

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,

Defendant.

**DEFENDANT CITY OF TAMPA'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS' FIRST AMENDED VERIFIED COMPLAINT**

Defendant, CITY OF TAMPA, FLORIDA, by and through its undersigned counsel,
answers Plaintiffs' First Amended Complaint (Doc. 78) as follows:

INTRODUCTION

1. Defendant denies the allegations in paragraph 1.
2. Defendant admits that Ordinance 2017-47 was signed by Mayor Bob Buckhorn on April 10, 2017, effective immediately, but denies the remaining allegations in paragraph 2.
3. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 3 and, therefore, denies same.
4. Defendant denies the allegations in paragraph 4.
5. Defendant denies the allegations in paragraph 5.
6. Defendant denies the allegations in paragraph 6.

7. Defendant denies the allegations in paragraph 7.

8. Defendant denies the allegations in paragraph 8.

9. Defendant denies the allegations in paragraph 9.

10. Defendant admits that Plaintiffs seek preliminary and permanent injunctive relief against Defendant, but denies the remaining allegations in paragraph 10.

11. Defendant admits that Plaintiffs seek preliminary and permanent injunctive relief against Defendant, but denies the remaining allegations in paragraph 11.

12. Defendant denies the allegations in paragraph 12.

13. Defendant denies the allegations in paragraph 13.

PARTIES

14. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 14 and, therefore, denies same.

15. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 15 and, therefore, denies same.

16. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 16 and, therefore, denies same.

17. Defendant admits the allegations in paragraph 17.

18. Defendant admits that Sal Ruggiero is the Manager of the City of Tampa Neighborhood Enforcement Division, which is responsible for enforcing all of the City of Tampa's non-criminal ordinances. Mr. Ruggiero was dismissed as a party defendant in this lawsuit (Doc. No. 137), and therefore the ultimate facts set forth in this paragraph are now moot.

JURISDICTION AND VENUE

19. Defendant admits that Plaintiffs are purporting to allege claims for relief under 42 U.S.C. § 1983, Article I, § 4 of the Florida Constitution, and the Florida Religious Freedom Restoration Act, and that this Court has jurisdiction over their alleged claims for relief, but denies all allegations of wrongdoing and further denies any liability to Plaintiffs. Plaintiffs' claims under Florida Patient's Bill of Rights and Responsibilities, Free Exercise Clause of the First Amendment to the United States Constitution, and Article I, § 3 of the Florida Constitution have been dismissed by this Court's March 5, 2019 Order (Doc. No. 162) adopting the Report and Recommendation at docket number 148, and, therefore, no response is required.

20. Defendant admits the allegations in paragraph 20.

21. Defendant admits the allegations of venue in paragraph 21, but denies that Plaintiffs have a valid cause of action and denies the same.

22. Defendant admits the allegations in paragraph 22.

23. The allegations of paragraph 23 assert a legal conclusion and, therefore, no response is required. To the extent a response may be required, Defendant denies the allegations of paragraph, 23.

GENERAL ALLEGATIONS

A. ORDINANCE 2017-47

24. Defendant admits the allegations in paragraph 24.

25. Defendant admits the allegations in paragraph 25.

26. Defendant admits the allegations in paragraph 26.

27. Defendant admits the allegations in paragraph 27.

28. Defendant admits the allegations in paragraph 28.

29. Defendant admits the allegations in paragraph 29.

30. Defendant admits the allegations in paragraph 30.

B. RESEARCH ON SOCE COUNSELING

31. Defendant admits the allegations in paragraph 31.

32. Defendant admits that the Report of the 2009 American Physiological Association’s Task Force on Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) is attached to the Plaintiff’s Verified Complaint as Exhibit B, but denies the allegations in paragraph 32.

33. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 33.

34. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 34.

35. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 35.

36. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 36.

37. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 37.

38. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 38.

39. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 39.

40. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 40.

41. Defendant denies the allegations in paragraph 41.

42. Defendant denies the allegations in paragraph 42.

43. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 43 and, therefore, denies same.

44. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 44 and, therefore, denies same.

45. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 45 and, therefore, denies same.

46. Defendant denies the allegations in paragraph 46.

47. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 47 and, therefore, denies same.

48. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 48 and, therefore, denies same.

49. Defendant admits that Dr. Nicolas Cummings' article is attached to Plaintiffs' Verified Complaint as Exhibit C, but Defendant lacks sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraph 49 and, therefore, denies same.

50. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 50.

51. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 51.

52. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 52.

53. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 53.

54. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 54.

