

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DAVID SCHWARTZ,

Plaintiff,

-v-

THE CITY OF NEW YORK, and LORELEI
SALAS, in her official capacity as
Commissioner of the New York City
Department of Consumer Affairs,

Defendants.

Case No. 1:19 Civ. 00463 (RJD) (ST)

**MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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Conversion therapy—the attempt to change the sexual orientation of a person who identifies as homosexual or the gender identity of a transgender person through psychological intervention—has been thoroughly discredited by mainstream mental health organizations, providers, and academic researchers. It is ineffective and harmful to its victims—those whom the practice is supposedly intended to “fix.” Numerous states and cities accordingly have restricted conversion therapy, subjecting practitioners to professional discipline if they seek to treat patients through conversion therapy or outlawing the practice as violative of consumer-protection laws.

In 2017, the New York City Council voted to amend the City’s prohibition on “deceptive” and “unconscionable” trade practices to include commercial conversion therapy. The Council determined that “[c]onversion therapy is a form of psychological torture, pure and simple,” and that the City should protect consumers from “this quackery.”¹ The law seeks to advance the City’s interest in protecting individuals from unfair, predatory commercial practices by banning conversion therapy services offered for a fee. It does not bar practitioners from communicating with the public about conversion therapy, sexual orientation, or gender identity; it does not prohibit practitioners from sharing their views in private conversations outside the context of paid counseling or treatment; and it does not interfere with pastoral efforts to change sexual orientation or gender identity. In banning the provision of commercial conversion therapy, the City exercised its lawful authority to regulate a harmful business practice and to protect consumers without restricting the substance of private, non-commercial speech.

David Schwartz is a licensed clinical social worker. As part of his private psychotherapy practice, he treats patients, for a fee, in order “to decrease same-sex attraction or increase their

¹ N.Y.C. Council Comm. on Civ. Rights, Nov. 29, 2017 Hr’g Tr., Schoenfeld Decl. Ex. A, at 4.

attraction to the opposite sex.” Schwartz Decl. ¶ 31. He filed this lawsuit in January 2019 to challenge the constitutionality of the City’s ban on commercial conversion therapy. More than a month later, he filed a motion to enjoin enforcement of the ban. That motion should be denied. This Court should conclude—like virtually every other court to consider the constitutionality of conversion-therapy bans—that they are lawful regulations of harmful practices, and not unconstitutional infringements on the speech of the provider. The motion should also be denied on the independent ground that plaintiff’s nearly year-long delay in bringing suit fatally undermines any claim of irreparable injury, as is required for a preliminary injunction.

BACKGROUND

A. Conversion Therapy

The evidence that conversion therapy is both ineffective and harmful is “overwhelming.” *Otto v. City of Boca Raton*, 353 F. Supp. 3d 1237, 1262 (S.D. Fla. 2019), *appeal filed*, No. 19-10604 (11th Cir. Feb. 14, 2019); *see also King v. Governor of New Jersey*, 767 F.3d 216, 238 (3d Cir. 2014); *Pickup v. Brown*, 740 F.3d 1208, 1231-32 (9th Cir. 2014). Conversion therapy encompasses a broad range of interventions meant to change a patient’s sexuality or gender identity, including “aversive” physical therapies such as electric shock treatment or the use of nausea-inducing drugs, as well as non-aversive therapy that may incorporate non-physical approaches such as psychoanalysis and counseling. *See* Glassgold Decl. ¶ 17; Haldeman Decl. ¶ 7; Am. Psychological Ass’n (“APA”), *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) (“APA Report”), Glassgold Decl. Ex. B, at 22, 31. Even non-aversive, non-physical approaches to conversion therapy cause serious harm to patients, who may experience emotional trauma, depression, anxiety, suicidal ideation, and self-hatred. *See* Glassgold Decl. ¶¶ 28-30; Haldeman Decl. ¶¶ 17-23; N.Y.C. Council Comm. on Civ. Rights, June 19, 2017 Hr’g Tr. (“June 19, 2017 Tr.”), Schoenfeld Decl. Ex. B, at 56-75 (first-hand

testimony about the harms of conversion therapy); *see also Otto*, 353 F. Supp. 3d at 1258-61 (collecting medical evidence of harm to patients from conversion therapy); Amicus Br., *King*, 767 F.3d 216 (No. 13-4429) (“*King Amicus Br.*”), Schoenfeld Decl. Ex. C, at 13 (detailing experience of 20-year-old patient who “became fixated on the notion that he was broken or defective” while in conversion therapy, which led to thoughts of suicide).

Conversion therapy is also ineffective. Ordinarily, medical interventions approved or indicated for patient treatment are demonstrated to be effective through scientific and medical research. Glassgold Decl. ¶ 20; *see also Haldeman Decl.* ¶¶ 6, 26. That is not the case with conversion therapy; the peer-reviewed and methodologically sound scientific and medical studies offer no support for conversion therapy’s reliability or effectiveness in reducing homosexual attraction or increasing heterosexual attraction, or changing gender identity, even in patients who desire that outcome. *See Glassgold Decl.* ¶¶ 22-27; *Haldeman Decl.* ¶¶ 9-16 (citing APA Report). Patients who are struggling with their sexual orientation or gender identity may invest substantial time, money, and hope in pursuing “treatment” via conversion therapy that does not produce their desired outcome. *See, e.g., June 19, 2017 Tr.* 63; *see also APA Report* 85. Conversion therapy may instead compound psychological pain and trauma, manifesting in depression, guilt, anxiety, low self-esteem, intimacy avoidance, sexual dysfunction, or suicidal ideation, among other negative consequences. *Glassgold Decl.* ¶¶ 28-30; *Haldeman Decl.* ¶ 17. Survivors’ trauma is further exacerbated when the “therapy” yields no change and they perceive that as a personal failure, with attendant feelings of shame, discouragement, and humiliation. *See King Amicus Br.* at 11 (recounting experience of survivor who attended conversion therapy for three years as an adult); *Haldeman Decl.* ¶ 17. Conversion therapy efforts also prevent or

delay access to effective mental health care the patient may require. Glassgold Decl. ¶ 31; Haldeman Decl. ¶¶ 27-30.

