

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, individually)	
and on behalf of his patients,)	
DAVID H. PICKUP, LMFT, individually)	
and on behalf of his patients, and)	Case No. 8:17-cv-2896-T-02AAS
SOLI DEO GLORIA INTERNATIONAL,)	
INC. d/b/a NEW HEARTS OUTREACH)	
TAMPA BAY, individually and on behalf of)	
its members, constituents and clients,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF TAMPA, FLORIDA,)	
)	
Defendant.)	
)	

**PLAINTIFFS’ STATEMENT OF DISPUTED AND UNDISPUTED FACTS
IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs ROBERT L. VAZZO, 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, pursuant to Rule 56, Fed. R. Civ. P., Local Rule 3.01, and the Court’s Case Management and Scheduling Order (D.183), file this statement of disputed facts in response to City of Tampa’s Statement of Undisputed Facts (D.190, “Tampa SUF”), numbered 1 through 58, and in opposition to Defendant The City of Tampa’s Motion for Summary Judgment (D.189, “Tampa MSJ”).

TABLE OF REFERENCES TO THE RECORD

The following record materials are cited herein by the indicated parenthetical references:

Dkt.	Document
24-1 PageID 343–350	City of Tampa Ordinance 2017-47 (“ Ordinance ”)
24-4 Page ID 509–527	AACAP Statement (“ AACAP Statement ”)
24-4 PageID 535 to 24-6 PageID 611	Substance Abuse and Mental Health Services Administration (SAMHSA), <i>Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth</i> (2015) (“ SAMHSA Report ”)
78	First Amended Verified Complaint (“ FAVC ”)
133-1	Deposition of Sal Ruggiero (“ Ruggiero ”)
133-2	Deposition of Councilman Guido Maniscalco (“ Maniscalco ”)
133-3	Deposition of Jerrod Simpson, Esquire (“ Simpson ”)
134-17	2009 Report of American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (“ APA Report ”)
135-1	<i>Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</i> , 70(9) Am. Psychologist 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf (“ APA TGNC Guidelines ”)
138	Transcript of Preliminary Injunction Hearing (“ PI Hearing ”)
140-1	Plaintiffs’ Preliminary Injunction Hearing Slides, Presentation of Horatio G. Mihet (“ 140-1 Slides ”)
140-2	Plaintiffs’ Preliminary Injunction Hearing Slides, Presentation of Roger K. Gannam (“ 140-2 Slides ”)
149	Report & Recommendation on Plaintiffs’ Motion for Preliminary Injunction (“ MPI R&R ”)
192-1	Deposition of Judith M. Glassgold, Psy.D (“ Glassgold ”)
192-2	Deposition of Norman Spack, M.D. (“ Spack ”)

DISPUTED AND UNDISPUTED FACTS

Plaintiffs identify the following disputed and undisputed facts, as indicated, in response to the correspondingly numbered Tampa SUF:

1. Undisputed, subject to the definition of “conversion therapy” used in the Ordinance. (See Plaintiffs’ Statement of Undisputed Facts in Support of Motion for Summary Judgment, D.193 (“Plaintiffs’ SUF”), ¶ 1.)

2. Undisputed that Ordinance text accurately quoted.

3. Undisputed that Ordinance text accurately quoted. It is also undisputed, however, that no empirical study or evidence demonstrates harm from “conversion therapy” or “sexual orientation or gender identity change efforts.” (Pls.’ SUF ¶¶ 11–14, 19–21.)

4. Undisputed that Ordinance text accurately quoted. It is also undisputed, however, that no empirical study or evidence demonstrates harm from “conversion therapy” or “sexual orientation or gender identity change efforts.” (Pls.’ SUF ¶¶ 11–14, 19–21.)

5. Undisputed as to citations and text of identified documents. It is also undisputed, however, that no empirical study or evidence demonstrates harm from “conversion therapy” or “sexual orientation or gender identity change efforts.” (Pls.’ SUF ¶¶ 11–14, 19–21.)

