

**NO.: 19-14387**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

CITY OF TAMPA,  
*Defendant-Appellant,*

v.

ROBERT L. VAZZO and SOLI DEO GLORIA INTERNATIONAL, INC.  
d/b/a NEW HEARTS OUTREACH TAMPA BAY,

*Plaintiffs-Appellees*

---

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION  
CASE NO.: 8:17-cv-02896-T-02AAS**

---

**APPELLANT'S APPENDIX TO INITIAL BRIEF**

GINA GRIMES, CITY ATTORNEY  
CITY OF TAMPA

David E. Harvey  
Assistant City Attorney  
David.Harvey@tampagov.net  
FBN: 0610046  
315 E. Kennedy Boulevard  
5th Floor  
Tampa, Florida 33602  
(813) 274-7599  
Attorney for Appellant, City of Tampa

INDEX of APPENDIX TO APPELLANT BRIEF

	<u>Docket/Tab#</u>
District Court Docket Sheet.....	A
Amended Complaint.....	78
Order Granting Plaintiff's Motion for Summary Judgement.....	213
Hearing Transcript: Sept. 24, 2019 Motion for Summary Judgement Hearing.....	226
Certificate of Service	

Tab A

**U.S. District Court  
Middle District of Florida (Tampa)  
CIVIL DOCKET FOR CASE #: 8:17-cv-02896-WFJ-AAS**

Vazzo et al v. City of Tampa, Florida  
Assigned to: Judge William F. Jung  
Referred to: Magistrate Judge Amanda Arnold Sansone  
Case in other court: Eleventh Circuit, 19-14387-G  
Cause: 42:1983 Civil Rights Act

Date Filed: 12/04/2017  
Date Terminated: 10/04/2019  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**Robert L. Vazzo**  
*LMFT, individually and on behalf of his  
patients*

represented by **Daniel Joseph Schmid**  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854-0774  
407-875-1776  
Fax: 407-875-0770  
Email: dschmid@lc.org  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Horatio G. Mihet**  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854-0774  
800/671-1776  
Fax: 407/875-0770  
Email: hmihet@lc.org  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Mathew D. Staver**  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854-0774  
800-671-1776  
Fax: 407-875-0770  
Email: mat@lc.org  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Roger K. Gannam**  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854-0774  
407-875-1776  
Fax: 407-875-0770  
Email: rgannam@lc.org

**Plaintiff**

**David H. Pickup**

*LMFT, individually and on behalf of his patients*

*TERMINATED: 09/24/2019*

represented by **Daniel Joseph Schmid**

(See above for address)

*LEAD ATTORNEY*

*PRO HAC VICE*

*ATTORNEY TO BE NOTICED*

**Horatio G. Mihet**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Mathew D. Staver**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Roger K. Gannam**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Soli Deo Gloria International, Inc.**

*individually and on behalf of its members, constituents and clients  
doing business as*

*New Hearts Outreach Tampa Bay*

represented by **Horatio G. Mihet**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Roger K. Gannam**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**City of Tampa, Florida**

represented by **David Harvey**

City of Tampa

5th Floor

315 E Kennedy Blvd

Tampa, FL 33602

813-274-7599

Email: david.harvey@tampagov.net

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Jerry M. Gewirtz**

City of Tampa Attorney's Office

4th Floor

315 E Kenndy Blvd

Tampa, FL 33602  
813/274-8996  
Fax: 813-274-8809  
Email: jerry.gewirtz@tampagov.net  
*TERMINATED: 10/03/2018*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Robert V. Williams**  
Burr & Forman, LLP  
201 N Franklin St Ste 3200  
Tampa, FL 33602  
813/221-2626  
Fax: 813/221-7335  
Email: rwilliams@burr.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Dana Lee Robbins**  
Burr & Forman, LLP  
201 N Franklin St Ste 3200  
Tampa, FL 33602  
813-221-2626  
Fax: 813-221-7335  
Email: drobbins@burr.com  
*ATTORNEY TO BE NOTICED*

**Robin Horton Silverman**  
City of Tampa  
5th Floor  
315 E Kennedy Blvd  
Tampa, FL 33602  
813/274-5767  
Fax: 813/274-8777  
Email: Robin.Horton-Silverman@tampagov.net  
*TERMINATED: 10/03/2018*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Sal Ruggiero**  
*in his official capacity as Manager of the  
City of Tampa Neighborhood Enhancement  
Division*  
*TERMINATED: 11/28/2018*

represented by **Robert V. Williams**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**Equality Florida Institute, Inc.**

represented by **Brian C. Porter**  
Carlton Fields Jordan Burt, PA  
4221 W Boy Scout Blvd Ste 1000  
PO Box 3239  
Tampa, FL 33601-3239  
813-229-7000  
Fax: 813-229-4133

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**Christopher Stoll**

National Center for Lesbian Rights  
870 Market St Ste 570  
San Francisco, CA 94102  
415-392-6257  
Email: cstoll@nclrights.org  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**David C. Dinielli**

Southern Poverty Law Center  
Immigrant Justice Project  
400 Washington Ave  
Montgomery, AL 36104  
334-956-8200  
Email: david.dinielli@splcenter.org  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**J. Tyler Clemons**

Southern Poverty Law Center  
201 St Charles Ave Ste 2000  
New Orleans, LA 70170  
504-486-8982  
Email: tyler.clemons@splcenter.org  
*LEAD ATTORNEY  
PRO HAC VICE  
ATTORNEY TO BE NOTICED*

**Sylvia H. Walbolt**

Carlton Fields Jordan Burt, PA  
4221 W Boy Scout Blvd Ste 1000  
PO Box 3239  
Tampa, FL 33601-3239  
813/223-7000  
Fax: 813/229-4133  
Email: swalbolt@carltonfields.com  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
12/04/2017	<a href="#">1</a>	COMPLAINT against City of Tampa, Florida (Filing fee \$ 400 receipt number TPA047442) filed by Robert L. Vazzo, David H. Pickup. (Attachments: # <a href="#">1</a> Civil Cover Sheet)(LMD) (Entered: 12/04/2017)
12/04/2017	<a href="#">2</a>	SUMMONS issued as to City of Tampa, Florida. (LMD) (Entered: 12/04/2017)

12/04/2017	<a href="#">3</a>	<b>MOTION for preliminary injunction</b> filed by David H. Pickup, Robert L. Vazzo. (LMD) (Entered: 12/04/2017)
12/04/2017	<a href="#">4</a>	<b>RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 12/18/2017. Signed by Judge Charlene Edwards Honeywell on 12/4/2017. (BGS)</b> (Entered: 12/04/2017)
12/04/2017	<a href="#">5</a>	<b>INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 12/18/2017. Signed by Judge Charlene Edwards Honeywell on 12/4/2017. (BGS)</b> (Entered: 12/04/2017)
12/04/2017	<a href="#">6</a>	NOTICE to counsel of Local Rule 2.01 (signed by deputy clerk). (LMD) (Entered: 12/04/2017)
12/14/2017	<a href="#">7</a>	RETURN of service executed on 12/05/2017 by Robert L. Vazzo, David H. Pickup as to All Defendants. (Mihet, Horatio) (Entered: 12/14/2017)
12/14/2017	<a href="#">8</a>	<b>ORDER referring motion for report and recommendation: <a href="#">3</a> MOTION for Preliminary Injunction filed by David H. Pickup, Robert L. Vazzo Signed by Judge Charlene Edwards Honeywell on 12/14/2017. (BGS) Motions referred to Magistrate Judge Amanda Arnold Sansone.</b> (Entered: 12/14/2017)
12/14/2017	<a href="#">9</a>	MOTION for Daniel J. Schmid to appear pro hac vice by All Plaintiffs. (Mihet, Horatio) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 12/14/2017)
12/14/2017	<a href="#">10</a>	NOTICE of pendency of related cases per Local Rule 1.04(d) by David H. Pickup, Robert L. Vazzo. Related case(s): No (Mihet, Horatio) (Entered: 12/14/2017)
12/14/2017	<a href="#">11</a>	CERTIFICATE of interested persons and corporate disclosure statement re <a href="#">5</a> Interested persons order by David H. Pickup, Robert L. Vazzo. (Mihet, Horatio) (Entered: 12/14/2017)
12/18/2017	<a href="#">12</a>	<b>ENDORSED ORDER granting <a href="#">9</a> Motion to Admit Daniel J. Schmid Pro Hac Vice. Attorney Daniel J. Schmid may appear pro hac vice, subject to the requirement that counsel comply with the email registration requirements of Local Rule 2.01(d), M.D. Fla., within 14 days of the date of this Order. Signed by Magistrate Judge Amanda Arnold Sansone on 12/18/2017. (DMP)</b> (Entered: 12/18/2017)
12/18/2017	<a href="#">13</a>	NOTICE of Appearance by Jerry M. Gewirtz on behalf of City of Tampa, Florida (Gewirtz, Jerry) (Entered: 12/18/2017)
12/18/2017	<a href="#">14</a>	MOTION for Extension of Time to File Response/Reply to Complaint and Motion for Preliminary Injunction by City of Tampa, Florida. (Gewirtz, Jerry) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 12/18/2017)
12/18/2017	<a href="#">15</a>	NOTICE of Appearance by Robin Horton Silverman on behalf of City of Tampa, Florida (Horton Silverman, Robin) (Entered: 12/18/2017)
12/18/2017	<a href="#">16</a>	MEMORANDUM in opposition re <a href="#">14</a> Motion for Extension of Time to File Response/Reply ( <i>Partial Opposition</i> ) filed by David H. Pickup, Robert L. Vazzo. (Mihet, Horatio) (Entered: 12/18/2017)
12/18/2017	<a href="#">17</a>	MOTION for Leave to File Excess Pages by City of Tampa, Florida. (Gewirtz, Jerry) (Entered: 12/18/2017)
12/18/2017	<a href="#">18</a>	MEMORANDUM in opposition re <a href="#">17</a> Motion for Leave to File Excess Pages filed by David H. Pickup, Robert L. Vazzo. (Mihet, Horatio) (Entered: 12/18/2017)
12/18/2017	<a href="#">19</a>	<b>ENDORSED ORDER granting <a href="#">14</a> Motion for Extension of Time in Which to Respond to the Complaint and Motion for Preliminary Injunction. Responses due</b>

