

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.)
)

**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT CITY OF TAMPA'S MOTION FOR EXTENSION OF TIME
TO FILE OBJECTIONS TO REPORTS AND RECOMMENDATIONS**

Plaintiffs, pursuant to Local Rule 3.01(b), file this response in opposition to Defendant City of Tampa's Motion for Extension of Time to File Objections to Reports and Recommendations and Request for Expedited Ruling (Dkt. 152).

1. The City requests a ten-day extension of time to file its objections to Magistrate Judge Sansone's Reports and Recommendations entered January 30, 2019 (Dkts. 148, 149), based solely on the Order Denying Plaintiffs' Motion for Preliminary Injunction entered in *Otto v. City of Boca Raton*, No. 9:18-CV-80771-Rosenberg/Reinhart, 2019 WL 588645 (S.D. Fla. Feb. 13, 2019) (hereinafter, the "*Otto Order*"). (Def.'s Mot., Dkt. 152, ¶¶ 4-7.)

2. This Court, however, already has noticed a "Status Conference and oral argument on any unresolved matters set for 3/5/2019 at 09:00 AM for two (2) hours" (Dkt. 150), during which the parties will have ample opportunity to argue the pith of the *Otto Order*, and around

which Plaintiffs' counsel have scheduled other equally important matters. The extension requested by the City necessarily will require rescheduling the Status Conference to a date after the City's objections and Plaintiffs' responses are filed. Given the limited utility of the *Otto* Order to this Court's review of the Reports and Recommendations (*see, e.g., infra* ¶ 4), the City's interest in having an additional ten days to ponder a single, nonbinding order issued six days (three business days) before the City's objections are due is far outweighed by the substantial prejudice to Plaintiffs which inevitably will result from the delay.

3. Plaintiffs' counsel already are committed to several out-of-state proceedings during the time period into which a rescheduled Status Conference would likely be moved, to wit: depositions in California nearly every business day between March 11 and April 19; a deposition in Massachusetts March 20; two depositions in Maryland the week of March 25; a preliminary injunction hearing in Maryland April 11–12; and a two-week evidentiary hearing in a California criminal case April 22 to May 3. The currently scheduled March 5 Status Conference in this Court would not conflict with any of these other substantial commitments, but any rescheduled Status Conference, after extended briefing on Defendant's objections, almost certainly would.

4. Furthermore, the *Otto* Order is unhelpful on its face, for it (erroneously) punts on the critical issue of the applicable standard of constitutional review for the *Otto* plaintiffs' First Amendment claims:

- “At this early stage of the litigation, the Court need not resolve whether strict scrutiny is the applicable standard and whether the ordinances are the *least* restrictive means that Defendants could have used to achieve their interest in order to reach a decision regarding the Motion.” (*Otto* Order at *2.)
- “The Court concludes that it is unclear what standard of review should apply to this case.” (*Otto* Order at *16.)
- “[T]he Court declines to announce a standard of review for this case.” (*Otto* Order at *26.)

This reversible error, among others, is the subject of the *Otto* Plaintiffs' appeal to the Eleventh Circuit filed immediately after entry of the Southern District's order. Moreover, the Southern District's error will be further explained to this Court in Plaintiffs' forthcoming response to the City's objections to Magistrate Judge Sansone's Report and Recommendation on Plaintiffs' preliminary injunction motion (Dkt. 149) which, unlike the *Otto* Order, analyzed **and reached a conclusion** on the appropriate standard of review for Plaintiffs' First Amendment claims. (Dkt. 149 at 26 (concluding "strict-scrutiny analysis applies to laws banning SOCE counseling").)

5. Finally, as correctly observed by Magistrate Judge Sansone, Plaintiffs are presumptively harmed by any deprivation of their First Amendment rights. (Dkt. 149 at 33.) The delay resulting from the extension of time requested by the City will increase the irreparable harm already suffered by Plaintiffs.

Respectfully submitted,

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

CERTIFICATE OF SERVICE

I hereby certify that on this February 14, 2019, 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