Recognizing the substantial risks associated with conversion therapy and the dearth of evidence of its effectiveness, leading professional organizations disavowed the practice decades ago. In 2000, the American Psychiatric Association (“A.Psy.A”) stated that it “opposes any psychiatric treatment ... based upon the a priori assumption that a patient should change his/her homosexual orientation.” A.Psy.A., *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation* (2000), Glassgold Decl. Ex. Z. The APA, American Counseling Association (“ACA”), and National Association of Social Workers followed suit, and the APA published a comprehensive study in 2009 that concluded that there was no scientific support for conversion therapy. *See* Glassgold Decl. ¶¶ 21-22, 31; Haldeman Decl. ¶¶ 10-15, 22, 29; *see also* *Otto*, 353 F. Supp. 3d at 1258-61 (collecting statements from major medical organizations discrediting conversion therapy); *King*, 767 F.3d at 238 (crediting legislative record that conversion therapy potentially inflicts harm).

More recently, state and local governments nationwide have taken action to protect citizens from the risks of this discredited and harmful practice. At present, 15 states, 50 municipalities, and the District of Columbia have restricted commercial conversion therapy (either to minors or in its entirety), either by regulating it as part of a state licensure or professional regulatory regime, or by prohibiting it as a violation of consumer-protection laws. Indeed, while New York State has not yet prohibited all commercial conversion therapy in its regulatory authority to license therapists and medical providers, the State Legislature banned the practice on minor patients in January 2019 as professional misconduct. *See* N.Y. Educ. Law § 6531-a; N.Y. Pub. Health Law § 230-a. Many of these laws have been subject to challenge on

the grounds that they infringe practitioner speech and religious expression; all but one of these challenges (which is likely to be appealed) have been unsuccessful. *See Pickup*, 740 F.3d 1208; *King*, 767 F.3d 216; *Doe ex rel. Doe v. Governor of New Jersey*, 783 F.3d 150 (3d Cir. 2015); *Otto*, 353 F. Supp. 3d 1237. *But see Vazzo v. City of Tampa*, No. 8:17-cv-2896, 2019 WL 1040855 (M.D. Fla. Mar. 5, 2019).

B. New York City Local Law 22

The New York City Charter establishes the New York City Department of Consumer Affairs (“DCA”), which is charged with, *inter alia*, enforcing the City’s consumer protection laws and rules. *See* N.Y.C. Charter §§ 2201, 2203(h). New York City’s general consumer protection law bans “deceptive” or “unconscionable” trade practices.² N.Y.C. Admin. Code §§ 20-700, 20-701(a), 20-701(b). The law has been applied in diverse contexts to protect consumers who might otherwise purchase goods or services of limited value or that threaten their health or safety. *See, e.g., City of New York v. Smart Apartments LLC*, 39 Misc. 3d 221, 225-26 (N.Y. Sup. Ct. 2013) (finding that short-term rental of apartments that are not compliant with safety codes violated City’s consumer protection law). In addition to the general consumer-protection law, the City Council has deployed its legislative authority to protect consumers against specific deceptive and unconscionable practices, such as those related to payday loan services (Admin. Code §§ 20-723.1, 20-780 *et seq.*), funeral services (*id.* §§ 20-730 *et seq.*), the sale of expired medications (*id.* § 20-821 *et. seq.*), and bail bondsmen services (*id.* § 20-830 *et seq.*).

² Deceptive or unconscionable trade practices are defined as: “[a]ny false, falsely disparaging, or misleading oral or written statement ... made in connection with the sale [or] offering ... of consumer goods or services” and “[a]ny act or practice in connection with the sale [or] offering ... of any consumer goods or services ... which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer; or results in a gross disparity between the value received by a consumer and the price paid, to the consumer’s detriment,” respectively. Admin. Code §§ 20-701(a); 20-701(b).

The City's ban on conversion therapy (Local Law 22 of 2018) was introduced with the objective of "protect[ing] consumers from fraudulent practices" and protecting the public "from the potentially dangerous consequences of conversion therapy." Council of the City of N.Y., Comm. Rep. of the Gov. Affairs Div., Comm. on Civ. Rights, Nov. 30, 2017 ("Nov. 30, 2017 Comm. Rep."), Schoenfeld Decl. Ex. D, at 7. At a hearing on the proposed legislation, the City Council heard testimony from representatives of the New York City Commission on Human Rights, the Department of Health and Mental Hygiene, the DCA, and an individual who testified about the physical and emotional anguish that he and his family suffered while subject to conversion therapy by a Manhattan-based psychotherapist during late adolescence/early adulthood. June 19, 2017 Tr. 17-22, 59-65.

In addition to hearing testimony, the Committee on Civil Rights considered the opinions of leading national professional associations, including the APA, American Medical Association ("AMA"), ACA, and A.Psy.A, which unanimously agreed that there is no valid evidence showing that conversion therapy is effective. Nov. 30, 2017 Comm. Rep. 5. In addition to observing the consensus among mental health professionals, the Committee noted that a New Jersey court had found conversion therapy to be a form of consumer fraud prohibited by state law, and that proposed federal legislation would outlaw commercial conversion therapy "as an unfair or deceptive act or practice." *Id.* at 6. Lastly, the Committee considered recent New York State regulations that prohibited certain facilities from providing conversion therapy to minors and prohibited public and private insurers from covering conversion therapy in New York State. *Id.* at 6-7. The Council concluded that while these state-level initiatives constituted progress toward a desirable goal, they did not sweep broadly enough to fully protect both minors and adults. *Id.*

On December 31, 2017, New York City enacted Local Law 22, making it “unlawful for any person to offer or provide conversion therapy services.” Admin. Code § 20-825.

Conversion therapy services are defined as “any services, offered or provided to consumers for a fee, that seek to change a person’s sexual orientation or seek to change a person’s gender identity to conform to the sex of such individual that was recorded at birth.” *Id.* § 20-824. The law excludes from this prohibition:

[S]ervices that provide assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person’s sexual orientation or facilitates a person’s coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual’s sexual orientation or gender identity.