		by 1/12/2018. Signed By Magistrate Judge Amanda Arnold Sansone on 12/18/2017. (DMP) (Entered: 12/18/2017)
12/19/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Daniel J. Schmid, appearing on behalf of David H. Pickup, Robert L. Vazzo (Filing fee \$150 receipt number TPA047770.) Related document: <a href="#">9</a> MOTION for Daniel J. Schmid to appear pro hac vice. (AG) (Entered: 12/19/2017)
01/02/2018	<a href="#">20</a>	CERTIFICATE of interested persons and corporate disclosure statement re <a href="#">5</a> Interested persons order by City of Tampa, Florida. (Gewirtz, Jerry) (Entered: 01/02/2018)
01/03/2018	<a href="#">21</a>	<b>ENDORSED ORDER granting <a href="#">17</a> Motion for Leave to File Excess Pages. Signed by Magistrate Judge Amanda Arnold Sansone on 1/3/2018. (DMP)</b> (Entered: 01/03/2018)
01/12/2018	<a href="#">22</a>	MOTION to Dismiss Complaint by City of Tampa, Florida. (Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">23</a>	RESPONSE in Opposition re <a href="#">3</a> MOTION for preliminary injunction filed by City of Tampa, Florida. (Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">24</a>	NOTICE to the Courts to take judicial notice regarding <a href="#">22</a> MOTION to Dismiss Complaint , <a href="#">3</a> MOTION for preliminary injunction by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit 1 of 7, # <a href="#">2</a> Exhibit 2 of 7, # <a href="#">3</a> Exhibit 3 of 7, # <a href="#">4</a> Exhibit 4 of 7, # <a href="#">5</a> Exhibit 5 of 7, # <a href="#">6</a> Exhibit 6 of 7, # <a href="#">7</a> Exhibit 7 of 7)(Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">25</a>	NOTICE to the Courts to take judicial notice regarding <a href="#">3</a> MOTION for preliminary injunction by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit 1 of 2, # <a href="#">2</a> Exhibit 2 of 2)(Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">26</a>	NOTICE to the Courts to take judicial notice regarding <a href="#">3</a> MOTION for preliminary injunction by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit 02/16/2017, # <a href="#">2</a> Exhibit 03/02/2017, # <a href="#">3</a> Exhibit 03/16/2017, # <a href="#">4</a> Exhibit 04/06/2017)(Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">27</a>	MOTION for leave to file <i>DVDs</i> by City of Tampa, Florida. (Gewirtz, Jerry) (Entered: 01/12/2018)
01/12/2018	<a href="#">28</a>	MOTION to intervene <i>as party defendant</i> by Equality Florida Institute, Inc.. (Walbolt, Sylvania) Motions referred to Magistrate Judge Amanda Arnold Sansone. Item terminated due to the filing of <a href="#">30</a> . Modified on 1/16/2018 (DG). (Entered: 01/12/2018)
01/12/2018	<a href="#">29</a>	RESPONSE in Opposition re <a href="#">3</a> MOTION for preliminary injunction filed by Equality Florida Institute, Inc.. (Walbolt, Sylvania) (Entered: 01/12/2018)
01/12/2018	<a href="#">30</a>	MOTION to intervene <i>as party defendant</i> by Equality Florida Institute, Inc.. (Walbolt, Sylvania) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 01/12/2018)
01/12/2018	<a href="#">31</a>	RESPONSE in Opposition re <a href="#">3</a> MOTION for preliminary injunction filed by Equality Florida Institute, Inc.. (Walbolt, Sylvania) (Entered: 01/12/2018)
01/12/2018	<a href="#">32</a>	MOTION to Dismiss Complaint by Equality Florida Institute, Inc.. (Walbolt, Sylvania) Item terminated due to the filing of <a href="#">34</a> . Modified on 1/16/2018 (DG). (Entered: 01/12/2018)
01/12/2018	<a href="#">33</a>	MOTION for Hearing re <a href="#">32</a> MOTION to Dismiss Complaint by Equality Florida Institute, Inc.. (Walbolt, Sylvania) (Entered: 01/12/2018)
01/12/2018	<a href="#">34</a>	MEMO IN SUPPORT OF MOTION to Dismiss Complaint by Equality Florida Institute,

01/17/2018	<a href="#">35</a>	<b>ORDER Referring Motion for Report and Recommendation: <a href="#">22</a> MOTION to Dismiss Complaint filed by City of Tampa, Florida. Signed by Judge Charlene Edwards Honeywell on 1/17/2018. (BGS) Motions referred to Magistrate Judge Amanda Arnold Sansone.</b> (Entered: 01/17/2018)
01/22/2018	<a href="#">36</a>	NOTICE by Equality Florida Institute, Inc. re <a href="#">30</a> MOTION to intervene <i>as party defendant</i> (Walbolt, Sylvia) (Entered: 01/22/2018)
01/23/2018	<a href="#">37</a>	Unopposed MOTION for miscellaneous relief, specifically File Consolidated Opposition to Defendant's Motion to Dismiss and Reply in Support of Preliminary Injunction by All Plaintiffs. (Schmid, Daniel) (Entered: 01/23/2018)
01/24/2018	<a href="#">38</a>	NOTICE of Appearance by Brian C. Porter on behalf of Equality Florida Institute, Inc. (Porter, Brian) (Entered: 01/24/2018)
01/25/2018	<a href="#">39</a>	<b>ENDORSED ORDER granting <a href="#">37</a> Plaintiffs' Unopposed Motion for Leave to File Consolidated Opposition to Defendant's Motion to Dismiss and Reply in Support of Preliminary Injunction. Plaintiffs' consolidated response must not exceed thirty-five pages. Signed by Magistrate Judge Amanda Arnold Sansone on 1/25/2018. (DMP)</b> (Entered: 01/25/2018)
01/25/2018	<a href="#">40</a>	Unopposed MOTION for Extension of Time to File Response/Reply as to <a href="#">22</a> MOTION to Dismiss Complaint , <a href="#">23</a> Response in Opposition to Motion <i>for Preliminary Injunction</i> by All Plaintiffs. (Schmid, Daniel) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 01/25/2018)
01/25/2018	<a href="#">41</a>	<b>ENDORSED ORDER granting <a href="#">40</a> Plaintiffs' Unopposed Motion for a One Business Day Extension of Time to File Consolidated Response to Motion to Dismiss and Reply in Support of Preliminary Injunction. Plaintiffs' consolidated response is due January 29, 2018. Signed by Magistrate Judge Amanda Arnold Sansone on 1/25/2018. (DMP)</b> (Entered: 01/25/2018)
01/26/2018	<a href="#">42</a>	RESPONSE in Opposition re <a href="#">30</a> MOTION to intervene <i>as party defendant</i> filed by David H. Pickup, Robert L. Vazzo. (Schmid, Daniel) (Entered: 01/26/2018)
01/29/2018	<a href="#">43</a>	RESPONSE in Opposition re <a href="#">22</a> MOTION to Dismiss Complaint <i>and Reply in Support of Motion for Preliminary Injunction</i> filed by David H. Pickup, Robert L. Vazzo. (Schmid, Daniel) (Entered: 01/29/2018)
01/29/2018	<a href="#">44</a>	MEMORANDUM in opposition re <a href="#">25</a> Notice to take judicial notice, <a href="#">26</a> Notice to take judicial notice, <a href="#">24</a> Notice to take judicial notice filed by David H. Pickup, Robert L. Vazzo. (Schmid, Daniel) (Entered: 01/29/2018)
02/02/2018	<a href="#">45</a>	MOTION for leave to file Motion for Leave to File Reply to Plaintiffs' Response in Opposition to Proposed Intervenor Equality Florida's Motion to Intervene by Equality Florida Institute, Inc.. (Walbolt, Sylvia) (Entered: 02/02/2018)
02/06/2018	<a href="#">46</a>	Unopposed MOTION for miscellaneous relief, specifically Leave to Conduct Case Management Meeting of Parties Telephonically and For Expedited Consideration by All Plaintiffs. (Schmid, Daniel) (Entered: 02/06/2018)
02/06/2018	<a href="#">47</a>	<b>ENDORSED ORDER granting <a href="#">46</a> Unopposed Motion to Conduct Case Management Meeting of Parties Telephonically. Signed by Magistrate Judge Amanda Arnold Sansone on 2/6/2018. (DMP)</b> (Entered: 02/06/2018)
02/20/2018	<a href="#">48</a>	<b>ORDER granting <a href="#">45</a> Equality Florida's motion for leave to file a reply. Equality</b>

		Florida 13-14387 is due February 23, 2018, and Page 1 of 28. <b>Florida 13-14387 is due February 23, 2018, and Page 1 of 28. Signed by Magistrate Judge Amanda Arnold Sansone on 2/20/2018. (DMP)</b> (Entered: 02/20/2018)
02/20/2018	<a href="#">49</a>	Joint MOTION to stay discovery <i>pending final resolution of Plaintiffs' Motion for Preliminary Injunction</i> by David H. Pickup, Robert L. Vazzo. (Schmid, Daniel) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 02/20/2018)
02/22/2018	<a href="#">50</a>	REPLY to Response to Motion re <a href="#">28</a> MOTION to intervene <i>as party defendant</i> filed by Equality Florida Institute, Inc.. (Walbolt, Sylvia) (Entered: 02/22/2018)
03/15/2018	<a href="#">51</a>	<b>ORDER granting <a href="#">27</a> Motion for Leave to File DVDs with the Clerk of Court. See Order for details. Signed by Magistrate Judge Amanda Arnold Sansone on 3/15/2018. (DMP)</b> (Entered: 03/15/2018)
03/15/2018	<a href="#">52</a>	<b>REPORT AND RECOMMENDATION re <a href="#">30</a> Motion to Intervene as Party Defendant. Signed by Magistrate Judge Amanda Arnold Sansone on 3/15/2018. (DMP)</b> (Entered: 03/15/2018)
03/16/2018	<a href="#">53</a>	NOTICE by City of Tampa, Florida <i>OF FILING DVDs</i> (Gewirtz, Jerry) (Entered: 03/16/2018)
03/16/2018	54	APPENDIX re <a href="#">53</a> Notice of Filing DVDs in accordance with the Court's Order dated March 15, 2019 (51) by City of Tampa, Florida. Filed Separately. (One envelope). (DG) (Entered: 03/16/2018)
03/22/2018	55	NOTICE of hearing: Telephone Status Conference set for 4/2/2018 at 10:00 AM in Tampa Courtroom 10 B before Magistrate Judge Amanda Arnold Sansone regarding motion for preliminary injunction and motion to dismiss. Parties are to call 888-808-6929 and enter the access code 2487394. Parties must use a land line telephone when calling in.(CDM) (Entered: 03/22/2018)
03/28/2018		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Christopher Stoll, appearing on behalf of Equality Florida Institute, Inc. (Filing fee \$150 receipt number TPA49666.). (JNB) (Entered: 03/28/2018)
03/28/2018		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Shannon Minter, appearing on behalf of Equality Florida Institute, Inc. (Filing fee \$150 receipt number TPA49666.). (JNB) (Entered: 03/28/2018)
03/29/2018	<a href="#">56</a>	MOTION for Christopher Stoll to appear pro hac vice by Equality Florida Institute, Inc.. (Attachments: # <a href="#">1</a> Exhibit Affidavit)(Walbolt, Sylvia) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 03/29/2018)
03/29/2018	57	<b>ENDORSED ORDER granting <a href="#">56</a> Motion to Appear Pro Hac Vice. Attorney Christopher Stoll may appear pro hac vice, subject to the requirement that counsel comply with the email registration requirements of Local Rule 2.01(d), M.D. Fla., within fourteen days of the date of this order. Signed by Magistrate Judge Amanda Arnold Sansone on 3/29/2018. (DMP)</b> (Entered: 03/29/2018)
04/02/2018	<a href="#">58</a>	Minute Entry. Proceedings held before Magistrate Judge Amanda Arnold Sansone: TELEPHONE STATUS CONFERENCE held on 4/2/2018. (digital) Court Reporter: Nikki L. Peters (CDM) (Entered: 04/02/2018)
04/02/2018	<a href="#">59</a>	<b>ORDER granting <a href="#">33</a> Motion to Request Hearing on Motion to Dismiss; scheduling hearing on the plaintiffs' motion for preliminary injunction and the defendant's motion to dismiss. Signed by Magistrate Judge Amanda Arnold Sansone on 4/2/2018. (DMP)</b> (Entered: 04/02/2018)