6. Undisputed that Ordinance text accurately quoted.

7. Undisputed that Ordinance text accurately quoted.

8. Undisputed that Ordinance text accurately quoted.

9. Undisputed that Ordinance text accurately quoted.

10. Undisputed that Ordinance text accurately quoted.

11. Undisputed that Ordinance text accurately quoted.

12. Undisputed that Ordinance text accurately quoted.

13. Undisputed that Ordinance text accurately quoted.

14. Undisputed.

15. Undisputed that the City heard public comments regarding the Ordinance before passage, and that a majority of the comments were in favor of passage. Disputed that the City heard from “all interested in raising comments” or even has knowledge of “all [who were] interested in raising comments.”

16. Disputed. No speaker “detailed . . . severe harm” or provided any account of harm caused by therapy that is targeted by the Ordinance. The speakers who gave accounts of counseling may be summarized as follows: One speaker in favor of passage of the Ordinance who gave a personal account of counseling said she got involved with a “conversion/reparative therapy” ministry in another state in 1995 at age 40, and said it was “wrong,” but did not detail her therapy or any claimed harm. (D.26-3 17:25–20:8 (Wynne-Phillips).) Another speaker in favor of the Ordinance who gave a personal account claimed to have “survived the torture of conversion therapy” consisting of apparently religious practices at a church. (26-4 5:16–8:7 (Citro).) Three other speakers in favor of the Ordinance gave purported accounts of counseling, but in each case the account was second- or third-hand and did not involve licensed professional counseling targeted by the Ordinance. (D.26-2 7:12–10:12, D.26-3 24:9–26:16 (Lazarus) (reading letter of “Marcel” claiming parents “got [him] in contact with” ex-gay ministry after he turned 18); D.26-2 14:14–17:10 (Sykes) (reading previous speaker’s second-hand account of undefined “Christian-based conversion therapy” in Ohio at undisclosed time), 27:11-29:6 (Eche) (claiming to “know somebody who was put through conversion therapy in high school” consisting of undefined “counsel with a church member ” without detailing any claimed harm).) Conversely, one speaker opposed to the Ordinance explained he is a former homosexual of 30 years, had previously struggled with homosexuality for 20 years, had received “clinical and therapeutic interventions,”

and now is happy, contented, and at peace. (D.26-1 6:17–8:19, D.26-4 29:25–32:2 (Culligan).)

Another speaker opposed to the Ordinance testified he lived in a gay lifestyle for 18 years, but walked away from homosexuality at age 41, having sought pastoral and professional counseling that did not harm him. (D.26-4 29:25–32:2 (Thorpe).)

17. Disputed that any licensed professional updated or supplemented the empirical record that cannot demonstrate harm from “conversion therapy” or “sexual orientation or gender identity change efforts.” (Pls.’ SUF ¶¶ 11–14, 19–21; D.142-3 (Ryan, et al. 2018 article) at Page ID 3234 (“[C]ausal claims cannot be made.” (emphasis added)); D.192-1 (Glassgold Dep.) at 134:18–155:5, 175:15–180:18; D.192-3 (Glassgold Dec.) ¶ 17 at 7–8, 8 n.7, Ex. B; D.192-4 to 192-7.)

18. Undisputed that “[s]ome speakers opposed the Ordinance at the Public Hearings.” (D.26-1 3:14–10:22 (four speakers opposing Ordinance); D.26-3 6:22–8:15, 28:6–30:10, 34:20–36:14 (three speakers opposing Ordinance); D.26-4 12:16–13:9, 18:2–22:3, 23:13–35:17 (nine speakers opposing Ordinance).) Undisputed that some speakers opposing the Ordinance raised the issue of parental rights. (D.26-1 3:14–10:22 (four speakers); D.26-4 12:6–13:9, 20:4–22:3, 23:13–29:18, 32:14–33:21 (six speakers).) Disputed that any speakers “raised the issue of consent of parents.”