Id. § 20-825. The law is also limited in scope to prohibit only the commercial provision of conversion therapy for a fee; pastoral guidance and other free counseling is not affected. Local Law 22 took effect on April 30, 2018.

C. Procedural History

More than eight months after Local Law 22 took effect and more than one year from its passage, plaintiff filed this action challenging the law’s constitutionality and seeking to enjoin it. Plaintiff’s motion for a preliminary injunction makes no attempt to explain why emergency relief is warranted despite his delay in bringing suit. Instead, it restates the Complaint’s contentions and advances a conclusory argument that the City “does not have a cognizable [government] interest” in prohibiting the commercial practice of conversion therapy. *See* PI Mem. 13.

ARGUMENT

In general, “[a] party seeking a preliminary injunction must show (1) irreparable harm; (2) either a likelihood of success on the merits or both serious questions on the merits and a balance of hardships decidedly favoring the moving party; and (3) that a preliminary injunction

is in the public interest.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). A plaintiff challenging “governmental action taken in the public interest pursuant to a statutory or regulatory scheme,” however, cannot satisfy the second element of the standard by showing merely serious questions on the merits; rather, the plaintiff must show an actual likelihood of success on the merits, because “governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.” *Otoe-Missouria Tribe of Indians v. N.Y. State Dep’t of Fin. Servs.*, 769 F.3d 105, 110 (2d Cir. 2014) (citations and internal quotation marks omitted).

I. Plaintiff’s Inexcusable One-Year Delay In Bringing Suit Precludes Any Finding Of Irreparable Harm

As discussed below, the application for a preliminary injunction should be denied because plaintiff is unlikely to succeed on his constitutional challenges to Local Law 22. The Court need not even address the merits of plaintiff’s claims in this posture, however, due to his inexcusable year-long delay in bringing suit and seeking to enjoin the law.

Local Law 22 was signed into law on December 31, 2017. Less than one month later, plaintiff exercised his First Amendment rights to condemn the legislation in a letter to the editor published in a widely distributed community newspaper. *See* Schwartz, *Therapy and SSA*, *The Jewish Press* (Jan. 10, 2018), Schoenfeld Decl. Ex. E. The law went into effect three-and-a-half months later—on April 30, 2018—and yet he did not file suit until eight months after that, a full year after enactment. *See supra* p.7. Plaintiff offers nothing to explain the delay.

A preliminary injunction is a drastic measure to provide interim relief where exigent circumstances make it impossible to wait for a judgment on the merits. Plaintiff’s delay in bringing suit undermines any claim he could raise about the urgency of his need for relief and

warrants denial of an injunction regardless of any likelihood of success on the merits of his claim—which, as discussed below, is low. *See, e.g., Citibank, N.A. v. Cititrust*, 756 F.2d 273, 276 (2d Cir. 1985) (stating that delay seeking a preliminary injunction “tends to indicate at least a reduced need for such drastic, speedy action”); *see also Union Cosmetic Castle, Inc. v. Amorepacific Cosmetics USA, Inc.*, 454 F. Supp. 2d 62, 68, 70 (E.D.N.Y. 2006) (“plaintiffs’ delay of approximately seven months” in commencing action was “undue” and “negate[d] the alleged urgency”); *Nat’l Council of Arab Ams. v. City of New York*, 331 F. Supp. 2d 258, 266 (S.D.N.Y. 2004) (denying preliminary injunction in First Amendment challenge, noting that plaintiffs’ “delay is one of the equities that argues strongly against granting a preliminary injunction”); *Irish Lesbian & Gay Org. v. Giuliani*, 918 F. Supp. 732, 748-49 (S.D.N.Y. 1996) (same). By contrast, the grant of a preliminary injunction would constitute “ongoing irreparable harm” to the City due to the obstruction of a statute “enacted by representatives of its people.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers).

II. Plaintiff Is Unlikely To Succeed On The Merits Of His Constitutional Claims

A. Plaintiff Is Unlikely To Succeed On His Free Speech Claim

Plaintiff’s entire argument that he is likely to succeed on the merits of his free speech claim turns on the premise that Local Law 22 regulates speech and is thus subject to strict scrutiny. *See* PI Mem. 8-16.³ But Local Law 22 does not regulate speech at all; it regulates conduct—namely, a deceptive and dangerous service that is well within the City’s authority to prohibit. That some providers, including plaintiff, practice conversion therapy principally or

³ The Complaint contains two free speech claims (Count I, for denial of Plaintiff’s free speech rights, and Count III, for denial of Plaintiff’s patients’ free speech rights) and two free exercise claims (Count IV, for denial of Plaintiff’s free exercise rights, and Count V, for denial of Plaintiff’s patients’ free exercise rights). Plaintiff lacks third-party standing to assert First Amendment claims on behalf of his adult clients. *King*, 767 F.3d at 244; *Doe*, 783 F.3d at 154 n.3; *Welch v. Brown*, 58 F. Supp. 3d 1079, 1091 (E.D. Cal. 2014); *see* PI Mem. 18.

exclusively through talk does not change the fact that conversion therapy purports to be a *practice*. The regulation is thus subject to only limited constitutional scrutiny, which it easily satisfies.

To the extent Local Law 22 could be regarded as regulating speech, any such regulation is only incidental to its principal purpose and effect of regulating the deceptive and harmful practice of conversion therapy. Under decades of Supreme Court and Second Circuit precedent, including the Supreme Court's recent decision in *National Institute of Family & Life Advocates v. Becerra* (“*NIFLA*”), 138 S. Ct. 2361 (2018), Local Law 22 is accordingly subject to—at most—intermediate scrutiny. Plaintiff makes no argument that his challenge succeeds under that standard of review, and it does not: Local Law 22 targets a specific type of therapy that is both ineffective and potentially harmful, and the City has a compelling interest in protecting the public from deceptive and dangerous practices. Moreover, the law is narrowly tailored to prohibit only one specific practice with demonstrably ill effects and no practical effectiveness. To the extent plaintiff believes in the utility of conversion therapy—contrary to all reliable health and medical evidence—he remains free to express those views, as well as his opinions on sexuality, whether in public or to his patients. Indeed, under the law, plaintiff may even provide his services without a fee (so long as he complies with other applicable laws). Finally, even if strict scrutiny did apply, Local Law 22 would survive for precisely the same reasons.