04/04/2018	<a href="#">60</a>	<b>ORDER: (1) The Report and Recommendation of the Magistrate Judge <a href="#">52</a> is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review. (2) Equality Florida's Motion to Intervene as Party Defendant <a href="#">30</a> is DENIED. (3) Equality Florida is permitted to appear as amicus curiae. Signed by Judge Charlene Edwards Honeywell on 4/4/2018. (BGS) (Entered: 04/04/2018)</b>
04/11/2018	<a href="#">61</a>	<b>ORDER: 1. The Joint Motion to Stay Discovery and Scheduling of Trial Deadlines Pending Final Resolution of Plaintiffs' Motion for Preliminary Injunction <a href="#">49</a> is DENIED. 2. Plaintiffs shall file a Case Management Report within SEVEN (7) DAYS from the date of this Order. Signed by Judge Charlene Edwards Honeywell on 4/11/2018. (BGS) (Entered: 04/11/2018)</b>
04/18/2018	<a href="#">62</a>	CASE MANAGEMENT REPORT. (Mihet, Horatio) (Entered: 04/18/2018)
05/09/2018	<a href="#">63</a>	<b>CASE MANAGEMENT AND SCHEDULING ORDER: Discovery due by 6/7/2019, Dispositive motions due by 7/5/2019, Pretrial statement due by 10/15/2019, All other motions due by 10/22/2019, Final Pretrial Conference set for 11/12/2019 at 3:00 PM in Tampa Courtroom 13A before Judge Charlene Edwards Honeywell, Bench Trial set for term commencing 12/2/2019 in Tampa Courtroom 13A before Judge Charlene Edwards Honeywell. Conduct mediation hearing by 6/14/2019. Lead counsel to coordinate dates. Signed by Judge Charlene Edwards Honeywell on 5/9/2018. (BGS) (Entered: 05/09/2018)</b>
05/15/2018	<a href="#">64</a>	NOTICE of <i>Appearance of Counsel</i> Appearance by Robert V. Williams on behalf of City of Tampa, Florida (Williams, Robert) (Entered: 05/15/2018)
05/21/2018	<a href="#">65</a>	MOTION for David C. Dinielli and J. Tyler Clemons to appear pro hac vice by Equality Florida Institute, Inc.. (Walbolt, Sylvia) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 05/21/2018)
05/22/2018	66	<b>ENDORSED ORDER granting <a href="#">65</a> motion to appear pro hac vice. Attorneys David C. Dinielli and J. Tyler Clemons may appear pro hac vice, subject to the requirement that counsel comply with the email registration requirements of Local Rule 2.01(d) within fourteen days of the date of this order. Signed by Magistrate Judge Amanda Arnold Sansone on 5/22/2018. (DMP) (Entered: 05/22/2018)</b>
05/22/2018	<a href="#">67</a>	NOTICE of supplemental authority <i>In Support of Its Motion to Dismiss and In Opposition to Plaintiffs' Motion for Preliminary Injunction</i> by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit A)(Williams, Robert) (Entered: 05/22/2018)
05/23/2018	<a href="#">68</a>	MOTION for Shannon Minter to appear pro hac vice by Equality Florida Institute, Inc.. (Walbolt, Sylvia) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 05/23/2018)
05/23/2018	69	<b>ENDORSED ORDER granting <a href="#">68</a> motion to appear pro hac vice. Attorney Shannon Minter may appear pro hac vice, subject to the requirement that counsel complies with the email registration requirements of Local Rule 2.01(d) within fourteen days of the date of this order. Signed by Magistrate Judge Amanda Arnold Sansone on 5/23/2018. (DMP) (Entered: 05/23/2018)</b>
05/23/2018	<a href="#">70</a>	NOTICE OF SELECTION of Dennis F. Alvarez as mediator by David H. Pickup, Robert L. Vazzo.(Mihet, Horatio) (Entered: 05/23/2018)
05/25/2018		***PRO HAC VICE FEES paid (Filing fee \$150 receipt number tpa050874.) Related document: <a href="#">65</a> MOTION for David C. Dinielli to appear pro hac vice. (ARC) Modified on 5/25/2018 (ARC). (Entered: 05/25/2018)
05/25/2018		***PRO HAC VICE FEES paid (Filing fee \$150 receipt number tpa050874.) Related

05/25/2018	<a href="#">71</a>	MOTION to Amend/Correct <a href="#">1</a> Complaint by All Plaintiffs. (Attachments: # <a href="#">1</a> Exhibit 1 - Proposed First Amended Verified Complaint, # <a href="#">2</a> Exhibit 2 - Redline Comparison Between Original Verified Complaint and Proposed First Amended Verified Complaint) (Mihet, Horatio) (Entered: 05/25/2018)
05/31/2018	<a href="#">72</a>	<b>ORDER cancelling hearing scheduled for June 7, 2018. Signed by Magistrate Judge Amanda Arnold Sansone on 5/31/2018. (DMP)</b> (Entered: 05/31/2018)
06/06/2018	<a href="#">73</a>	TRANSCRIPT of Status Conference held on April 2, 2018 before Judge Amanda Arnold Sansone. Court Reporter/Transcriber Nikki Peters, Telephone number 813-301-5448. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 6/27/2018, Redacted Transcript Deadline set for 7/9/2018, Release of Transcript Restriction set for 9/4/2018. (NLP) (Entered: 06/06/2018)
06/08/2018	<a href="#">74</a>	RESPONSE in Opposition re <a href="#">71</a> MOTION to Amend/Correct <a href="#">1</a> Complaint <i>Defendant, City of Tampa's Response and Memorandum of Law in Opposition to Plaintiff's Motion for Leave to File Amended Complaint</i> filed by City of Tampa, Florida. (Williams, Robert) (Entered: 06/08/2018)
06/11/2018	<a href="#">75</a>	MOTION for leave to file Reply in Support of Plaintiffs' Motion to Amend Complaint by All Plaintiffs. (Mihet, Horatio) (Entered: 06/11/2018)
06/12/2018	<a href="#">76</a>	<b>ENDORSED ORDER granting <a href="#">71</a> Plaintiffs' Motion for Leave to Amend Verified Complaint with Incorporated Memorandum of Law in Support. As leave to amend should be freely given when justice so requires, Plaintiffs are granted leave to file an amended complaint on or before June 19, 2018. Signed by Judge Charlene Edwards Honeywell on 6/12/2018. (BGS)</b> (Entered: 06/12/2018)
06/12/2018	<a href="#">77</a>	<b>ENDORSED ORDER denying as moot <a href="#">75</a> Plaintiffs' Motion for Leave to File Reply In Support of their Motion to Amend Complaint. Leave to file an amended complaint has been granted. Signed by Judge Charlene Edwards Honeywell on 6/12/2018. (BGS)</b> (Entered: 06/12/2018)
06/12/2018	<a href="#">78</a>	<b>AMENDED COMPLAINT</b> against All Defendants filed by All Plaintiffs.(Mihet, Horatio) (Entered: 06/12/2018)
06/14/2018	<a href="#">79</a>	<b>ENDORSED ORDER denying as moot <a href="#">22</a> Defendant, City of Tampa's, Motion to Dismiss Complaint with Prejudice, and Memorandum of Law In Support Thereof. Plaintiffs filed an amended complaint on June 12, 2018 which supersedes the original complaint. Signed by Judge Charlene Edwards Honeywell on 6/14/2018. (BGS)</b> (Entered: 06/14/2018)
06/18/2018	<a href="#">80</a>	<b>ENDORSED ORDER denying <a href="#">3</a> Plaintiffs' Motion for Preliminary Injunction with Incorporated Memorandum of Law. The motion for preliminary injunction refers to the verified complaint, which is no longer the operative complaint. An amended verified complaint was filed on June 12, 2018. Signed by Judge Charlene Edwards Honeywell on 6/18/2018. (BGS)</b> (Entered: 06/18/2018)
06/20/2018	<a href="#">81</a>	NOTICE by City of Tampa, Florida, Sal Ruggiero <i>Notice of Acceptance of Service on behalf of Sal Ruggiero</i> (Williams, Robert) (Entered: 06/20/2018)
06/20/2018	<a href="#">82</a>	NOTICE of Appearance by Robert V. Williams on behalf of City of Tampa, Florida, Sal Ruggiero (Williams, Robert) (Entered: 06/20/2018)

06/20/2018	<a href="#">83</a>	<del>NOTICE of Appended Date Filed 06/20/2018 of Appended by Robert V. Williams on behalf of City of Tampa, Florida, Sal Ruggiero (Williams, Robert) (Entered: 06/20/2018)</del>
06/26/2018	<a href="#">84</a>	MOTION to Dismiss First Amended Complaint by City of Tampa, Florida. (Williams, Robert) (Entered: 06/26/2018)
06/26/2018	<a href="#">85</a>	Second MOTION for preliminary injunction by All Plaintiffs. (Mihet, Horatio) (Entered: 06/26/2018)
06/27/2018	<a href="#">86</a>	<b>ORDER Referring Motions for Report and Recommendation: <a href="#">84</a> MOTION to Dismiss First Amended Complaint filed by City of Tampa, Florida, <a href="#">85</a> Second MOTION for preliminary injunction filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. Signed by Judge Charlene Edwards Honeywell on 6/27/2018. (BGS) Motions referred to Magistrate Judge Amanda Arnold Sansone.</b> (Entered: 06/27/2018)
06/29/2018	<a href="#">87</a>	Unopposed MOTION for miscellaneous relief, specifically Adopt the Parties' Agreed Briefing Schedule and Page Limits on Motions to Dismiss and Motion for Preliminary Injunction; AND Request for Hearing on Pending Motions; And Request for Expedited Consideration by All Plaintiffs. (Mihet, Horatio) (Entered: 06/29/2018)
07/03/2018	<a href="#">88</a>	<b>ORDER granting <a href="#">87</a> motion to adopt the parties' briefing schedule and request for hearing on pending motions. See Order for details. Signed by Magistrate Judge Amanda Arnold Sansone on 7/3/2018. (DMP)</b> (Entered: 07/03/2018)
07/10/2018	<a href="#">89</a>	NOTICE of pendency of related cases per Local Rule 1.04(d) by City of Tampa, Florida, Sal Ruggiero. Related case(s): yes (Williams, Robert) (Entered: 07/10/2018)
07/10/2018	<a href="#">90</a>	RESPONSE re <a href="#">88</a> Order on Motion for Miscellaneous Relief <i>Dated July 3, 2018</i> filed by City of Tampa, Florida, Sal Ruggiero. (Williams, Robert) (Entered: 07/10/2018)
07/10/2018	<a href="#">91</a>	MOTION to Dismiss First Amended Verified Complaint by Sal Ruggiero. (Williams, Robert) (Entered: 07/10/2018)
07/10/2018	<a href="#">92</a>	DEFENDANT'S BRIEF re <a href="#">84</a> MOTION to Dismiss First Amended Complaint , <a href="#">60</a> Order Adopting Report and Recommendations ( <i>Amicus Brief</i> ) filed by Equality Florida Institute, Inc.. (Walbolt, Sylvia) (Entered: 07/10/2018)
07/10/2018	<a href="#">93</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo <i>Regarding Scheduling and Nature of the Preliminary Injunction Hearing</i> (Mihet, Horatio) (Entered: 07/10/2018)
07/11/2018	<a href="#">94</a>	<b>ORDER directing the parties to submit joint notices concerning the hearing on the motion for preliminary injunction and motions to dismiss. See Order for details. Signed by Magistrate Judge Amanda Arnold Sansone on 7/11/2018. (DMP)</b> (Entered: 07/11/2018)
07/11/2018	<a href="#">95</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo <i>Advising the Court that the Parties Have Reached Partial Agreement on the Scheduling of the Preliminary Injunction Hearing</i> (Mihet, Horatio) Item terminated due to the filing of <a href="#">96</a> . Modified on 7/12/2018 (DG). (Entered: 07/11/2018)
07/11/2018	<a href="#">96</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo <i>of Withdrawal of their Second Notice Regarding Preliminary Injunction Hearing</i> (Mihet, Horatio) (Entered: 07/11/2018)
07/18/2018	<a href="#">97</a>	NOTICE by City of Tampa, Florida, Sal Ruggiero re <a href="#">94</a> Order pdf <i>Joint Notice in Response to Court's Order of 7-11-18</i> (Williams, Robert) (Entered: 07/18/2018)
07/24/2018	<a href="#">98</a>	Response in Opposition to Plaintiffs' Motion for Preliminary Injunction by Equality



