion to stay discovery. That was
8 originally auto-referred to me through the CM/ECF program,
9 but then it was un-referred by the district judge's chambers.
10 So that motion is currently not pending before me. The
11 motion to dismiss and the motion for preliminary injunction
12 are pending before me for a report and recommendation on
13 both.

14 The first question I had is I was planning on
15 handling both motions at the same hearing, and I wanted to
16 make sure that that wasn't an issue. I know, obviously,
17 Plaintiffs filed their response to the motion to dismiss in
18 conjunction with a reply on the PI. So I'm assuming it's
19 not an issue for Plaintiffs.

20 But let me hear from you, Mr. Mihet. Do you have
21 any issue with both motions being handled in the same
22 hearing?

23 **MR. MIHET:** We have no issue with that,
24 Your Honor.

25 **THE COURT:** Thank you.

1 And Mr. Gewirtz for the City of Tampa?

2 **MR. GEWIRTZ:** No objection, Your Honor. Thank
3 you.

4 **THE COURT:** Okay. And, actually, I was remiss.
5 There is one other motion pending before me, which is
6 Equality Florida's motion for a hearing. That will be
7 granted. I do intend to have a hearing on both motions. So
8 we will grant that by endorsed order today.

9 In terms of the hearing, my next question is
10 whether it would be oral argument only or an evidentiary
11 hearing also. Let me hear from both parties, and then also
12 Equality Florida, on this issue.

13 Let me first hear from Mr. Mihet on that issue.

14 **MR. MIHET:** Your Honor, this is Horatio Mihet. I
15 believe that the hearing can be an oral-argument hearing
16 only, and that the Court can decide the matters before it on
17 the data of the record that has already been provided in the
18 parties' submission.

19 **THE COURT:** And, Mr. Gewirtz, let me hear from you
20 for the City's position on that.

21 **MR. GEWIRTZ:** Yes. The City would be agreeable,
22 as well, to an oral argument based upon the evidence before
23 the Court.

24 **THE COURT:** Okay. And then let me just hear from
25 Equality Florida. Is Equality Florida in agreement with the

1 parties' positions?

2 **MS. WALBOLT:** We are, Your Honor.

3 **THE COURT:** Okay. Then the next question that --
4 it was really then the timing. One would be the amount of
5 time that the parties and then Equality Florida believe that
6 they need for the hearing. And then, once I have an idea of
7 that, I can get a sense of the timing. In other words, how
8 far out my schedule is looking to be able to set it.

9 So let me first hear from you, Mr. Mihet. How
10 much time do you anticipate that the Plaintiffs would need
11 for this hearing?

12 **MR. MIHET:** Your Honor, the Plaintiffs -- this is
13 Horatio Mihet. The Plaintiffs believe that approximately
14 one hour per side would be sufficient to adequately present
15 the issues before the Court. It would be Plaintiffs'
16 request, preference and position that Equality Florida be
17 limited to filing an amicus brief since it was not allowed
18 to intervene. However, if the Court does allow Equality of
19 Florida to present argument, we would ask the Court to split
20 the time between -- the time between the City and Equality
21 Florida, since their interests are identical, so that, out
22 of fairness, Plaintiff's time would equal the City's and
23 Equality Florida's time combined.

24 **THE COURT:** Okay. Let me address the one issue so
25 that when I hear from Equality Florida they have an

1 understanding. I intend to permit them to make argument to
2 the Court. So I do not intend to require that they stand on
3 the briefing alone. So Equality Florida, even though the
4 status that I have recommended is amicus, it is with the --
5 the understanding that they would be able to speak at the
6 hearing.

7 So let me turn to Mr. Gewirtz for the City. How
8 much time do you anticipate that the City would need to
9 cover what it needs to cover?

10 **MR. GEWIRTZ:** Your Honor, I believe approximately
11 one hour would be adequate for the City.

12 **THE COURT:** Okay. And then let me hear from
13 Ms. Walbolt on behalf of Equality Florida. How much time
14 does Equality Florida anticipate that it would need?

15 **MS. WALBOLT:** Your Honor, I would say 15 to 20
16 minutes. We would, obviously, not try to repeat what's
17 already been heard.

18 **THE COURT:** So what I would do, then, is I am
19 going to look on my schedule for full half days that are
20 available. One, my experience so far has been that argument
21 ends up taking longer than shorter than what people
22 anticipate. Plus, I've already reviewed everything. I
23 intend to even further drill down completely on all of the
24 findings as well as the case law. So I intend to be very
25 active in terms of having questions. So that may also

1 extend the amount of time.

2 What I will do is I will look at my calendar and
3 provide times, probably either have Ms. Morgan who emailed
4 you before or else my law clerk on this case, Diego Pestana,
5 email with dates that would work on our end.

6 Let me ask now, are there any time frames that
7 you-all already know absolutely will not work? And I ask
8 that really more so that I'm not sending dates that don't
9 work anyway.

10 Let me hear from you, Mr. Mihet. Are there any
11 periods of time that you already know you're in trial or
12 that you have a previously planned vacation or something
13 that -- days you already know are absolutely not available?

14 **MR. MIHET:** Thank you, Your Honor, for being
15 sensitive to that. Unfortunately, the month of May is
16 really impossible on our schedule. We do have some time the
17 week of April 16th as well as the first couple of weeks in
18 June. So depending on how far the Court is looking out, we
19 would ask the month of May be protected.