1. Local Law 22 regulates conduct, not speech.

The First Amendment prohibits laws “abridging the freedom of speech.” U.S. Const. amend. I. The core of protected First Amendment speech is speech that facilitates “the free flow of ideas and opinions on matters of public interest and concern.” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988). Government regulation that suppresses speech on account of its content is accordingly subject to strict scrutiny—that is, “the government must show that the

regulation at issue is narrowly tailored to serve or promote a compelling government interest.”
United States v. Caronia, 703 F.3d 149, 163 (2d Cir. 2012).

But the First Amendment does not bar government regulation of “a course of conduct ... initiated, evidenced, or carried out by means of language.” *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949); *see also Jews for Jesus, Inc. v. Jewish Cmty. Relations Council of N.Y., Inc.*, 968 F.2d 286, 295 (2d Cir. 1992) (“[S]imply because speech or other expressive conduct can in some circumstances be the vehicle for violating a statute directed at regulating conduct does not render that statute unconstitutional.”). Nor does the First Amendment “prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011).

Consistent with that principle, the Supreme Court and Second Circuit routinely have upheld prohibitions on fraudulent, deceptive, or otherwise harmful practices, even where those practices are carried out through speech or have some speech component. *See, e.g., Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 456 (1978) (listing examples of “communications that are regulated without offending the First Amendment,” including “the exchange of information about securities, corporate proxy statements, the exchange of price and production information among competitors, and employers’ threats of retaliation for the labor activities of employees” (citations omitted)); *see also Jews for Jesus*, 968 F.2d at 295-96

Local Law 22 regulates deceptive and unconscionable conduct. The law prohibits anyone from “provid[ing]” or “offer[ing]” conversion therapy “services” for a fee, *i.e.*, engaging in a course of treatment designed “to change a person’s sexual orientation” or gender identity. Admin. Code § 20-824. It thus “affects what [providers] must *do* ... not what they may or may not *say*.” *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 60 (2006). To be sure,

many providers, including plaintiff, engage in talk-based therapy; they engage in structured talk practice in an “attempt[] to change gay men’s and lesbians’ thought patterns by reframing desires, redirecting thoughts, or using hypnosis, with the goal of changing sexual arousal, behavior, and orientation.” APA Report 22; *see also* Schwartz Decl. ¶ 32 (explaining that he offers his patients “ways of thinking about themselves and others that may help them make progress” towards changing their sexual attractions). But that service is not immune from regulation merely because it takes the form of speech. *See, e.g., Pickup*, 740 F.3d at 1229 (conversion therapy ban “regulates conduct” because it “bans a form of treatment”). It is a commercial service offered to “fix” a purported problem. *See Otto*, 353 F. Supp. 3d at 1256. Speech is “*the manner of delivering* the treatment,” but providers “are essentially writing a prescription for a treatment that will be carried out verbally.” *Id.*; *see also, e.g., Pickup*, 740 F.3d at 1229-31. In short, Local Law 22 regulates a service offered to individuals and families that certain practitioners “carr[y] out by means of language.” *Giboney*, 336 U.S. at 502.⁴

Although plaintiff takes pains to note that he performs conversion therapy by “talking with the patient,” rather than through electroshock treatment or other physical treatments, he acknowledges that he is not merely speaking, but is in fact “providing” his patients with “psychotherapeutic services.” Schwartz Decl. ¶¶ 32, 36, 40, 60. To the extent he provides these services through speech, that speech “serve[s] a function”; the “words constitute an *act* of therapy,” and are coextensive with the deceptive practice itself. *Otto*, 353 F. Supp. 3d at 1257.

⁴ Plaintiff apparently contends that his patients have a constitutional right to obtain conversion therapy for a fee. *See* PI Mem. 20. That the government may prohibit particular medical treatments that it has found to be ineffective or unsafe is beyond doubt. *See, e.g., Abigail All. for Better Access to Dev. Drugs v. von Eschenbach*, 495 F.3d 695, 711 (D.C. Cir. 2007) (holding there is no privacy right for terminally ill patients to access treatments whose safety had not yet been tested); *Mitchell v. Clayton*, 995 F.2d 772, 775 (7th Cir. 1993) (“[A] patient does not have a constitutional right to obtain a particular type of treatment or to obtain treatment from a particular provider if the government has reasonably prohibited that type of treatment or provider.”).

Plaintiff relies heavily on *NIFLA*, where the Supreme Court considered a First Amendment challenge to a California statute requiring medical clinics serving pregnant women to provide certain notices not associated with the performance of any medical procedure, including (for certain clinics) a notice “that California provides free or low-cost services, including abortions.” 138 S. Ct. at 2368. The Supreme Court held the notice requirement unlawful. *NIFLA* is inapplicable here because it is a compelled speech case—which this case is not. In any event, far from supporting plaintiff, the Court’s reasoning makes clear why Local Law 22 is perfectly lawful. The Court explained that decades of its case law confirmed States’ authority to regulate speech as an incident to lawful regulations of conduct. *Id.* at 2372.⁵ As an example of permissible regulation by the State, the Court discussed at length the law at issue in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which “require[ed] physicians to obtain informed consent before they could perform an abortion.” *NIFLA*, 138 S. Ct. at 2373. That law, the Court explained, was permissible because it “regulated speech only ‘as part of the *practice* of medicine.’” *Id.* (quoting *Casey*, 505 U.S. at 884). By contrast, the Court in *NIFLA* held, California’s notice requirement was *not* a “regulation of professional conduct” because it was “not tied to a procedure at all”; rather, it applied “to all interactions between a covered facility and its clients, regardless of whether a medical procedure is ever sought, offered, or performed.” *Id.* It thus “regulate[d] speech as speech.” *Id.* at 2374.