19. Undisputed that the City never considered the differences between aversive and non-aversive therapies, or banning only aversive therapies. (Pls.’ SUF ¶ 41.) Disputed that the reason the City did not consider the differences between aversive and non-aversive therapies was because of concern for intimidation; the reason was that the City did not know the difference or undertake to learn the difference prior to passage of the Ordinance. (D.133-2 (Maniscalco Dep.)

36:3–37:4 (“**I don’t understand the terms. I don’t know the words.**” (emphasis added)), 98:12–102:9.)

20. Undisputed as to the content of Maniscalco’s testimony. Disputed that either Maniscalco or the City had or has any scientific or empirical basis to support a determination that any “conversion therapy” causes harm, or a determination of the prevalence of harm as between voluntary, involuntary, or coerced “conversion therapy.” (Pls.’ SUF ¶¶ 11–14, 19–21; D.142-3 (Ryan, et al. 2018 article) at Page ID 3234 (“[C]ausal claims cannot be made.”); D.192-1 (Glassgold Dep.) at 134:18–155:5, 175:15–180:18; D.192-3 (Glassgold Dec.) ¶ 17 at 7–8, 8 n.7, Ex. B; D.192-4 to 192-7.)

21. Undisputed that the Ordinance purports reliance on “overwhelming research,” which refers exclusively to fourteen sources appearing in the Ordinance’s recitals. (Pls.’ SUF ¶ 11; D.24-1 PageID 344–47; D.133-2 (Maniscalco Dep.) 86:3–88:3.) Disputed that the sources cited in the Ordinance evidence an “overwhelming medical consensus that conversion therapy is contraindicated, ineffective, provides no unique benefits, and [sic] harmful to minors.” (Pls.’ SUF ¶¶ 11–14, 19–21.)

- a. Undisputed that text accurately quoted.
- b. Undisputed that text accurately quoted.
- c. Disputed that APA Task Force was created in 2009. (D.24-1 PageID 369 (reporting establishment in February 2007.)) Undisputed that excerpted text from 2009 APA Report is accurately quoted.
- d. Undisputed that text accurately quoted.
- e. Disputed that 2009 APA Report referred to “Conversion Therapy” as used in the Tampa SUF or defined by the Ordinance because the Report was limited to sexual

orientation and did not discuss gender identity. (Pls. SUF ¶ 19.) Disputed that the APA “found no evidence ‘that providing [Conversion Therapy] to children or adolescents has an impact on adult sexual orientation’” Undisputed that the APA summarized, “There is **no research** demonstrating that providing SOCE to children or adolescents has an impact on adult sexual orientation” (D.24-1 PageID 372 (emphasis added)), but that the APA ultimately resolved, “**there is insufficient evidence** to support the use of psychological interventions to change sexual orientation” (D.24-3 PageID 489 (emphasis added); D.192-1 (Glassgold Dep.) at 92:13–94:16 (explaining Task Force intentionally **changed** statement “**there is no** evidence to support the use of psychological interventions to change sexual orientation” to “**there is insufficient** evidence” (emphasis added)).) Otherwise undisputed that text excerpts are quoted accurately. (D.24-1 PageID 372; D.24-2 PageID 448.)

f. Undisputed that text accurately quoted. Disputed that the excerpted text supports the statement that “[t]he APA Task Force also determined that minors may not understand the consequences of SOCE”

g. Undisputed that text accurately quoted.

h. Undisputed that APA Task Force stated: “**Although sound data on the safety of SOCE are extremely limited**, some individuals reported being harmed by SOCE. Distress and depression were exacerbated.” (D.24-3 PageID 488 (emphasis added).) Disputed as to the City’s commentary on the quoted material.