08/27/2018	<a href="#">111</a>	<p>Case: 19-14387 Date Filed: 12/23/2019 Page: 16 of 281</p> <p>RESPONSE in Opposition re <a href="#">106</a> MOTION for Extension of Time to File Response/Reply <i>and Request for Expedited Consideration</i> filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Attachments: # <a href="#">1</a> Exhibit A - Requests to Boca Raton, # <a href="#">2</a> Exhibit B - Requests to Palm Beach County, # <a href="#">3</a> Exhibit C - Otto Discovery Order, # <a href="#">4</a> Exhibit D - Discovery email communications)(Mihet, Horatio) (Entered: 08/27/2018)</p>
08/28/2018	112	<p>MOTION for leave to file Reply in Support of Motion for Extension of Time to Respond to Discovery <i>and Request for Expedited Consideration</i> by City of Tampa, Florida, Sal Ruggiero. (Williams, Robert) IMAGE REMOVED, PURSUANT TO CHAMBERS. SEE <a href="#">113</a>. Modified on 8/29/2018 (DG). (Entered: 08/28/2018)</p>
08/28/2018	<a href="#">113</a>	<p>MOTION for leave to file Reply in Support of Motion for Extension of Time to Respond to Discovery Requests <i>and Request for Expedited Consideration</i> by City of Tampa, Florida, Sal Ruggiero. (Williams, Robert) (Entered: 08/28/2018)</p>
08/28/2018	<a href="#">114</a>	<p>RESPONSE in Opposition re <a href="#">84</a> MOTION to Dismiss First Amended Complaint , <a href="#">91</a> MOTION to Dismiss First Amended Verified Complaint <i>AND REPLY IN SUPPORT OF PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION</i> filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Mihet, Horatio) (Entered: 08/28/2018)</p>
08/30/2018	<a href="#">115</a>	<p>RESPONSE in Opposition re <a href="#">113</a> MOTION for leave to file Reply in Support of Motion for Extension of Time to Respond to Discovery Requests <i>and Request for Expedited Consideration</i> filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Mihet, Horatio) (Entered: 08/30/2018)</p>
08/31/2018	116	<p>NOTICE of hearing: Hearing on the defendants' <a href="#">106</a> motion for extension of time set for 9/5/2018 at 3:00 p.m. in Tampa Courtroom 10B before Magistrate Judge Amanda Arnold Sansone. (DMP) (Entered: 08/31/2018)</p>
08/31/2018	117	<p><b>ENDORSED ORDER denying as moot <a href="#">113</a> motion for leave to file reply. The defendants may present their arguments at the hearing scheduled for September 5th. Signed by Magistrate Judge Amanda Arnold Sansone on 8/31/2018. (DMP)</b> (Entered: 08/31/2018)</p>
09/05/2018	<a href="#">118</a>	<p>Minute Entry. Proceedings held before Magistrate Judge Amanda Arnold Sansone: MOTION HEARING held on 9/5/2018 re <a href="#">106</a> MOTION for Extension of Time to File Response/Reply <i>and Request for Expedited Consideration</i> filed by Sal Ruggiero, City of Tampa, Florida. (digital) (CDM) (Entered: 09/06/2018)</p>
09/06/2018	<a href="#">119</a>	<p><b>ORDER taking under advisement <a href="#">106</a> motion for extension of time. A telephonic hearing is set for September 13, 2018, at 9:00 a.m. To access the telephonic hearing, the parties must call 888-808-6929 and enter access code 2487394 when prompted. Attendees must access the telephonic hearing from a landline. Signed by Magistrate Judge Amanda Arnold Sansone on 9/6/2018. (DMP)</b> (Entered: 09/06/2018)</p>
09/13/2018	<a href="#">120</a>	<p>Minute Entry. Proceedings held before Magistrate Judge Amanda Arnold Sansone: TELEPHONE STATUS CONFERENCE held on 9/13/2018. (digital) (CDM) (Entered: 09/13/2018)</p>
09/13/2018	<a href="#">121</a>	<p><b>ORDER granting in part and denying in part <a href="#">106</a> motion for extension of time. Signed by Magistrate Judge Amanda Arnold Sansone on 9/13/2018. (DMP)</b> (Entered: 09/13/2018)</p>
09/18/2018	122	<p>Case Reassigned to Judge William F. Jung. New case number: 8:17-cv-2896-T-02AAS. Judge Charlene Edwards Honeywell no longer assigned to the case. (KE) (Entered: 09/18/2018)</p>

09/19/2018	<a href="#">123</a>	TRANSCRIPT of Status Hearing held on 9/17/2018 before Judge Sansone. Court Reporter Lynann Nicely, Telephone number (813) 301-5252. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 10/10/2018, Redacted Transcript Deadline set for 10/22/2018, Release of Transcript Restriction set for 12/18/2018. (LN) (Entered: 09/19/2018)
09/19/2018	124	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Lynann Nicely. (LN) (Entered: 09/19/2018)
09/26/2018	<a href="#">125</a>	MOTION for protective order <i>Memorandum of Law and Request for Expedited Consideration</i> by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Williams, Robert) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 09/26/2018)
10/02/2018	<a href="#">126</a>	Unopposed MOTION for to withdraw as attorney by City of Tampa, Florida. (Gewirtz, Jerry) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 10/02/2018)
10/03/2018	127	<b>ENDORSED ORDER granting <a href="#">126</a> motion to withdraw counsel. Attorneys Jerry M. Gewirtz and Robin Horton-Silverman terminated. Signed by Magistrate Judge Amanda Arnold Sansone on 10/3/2018. (DMP)</b> (Entered: 10/03/2018)
10/11/2018	<a href="#">128</a>	RESPONSE in Opposition re <a href="#">125</a> MOTION for protective order <i>Memorandum of Law and Request for Expedited Consideration AND REQUEST FOR HEARING</i> filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 10/11/2018)
10/11/2018	<a href="#">129</a>	NOTICE of unavailability of counsel by City of Tampa, Florida, Sal Ruggiero. (Williams, Robert) (Entered: 10/11/2018)
10/25/2018	<a href="#">130</a>	<b>ORDER granting in part and denying in part <a href="#">125</a> motion for protective order. Signed by Magistrate Judge Amanda Arnold Sansone on 10/25/2018. (DMP)</b> (Entered: 10/25/2018)
11/02/2018	<a href="#">131</a>	JOINT NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo ( <i>regarding Preliminary Injunction Hearing.</i> ) (Gannam, Roger) Modified text on 11/15/2018 (AG). (Entered: 11/02/2018)
11/13/2018	<a href="#">132</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo of <i>filing Discovery Responses in support of Motion For Preliminary Injunction.</i> (Attachments: # <a href="#">1</a> Defendant City of Tampa, Florida's Discovery Responses)(Gannam, Roger) Modified text on 11/15/2018 (AG) (Entered: 11/13/2018)
11/13/2018	<a href="#">133</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo of <i>filing Deposition Transcripts in support of Motion for Preliminary Injunction.</i> (Attachments: # <a href="#">1</a> Deposition of Sal Ruggiero, # <a href="#">2</a> Deposition of Guido Maniscalco, # <a href="#">3</a> Deposition of Jerrod Simpson)(Gannam, Roger) Modified text on 11/15/2018 (AG). (Entered: 11/13/2018)
11/13/2018	<a href="#">134</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo of <i>filing Deposition Exhibits in support of Motion for Preliminary Injunction.</i> (Attachments:

		Case # 1382, Date Filed 11/13/2018, Page 4 of 261 # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11, # <a href="#">12</a> Exhibit 12, # <a href="#">13</a> Exhibit 13, # <a href="#">14</a> Exhibit 14, # <a href="#">15</a> Exhibit 15, # <a href="#">16</a> Exhibit 16, # <a href="#">17</a> Exhibit 17, # <a href="#">18</a> Exhibit 18, # <a href="#">19</a> Exhibit 19, # <a href="#">20</a> Exhibit 20, # <a href="#">21</a> Exhibit 21, # <a href="#">22</a> Exhibit 22, # <a href="#">23</a> Exhibit 23, # <a href="#">24</a> Exhibit 24, # <a href="#">25</a> Exhibit 25, # <a href="#">26</a> Exhibit 26, # <a href="#">27</a> Exhibit 27)(Gannam, Roger) Modified text on 11/15/2018 (AG). (Entered: 11/13/2018)
11/14/2018	<a href="#">135</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo of <i>filing Journal Articles in support of Motion for Preliminary Injunction</i> . (Attachments: # <a href="#">1</a> APA TGNC Guidelines, # <a href="#">2</a> Meyer-Bahlburg GID Article)(Gannam, Roger) Modified text on 11/15/2018 (AG). (Entered: 11/14/2018)
11/15/2018	<a href="#">136</a>	Minute Entry. Proceedings held before Magistrate Judge Amanda Arnold Sansone: MOTION HEARING held on 11/15/2018 re <a href="#">3</a> MOTION for preliminary injunction filed by David H. Pickup, Robert L. Vazzo. (digital) Court Reporter: Lynann Nicely (CDM) (Entered: 11/15/2018)
11/20/2018	<a href="#">137</a>	NOTICE of voluntary dismissal by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo (Gannam, Roger) (Entered: 11/20/2018)
11/26/2018	<a href="#">138</a>	TRANSCRIPT of Preliminary Injunction Hearing held on 11/15/2018 before Judge Sansone. Court Reporter Lynann Nicely, Telephone number (813) 301-5252. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 12/17/2018, Redacted Transcript Deadline set for 12/27/2018, Release of Transcript Restriction set for 2/25/2019. (LN) (Entered: 11/26/2018)
11/26/2018	139	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Lynann Nicely. (LN) (Entered: 11/26/2018)
11/26/2018	<a href="#">140</a>	NOTICE of <i>Filing Preliminary Injunction Hearing Presentation Slides</i> by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo (Attachments: # <a href="#">1</a> Presentation of Horatio G. Mihet, Esq., # <a href="#">2</a> Presentation of Roger K. Gannam, Esq.) (Gannam, Roger) (Entered: 11/26/2018)
11/28/2018	141	<b>ORDER: In light of <a href="#">137</a> Plaintiffs' Notice of Voluntary Dismissal, Without Prejudice, of All Claims Against Defendant Sal Ruggiero, the Clerk is directed to terminate Sal Ruggiero as a Defendant. The claims against Mr. Ruggiero are hereby dismissed without prejudice. The Clerk is further directed to terminate the <a href="#">91</a> Motion to Dismiss First Amended Verified Complaint, as it is moot. Signed by Judge William F. Jung on 11/28/2018. (SAO)</b> (Entered: 11/28/2018)
12/03/2018	<a href="#">142</a>	SUPPLEMENT <i>Supplemental Amicus Brief</i> by Equality Florida Institute, Inc. (Attachments: # <a href="#">1</a> Exhibit NARTH Guidelines, # <a href="#">2</a> Exhibit Behav. Health Workforce Research Center Report, # <a href="#">3</a> Exhibit Journal of Homosexuality, # <a href="#">4</a> Exhibit Substance Abuse & Mental Health Admin, # <a href="#">5</a> Exhibit APA Report)(Walbolt, Sylvia) (Entered: 12/03/2018)
12/03/2018	<a href="#">143</a>	MEMORANDUM in support re <a href="#">99</a> Memorandum in opposition, <a href="#">84</a> Motion to dismiss filed by City of Tampa, Florida. (Williams, Robert) (Entered: 12/03/2018)
12/03/2018	<a href="#">144</a>	MOTION for Leave to File Excess Pages <i>FOR POST-HEARING MEMORANDUM IN</i>