55. Defendant admits that Exhibit C speaks for itself, but denies the remaining allegations in paragraph 55.

56. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 56 and, therefore, denies same.

57. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 57 and, therefore, denies same.

58. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 58 and, therefore, denies same.

59. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 59 and therefore denies same.

C. SOCE COUNSELING

60. Defendant denies the allegations in paragraph 60.

61. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 61 and, therefore, denies same.

62. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 62 and, therefore, denies same.

63. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 63 and, therefore, denies same.

64. Defendant admits that Ordinance 2017-47 speaks for itself, and denies the remaining allegations in paragraph 64.

65. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 65 and, therefore, denies same.

66. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 66 and, therefore, denies same.

67. Defendant denies the allegations in paragraph 67.

68. Defendant denies the allegations in paragraph 68.

69. Defendant denies the allegations in paragraph 69.

70. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 70 and, therefore, denies same.

71. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 71 and, therefore, denies same.

D. CURRENT ETHICAL OBLIGATIONS PROTECTING MINOR CLIENTS IN MENTAL HEALTH COUNSELING

72. Defendant denies the allegations in paragraph 72.

73. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations in paragraph 73.

74. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations in paragraph 74.

75. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations in paragraph 75.

76. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations in paragraph 76.

77. Defendant admits that the Florida Administrative Code speaks for itself, but denies the remaining allegations in paragraph 77.

78. Defendant admits that the American Association of Marriage and Family Therapists Code of Ethics (“AAMFT Code”) speaks for itself, but denies the remaining allegations in paragraph 78.

79. Defendant admits that the AAMFT Code speaks for itself, but denies the remaining allegations in paragraph 79.

80. Defendant admits that the AAMFT Code speaks for itself, but denies the remaining allegations in paragraph 80.

81. Defendant admits that the AAMFT Code speaks for itself, but and denies the remaining allegations in paragraph 81.

82. Defendant admits that the AAMFT Code speaks for itself, but denies the remaining allegations in paragraph 82.

83. Defendant admits that the AAMFT Code speaks for itself, but denies the remaining allegations in paragraph 83.

84. Defendant denies the allegations in paragraph 84.

E. VAGUENESS PROBLEMS WITH THE ORDINANCE

85. Defendant denies the allegations in paragraph 85.

86. Defendant denies the allegations in paragraph 86.

87. Defendant admits that the APA Report speaks for itself, but denies the remaining allegations in paragraph 87.

88. Defendant denies the allegations in paragraph 88.

89. Defendant denies the allegations in paragraph 89.

90. Defendant admits that the Ordinance speaks for itself, but denies the remaining allegations in paragraph 90.

91. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 91 and, therefore, denies same.

92. Defendant denies the allegations in paragraph 92.

93. Defendant admits that the Ordinance speaks for itself, but denies the remaining allegations in paragraph 93.

94. Defendant admits that the Ordinance speaks for itself, but denies the remaining allegations in paragraph 94.

95. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 95 and, therefore, denies same.

96. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 96 and, therefore, denies same.

97. Defendant denies the allegations in paragraph 97.

98. Defendant admits that the Ordinance speaks for itself, but denies the remaining allegations in paragraph 98.

99. Defendant denies the allegations in paragraph 99.

F. PLAINTIFF ROBERT L. VAZZO, LMFT

100. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 100 and, therefore, denies same.

101. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 101 and, therefore, denies same.

102. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 102 and, therefore, denies same.

103. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 103 and, therefore, denies same.

104. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 104 and, therefore, denies same.

105. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 105 and, therefore, denies same.

106. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 106 and, therefore, denies same.

107. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 107 and, therefore, denies same.

108. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 108 and, therefore, denies same.

109. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 109 and, therefore, denies same.

110. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 110 and, therefore, denies same.

111. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 111 and, therefore, denies same.

112. Defendant admits that under the Ordinance, a Provider is prohibited within the city limits of the City of Tampa, Florida, to practice conversion therapy efforts on any individual who is a minor, but Defendant denies the remaining allegations of paragraph 112.

G. PLAINTIFF DAVID H. PICKUP, LMFT

113. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 113 and, therefore, denies same.

114. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 114 and, therefore, denies same.

115. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 115 and, therefore, denies same.

116. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 116 and, therefore, denies same.

117. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 117 and, therefore, denies same.

118. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 118 and, therefore, denies same.

119. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 119 and, therefore, denies same.

120. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 120 and, therefore, denies same.

121. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 121 and, therefore, denies same.

122. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 122 and, therefore, denies same.

123. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 123 and, therefore, denies same.

124. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 124 and, therefore, denies same.

125. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 125 and, therefore, denies same.

H. PLAINTIFF NEW HEARTS OUTREACH

126. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 126 and, therefore, denies same.

127. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 127 and, therefore, denies same.

128. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 128 and, therefore, denies same.

129. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 129 and, therefore, denies same.

130. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 130 and, therefore, denies same.

131. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 131 and, therefore, denies same.

132. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 132 and, therefore, denies same.

133. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 133 and, therefore, denies same.

134. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 134 and, therefore, denies same.

135. Defendant lacks sufficient knowledge or information to form a belief about the truth of New Hearts Outreach desires, and, therefore, denies the same.

136. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 136 and, therefore, denies same.

137. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 137 and, therefore, denies same.

138. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 138 and, therefore, denies same.

139. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 139 and, therefore, denies same.

140. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 140 and, therefore, denies same.

141. Defendant lacks sufficient knowledge or information to form a belief about the truth of allegations in paragraph 141 and, therefore, denies same.

142. Defendant lacks sufficient knowledge or information to form a belief about the truth of allegations in paragraph 142 and, therefore, denies same.

143. Defendant denies the allegations in paragraph 143.

144. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 144 and, therefore, denies same.

145. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 145 and, therefore, denies same.

146. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 146 and, therefore, denies same.

147. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 147 and, therefore, denies same.

148. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 148 and, therefore, denies same.

149. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 149 and, therefore, denies same.

150. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 150 and, therefore, denies same.

I. IRREPARABLE HARM TO VAZZO, PICKUP, THEIR CLIENTS, AND NEW HEARTS

151. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 151 and, therefore, denies same.

152. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 152 and, therefore, denies same.

153. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 153 and, therefore, denies same.

154. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 154 and, therefore, denies same.

155. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 155 and, therefore, denies same.

156. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 156 and, therefore, denies same.

157. Defendant admits that under the Ordinance, a Provider is prohibited within the city limits of the City of Tampa, Florida, to practice conversion therapy efforts on any individual who is a minor, but denies the remaining allegations of paragraph 157.

158. Defendant admits that under the Ordinance, a Provider is prohibited within the city limits of the City of Tampa, Florida, to practice conversion therapy efforts on any individual who is a minor, but denies the remaining allegations of paragraph 158.

159. Defendant admits that under the Ordinance, a Provider is prohibited within the city limits of the City of Tampa, Florida, to practice conversion therapy efforts on any individual who is a minor, but Defendant denies the remaining allegations of paragraph 159.

160. Defendant denies the allegations in paragraph 160.

161. Defendant denies the allegations in paragraph 161.

162. Defendant denies the allegations in paragraph 162.

163. Defendant denies the allegations in paragraph 163.

164. Defendant denies the allegations in paragraph 164.

165. Defendant denies the allegations in paragraph 165.

166. Defendant denies the allegations in paragraph 166.

167. Defendant denies the allegations in paragraph 167.

168. Defendant denies the allegations in paragraph 168.

169. Defendant denies the allegations in paragraph 169.

170. Defendant denies the allegations in paragraph 170.

171. Defendant denies the allegations in paragraph 171.

172. Defendant denies the allegations in paragraph 172.

173. Defendant denies the allegations in paragraph 173.

174. Defendant denies the allegations in paragraph 174.

175. Defendant denies the allegations in paragraph 175.

176. Defendant denies the allegations in paragraph 176.

**COUNT I—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’
RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT**

177. Defendant hereby incorporates by reference all statements contained in paragraphs 1 through 176 above as if more fully set forth herein.

178. Defendant admits the allegations in paragraph 178.

179. Defendant denies the allegations in paragraph 179.

180. Defendant denies the allegations in paragraph 180.

181. Defendant denies the allegations in paragraph 181.

182. Defendant denies the allegations in paragraph 182.

183. Defendant denies the allegations in paragraph 183.

184. Defendant denies the allegations in paragraph 184.

185. Defendant denies the allegations in paragraph 185.

186. Defendant denies the allegations in paragraph 186.

187. Defendant denies the allegations in paragraph 187.

188. Defendant denies the allegations in paragraph 188.

189. Defendant denies the allegations in paragraph 189.

190. Defendant denies the allegations in paragraph 190.

191. Defendant denies the allegations in paragraph 191.

192. Defendant denies the allegations in paragraph 192.

193. Defendant denies the allegations in paragraph 193.

194. Defendant denies the allegations in paragraph 194.

195. Defendant denies the allegations in paragraph 195.

196. Defendant denies the allegations in paragraph 196.

COUNT II—ORDINANCE 2017-47 VIOLATES PLAINTIFFS' CLIENTS' FIRST AMENDMENT RIGHT TO RECEIVE INFORMATION

197. Defendant hereby incorporates by reference all statements contained in paragraphs 1 through 176 above as if more fully set forth herein.