⁵ The Court in *NIFLA* disapproved *Pickup* and *King*’s suggestion that there exists a special analysis under the First Amendment for “professional speech”—*i.e.*, speech conducted by a professional in the context of a practitioner-client relationship. *NIFLA*, 138 S. Ct. at 2371-73. Because Local Law 22 regulates plaintiff’s speech only insofar as it is an incident to the conduct or providing a purported mental health service, *NIFLA*’s discussion of the professional speech doctrine has no bearing here. Further, to the extent the First Amendment is implicated here at all, it is because the City has prohibited false and deceptive speech as an incident to its ban on offering or providing conversion therapy for a fee—not because it is regulating professional speech.

Local Law 22 is exactly the sort of “regulation of ... conduct” that *NIFLA* recognizes States are permitted to enact, notwithstanding its incidental effects on speech. 138 S. Ct. at 2372. The grounds on which the Supreme Court distinguished the California notice requirement from permissible regulations of professional conduct—the fact that the California requirement was “not tied to a procedure” and applied “regardless of whether a medical procedure [was] ever sought, offered, or performed,” *id.* at 2373—are wholly inapplicable to Local Law 22, which applies *solely* to the provision of a particular type of service that the City has reasonably deemed a risk to its residents and which prohibits speech only to the extent it effectuates that service. Indeed, Local Law 22 goes out of its way to permit the sort of speech that *NIFLA* holds is constitutionally protected, such as advocacy about the merits or demerits of conversion therapy. *See supra* p.10. The *only* thing it prohibits is the actual provision of the “service” of conversion therapy for a fee, which—as discussed above—is fundamentally conduct rather than speech.

Finally, Plaintiff contends that Local Law 22 censors his views on sexuality, and therefore should be subject to strict scrutiny. *See* PI Mem. 10-12. Nothing in Local Law 22 prevents plaintiff and other therapists from expressing their views about sexual orientation or gender identity in public or to their patients. Courts have overwhelmingly found that conversion therapy bans similar to Local Law 22 are viewpoint neutral and do not burden expressive speech. *See King*, 767 F.3d at 236-37; *Pickup*, 740 F.3d at 1231; *Otto*, 353 F. Supp. 3d at 1268-70. As the Ninth Circuit noted in *Pickup*, California’s ban on conversion therapy “regulates only treatment, while leaving mental health providers free to discuss and recommend, or recommend against,” sexual orientation change efforts. 740 F.3d at 1231. Here, too, plaintiff and others remain free to express their opinion that sexual orientation or gender identity may change and to discuss conversion therapy.

2. Local Law 22 satisfies intermediate scrutiny; even if strict scrutiny applies, the law is constitutional.

Local Law 22 regulates conduct and is thus subject to rational basis review, which it easily satisfies. *See Pickup*, 740 F.3d at 1231. Even were the law regarded to some degree as a regulation on speech, it would at most be subject to intermediate scrutiny. *See United States v. O'Brien*, 391 U.S. 367, 376-77 (1968); *Jews for Jesus*, 968 F.2d at 295-98 (applying intermediate scrutiny to anti-discrimination statutes that “can be violated by speech or other expressive conduct”); *see also Otto*, 353 F. Supp. 3d at 1256 (intermediate scrutiny “strike[s] the appropriate balance between recognizing that [therapists] maintain some freedom of speech within their offices, and acknowledging that treatments may be subject to significant regulation under the government’s police powers”).

Local Law 22 easily satisfies intermediate scrutiny; indeed plaintiff makes no argument to the contrary. Banning a deceptive and harmful practice directly advances the City’s substantial interest “in the health, safety, and welfare of its citizens,” *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 341 (1986), an interest that “is unrelated to the suppression of free expression,” *O'Brien*, 391 U.S. at 377. By targeting the service itself, Local Law 22 ensures that “the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *Id.*; *accord King*, 767 F.3d at 237-40; *Otto*, 353 F. Supp. 3d at 1264-68. Even if strict scrutiny applies, however, Local Law 22 survives because talk-based conversion therapy is deceptive and harmful—it promises something it has no right to claim it can deliver, and it damages victims in the process. The City’s interest in preventing consumer deception and protecting its citizens from a dangerous practice outweighs any expressive value of conversion therapy, and Local Law 22 is narrowly tailored to serve the City’s compelling interest.

- a) *Local Law 22 advances the City’s compelling interest in protecting individuals from an unconscionable and harmful service.*

Local Law 22 seeks to “protect consumers from fraudulent practices” and to protect LGBTQ individuals “from the potentially dangerous consequences of conversion therapy.” Nov. 30, 2017 Comm. Rep. 7. In defending Local Law 22 “as a means to redress past harms or prevent anticipated harms,” the City “must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994). At the same time, the Court “must accord substantial deference to the predictive judgments of [the City].” *Id.* at 665; *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 36-38 (2010). The Court’s role, therefore, “is to assure that, in formulating its judgments, [the City] has drawn reasonable inferences based on substantial evidence.” *Turner*, 512 U.S. at 666.

The City obviously has a compelling interest in protecting the public from deceptive and unconscionable conduct, and Local Law 22 advances that aim. The overwhelming evidence before the City Council established that conversion therapy is both harmful and discredited. Leading professional associations—including the APA, the AMA, the ACA, and the A.Psy.A.—have uniformly disavowed the practice.⁶ *See* Nov. 30, 2017 Comm. Rep. 5. The APA, for example, found that “the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through [conversion therapy].” APA Report 3. Nor is there valid evidence suggesting that

⁶ The genesis of conversion therapy underscores its unconscionability and harmfulness. Conversion therapy originated as a treatment to what medical professionals considered a disorder—a position that these professions have long since abandoned. *See* A.Psy.A., *Position Statement on Issues Related to Homosexuality* (2013) (“The American Psychiatric Association does not believe that same-sex orientation should or needs to be changed[.]”), Glassgold Decl. Ex. D; Am. Counseling Ass’n, *Ethical Issues Related to Conversion or Reparative Therapy* (2013) (“The belief that same-sex attraction and behavior is abnormal and in need of treatment is in opposition to the position taken by national mental health organizations, including ACA.”), Glassgold Decl. Ex. O.

conversion therapies are any more effective when used to try to change the gender identities of transgender individuals. Glassgold Decl. ¶¶ 44-47. Because conversion therapy generally fails to achieve what it is designed to do, *i.e.*, change a patient's sexual orientation or gender identity, the legislature reasonably concluded that it is a deceptive and unconscionable practice.

