UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, etc., et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 8:17-cv-2896-T-02AAS
	)	
CITY OF TAMPA, FLORIDA,	)	
	)	
Defendant.	)	
	)	

PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND IN RESPONSE TO COURT'S QUESTIONS AT HEARING

Plaintiffs move the Court for leave to file this supplement in support of Plaintiffs' Motion for Preliminary Injunction (Doc. 85), and in response to questions raised by the Court at the preliminary injunction hearing on March 5, 2019 (Doc. 161) regarding (1) the status of Plaintiff Pickup's Florida licensure, and (2) the application, in the preliminary injunction context, of the rule in *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939), that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." Defendant opposes Plaintiffs' filing this supplement. Plaintiffs would show the Court as follows:

1. Plaintiff Pickup's Florida Licensure. At the hearing on March 5, the Court asked the status of Plaintiff Pickup's Florida licensure. Pickup has performed all conditions to Florida licensure as a marriage and family therapist that are within his control, and he is waiting on the Florida Board of Clinical Social Work, Marriage & Family Therapy and Mental Health Counseling to authorize him to sit for the licensure examination. Pickup previously had been advised that he could obtain reciprocal licensing in Florida on the basis of examination and licensure in another jurisdiction where he was already licensed, and he pursued Florida licensure on those terms. He

was later advised, however, that he must sit for the licensure examination in Florida after all. Pickup has completed all requirements for taking the examination and is waiting only for clearance from the licensing board, which he expects to receive any day. Pickup is still pursuing licensing with all deliberate speed and still intends to begin seeing clients in Tampa immediately upon his licensure.

Plaintiffs submit that the delay in Pickup's licensure has no bearing on whether a preliminary injunction should be entered for Plaintiffs Vazzo and New Hearts Outreach. The Court has adopted the Magistrate's Report and Recommendation (Doc. 148; Doc. 162), over Tampa's objections (Doc. 155), finding that Plaintiff Vazzo "has standing to maintain this suit individually and on behalf of his minor clients," and holding that "[i]f one plaintiff establishes standing, a court need not consider whether co-plaintiffs established standing, and the lawsuit may continue." (Doc. 148 at 9.) It is undisputed that Vazzo and New Hearts Outreach are ready, willing and able to assist existing and future minor clients in Tampa; that the only thing precluding them from so doing is the challenged ordinance; and that they would resume their protected speech immediately upon the enjoinment of the ordinance. (First Am. V. Compl., Doc. 78, ¶¶ 108–112, 133–36, 140–43.) Each day that the likely unconstitutional ordinance remains in effect brings new irreparable harm. Thus, the Court should grant Plaintiffs' motion for preliminary injunction on the strength of Vazzo's and New Hearts Outreach's established standing.

2. **Application of the *Schneider* Rule in the Preliminary Injunction Context.** Also at the hearing, the Court questioned whether, for preliminary injunction purposes, Plaintiffs' potential ability to counsel clients **outside** Tampa's city limits ameliorated the irreparable harm otherwise suffered by Plaintiffs as a result of Tampa's counseling ban. The Court's question arose specifically in the shadow of the Supreme Court's axiomatic pronouncement in *Schneider v. New*

Jersey, 308 U.S. 147, 163 (1939), that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place," as applied in *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 77 (1981). The *Schneider* rule definitively says "no" to this Court's question for merits or permanent injunctive relief purposes. The following cases emphatically illustrate that the answer also is "no" **in the preliminary injunction context**: *Knights of the Ku Klux Klan, Realm of La. v. East Baton Rouge Parish Sch. Bd.*, 578 F.2d 1122, 1126 (5th Cir. 1978) (reversing denial of preliminary injunctive relief after holding irreparable harm established on application of *Schneider* rule, and rejecting school board argument that KKK could take its offensive speech elsewhere); *FF Cosmetics FL Inc. v. City of Miami Beach*, 129 F. Supp. 3d 1316, 1331 (S.D. Fla. 2015) (preliminarily enjoining city solicitation ban upon finding "City's blanket ban on solicitations exacts a high cost on [plaintiffs'] First Amendment interests" and holding *Schneider* rule "applies forcefully to Plaintiffs here"); *Gray v. Kohl*, No. 07-10024-CIV-MOORE/GARBER, 2007 WL 9702480, *2 (S.D. Fla. Nov. 14, 2007) (preliminarily enjoining enforcement of state statute prohibiting Bible distribution near schools upon finding irreparable injury and rejecting, under *Schneider* rule, government's "claim that Plaintiff can simply choose another location, outside the school safety zone, to distribute Bibles"); *Chicago Area Military Project v. City of Chicago*, 508 F.2d 921, 926 (7th Cir. 1975) (affirming preliminary injunction upon finding irreparable injury and rejecting, under *Schneider* rule, "Defendants' argument that the plaintiffs have alternate forums for distributing their literature"); *Collin v. Chicago Park Dist.*, 460 F.2d 746, 748, 752, 757 (7th Cir. 1972) (reversing denial of preliminary injunction and citing *Schneider* rule); *Furr v. Town of Swansea*, 594 F. Supp. 1543, 1549 (D.S.C. 1984) (granting preliminary injunction, citing *Schneider* rule); *Clifford v. Moritz*, 472 F. Supp. 1094, 1100 n.2 (S.D. Ohio 1979) (granting preliminary injunction, applying *Schneider* rule).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this April 18, 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
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