i. Disputed that the quoted text refers to “conversion therapies” as used in the Tampa SUF or the Ordinance. Undisputed that the source document states: “**Services that purport to ‘cure’** people with non-heterosexual sexual orientation lack medical

justification and represent a serious threat to the health and well-being of affected people.”
(D.24-4 PageID 529 (emphasis added).)

j. Undisputed that text accurately quoted.

k. Undisputed that text accurately quoted.

l. Undisputed that text accurately quoted. Also undisputed, however, that the 2015 SAMHSA Report is cited in the source document to support the quoted text (D.24-4 PageID 533), and that the SAMHSA Report affirms the conclusions of the 2009 APA Report, which itself disclaimed any empirical evidence of harm from SOCE. (Pls.’ SUF ¶¶ 11–14.)

m. Undisputed that text accurately quoted.

22. Undisputed that Ordinance text accurately quoted.

23. Undisputed.

24. Undisputed.

25. Undisputed.

26. Undisputed.

27. Undisputed.

28. Disputed that the SAMHSA Report reflects an “expert consensus” to the extent it contradicts the undisputed empirical record, which the SAMHSA Report acknowledged is deficient. (Pls.’ SUF ¶¶ 11–14.) Otherwise undisputed.

29. Undisputed.

30. Undisputed. Also undisputed, however, that any purported risk of harm from “conversion therapy” cannot be quantified. (Pls.’ SUF ¶ 14; *see also* D.194, Plaintiffs’ MSJ, at

10–12 (arguing for exclusion of Dr. Glassgold’s opinions on causation and risk prevalence that contradict empirical research).)

31. Undisputed. Also undisputed, however, that the 2018 Ryan, et al. article cited by Dr. Glassgold conclusively self-limits its application to this case: “**causal claims cannot be made.**” (D.142-3 Page ID 3234 (emphasis added); Pls.’ SUF ¶ 36.)

32. Undisputed. Also undisputed, however, that any purported risk of harm from “conversion therapy” cannot be quantified. (Pls.’ SUF ¶ 14; *see also* D.194, Plaintiffs’ MSJ, at 10–12 (arguing for exclusion of Dr. Glassgold’s opinions on causation and risk prevalence that contradict empirical research).)

33. Undisputed. (*But see* D.194, Plaintiffs’ MSJ, at 10–12 (arguing for exclusion of Dr. Glassgold’s opinions on causation and risk prevalence that contradict empirical research).)

34. Disputed that the meaning of the term “conversion therapy” or “CT” as used by Dr. Glassgold in her Declaration matches the meaning of the term “conversion therapy” as used in the Tampa SUF or the Ordinance. (D.192-3 (Glassgold Decl.) ¶ 23.)

35. Undisputed. Also undisputed, however, that Dr. Spack agrees that “no approach to working with [transgender/gender nonconforming] children has been adequately, empirically validated,” and that “consensus does not exist regarding best practice with prepubertal children.” (Pls.’ SUF ¶ 21, n.5.) And undisputed that the City’s other expert, Dr. Glassgold, also agrees “consensus does not exist.” (Pls.’ SUF ¶ 21, n.5.)

36. Undisputed

37. Undisputed that excerpted text quoted accurately. (*But see* Rebuttal Declaration of Bernard O. Hudson, MD (attached hereto, “Hudson Rebuttal Declaration”), ¶ 9 (“There are a number of problems with this statement”))

38. Undisputed that excerpted text quoted accurately.

39. Disputed that the SAMHSA Report reflects any “medical consensus” to the extent it contradicts the undisputed empirical record, which the SAMHSA Report acknowledged is deficient. (Pls.’ SUF ¶¶ 11–14.)

a. Undisputed that excerpted text quoted accurately.

b. Undisputed that excerpted text quoted accurately.

c. Undisputed that excerpted text quoted accurately.