		<del>REPORT AND RECOMMENDATION</del> by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 12/03/2018)
12/03/2018	<a href="#">145</a>	MEMORANDUM in support re <a href="#">85</a> Motion for preliminary injunction filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 12/03/2018)
12/04/2018	146	<b>ENDORSED ORDER granting <a href="#">144</a> motion for leave to file excess pages. Signed by Magistrate Judge Amanda Arnold Sansone on 12/4/2018. (DMP)</b> (Entered: 12/04/2018)
12/05/2018	<a href="#">147</a>	OBJECTION re <a href="#">142</a> Supplement . (Gannam, Roger) (Entered: 12/05/2018)
01/30/2019	<a href="#">148</a>	<b>REPORT AND RECOMMENDATION on <a href="#">84</a> motion to dismiss. Signed by Magistrate Judge Amanda Arnold Sansone on 1/30/2019. (DMP)</b> (Entered: 01/30/2019)
01/30/2019	<a href="#">149</a>	<b>REPORT AND RECOMMENDATION on <a href="#">85</a> motion for preliminary injunction. Signed by Magistrate Judge Amanda Arnold Sansone on 1/30/2019. (DMP)</b> (Entered: 01/30/2019)
01/30/2019	150	NOTICE of Status Conference and oral argument on any unresolved matters set for 3/5/2019 at 09:00 AM for two (2) hours in Tampa Courtroom 15 B before Judge William F. Jung (CCB) (Entered: 01/30/2019)
01/31/2019	151	<b>ENDORSED ORDER SETTING DEADLINES. Any objections to the Report and Recommendations at Dkt. 148 and Dkt. 149 must be filed no later than February 16, 2019. Any responses to those objections must be filed no later than March 3, 2019. Signed by Judge William F. Jung on 1/31/2019. (Jung, William)</b> (Entered: 01/31/2019)
02/14/2019	<a href="#">152</a>	MOTION for Extension of Time to File Objections to Reports and Recommendations by City of Tampa, Florida. (Williams, Robert) (Entered: 02/14/2019)
02/14/2019	<a href="#">153</a>	RESPONSE in Opposition re <a href="#">152</a> MOTION for Extension of Time to File Objections to Reports and Recommendations filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 02/14/2019)
02/15/2019	154	<b>ENDORSED ORDER denying <a href="#">152</a> Motion for Extension of Time to File. Signed by Judge William F. Jung on 2/15/2019. (Jung, William)</b> (Entered: 02/15/2019)
02/16/2019	<a href="#">155</a>	OBJECTION re <a href="#">148</a> REPORT AND RECOMMENDATIONS re <a href="#">84</a> MOTION to Dismiss First Amended Complaint filed by City of Tampa, Florida. (Williams, Robert) (Entered: 02/16/2019)
02/16/2019	<a href="#">156</a>	OBJECTION re <a href="#">149</a> REPORT AND RECOMMENDATIONS re <a href="#">85</a> Second MOTION for preliminary injunction filed by David H. Pickup, Soli Deo Gloria International, Inc, Robert L. Vazzo. (Williams, Robert) (Entered: 02/16/2019)
02/26/2019	157	<b>ENDORSED ORDER: notice to the parties. The Court will afford each of the two sides 60 minutes at the upcoming hearing/status conference. The parties should assume that the Court has read carefully the entire record and pertinent case law. The parties should first address the manner in which they suggest the case proceed forward, and then should address the pending objections. The defendant will proceed first as the objecting party. Amici may participate in the defendant time slot if they wish. The Court will not rule from the bench. Signed by Judge William F. Jung on 2/26/2019. (Jung, William)</b> (Entered: 02/26/2019)
03/01/2019	<a href="#">158</a>	MOTION to stay discovery by City of Tampa, Florida. (Williams, Robert) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 03/01/2019)

03/01/2019	159	<b>ENDORSED ORDER</b> Date Filing <a href="#">158</a> Motion to stay discovery. Signed by Judge William F. Jung on 3/1/2019. (Jung, William) (Entered: 03/01/2019)
03/04/2019	<a href="#">160</a>	RESPONSE to objections to <a href="#">148</a> , <a href="#">149</a> Report and Recommendations filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 03/04/2019)
03/05/2019	<a href="#">161</a>	Minute Entry. Proceedings held before Judge William F. Jung: STATUS CONFERENCE and ORAL ARGUMENT re objections to <a href="#">148</a> Report and Recommendation on <a href="#">84</a> motion to dismiss and <a href="#">149</a> Report and Recommendation on <a href="#">85</a> motion for preliminary injunction held on 3/5/2019. Court Reporter: Scott N. Gamertsfelder (SAO) (Entered: 03/05/2019)
03/05/2019	<a href="#">162</a>	<b>ORDER granting in part and denying in part <a href="#">84</a> motion to dismiss; and adopting <a href="#">148</a> Report and Recommendations. Defendant shall file its answer and defenses in accord with the attached order within fourteen (14) days. Signed by Judge William F. Jung on 3/5/2019. (CCB)</b> (Entered: 03/05/2019)
03/13/2019	<a href="#">163</a>	TRANSCRIPT of MOTION HEARING held on March 5, 2019 before Judge William F. Jung. Court Reporter/Transcriber Scott N. Gamertsfelder, Telephone number 813.301.5898. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 4/3/2019, Redacted Transcript Deadline set for 4/15/2019, Release of Transcript Restriction set for 6/11/2019. (SNG) (Entered: 03/13/2019)
03/13/2019	164	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Scott N. Gamertsfelder. scottgrmr@aol.com (SNG) (Entered: 03/13/2019)
03/19/2019	<a href="#">165</a>	<b>ANSWER and affirmative defenses to <a href="#">78</a> Amended Complaint by City of Tampa, Florida.</b> (Williams, Robert) (Entered: 03/19/2019)
03/25/2019	<a href="#">166</a>	MOTION to modify Expert Disclosure Sequence and Schedule or to Extend Expert Report Deadlines ( <i>Partially Unopposed</i> ) and Request for Expedited Consideration by All Plaintiffs. (Mihet, Horatio) (Entered: 03/25/2019)
03/26/2019	<a href="#">167</a>	<b>ORDER granting in part and denying in part <a href="#">166</a> Motion to Modify CMSO deadlines in accord with the attached order. Signed by Judge William F. Jung on 3/26/2019. (CCB)</b> (Entered: 03/26/2019)
04/16/2019	168	<b>ENDORSED ORDER, notice to counsel. The Court shortens the response time on dispositive motions as follows: Any response is due in 21 days. Any reply is due 5 days after response. The Court will set a hearing on all dispositive motions for September 6, 2019. Signed by Judge William F. Jung on 4/16/2019. (Jung, William)</b> (Entered: 04/16/2019)
04/16/2019	169	NOTICE of hearing on all dispositive motions set for 9/06/2019 at 11:00 AM in Tampa Courtroom 15B before Judge William F. Jung. (SAO) (Entered: 04/16/2019)
04/16/2019	170	NOTICE OF RESCHEDULING HEARING (AS TO TIME ONLY): The hearing on all dispositive motions previously scheduled for 9/06/2019 at 11:00 AM is rescheduled. New

		<a href="#">Hearing filed 4/16/2019 at 02:00 PM in Tampa Courtroom 15B before Judge William F. Jung. (SAO) (Entered: 04/16/2019)</a>
04/17/2019	<a href="#">171</a>	NOTICE of supplemental authority re <a href="#">156</a> <i>Objection to Magistrate's Report and Recommendation</i> by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit A)(Williams, Robert) (Entered: 04/17/2019)
04/17/2019	<a href="#">172</a>	NOTICE of Filing Exhibit B by City of Tampa, Florida re <a href="#">171</a> Notice of filing supplemental authority (Attachments: # <a href="#">1</a> Exhibit B)(Williams, Robert) (Entered: 04/17/2019)
04/18/2019	<a href="#">173</a>	MOTION for leave to file Supplement in Support of Motion for Summary Judgment and in Response to Court's Questions at Hearing by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 04/18/2019)
04/18/2019	<a href="#">174</a>	MOTION for leave to file Supplement in Support of Motion for Preliminary Injunction and in Response to Court's Questions at Hearing (CORRECTED) by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 04/18/2019)
04/19/2019	<a href="#">175</a>	RESPONSE re <a href="#">172</a> Notice (Other), <a href="#">171</a> Notice of filing supplemental authority filed by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 04/19/2019)
05/06/2019	<a href="#">176</a>	Consent MOTION to extend time to COMPLETE MEDIATION by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 05/06/2019)
05/06/2019	177	<b>ENDORSED ORDER granting <a href="#">176</a> Motion to Continue mediation date. The date can be discussed at the next hearing. Signed by Judge William F. Jung on 5/6/2019. (CCB) (Entered: 05/06/2019)</b>
05/09/2019	178	<b>ENDORSED ORDER denying as moot <a href="#">173</a> Motion for Leave to File, in view of the corrected motion filed at docket 174. Signed by Judge William F. Jung on 5/9/2019. (CCB) (Entered: 05/09/2019)</b>
06/11/2019	<a href="#">179</a>	NOTICE of Appearance by Dana Lee Robbins on behalf of City of Tampa, Florida (Robbins, Dana) (Entered: 06/11/2019)
06/11/2019	<a href="#">180</a>	Joint MOTION to Amend/Correct <a href="#">63</a> Case management and scheduling order, <a href="#">167</a> Order on motion to modify <i>and Request for Expedited Consideration</i> , Joint MOTION to Continue <i>Dispositive Motions Hearing and Trial</i> by All Plaintiffs. (Gannam, Roger) (Entered: 06/11/2019)
06/14/2019	181	<b>ENDORSED ORDER granting <a href="#">180</a> motion to amend/correct; granting <a href="#">180</a> Motion to Continue. The dates suggested in Dkt. 180 are accepted, including for trial. The hearing on dispositive motions is reset for 1 pm September 24, 2019. Four hours will be reserved for this hearing. Signed by Judge William F. Jung on 6/14/2019. (Jung, William) (Entered: 06/14/2019)</b>
06/17/2019	182	NOTICE OF RESCHEDULING HEARING: The hearing on all dispositive motions previously scheduled for 9/6/2019 is rescheduled. New scheduling date and time: 9/24/2019 at 01:00 PM in Tampa Courtroom 15B before Judge William F. Jung. (4 hours reserved.) (SAO) (Entered: 06/17/2019)
06/17/2019	<a href="#">183</a>	<b>AMENDED CASE MANAGEMENT AND SCHEDULING ORDER: Dispositive motions due by 8/19/2019, Final Pretrial Conference set for 1/09/2020 at 9:00 AM in Tampa Courtroom 15B before Judge William F. Jung, Bench Trial set for the February 2020 trial term commencing 2/03/2020 at 9:00 AM in Tampa Courtroom</b>