20 **THE COURT:** Okay. And let me hear, then,
21 Mr. Gewirtz on behalf of the City, any scheduling issues on
22 your end?

23 **MR. GEWIRTZ:** No. I believe we can accommodate
24 just about anything. I think the only dates that would be
25 challenging would be May 7th, 8th, 15th, 21 and 22. But

1 even then, if that was the Court's pleasure, we could
2 accommodate the Court.

3 **THE COURT:** Thank you.

4 And then Ms. Walbolt for Equality Florida?

5 **MS. WALBOLT:** April 26 and 27 I'm supposed to be
6 out of town at an ABA meeting. Other than that, I can make
7 myself available.

8 **THE COURT:** Okay. Well, I will try to send as
9 many dates as possible. And then we will just ask that
10 you-all confer among each other and then pick the time that
11 works the best. And, again, I will give -- I will set
12 aside, then, that entire morning or afternoon to be able to
13 handle this.

14 So that covers everything that I had on my list
15 that I wanted to cover. Is there anything else that need --
16 that would be helpful to the parties to address today?
17 Obviously, other than your motion to stay discovery.

18 Let me hear from you, Mr. Mihet. Anything else to
19 address today?

20 **MR. MIHET:** No, Your Honor. Thank you.

21 **THE COURT:** Mr. Gewirtz, anything from City of
22 Tampa?

23 **MR. GEWIRTZ:** Just a general question. If,
24 relative to doing any further research, we were to uncover
25 any additional cases either that would have been decided

1 since the briefing or that we may not have uncovered prior
2 to the briefing, is that something that the Court would
3 encourage or discourage or has no opinion on?

4 **THE COURT:** Let me see. I know as to the local
5 rule with regard to preliminary injunctions, there is
6 specific information on that. That said, you know, I do not
7 have a problem with it as long as it's in advance of the
8 hearing enough that I have a chance to look at it.

9 Mr. Mihet, let me ask you, obviously, City of
10 Tampa has brought this issue up. Do you have any issue with
11 that? Keeping in mind that what's good for the goose is
12 good for the gander, so that if you have anything that you
13 find, you would also be able to submit it.

14 **MR. MIHET:** Your Honor, this is Horatio Mihet.

15 If the authorities were decided since the briefing
16 was complete, then we would have no problem with parties
17 filing notices of supplemental authority with adequate and
18 appropriate responses from the other side. However, if
19 we're talking about reopening the briefing and bringing to
20 the Court authorities that were available before the
21 briefing is completed, we would object to that. We think
22 the Court already has a big pile of paper before the Court,
23 and there's always more that can be said about a particular
24 topic. So we think it would be counterproductive, at this
25 point, to allow the parties additional space and paper to

1 brief things that could have been briefed prior to the
2 deadline.

3 **THE COURT:** And I understood Mr. Gewirtz to be
4 saying that it would be subsequent-in-time decisions.

5 But let me -- Mr. Gewirtz, is that accurate? Is
6 that what you were referencing?

7 **MR. GEWIRTZ:** Either one to the extent that it was
8 decided after the briefing or to the extent that we
9 discovered something that was decided before that had not
10 previously been cited. So it could be either one.

11 **THE COURT:** To the extent that it's something that
12 was issued by a Court after the briefing, then that is no
13 issue, go ahead and supplement. Now, what I have also seen
14 in other cases are decisions that were entered by Courts
15 prior to the end of the briefing deadline but that were --
16 because they're not available on Westlaw or some other more
17 publicly available mechanism, they are brought to the
18 attention of the Court with the description of why it is
19 belated. Now, if it's that type of exception, then that
20 could also be filed as supplemental authority as long as it
21 has -- the Notice of Supplemental Authority explains why
22 it's belated. Otherwise, if it is a case that should have
23 been found and could have been found prior to the briefing,
24 then that should not be filed as supplemental authority.

25 **MR. GEWIRTZ:** Very good. Thank you, Your Honor.

1 **THE COURT:** Anything else, Mr. Gewirtz, from the
2 City of Tampa?

3 **MR. GEWIRTZ:** No, Your Honor.

4 **THE COURT:** And Ms. Walbolt, anything further from
5 Equality Florida?

6 **MS. WALBOLT:** No. Thank you, Your Honor.

7 **THE COURT:** And just so the parties know, we did
8 follow up with the district judge's chambers this morning to
9 make sure that the motion to stay discovery was properly
10 unrefereed from us, and we confirmed that it was. So that
11 is not something that I expect that I will be ruling on.

12 We will -- and within the next, hopefully, day,
13 hopefully by the end of today, we will send you available
14 dates and times on our end so that the parties can work
15 together -- I should say the parties and Equality Florida
16 can work together -- to select the appropriate date for the
17 hearing.

18 And if there's nothing further, then we will be in
19 recess. So thank you for your time this morning.

20 **MR. GEWIRTZ:** Thank you, Your Honor.

21 **MR. MIHET:** Thank you, Your Honor.

22 (The foregoing proceedings concluded at
23 10:13 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

June 6, 2018

s\Nikki L. Peters
Nikki L. Peters, RPR, CRR, CRC, FPR
Federal Official Court Reporter
United States District Court
Middle District of Florida