Conversion therapy is not only ineffective, it is also dangerous. Courts have repeatedly recognized “the overwhelming consensus” that conversion therapy is “harmful.” *Pickup*, 740 F.3d at 1232; *see also King*, 767 F.3d at 239; *Otto*, 353 F. Supp. 3d at 1262. The APA Report cites numerous harms suffered by adults who undergo conversion therapy: “negative mental health effects (depression and suicidality), decreased self-esteem and authenticity to others, increased self-hatred and negative perceptions of homosexuality, a loss of faith, and a sense of having wasted time and resources.” APA Report 53. In a hearing on Local Law 22, Mathew Shurka highlighted these harms to the Council, testifying about the “anxiety attacks” he experienced while undergoing conversion therapy as a young adult, and how the therapy “started to break [his] family apart.” June 19, 2017 Tr. 61. Thirty thousand dollars—and significant trauma—later, Shurka was still gay. *Id.* at 63-64. There is no reason to believe that the harms experienced by gay and lesbian victims of conversion therapy are not experienced in equal measure by those who received these therapies to change their gender identity. Glassgold Decl. ¶¶ 44-47.

As the City Council recognized, many other cities and States have restricted conversion therapy, and courts have recognized it for the deceptive and harmful practice it is. *See King*, 767 F.3d at 237-39; *Pickup*, 740 F.3d at 1232; Order, *Ferguson v. JONAH*, 136 A.3d 447 (N.J. Super. Ct. Law Div. 2014) (No. 5473-12) (enjoining defendants from engaging in conversion therapy, which jury found to be an “unconscionable commercial practice[.]”), Schoenfeld Decl. Ex. F; *see*

also *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012); see also *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995) (noting that the Court has “permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether”). Based on this evidence, the City Council reasonably concluded that conversion therapy should be banned to protect individuals from this conduct in the City—indeed, that is the only reasonable inference the City Council could have drawn.

Furthermore, the City’s interest in protecting individuals from conversion therapy outweighs plaintiff’s interest in offering this deceptive and dangerous commercial practice. See, e.g., *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 792 (1988) (compelling interest in preventing fraud); *Evergreen Ass’n v. City of New York*, 740 F.3d 233, 247 (2d Cir. 2014) (compelling interest in “protect[ing] the health of [City’s] citizens and combat[ing] consumer deception”). Indeed, the City’s interests in protecting LGBTQ individuals from harm and preventing consumer deception go to the heart of the City’s governmental functions.⁷

b) *Local Law 22 is narrowly tailored to achieve the City’s compelling interest.*

To survive strict scrutiny, a law “must be the least restrictive means of achieving a compelling state interest.” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Local Law 22 meets that requirement.

First, Local Law 22 is targeted precisely to the type of therapy that has long been shown to be ineffective and dangerous. See, e.g., APA Report 2 (defining “sexual orientation change

⁷ Plaintiff argues that Local Law 22 is underinclusive because it targets a specific form of therapy rather than all “sexual and relational advice ... which may cause distress.” PI Mem. 15-16. While it is true that “[u]nderinclusiveness can ... reveal that a law does not actually advance a compelling interest,” *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1668 (2015), Local Law 22’s focus on conversion therapy merely reflects the voluminous evidence and consistent professional opinion related to that specific, discredited, practice. Plaintiff has pointed to no evidence that any similar practice is as harmful and ineffective as conversion therapy.

efforts” as “methods ... that aim to change a person’s same-sex sexual orientation to other-sex”). It leaves plaintiff and other service providers free to discuss sexual orientation, gender identity, and whether one may want to seek conversion therapy. Plaintiff violates the law only by engaging in a course of treatment designed to *change* his patient’s sexual orientation or gender identity.⁸ Additionally, Local Law 22 is limited to fee-for-service relationships, where a strong risk of consumer deception is present; for this reason, religious counseling, and other non-fee counseling, is unaffected. By targeting ineffective and potentially harmful services, provided or offered for a fee, Local Law 22 “curtail[s] speech only to the degree necessary to meet the particular problem at hand.” *Green Party of Conn. v. Garfield*, 616 F.3d 189, 209 (2d Cir. 2010).

Second, no alternatives to a ban on conversion therapy would fulfill the City’s compelling interest in protecting the public from deceptive practices. *See* PI Mem. 16. For example, a ban covering only physical, aversive treatments, such as electroshock therapy, ignores the well-documented risks and inefficacy of the type of “talk therapy” plaintiff practices. Similarly, a ban covering only involuntary conversion therapy ignores the evidence that even voluntary conversion therapy is ineffective and harmful. Glassgold Decl. ¶¶ 29, 49; Haldeman Decl. ¶ 18. And an informed consent requirement would not achieve the City’s compelling interest because the City reasonably determined based on the evidence before it that conversion therapy is simply too dangerous, even if individuals are made aware of the therapy’s lack of efficacy and risks. Glassgold Decl. ¶¶ 28-36; Haldeman Decl. ¶¶ 17-23. Indeed, there is nothing unusual about banning an inherently deceptive practice; Congress, for example, has done so with regard to

⁸ This distinction accords with the APA Report’s recommendation that therapists provide “identity exploration and development.” APA Report 4. Such therapy “offer[s] permission and opportunity to explore a wide range of options and reduc[es] the conflicts caused by dichotomous or conflicting conceptions of self and identity *without prioritizing a particular outcome*”—namely, a change in sexual orientation. *Id.* (emphasis added).

commercial speech associated with the labelling of dangerous drugs. *See* 21 U.S.C. §§ 331(a), 352(j). Therefore, a straightforward ban on conversion therapy, offered or provided for a fee, is the least restrictive means to protect the City’s residents and visitors from this deceptive and harmful practice.