198. The allegations of paragraph 198 assert a legal conclusion, and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 198.

199. The allegations of paragraph 199 assert a legal conclusion, and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 199.

200. Defendant lacks sufficient knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 200 and therefore denies same.

201. Defendant admits that under the Ordinance, a Provider is prohibited within the city limits of the City of Tampa, Florida, to practice conversion therapy efforts on any individual who is a minor, but denies the remaining allegations of paragraph 201.

202. Defendant denies the allegations in paragraph 202.

203. Defendant denies the allegations in paragraph 203.

204. Defendant denies the allegations in paragraph 204.

205. Defendant denies the allegations in paragraph 205.

COUNT III—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’ RIGHT TO FREE EXERCISE OF RELIGION

206—223. Count III has been dismissed pursuant to the Court’s March 5, 2019 Order (Doc. No. 162) adopting the Report and Recommendation at docket 148. Therefore, no response is necessary.

COUNT IV—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’ RIGHT TO LIBERTY OF SPEECH UNDER ARTICLE 1, SECTION 4 OF THE FLORIDA CONSTITUTION

224. Defendant hereby incorporates by reference all statements contained in paragraphs 1 through 176 above as if more fully set forth herein.

225. Defendant admits that Article I, § 4 of the Constitution of the State of Florida speaks for itself, but denies the remaining allegations of 225.

226. Defendant denies the allegations in paragraph 226.

227. Defendant denies the allegations in paragraph 227.

228. Defendant denies the allegations in paragraph 228.

229. Defendant denies the allegations in paragraph 229.

230. Defendant denies the allegations in paragraph 230.

231. Defendant denies the allegations in paragraph 231.

232. Defendant denies the allegations in paragraph 232.

233. Defendant denies the allegations in paragraph 233.

234. Defendant denies the allegations in paragraph 234.

235. Defendant denies the allegations in paragraph 235.

236. Defendant denies the allegations in paragraph 236.

237. Defendant denies the allegations in paragraph 237.

238. Defendant denies the allegations in paragraph 238.

239. Defendant denies the allegations in paragraph 239.

240. Defendant denies the allegations in paragraph 240.

241. Defendant denies the allegations in paragraph 241.

242. Defendant denies the allegations in paragraph 242.

243. Defendant denies the allegations in paragraph 243.

COUNT V—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’ RIGHT TO FREE EXERCISE AND ENJOYMENT OF RELIGION UNDER ARTICLE 1, SECTION 3 OF THE FLORIDA CONSTITUTION

244—261. Count V has been dismissed pursuant to the Court’s March 5, 2019 Order (Doc. No. 162) adopting the Report and Recommendation at docket 148. Therefore, no response is necessary.

COUNT VI—THE CITY HAD NO AUTHORITY TO ENACT ORDINANCE 2017-47 AND ITS ADOPTION IS THUS ULTRA VIRES UNDER ARTICLE VIII, SECTION 2(B) OF THE FLORIDA CONSTITUTION

262. Defendant hereby incorporates by reference all statements contained in paragraphs 1 through 176 above as if more fully set forth herein.

263. Defendant admits that Article VIII, § 2(b) of the Constitution of the State of Florida speaks for itself, but denies the remaining allegations of 263.

264. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 264.

265. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 265.

266. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 266.

267. The allegations of paragraph 267 assert a legal conclusion and, therefore, no response is required. To the extent a response may be required, Defendant denies the allegations of paragraph 267.

268. The allegations of paragraph 268 assert a legal conclusion, and, therefore, no response is required. To the extent a response may be required, Defendant denies the allegations of paragraph 268.

269. Defendant denies the allegations of paragraph 269.

270. Defendant admits that the Florida Administrative Code speaks for itself, but denies the remaining allegations of 270.

271. Defendant admits that the Florida Administrative Code and Florida Statute speak for itself, the remaining allegations of 271 assert a legal conclusion and, therefore, no response is required. To the extent a response may be required, Defendant denies the remaining allegations of paragraph 271.

272. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 272 and therefore denies same.

273. Defendant admits that the Ordinance speaks for itself, and lacks sufficient knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 273 and therefore denies same.