		<a href="#">158</a> before Judge William F. Jung / Signed by Judge William F. Jung on 6/17/2019. (SAO) (Entered: 06/17/2019)
08/14/2019	<a href="#">184</a>	Unopposed MOTION to Amend/Correct <a href="#">183</a> Case management and scheduling order <i>TO AMEND DISPOSITIVE MOTIONS BRIEFING DEADLINES</i> , Unopposed MOTION to Expedite <i>Consideration</i> by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 08/14/2019)
08/15/2019	185	<b>ENDORSED ORDER granting <a href="#">184</a> motion to amend deadlines; denying as moot <a href="#">184</a> Motion to Expedite. Dispositive motion filing deadline is 8/23/2019, and responses in opposition is 9/11/2019. The deadline for replies and the dispositive hearing date remain unchanged. Signed by Judge William F. Jung on 8/15/2019.</b> (CCB) (Entered: 08/15/2019)
08/23/2019	<a href="#">186</a>	Unopposed MOTION for Extension of Time to File Dispositive Motions by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 08/23/2019)
08/23/2019	187	<b>ENDORSED ORDER granting <a href="#">186</a> Motion for Extension of Time to File dispositive and Daubert motions on or before 8/26/2019. All other briefing deadlines and the hearing date remain the same. Signed by Judge William F. Jung on 8/23/2019.</b> (CCB) (Entered: 08/23/2019)
08/26/2019	<a href="#">188</a>	CERTIFICATE of counsel re <a href="#">183</a> Case management and scheduling order <i>CERTIFYING CONFERENCE TO NARROW ISSUES FOR SUMMARY JUDGMENT</i> by Roger K. Gannam on behalf of David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo (Gannam, Roger) (Entered: 08/26/2019)
08/26/2019	<a href="#">189</a>	MOTION for summary judgment by City of Tampa, Florida. (Williams, Robert) (Entered: 08/26/2019)
08/26/2019	<a href="#">190</a>	STATEMENT of undisputed facts re: <a href="#">189</a> MOTION for summary judgment by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Appendix, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Exhibit 2, # <a href="#">4</a> Exhibit 3, # <a href="#">5</a> Exhibit 4, # <a href="#">6</a> Exhibit 5)(Williams, Robert) Modified on 8/27/2019 (BES). (Entered: 08/26/2019)
08/26/2019	<a href="#">191</a>	MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Appendix, # <a href="#">2</a> Exhibit 1, # <a href="#">3</a> Exhibit 2, # <a href="#">4</a> Exhibit 3-A, # <a href="#">5</a> Exhibit 3-B, # <a href="#">6</a> Exhibit 3-C, # <a href="#">7</a> Exhibit 4, # <a href="#">8</a> Exhibit 5)(Williams, Robert) Modified on 8/27/2019 (BES). (Entered: 08/26/2019)
08/26/2019	<a href="#">192</a>	NOTICE by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo ( <i>NOTICE OF FILING EXPERT DEPOSITION TRANSCRIPTS AND EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</i> ) (Attachments: # <a href="#">1</a> Transcript of Deposition of Judith M. Glassgold, Psy.D, July 25, 2019, # <a href="#">2</a> Transcript of Deposition of Norman Spack, M.D., August 1, 2019, # <a href="#">3</a> Exhibit 28, # <a href="#">4</a> Exhibit 29, # <a href="#">5</a> Exhibit 30, # <a href="#">6</a> Exhibit 31, # <a href="#">7</a> Exhibit 32, # <a href="#">8</a> Exhibit 33, # <a href="#">9</a> Exhibit 34, # <a href="#">10</a> Exhibit 35, # <a href="#">11</a> Exhibit 36, # <a href="#">12</a> Exhibit 37, # <a href="#">13</a> Exhibit 38, # <a href="#">14</a> Exhibit 39, # <a href="#">15</a> Exhibit 40, # <a href="#">16</a> Exhibit 41) (Gannam, Roger) (Entered: 08/26/2019)
08/26/2019	<a href="#">193</a>	STATEMENT of undisputed facts <i>IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</i> by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 08/26/2019)
08/26/2019	<a href="#">194</a>	MOTION for summary judgment , MOTION in limine by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 08/26/2019)
08/27/2019	195	NOTICE of HEARING (same date and time as notice found at docket 182) on <a href="#">194</a>

		<a href="#">MOTION for summary judgment MOTION in limine</a> <a href="#">Page 123</a> MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson , <a href="#">189</a> MOTION for summary judgment set for 9/24/2019 at 1:00 PM in Tampa Courtroom 15 B before Judge William F. Jung. (4 hours reserved.)(CCB) (Entered: 08/27/2019)
09/09/2019	<a href="#">196</a>	Joint MOTION for Extension of Time to File Response/Reply as to <a href="#">189</a> MOTION for summary judgment , <a href="#">191</a> MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson , <a href="#">194</a> MOTION for summary judgment MOTION in limine <i>and Request for Expedited Consideration</i> by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 09/09/2019)
09/09/2019	197	<b>ENDORSED ORDER granting <a href="#">196</a> Motion for Extension of Time to File Responses and Replies to <a href="#">194</a> MOTION for summary judgment MOTION in limine , <a href="#">191</a> MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson , <a href="#">189</a> MOTION for summary judgment . Responses due by 9/16/2019; Replies due by 12:00 p.m. noon 9/23/2019. The hearing remains on 9/24/2019. Signed by Judge William F. Jung on 9/9/2019. (CCB)</b> (Entered: 09/09/2019)
09/16/2019	<a href="#">198</a>	RESPONSE in Opposition re <a href="#">194</a> MOTION for summary judgment MOTION in limine filed by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit A)(Williams, Robert) (Entered: 09/16/2019)
09/16/2019	<a href="#">199</a>	MOTION to Strike <i>Portions of Plaintiffs' Undisputed Facts</i> by City of Tampa, Florida. (Williams, Robert) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 09/16/2019)
09/16/2019	<a href="#">200</a>	STATEMENT of undisputed facts re: <a href="#">193</a> Statement of undisputed facts <i>Disputed Facts</i> by City of Tampa, Florida. (Williams, Robert) (Entered: 09/16/2019)
09/16/2019	<a href="#">201</a>	STATEMENT of undisputed facts re: <a href="#">189</a> MOTION for summary judgment ( <i>Plaintiffs' Statement of Disputed and Undisputed Facts in Opposition to Defendant's Motion for Summary Judgment</i> ) by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Attachments: # <a href="#">1</a> Rebuttal Declaration of Bernard O. Hudson MD)(Gannam, Roger) (Entered: 09/16/2019)
09/16/2019	<a href="#">202</a>	MEMORANDUM in opposition re <a href="#">189</a> Motion for summary judgment filed by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 09/16/2019)
09/17/2019	<a href="#">203</a>	MEMORANDUM in opposition re <a href="#">191</a> Motion for Miscellaneous Relief filed by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 09/17/2019)
09/20/2019	<a href="#">204</a>	<b>ENDORSED ORDER: The Court might ask the attorneys at the hearing to comment on the attached hypothetical scenarios, for discussion purposes. Also, the Court asks counsel the following: Does the City of Tampa substantively regulate: massage therapy, pharmacy, acupuncture, piercings, tattoo services, optometry, hearing aids, funeral services, medlabs; or any medical, psychological, or counseling matters beyond the present Ordinance? If so, kindly cite to the regulation on this docket no later than 5 pm September 23, 2019. Signed by Judge William F. Jung on 9/20/2019. (Jung, William)</b> (Entered: 09/20/2019)
09/23/2019	<a href="#">205</a>	REPLY to Response to Motion re <a href="#">194</a> MOTION for summary judgment MOTION in limine filed by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Attachments: # <a href="#">1</a> Article)(Gannam, Roger) (Entered: 09/23/2019)
09/23/2019	<a href="#">206</a>	REPLY in support to <a href="#">189</a> Motion for summary judgment filed by City of Tampa, Florida.

09/23/2019	<a href="#">207</a>	REPLY to Response to Motion re <a href="#">191</a> MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson filed by City of Tampa, Florida. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Williams, Robert) (Entered: 09/23/2019)
09/23/2019	<a href="#">208</a>	NOTICE by City of Tampa, Florida <i>Notice of Filing</i> (Williams, Robert) (Entered: 09/23/2019)
09/24/2019	<a href="#">209</a>	MEMORANDUM in opposition re <a href="#">199</a> Motion to Strike filed by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 09/24/2019)
09/24/2019	<a href="#">210</a>	STIPULATION of Dismissal <i>OF CLAIMS BY PLAINTIFF DAVID H. PICKUP, LMFT</i> by David H. Pickup, Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 09/24/2019)
09/24/2019	211	<b>ENDORSED ORDER: Pursuant to the stipulation at Dkt. 210 Plaintiff Pickup's claims are dismissed without prejudice. Signed by Judge William F. Jung on 9/24/2019. (Jung, William)</b> (Entered: 09/24/2019)
09/24/2019	<a href="#">212</a>	Minute Entry. Proceedings held before Judge William F. Jung: MOTION HEARING held on 9/24/2019 re <a href="#">189</a> MOTION for summary judgment filed by City of Tampa, Florida, <a href="#">191</a> MOTION for miscellaneous relief, specifically Daubert Motion to Exclude Expert Testimony of Dr. Rosik and Dr. Hudson filed by City of Tampa, Florida, and <a href="#">194</a> MOTION for summary judgment MOTION in limine filed by Soli Deo Gloria International, Inc., Robert L. Vazzo. Court Reporter: Tracey Aurelio (SAO) (Entered: 09/25/2019)
10/04/2019	<a href="#">213</a>	<b>ORDER granting <a href="#">194</a> Motion for summary judgment as to Count VI. The Clerk is directed to enter judgment for Plaintiffs, terminate any pending motions/deadlines, and close the case. Signed by Judge William F. Jung on 10/4/2019. (JWW)</b> (Entered: 10/04/2019)
10/04/2019	214	<b>ENDORSED ORDER denying as moot <a href="#">85</a> Motion for Preliminary Injunction; denying as moot <a href="#">149</a> Report and Recommendations; denying as moot <a href="#">174</a> Motion for Leave to File; denying as moot <a href="#">189</a> Motion for summary judgment; denying as moot <a href="#">191</a> Motion; denying as moot <a href="#">194</a> Motion in Limine; denying as moot <a href="#">199</a> Motion to Strike. Signed by Judge William F. Jung on 10/4/2019. (CCB)</b> (Entered: 10/04/2019)
10/04/2019	<a href="#">215</a>	JUDGMENT in favor of Soli Deo Gloria International, Inc., Robert L. Vazzo ( Signed by Deputy Clerk) (BES) (Entered: 10/04/2019)
10/11/2019	<a href="#">216</a>	Unopposed MOTION for Extension of Time to File Bill of Costs and Motion for Attorney's Fees and Nontaxable Expenses by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) (Entered: 10/11/2019)
10/12/2019	217	<b>ENDORSED ORDER granting <a href="#">216</a> Motion for Extension of Time to File. Signed by Judge William F. Jung on 10/12/2019. (Jung, William)</b> (Entered: 10/12/2019)
10/29/2019	<a href="#">218</a>	NOTICE of <i>Post Judgment</i> Appearance by David Harvey on behalf of City of Tampa, Florida (Harvey, David) (Entered: 10/29/2019)
10/31/2019	<a href="#">219</a>	NOTICE OF APPEAL as to <a href="#">213</a> Order on motion for summary judgmentOrder on Motion in Limine, <a href="#">215</a> Judgment by City of Tampa, Florida. Filing fee not paid. (Williams, Robert) (Entered: 10/31/2019)
11/01/2019	<a href="#">220</a>	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of

		Appeal, 19-14387, Order filed 11/13/19, Page 25 of 28. If applicable to USCA re <a href="#">219</a> Notice of appeal. Eleventh Circuit Transcript information form forwarded to prose litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (BES) (Entered: 11/01/2019)
11/01/2019		USCA appeal fees received \$ 505 receipt number TPA058757 re <a href="#">219</a> Notice of appeal filed by City of Tampa, Florida (ARC) (Entered: 11/01/2019)
11/01/2019	<a href="#">221</a>	MOTION for Attorney Fees <i>and Nontaxable Expenses</i> by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Gannam, Roger) Motions referred to Magistrate Judge Amanda Arnold Sansone. (Entered: 11/01/2019)
11/01/2019	<a href="#">222</a>	PROPOSED BILL OF COSTS by Soli Deo Gloria International, Inc., Robert L. Vazzo. (Attachments: # <a href="#">1</a> Itemization of Taxable Costs, # <a href="#">2</a> Backup for Taxable Costs)(Gannam, Roger) (Entered: 11/01/2019)
11/02/2019	<a href="#">223</a>	NOTICE by Soli Deo Gloria International, Inc., Robert L. Vazzo re <a href="#">221</a> MOTION for Attorney Fees <i>and Nontaxable Expenses (Notice of Filing Declarations in Support of Plaintiffs' Motion for Attorney's Fees and Nontaxable Expenses)</i> . (Attachments: # <a href="#">1</a> Mihet Declaration, # <a href="#">2</a> Exhibit A to Mihet Declaration, # <a href="#">3</a> Exhibit B to Mihet Declaration, # <a href="#">4</a> Exhibit C to Mihet Declaration, # <a href="#">5</a> Exhibit D to Mihet Declaration, # <a href="#">6</a> Woodring Declaration)(Gannam, Roger) (Entered: 11/02/2019)
11/03/2019	224	<b>ENDORSED ORDER ruling deferred <a href="#">221</a> Motion for Attorney Fees and Costs. The Court will take up the matter of fees and costs upon conclusion of the entire case (after appeals are completed). Defendants need not respond to the motion for fees and costs, and the matter may be revisited by both parties upon conclusion of all appellate matters. Until then the motions for same are held in abeyance. Signed by Judge William F. Jung on 11/3/2019. (Jung, William)</b> (Entered: 11/03/2019)
11/08/2019	225	<b>ENDORSED ORDER denying without prejudice <a href="#">221</a> Motion for Attorney Fees. As noted at DKT 224, all parties may file any motions/pleadings relevant to fees and costs upon entire resolution after completion of the appellate process. Signed by Judge William F. Jung on 11/8/2019. (Jung, William)</b> (Entered: 11/08/2019)
11/13/2019	<a href="#">226</a>	TRANSCRIPT of Motion Hearing held on 9/24/19 before Judge WILLIAM F. JUNG. Court Reporter/Transcriber TRACEY AURELIO, Telephone number 813-301-5448. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 12/4/2019, Redacted Transcript Deadline set for 12/16/2019, Release of Transcript Restriction set for 2/11/2020. (TVA) (Entered: 11/13/2019)
11/13/2019	227	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Tracey Aurelio. (TVA) (Entered: 11/13/2019)
11/13/2019	<a href="#">228</a>	TRANSCRIPT information form filed by City of Tampa, Florida before Judge William F. Jung re <a href="#">219</a> Notice of appeal. USCA number: 19-14387. (Harvey, David) (Entered: 11/13/2019)
11/13/2019	<a href="#">229</a>	COURT REPORTER ACKNOWLEDGMENT by Tracey Aurelio re <a href="#">219</a> Notice of appeal ?? Estimated transcript filing date: 11/13/19. (TVA) (Entered: 11/13/2019)