B. Plaintiff Is Unlikely To Succeed On His Vagueness Challenge

Plaintiff contends that Local Law 22 is so vague that it leaves him “uncertain as to the conduct it prohibits.” PI Mem. 16-17. As to its material terms, Local Law 22 is essentially identical to every other conversion therapy ban enacted in the United States. *See, e.g.*, Cal. Bus. & Prof. Code § 865(b)(1) (prohibiting “any practices by mental health providers that seek to change an individual’s sexual orientation”). Courts have overwhelmingly rejected vagueness challenges to those statutes, *see, e.g., Pickup*, 740 F. 3d at 1233-34; *King*, 767 F.3d at 240-41; *Otto*, 353 F. Supp. 3d at 1271-72, and plaintiff does not point to any material difference in operative terms between them and Local Law 22. To the contrary, he contends that the law clearly covers his practice of conversion therapy—belying any suggestion that he is uncertain as to what conduct it prohibits. PI Mem. 6; Schwartz Decl. ¶¶ 27, 32, 36, 40, 59-60.

Vagueness challenges focus on “two separate questions: whether the statute gives adequate notice, and whether it creates a threat of arbitrary enforcement.” *Farrell v. Burke*, 449 F.3d 470, 485 (2d Cir. 2006); *see also Evergreen*, 740 F.3d at 243. Local Law 22 provides adequate notice. Plaintiff contends that the terms “change,” “develop,” “gender identity,” “sexual orientation,” and “identity exploration” are impermissibly vague. Compl. ¶ 118; PI Mem. 17. Not only do these terms carry plain, commonplace meaning, but they also gain meaning when viewed in context as terms used by mental health professionals.

When regulating conduct specific to a “group of persons having specialized knowledge, and the challenged phraseology is indigenous to the idiom of that class, the standard [for

vagueness] is lowered.” *United States v. Weitzenhoff*, 35 F.3d 1275, 1289 (9th Cir. 1993) (citation and internal quotation marks omitted); *see also Farrell*, 449 F.3d at 476 (examining whether parole condition gave notice to a “reasonable parolee”); *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926) (“words or phrases having a technical or other special meaning” need only be “well enough known to enable those within their reach to correctly apply them”). All the relevant terminology contained in Local Law 22 is easily understood by persons of ordinary intelligence and those who engage in offering or providing commercial counseling services. *See Pickup*, 740 F.3d at 1234. In fact, the term “identity exploration and development” comes directly from the APA report. APA Report 53. Because all the operative terms “have a common and readily-ascertainable meaning, such that a person of ordinary intelligence would understand the type of therapy that is prohibited,” there is no realistic prospect that service providers or other professionals “would be unclear about what [Local Law 22] prohibit[s].” *Otto*, 353 F. Supp. 3d at 1271-72 (citations omitted).

For much the same reasons, there is no threat of arbitrary enforcement. In *Farrell*, the Second Circuit found that the term “pornographic” was inherently unclear, but that the material in question was unquestionably pornographic and, therefore, fell within the core of the statute’s prohibition. 449 F.3d at 486, 494. Similarly, even if Local Law 22 contains unclear terms, plaintiff’s conduct “falls squarely within the ... core of the statute’s proscriptions” given that he self-identified as practicing prohibited therapies. *Broadrick v. Oklahoma*, 413 U.S. 601, 608 (1973) (internal quotation marks omitted); Schwartz Decl. ¶¶ 27, 32, 36, 40, 59-60 (asserting he is practicing conversion therapy).⁹

⁹ Plaintiff contends that Local Law 22 defines its prohibition based on intent, thereby impermissibly regulating someone “not for what they did but for what they thought,” and that the regulation may reach the unspoken intent of the provider. PI Mem. 18. Under Local Law 22, he can have any thoughts or opinions he

C. Plaintiff Is Unlikely To Succeed On His Free Exercise Claim

Finally, plaintiff is not likely to succeed on his free exercise claim. Local Law 22 easily satisfies the rational basis review applicable to neutral and generally applicable laws that only “incidental[ly]” burden religion or religious practice. *Commack Self-Serv. Kosher Meats, Inc. v. Hooker*, 680 F.3d 194, 210 (2d Cir. 2012) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (“*Lukumi*”), 508 U.S. 520, 531 (1993)).

I. *Because Local Law 22 is both neutral and generally applicable, it is not subject to heightened scrutiny.*

The text, operation, and legislative history of Local Law 22 all tell the same story: the law is “neutral and of general applicability”—it applies to all commercial conversion therapy, regardless of whether the practice is religious or secular. *Lukumi*, 508 U.S. at 531; *see Emp’t Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878-82 (1990).¹⁰ When a law is neutral and generally applicable, the government ““need only demonstrate a rational basis for its enforcement, even if enforcement of the law incidentally burdens religious practices.”” *Commack*, 680 F.3d at 212 (citation omitted). Only when “the object of a law is to infringe upon or restrict practices because of their religious motivation” do courts apply strict scrutiny and seek to determine whether the law is narrowly tailored and “justified by a compelling interest.” *Lukumi*, 508 U.S. at 533; *accord Commack*, 680 F.3d at 210.

wishes, but he may not offer or actually *treat* someone for a fee with the goal of changing their sexual orientation or gender identity.

¹⁰ Plaintiff’s argument that a *Smith/Lukumi* analysis is not required, *see* PI Mem. 21-24, relies exclusively on decontextualized language from *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012), a case that concerned a “religious organization’s freedom to select its own ministers” and thus implicated the “ministerial exception.” *Id.* at 189; *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017) (citing the relevant portion of *Hosanna-Tabor*). *Hosanna-Tabor* is easily distinguishable: the Supreme Court explained that it was bypassing a *Smith* analysis in that case because the issue at hand was “government interference with an internal church decision,” whereas “*Smith* involved government regulation of only outward physical acts.” *Hosanna-Tabor*, 565 U.S. at 190. Plaintiff offers no remotely similar allegation that Local Law 22 interferes, in theory or in practice, with the internal affairs of any religious organization.