40. Undisputed that SAMHSA Report makes the assertions summarized. Disputed that the assertions are accurate to the extent they contradict the undisputed empirical record, which the SAMHSA Report acknowledged is deficient. (Pls.’ SUF ¶¶ 11–14.)

41. Undisputed.

42. Undisputed.

43. Undisputed that excerpted text quoted accurately.

44. Undisputed.

45. Undisputed.

46. Undisputed.

47. Undisputed.

48. Undisputed.

49. Undisputed.

50. Undisputed.

51. Undisputed.

52. Undisputed.

53. Undisputed.

- 54. Undisputed.
- 55. Undisputed.
- 56. Undisputed.
- 57. Undisputed.
- 58. Undisputed.

Respectfully submitted,

/s/ Roger K. Gannam
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CERTIFICATE OF SERVICE

I hereby certify that on this September 16, 2019, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Plaintiffs

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.)	
)	

REBUTTAL DECLARATION OF BERNARD O. HUDSON MD

I, Dr. Bernard O. Hudson, hereby declare as follows:

1. As shown in my initial declaration, City of Tampa Ordinance 2017-47 is not supported by any evidence-based standards of care or professional consensus relating to the treatment of minors. The Declaration of Norman Spack, M.D. (the “Spack Declaration”) does not challenge this conclusion.

2. The only direct response to my initial declaration appears in part II.A, ¶ 1 of the Spack Declaration, which simply states:

I have reviewed the Declaration submitted by Dr. Bernard Hudson. From that review, it is my professional opinion that the Declaration significantly misstates current medical knowledge and practice regarding the standard of care of treatment for transgender and gender nonconforming children and adolescents.

Dr. Spack’s response is vague and unclear as to what current medical knowledge and practice he claims I misstated, and provides no citation to authority or other evidence to support his claim.

3. In part I.A, ¶ 2, Dr. Spack claims “the Ordinance is based upon the evidence-based medical consensus regarding appropriate treatment of transgender and gender non-conforming youth” This is not true because there is no such thing. According to the American Psychological Association’s 2015 “Guidelines for Psychological Practice with Transgender and Gender Nonconforming People” (“APA, 2015”), discussed in my initial declaration: “Due to the evidence that not all children persist in a TGNC [‘transgender’ and ‘gender nonconforming’] identity into adolescence or adulthood, and because **no approach to working with TGNC children has been adequately, empirically validated, consensus does not exist** regarding best practice with prepubertal children.” (Emphasis added.)

4. The 2009 “clinical practice guideline” attached to the Spack Declaration as Exhibit B, “Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice

Guideline” (“Endocrine, 2009”), was published over six years before the unequivocal APA, 2015 statement above, that “no approach to working with TGNC children has been adequately, empirically validated, consensus does not exist regarding best practice.” Moreover, the Endocrine, 2009 guideline itself discloses, on page one, that the quality of evidence on which it was based “was **low or very low.**” (Emphasis added.)

5. The Endocrine, 2009 guideline only addresses treatment of ‘TGNC’ minors who, suffering from gender identity disorder (GID) (an out-of-date psychiatric diagnosis), seek to develop the physical characteristics of the other sex. Thus, the guideline excludes treatment of minors suffering from GID who desire to align physically and psychologically with their biological sex. Furthermore, the guideline assumes that some minors have the capacity to understand the “reversible and irreversible effects of hormone suppression . . . and of cross-sex hormone treatment before they start hormone treatment” towards developing physical characteristics of the other sex. Thus, the guideline not only provides no empirically validated treatment standards for minors with GID who seek to develop the physical characteristics of the other sex, it provides no treatment standards whatsoever for minors with GID who desire to align physically and psychologically with their biological sex.

6. As shown in my initial declaration, evidence-based practice therapies for treating minors diagnosed with gender dysphoria (GD) (a current psychiatric diagnosis) do not impose predetermined therapeutic goals of ‘conversion’ or ‘affirmation,’ but rather seek to relieve the distress of GD, whatever the direction of change that can occur for any particular patient, including alignment of a patient’s perception of gender and self with the patient’s biological sex.