11/13/2019

[230](#)

NOTIFICATION that Document has been filed by Pagey Sun on 11/20/2019. Case: 17-1331 Document: 219 Notice of appeal. (TVA) (Entered: 11/13/2019)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
12/20/2019 12:55:59			
<b>PACER Login:</b>	Dharvey315:6184188:0	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	8:17-cv-02896-WFJ-AAS
<b>Billable Pages:</b>	20	<b>Cost:</b>	2.00

# Tab 78

IN THE UNITED STATES DISTRICT COURT FOR  
THE 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, )  
Plaintiffs, )

Civil Action No. 8:17-cv-02896-CEH-AAS

**INJUNCTIVE RELIEF SOUGHT**

v. )

CITY OF TAMPA, FLORIDA, and )  
SAL RUGGIERO, in his official capacity )  
as Manager of the City of Tampa )  
Neighborhood Enhancement Division, )  
Defendants )

---

**FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY,  
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DAMAGES**

For their VERIFIED COMPLAINT against Defendants CITY OF TAMPA, FLORIDA (“City”) and SAL RUGGIERO, in his official capacity as Manager of the City of Tampa Neighborhood Enhancement Division, (“Ruggiero”) (collectively “Defendants”), Plaintiffs ROBERT L. VAZZO, LMFT, individually and on behalf of his patients (“Vazzo”), DAVID H. PICKUP, LMFT, individually and on behalf of his patients (“Pickup”), and SOLI DEO GLORIA INTERNATIONAL, INC. d/b/a/ NEW HEARTS OUTREACH TAMPA BAY, individually and on behalf of its members, constituents and clients (“New Hearts Outreach”) (collectively “Plaintiffs”), by and through the undersigned counsel, allege and aver as follows:

## INTRODUCTION

1. Since time immemorial, the relationship between clients and their licensed mental health professionals has represented a sacred trust. In this vital relationship, mental health professionals are tasked with providing essential care to their clients and forming critical therapeutic alliances that represent the unique relationship between professional and client. This therapeutic alliance is designed to facilitate the foundational principle of all mental health counseling: the client's fundamental right to self-determination. Throughout the history of this learned profession, clients have provided mental health professionals with their goals, desires, and objectives that conform to their sincerely held desires and concept of self, and mental health professionals have provided counseling that aligns with the clients' right to self-determination. That unique relationship has, until now, been protected, revered, and respected as sacrosanct and inviolable. Now, the City of Tampa has seen fit to storm the office doors of mental health professionals, thrust itself into the therapeutic alliance, violate the sacred trust between client and counselor, and run roughshod over the fundamental right of client self-determination and the counselor's cherished First Amendment liberties. The City's purported justification for such unconscionable actions: it does not like the goals, objectives, or desires of certain clients when it comes to one type of counseling. The First Amendment demands more, and the City's actions have caused, are causing, and will continue to cause irreparable injury to Plaintiffs' fundamental and cherished liberties.

2. Plaintiffs bring this civil action to challenge the constitutionality of Tampa City Ordinance 2017-47, "An Ordinance Of The City Of Tampa, Florida, Relating To Conversion Therapy On Patients Who Are Minors," ("Ordinance" or "Ordinance 2017-47"), to prevent the Ordinance from violating their respective federal and state constitutional guarantees of Freedom

of Speech and Free Exercise of Religion, as well as the corresponding rights of their minor patients, members, constituents and clients, as the case may be. This law came into full effect immediately upon being approved by Mayor Bob Buckhorn on April 10, 2017, and thus time is of the essence to obtain judicial relief because Plaintiffs and their patients, members, constituents or clients have suffered, are currently suffering, and will continue to suffer immediate and irreparable injury to their most cherished constitutional liberties.

3. Plaintiffs engage in licensed, ethical, and professional counseling that honors their clients' autonomy and right to self-determination, that permits clients to prioritize their religious and moral values above unwanted same-sex sexual attractions, behaviors, or identities, and that enables clients to align their values with a licensed counselor who can address these values. Plaintiffs have First Amendment and state constitutional rights to facilitate, engage in and provide counseling consistent with their and their clients' sincerely held religious beliefs, and their clients have First Amendment and state constitutional rights to receive such counseling free from the viewpoint-based intrusion of the City into the sacrosanct therapeutic alliance.

4. By preventing minors from seeking counseling to address the conflict about or questions concerning their unwanted same-sex sexual attractions, behaviors, and identities and from seeking to reduce or eliminate their unwanted same-sex sexual attractions, behaviors, or identities through counseling, such as sexual orientation change efforts ("SOCE counseling"), the Ordinance denies or severely impairs Plaintiffs' clients and all minors their right to self-determination, their right to prioritize their religious and moral values, and their right to receive effective counseling consistent with those values.

5. By denying Plaintiffs' clients and all minors access to counseling from licensed counselors that can help minors who desire to reduce or eliminate their unwanted same-sex

attractions, behaviors, or identity, the Ordinance infringes on the fundamental rights of Plaintiffs' clients, and the rights of the parents of Plaintiffs' clients to direct the upbringing and education of their children, which includes the right to meet each child's individual counseling, developmental, and spiritual needs.

6. By prohibiting them from engaging in any efforts that seek to eliminate or reduce unwanted same-sex attractions, behaviors, or identity, even when the client, the parents, and the licensed mental health professional all consent to such counseling, the Ordinance also violates the Plaintiffs' constitutional rights.

7. Despite the value and benefit that Plaintiffs have provided by offering SOCE counseling, the Ordinance prohibits SOCE counseling to minors by licensed professionals, which is causing immediate and irreparable harm to Plaintiffs and Plaintiffs' clients.

8. The Ordinance harms licensed counselors and their clients by prohibiting minors and their parents from obtaining the counseling services they choose, after receiving full disclosure and providing informed consent, to resolve, reduce, or eliminate unwanted same-sex sexual attractions, behaviors, or identity and harms counselors by placing them in a Catch-22 in which they will be forced to choose between violating ethical codes by complying with the Ordinance or violating the law by failing to comply with the Ordinance.

9. By denying minors the opportunity to pursue a particular course of action that can most effectively help them address the conflicts between their sincerely held religious beliefs and goals to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, the Ordinance is causing those minors confusion and anxiety over same-sex sexual attractions, behaviors, and identity, and it is infringing on their free speech and religious liberty rights.

10. Plaintiffs seek preliminary and permanent injunctive relief against the Defendants, their agents, servants, departments, divisions, employees, and those acting in concert and with actual notice, enjoining the enforcement of the Ordinance because it violates: (1) the rights of Plaintiffs and their clients to freedom of speech and free exercise of religion, guaranteed by the First and Fourteenth Amendments to the United States Constitution, (2) the rights of Plaintiffs to liberty of speech and free exercise and enjoyment of religion, guaranteed by Article I, §§3, 4 of the Florida Constitution, (3) the Florida Patient's Bill of Rights and Responsibilities, Fla. Stat. Ann. § 381.026, and the Florida Religious Freedom Restoration Act, Fla. Stat. Ann. § 761.03.

11. Plaintiffs also seek preliminary and permanent injunctive relief enjoining the City from enforcing the Ordinance because the Ordinance is void *ab initio* as an *ultra vires* act in excess of the City's authority under Article VIII, Section 2(b) of the Florida Constitution.

12. Plaintiffs also pray for declaratory relief from this Court declaring that the Ordinance, both on its face and as-applied, is an unconstitutional violation of the First and Fourteenth Amendments to the United States Constitution and is void *ab initio* as an *ultra vires* act in excess of the City's authority under Article VIII, Section 2(b) of the Florida Constitution.

13. An actual controversy exists between the parties involving substantial constitutional issues, in that the Ordinance, both facially and as-applied by the City, violates Plaintiffs and their clients' rights to free speech and free exercise under the First Amendment.

#### **PARTIES**

14. Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio.

15. Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California and Texas, and is currently undergoing the necessary requirements to obtain his license in Florida.

16. Plaintiff Soli Deo Gloria International, Inc. d/b/a/ New Hearts Outreach Tampa Bay is a non-profit organizations incorporated under the laws of the State of Florida, with its principal place of business in Tampa, Florida.

17. Defendant, City of Tampa, is a municipal corporation and political subdivision of the State of Florida, with authority to sue and be sued.

18. Defendant, Sal Ruggiero, is the Manager of the City of Tampa Neighborhood Enhancement Division, which is responsible for enforcing all of the City's non-criminal ordinances, including Ordinance 2017-47. Mr. Ruggiero is sued in his official capacity.

#### **JURISDICTION AND VENUE**

19. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. This action also arises under Article I, §§ 3, 4 of the Florida Constitution. This action also arises under the Florida Patient's Bill of Rights and Responsibilities, Fla. Stat. Ann. § 381.026, and the Florida Religious Freedom Restoration Act, Fla. Stat. Ann. § 761.03.

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

21. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the City is situated in this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

22. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201-02, implemented through Rule 57 of the Federal Rules of Civil Procedure, and is authorized to grant injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

23. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1988.

### **GENERAL ALLEGATIONS**

#### **A. ORDINANCE 2017-47**

24. On April 6, 2017, the City Council enacted Ordinance 2017-47. A copy of the Ordinance is attached to Plaintiffs' Verified Complaint (dkt. 1) as EXHIBIT A and incorporated herein.

25. On April 10, 2017, Mayor Bob Buckhorn signed and approved the Ordinance.

26. The Ordinance immediately went into effect upon its adoption and approval. (*See* dkt. 1, Exhibit A at 7, § 11) ("this Ordinance shall take effect immediately upon its adoption").

27. Section 5 of the Ordinance states that "[i]t shall be unlawful for any Provider to practice conversion therapy efforts on any individual who is a minor regardless of whether the Provider receives monetary compensation in exchange for such services." (Dkt. 1, Ex. A at 6, § 5).

28. Section 4 of the Ordinance defines "conversion therapy efforts" ("SOCE counseling") as:

any counseling, practice, or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions

to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

(Dkt. 1, Ex. A at 5, § 4(a)).

29. Section 4 of the Ordinance defines “Provider” as:

any person who is licensed by the State of Florida to provide professional counseling, or who performs counseling as part of his or her professional training . . . including but not limited to medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors.

(Dkt. 1, Ex. A at 6, § 4(c)).

30. The Ordinance states that all purported violations of this Ordinance constitute a separate offense, that the fine for the first offense is \$1,000.00 and for each and every subsequent violation the fine is \$2,000.00.