Plaintiff contends that Local Law 22 is not neutral, but instead “targets religious conduct for distinctive treatment.” *Lukumi*, 508 U.S. at 534 (citation omitted). To the contrary, the law does not apply on its face to pastoral therapy. Nonetheless, plaintiff argues that Local Law 22 “was motivated by [anti-religious] animus” and that the law’s legislative history “presents evidence of targeted hostility to religion and the religious,” PI Mem. 24,¹¹ and further argues that the law is substantially underinclusive because it regulates religious conduct but not secular conduct that is just as harmful, *id.* at 24-25. Each of these assertions is wrong.

To prove that Local Law 22 reflects “religious gerrymandering,” plaintiff needs “to show the absence of a neutral, secular basis for the lines government has drawn.” *Commack*, 680 F.3d at 211. The neutral and secular basis for the law is apparent—indeed, it is the only one reflected in the legislative record. The City Council had before it evidence that conversion therapy is a particularly deceptive and fraudulent practice with the power to cause severe psychological harm. *Cf. supra* Part II.A.2. The only plausible reading is that the City Council was motivated by a desire to eradicate a fraudulent commercial practice it knew was harmful to patients.¹²

¹¹ The Complaint alleges that the law “purport[s] to prohibit Dr. Schwartz from providing counseling to his fellow Jews that is guided by and consistent with his religious convictions,” Compl. ¶ 151, and that the City Council enacted the law “with the knowledge and intent that [the law] was hostile to and targeting practices particularly associated with persons and communities adhering to traditional religious beliefs,” *id.* ¶ 152.

¹² Plaintiff claims that “[n]owhere ... in the legislative history of the law is a single example cited of any group or individual in New York City performing what it calls ‘conversion therapy’ other than religious groups.” PI Mem. 7. That is wrong. The legislative history cites the National Association for Research & Therapy of Homosexuality, a secular organization. Nov. 30, 2017 Comm. Rep. 5. And other providers identified in the Report are discussed without any reference to whether they are religiously affiliated or not—such as Higher Ground, a conversion therapy center near Stonewall. *See* June 19, 2017 Tr. 66. Plaintiff also points (at 7) to an isolated statement in a single report observing that conversion-therapy practitioners are “often religious in nature,” as evidence of animus. That single comment is not remotely comparable to the facts of cases in which courts inferred an intent to discriminate. *Compare Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731-32 (2018) (setting aside Commission’s enforcement order on account of “official expressions of hostility to religion in some of the commissioners’ comments”), and *Lukumi*, 508 U.S. at 534-35 (city council’s enactments “expressed their concern that certain religions may propose to engage in practices which are inconsistent with public morals, peace or safety”), with *Commack*, 680 F.3d at 211 (finding a “neutral, secular purpose” for New York’s Kosher Act—namely, “consumer protection for a particular type of food purchased by individuals of many different religious beliefs”—and no evidence that object of Act was to target religion or religious practice).

Finally, although Plaintiff argues that the law is “radically underinclusive with respect to the type of harm that it purports to address,” PI Mem. 25, his only support is an equally conclusory assertion that “New York City is filled with sexual and relational advice pointing in every conceivable direction, much of which may cause distress to those who follow it,” *id.* at 15-16. The City Council relied not on such speculation but rather on ample evidence before it that conversion therapy itself is *particularly* deceptive—and frequently harmful. *See supra* Part II.A.

2. *Plaintiff is unlikely to succeed even if heightened scrutiny applies.*

Even if the Court credits Plaintiff’s conclusory arguments that Local Law 22 is subject to strict scrutiny, plaintiff must still show a strong likelihood of proving that the law is not “justified by a compelling interest” and “narrowly tailored to advance that interest.” *Lukumi*, 508 U.S. at 533. Notably, the Second Circuit has concluded that “strict scrutiny is not invariably fatal in the context of free exercise claims.” *Central Rabbinical Cong. v. N.Y.C. DOHMH*, 763 F.3d 183, 198 (2d Cir. 2014).

Plaintiff does not appear to dispute that the government interests at issue are compelling, but instead focuses on a perceived lack of narrow tailoring, *see* PI Mem. 15-16, 24-25, which evidently encompasses both overbreadth, Compl. ¶¶ 110-111, and underinclusivity, *id.* ¶ 112. As to overbreadth, plaintiff has nowhere explained why some of the “therapies” prohibited by Local Law 22 are those “that the state may legitimately regulate,” while others are not. *Id.* ¶ 110. And as to underinclusivity, although he is correct that Local Law 22 does not prohibit all efforts by a counselor to “assist or steer patients towards [other] form[s] and direction[s] of sexual desire and activity,” plaintiff does not even attempt to identify practices not covered by the law that are just as harmful and deceptive as conversion therapy. *See Lukumi*, 508 U.S. at 535-38. In short, plaintiff has given the Court no cause to believe that Local Law 22 fails strict scrutiny by “leav[ing] appreciable damage to [a] supposedly vital interest unprohibited.” *Id.* at 547.

III. The Balance Of The Equities Weigh Against Granting A Preliminary Injunction

Plaintiff advances no argument to support his claim that the balance of the equities supports the grant of a preliminary injunction. *See* PI Mem. 25. Indeed, he does not acknowledge the relevance of the public’s interest whatsoever. *See id.*

As set forth above, plaintiff’s alleged irreparable injury should be given little, if any, weight. On the other side of the ledger are the City’s significant interest in prohibiting an ineffective and harmful practice and the public’s interest being free from the harm of a dangerous, medically unsupported “service.” *See* Glassgold Decl. ¶¶ 28-36; Haldeman Decl. ¶¶ 17-23; *see also* APA Report 42, 50-51. In addition, because those seeking to communicate or learn about conversion therapy may still do so, free expression of ideas can thrive while the law is in effect. If the law is enjoined, however, a particularly vulnerable population—individuals struggling with their feelings of homosexuality or questions about whether their gender differs from their assigned sex at birth, as well as their families—will again be subject to a predatory and harmful practice. The City’s interest in protecting the public from such services outweighs any negligible expressive value of plaintiff’s practicing conversion therapy on his unwitting patients.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff’s motion for a preliminary injunction, together with such other and further relief as the Court deems appropriate.

Dated: March 28, 2019

Respectfully submitted,

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