7. In part II.A, ¶ 6 of the Spack Declaration, Dr. Spack concludes “Subjecting minors to conversion therapy deviates from the standard of care for treating transgender and gender nonconforming children and adolescents.” There are number of problems with this statement: (1) Dr. Spack does not define “conversion therapy,” and the term is not otherwise descriptive of any singular or distinctive therapy to be evaluated against any evidence-based standards. (2) Dr. Spack’s use of the term “subjecting” indicates involuntary or coerced therapy, which categories are not specified in the prohibitions of Tampa Ordinance 2017-47 to the exclusion of voluntary therapy. (3) There is no empirically validated or consensus “standard of care” for diagnostic categories of “transgender” or “gender nonconforming.” (4) Dr. Spack cites no medical or scientific authority to support the statement.

8. In part II.A, ¶ 3, Dr. Spack states, “Current medical research strongly indicates that a person’s gender identity has a biological component.” This statement is vague. Given that the vast majority of people ‘identify’ as a gender that corresponds with their biological sex, it can be said that their ‘gender identities’ have a biological component. Dr. Spack identifies no medical research to support his statement or to explain his intended meaning.

9. In part II.A, ¶ 4, Dr. Spack sates, “There is no scientific evidence that any type of therapy or treatment can change a person’s gender identity, and attempts to do so put patients at risk of serious harms, including suicidality and depression.” There are number of problems with this statement: (1) Dr. Spack does not define “gender identity,” making it unclear whether he is referring to treatment of GID, GD, or another illness or condition. (2) There is no empirically validated or consensus ‘standard of care’ for treating “gender identity.” I am not aware of any

board-certified psychiatrist or board-certified child and adolescent psychiatrist attempting to change a patient's gender, as many patients have masculine and feminine characteristics; in fact, I have never met any patient who does not exhibit characteristics of both genders. (3) Dr. Spack cites no medical or scientific authority to support any causal attribution of harm to any treatment, or to otherwise support the statement.

10. In part II.A, ¶ 5, Dr. Spack states:

Transgender and gender nonconforming minors are a vulnerable population who often experience significant distress, negative self-esteem, and suicidal or self-harm ideations. Because these young people are already psychologically vulnerable, subjecting them to attempts to change their gender identity or gender expression are particularly harmful and put them at risk of increased suicidality and depression, among other serious long-term negative health impacts

There are number of problems with this statement: (1) Dr. Spack does not define "transgender and gender nonconforming," making it unclear whether he is referring to treatment of GID, GD, or another illness or condition. (2) There is no empirically validated or consensus 'standard of care' for treating "transgender and gender nonconforming minors." (3) Dr. Spack's use of the term "subjecting" indicates involuntary or coerced therapy, which categories are not specified in the prohibitions of Tampa Ordinance 2017-47 to the exclusion of voluntary therapy. (4) Dr. Spack cites no medical or scientific authority to support any causal attribution of harm to any treatment, or to otherwise support the statement.

11. In part II.B, ¶ 7, Dr. Spack states, "Multiple professional organizations have issued evidence-based guidelines and standards of care for treating transgender and gender nonconforming children and adolescents." As shown above, however, there are no empirically validated, consensus, or evidence-based standards of care for treating "transgender and gender nonconforming" minors. Evidence-based standards of care would require the support of medical science and the scientific method. Guidelines, such as they are, represent only recommendations, advice, or general rules or directions for the practice. The concept of 'standards of care' indicates a diagnostic and treatment process that a clinician should follow for a particular illness, or condition that is based on medical science and is the highest level of care based on the rigorous scientific method that produces reproducible evidence-based care.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and accurate.

Executed this July 17, 2019.

s/ Bernard O. Hudson, M.D.
Bernard O. Hudson, M.D