274. Defendant denies the allegations in paragraph 274.

275. Defendant denies the allegations in paragraph 275.

**COUNT VII—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’ RIGHTS UNDER THE
FLORIDA PATIENT’S BILL OF RIGHTS AND RESPONSIBILITIES**

276—291. Count VII has been dismissed pursuant to the Court’s March 5, 2019 Order (Doc. No. 162) adopting the Report and Recommendation at docket 148. Therefore, no response is necessary.

**COUNT VIII—ORDINANCE 2017-47 VIOLATES PLAINTIFFS’ RIGHTS UNDER
THE FLORIDA RELIGIOUS FREEDOM RESTORATION ACT**

292. Defendant hereby incorporates by reference all statements contained in paragraphs 1 through 176 above as if more fully set forth herein.

293. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 293.

294. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 294.

295. Defendant admits that the Florida Statute speaks for itself, but denies the remaining allegations of 295.

296. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 296 and, therefore, denies same.

297. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 297 and, therefore, denies same.

298. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations in paragraph 298 and, therefore, denies same.

299. Defendant denies the allegations in paragraph 299.

300. Defendant denies the allegations in paragraph 300.

301. Defendant denies the allegations in paragraph 301.

302. Defendant denies the allegations in paragraph 302.

303. Defendant denies the allegations in paragraph 303.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

Plaintiffs' claims fail to allege facts sufficient to state or constitute a claim for violation of the U.S. Constitution, the Civil Rights Act (42 U.S.C § 1983), or the Florida Constitution, or any other laws and further fail to allege facts sufficient to entitle Plaintiffs to the relief sought, or to any other relief. Plaintiffs are not entitled to costs or attorney's fees under 42 U.S.C. § 1988 or otherwise.

SECOND AFFIRMATIVE DEFENSE

(Sovereign Immunity)

To the extent Plaintiffs are seeking monetary relief, Defendant enjoys sovereign immunity as provided by law.

THIRD AFFIRMATIVE DEFENSE

(Ultra Vires)

The Complaint fails to state a claim upon which relief can be granted because the Defendant had the authority to enact the Ordinance and therefore the Ordinance's adoption is not *ultra vires* under Article VII, § 2(b) of the Florida Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Constitutional Rights)

Defendant has not deprived any person of any right, privilege, or immunity guaranteed by the Constitution or laws of the United States and Constitution of the State of Florida. There has been no deprivation of any right privilege or immunity guaranteed by the laws or Constitution of the United States or Constitution of the State of Florida.

FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Defendant contends that Plaintiffs cannot recover damages or any recovery should be reduced if and to the extent they have failed to mitigate all or a portion of their damages, if any.

SIXTH AFFIRMATIVE DEFENSE
(Lacks Standing)

Plaintiffs' claims in this action are barred in that they do not have standing to bring them. Defendant hereby incorporates by reference the arguments raised in its Motion to Dismiss (Doc. No. 84.)

SEVENTH AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)

The Complaint, and each cause of action therein, is improper as Plaintiffs have an adequate remedy at law.

EIGHTH AFFIRMATIVE DEFENSE
(Good Faith)

Defendant and its agents, servants, employees, or representatives acted in good faith and for a lawful purpose, and were reasonable and consistent with all applicable legal and constitutional standards.

NINTH AFFIRMATIVE DEFENSE
(Undue Injury to Public)

Plaintiffs are barred from obtaining relief sought in the Complaint because such relief would cause undue injury to the public.

RESERVATION OF RIGHTS

Defendant has not knowingly or intentionally waived any applicable affirmative defense. Defendant reserves the right to assert and rely upon other such defenses as may become available

or apparent during discovery proceedings or as may be raised or asserted by others in this case, and to amend its answer and affirmative defenses accordingly.

CONCLUSION

Defendant requests that this Court enter a judgment in favor of the City of Tampa and deny Plaintiffs request for attorney's fees and costs any other relief as this Court deems just and necessary.

/s/ Robert V. Williams
Robert V. Williams, Esquire
Florida Bar No. 144720
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Attorneys for Defendant, City of Tampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 2019, a true and correct copy of the foregoing was filed with the Clerk of Court with service to be effectuated on counsel for Plaintiff, Plaintiff, Horatio G. Mihet (hmihet@lc.org), Roger Gannam (rgannam@lc.org), and Daniel J. Schmid (dscmid@lc.org) and all counsel of record via the Court's ECF/ Electronic Service System.

/s/ Robert V. Williams
Attorney