#### **B. RESEARCH ON SOCE COUNSELING**

31. The Ordinance cites the Report of the 2009 American Psychological Association’s Task Force on Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) for the proposition that SOCE counseling is harmful. (Dkt. 1, Ex. A at 1).

32. The City intentionally misrepresents the findings of the APA Report and ignores the substantial limitations the APA Report noted extensively throughout its findings. A copy of the APA Report is attached to Plaintiffs’ Verified Complaint (dkt. 1) as EXHIBIT B and incorporated herein.

33. Despite the City’s claims that SOCE counseling was found to be harmful to minors, the APA Report specifically noted that “sexual orientation issues in children are **virtually unexamined.**” (Dkt. 1, Ex. B at 91) (emphasis added).

34. The APA Report stated that “[t]here is a lack of published research on SOCE among children.” (*Id.* at 72).

35. The APA Report also noted that it could make no conclusions about SOCE counseling for those adolescents who request such counseling. (*Id.* at 73) (“We found no empirical research on adolescents who request SOCE.”); (*id.* at 76) (noting that its conclusions are not based on specific studies from individuals, including minors, who request SOCE counseling and stating that its conclusions were thus necessarily limited).

36. The APA Report also concluded that “there is a dearth of scientifically sound research on the safety of SOCE. **Early and recent research studies provide no clear indication of the prevalence of harmful outcomes.**” (*Id.* at 42) (emphasis added).

37. But, from the research the APA Report examined, it found evidence of benefits achieved from SOCE counseling, while noting that there was “some” evidence of certain harm for others. (*Id.* at 91).

38. Because it noted that there was evidence of benefits for some, the APA Report concluded that “it is still unclear which techniques or methods may or may not be harmful.” (*Id.*).

39. The APA Report also specifically noted that “for some, sexual orientation identity [is] fluid or has an indefinite outcome.” (*Id.* at 2).

40. In fact, the APA Report found among its studies that “[s]ome individuals report that they went on to lead outwardly heterosexual lives, developing a sexual relationship with an other-sex partner, and adopting a heterosexual identity.” (*Id.* at 3).

41. The APA Report therefore does not support the City’s purported premise for adopting the Ordinance.

42. The APA Report itself is also highly partisan and politicized as a result of its researchers. Although many qualified conservative psychologists were nominated to serve on the task force, all of them were rejected.

43. The director of the APA's Lesbian, Gay and Bisexual Concerns Office, Clinton Anderson, stated that such practitioners were rejected because the group could not take into account what are fundamentally negative religious perceptions of homosexuality because they do not fit into the APA's worldview.

44. In seeking to reach conclusions in the APA Report, the APA operated with a litmus test when considering task force membership—the only views of homosexuality that were tolerated were those that uniformly endorsed same-sex behavior as a moral good. Thus, from the outset of the task force, it was predetermined that conservative or religious viewpoints would only be acceptable when they fit within their pre-existing worldview.

45. One example of this is the Report's failure to recommend any religious resources that adopt a traditional or conservative approach to addressing conflicts between religious beliefs and sexual orientation. This bias can hardly be said to respect religious diversity and had predictable consequences for how the task force addressed its work.

46. The APA Report contains a significant contrast between the exceptionally rigorous methodological standards applied to SOCE outcomes and the considerably less rigorous and uneven standards applied to the question of harm. With regard to SOCE outcomes, the APA Report dismisses most of the relevant research because of methodological limitations, which are outlined in great detail (Dkt. 1, Ex. B, at 26-34).

47. Studies pertaining to SOCE outcomes that fall short of the task force's rigorous standards were deemed unworthy of examination and dismissed as containing no evidence of value to the questions at hand. But, the APA Report appears to adopt very different evidentiary standards for making statements about alleged harms attributed to SOCE.

48. The standard as regards efficacy ruled out allegedly substandard studies as irrelevant; however, no such efficacy standards were employed in considering studies purporting to document harm. Additionally, the APA Report uses the absence of evidence to argue that SOCE is unlikely to produce change and thus strongly questions the validity of SOCE, but shows no parallel reticence to endorse affirmative therapy despite acknowledging that such therapy “has not been evaluated for safety and efficacy” (Dkt. 1, Ex. B at 91).

49. Dr. Nicolas Cummings, former president of the American Psychological Association, has also noted that SOCE counseling can provide enormous benefits. A copy of Dr. Cummings article discussing SOCE counseling is attached to Plaintiffs’ Verified Complaint (dkt. 1) as EXHIBIT C and incorporated herein.

50. Dr. Cummings noted that the City’s premise for adopting the Ordinance is damaging and incorrect. (*See* dkt. 1, Ex. C. at 1) (“The sweeping allegation that [SOCE counseling] must be a fraud because homosexual orientation can’t be changed is damaging.”).

51. Dr. Cummings personally counseled countless individuals in his years of mental health practice, and he reported that hundreds of those individuals seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity were successful. (*Id.*) (“Of the patients I oversaw who sought to change their orientation, **hundreds were successful.**” (emphasis added)).

52. Dr. Cummings said that the assertion that same-sex sexual attractions, behaviors, or identity is one identical inherited characteristic is unsupported by scientific evidence and that “**contending that all same-sex attraction is immutable is a distortion of reality.**” (*Id.* at 2) (emphasis added).

53. Dr. Cummings went on to criticize efforts to prohibit SOCE counseling as violative of the client’s right to self-determination and therapeutic choice. (*Id.*) (“Attempting to characterize

all sexual reorientation therapy as unethical violates patient choice and gives an outside party a veto over patients' goals for their own treatment.”).

54. Dr. Cummings concluded that “[a] political agenda shouldn’t prevent gays and lesbians who desire to change from making their own decisions.” (*Id.*).

55. Dr. Cummings concluded by condemning political efforts to prohibit SOCE counseling as harmful to clients and counselors. (*Id.*) (“Whatever the situation at an individual clinic, accusing professionals from across the country who provide treatment to fully informed persons seeking to change their sexual orientation of perpetrating a fraud **serves only to stigmatize the professional and shame the patient.**” (emphasis added)).

56. The American College of Pediatricians has noted that the political position statements of numerous mental health organizations, including many relied upon by the City here, have “no firm basis” in evidentiary support. A copy of the American College of Pediatricians statement on SOCE counseling is attached to Plaintiffs’ Verified Complaint (dkt. 1) as EXHIBIT D and incorporated herein.

57. The American College of Pediatricians noted that, “[t]he scientific literature, however, is clear: **Same-sex attractions are more fluid than fixed, especially for adolescents—many of whom can and do change.**” (Dkt. 1, Ex. D) (emphasis added).

58. The American College of Pediatricians also noted that “there is a body of literature demonstrating a variety of positive outcomes from SOCE.” (*Id.*).

59. Like Dr. Cummings, the American College of Pediatricians concluded that SOCE counseling is beneficial and that laws, such as the Ordinance here, that prohibit such counseling serve only to impose harm on minors who seek it. (*Id.*) (“Banning change therapy or SOCE will threaten the health and well-being of children wanting therapy.”).

**C. SOCE COUNSELING.**

60. Many of the position statements and studies referenced in the Ordinance improperly attempt to conflate practices allegedly used by some in the past with the practices that Plaintiffs Vazzo and Pickup, along with all ethical SOCE practitioners, use in their counseling and therapy practices with clients who wish to reduce or eliminate same-sex sexual attractions, behaviors, or identity. The Ordinance indiscriminately bans both types.

61. Plaintiffs Vazzo and Pickup do not engage in aversive techniques, nor are they aware of any practitioner who engages in such practices with clients seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity.

62. In their practices, Plaintiffs Vazzo and Pickup help clients with their unwanted same-sex attractions, behaviors, and identity by talking with them about root causes, about gender roles and identities, and about their anxieties and confusion that arises from these attractions.

63. Speech is the only tool that Vazzo and Pickup use in their counseling with minors seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity. The only thing that happens in their counseling sessions is speech. They sit down with their clients and talk to their clients about the clients' goals, objectives, religious beliefs, desires, and identity.

64. Throughout the Ordinance, the position statements refer to SOCE counseling as that counseling with the single goal of changing an individual's sexual orientation or gender identity. But, Plaintiffs Vazzo and Pickup do not begin counseling with any predetermined goals other than those that the clients themselves identify and set. This is consistent with the clients' fundamental right of self-determination.

65. Plaintiffs Vazzo and Pickup employ speech to help clients understand and identify their anxiety or confusion regarding their attractions, or identity and then to help the client formulate the method of counseling that will most benefit that particular client.

66. Often times, a client is not ready or does not desire to immediately begin to seek to reduce or eliminate their unwanted same-sex attraction, behaviors, or identity. When that is the case, Vazzo and Pickup focus on helping the client and parents to heal any wounds or frustrations and to begin to work on loving and accepting the minor client despite any challenges that arise from the unwanted same-sex attractions, behaviors, or identity.

67. The presumptions of the Ordinance that all such counseling from Vazzo and Pickup is premised on the notion that homosexuality is an illness, defect, or shortcoming does not accurately reflect Vazzo's and Pickup's practices, and it ignores the fact that Vazzo and Pickup seek to treat the anxiety and confusion that arises from a client's unwanted same-sex attractions, behaviors, or identity.

68. The presumption of the Ordinance that Vazzo and Pickup seek to "cure" a client of same-sex attractions are false, because Vazzo and Pickup seek only to assist a client with their stated desires and objectives in counseling, which sometime include reducing or eliminating the client's unwanted same-sex attractions.

69. The presumption of the Ordinance that SOCE counseling and Vazzo and Pickup view homosexuality as an "illness" does not reflect the truth of such counseling, and it ignores the point of mental health counseling in general.

70. The only relevant consideration in Vazzo's and Pickup's counseling is that same-sex attractions, behaviors, or identity are an adaption that the client has anxiety or distress over, and that the client seeks to eliminate that anxiety or distress.

71. This is the same relevant consideration in all forms of mental health counseling, and is true of many things that clients seek counseling for, including many that are not mental illnesses but that nevertheless impose great stress, anxiety, confusion, or grief on the client.

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

72. The Ordinance falsely asserts that there are no other effective means, including state statutes, to protect minors from the purported harms of SOCE counseling. (Dkt. 1, Ex. A at 4).

73. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from engaging in false, deceptive, or misleading advertisements relating to their practice of marriage and family therapy. Fla. Stat. Ann. § 491.009(1)(d).

74. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited from “[m]aking misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified” by Florida’s Marriage and Family Therapy Board. Fla. Stat. Ann. § 491.009(1)(l).

75. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from engaging in any practice that is harmful to clients or patients, such as “[f]ailing to meet minimum standards of performance in professional activities when measured against generally prevailing peer performance.” Fla. Stat. Ann. 491.009(1)(r).

76. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from violating other ethical regulations governing the practice of marriage and family therapy. Fla. Stat. Ann. § 491.001(1)(t).

77. Failure of licensed marriage and family therapists, such as Vazzo and Pickup, to abide by the legal requirements imposed upon them by Florida law or other ethical regulations

subjects them to significant fines, suspension of licensing, and permanent revocation of licensing depending on the nature and extent of the violation. Fla. Admin. Code § 64B4-5.001.

78. Other ethical regulations imposed upon marriage and family therapists, such as the American Association of Marriage and Family Therapists Code of Ethics (“AAMFT Code”), prohibit licensed marriage and family therapists from engaging in practices that harm clients or patients, and also prohibit them from refusing to recognize their clients’ right to self-determination and informed consent.

79. Standard 1 of the AAMFT Code requires that licensed marriage and family therapists, such as Vazzo and Pickup, “advance the welfare of families and individuals and make reasonable efforts to find the appropriate balance between conflicting goals.”

80. Standard 1.1 of the AAMFT Code prohibits licensed marriage and family therapists, such as Vazzo and Pickup, from discriminating against clients based on their sexual orientation or gender identity.

81. Standard 1.2 of the AAMFT Code mandates that licensed marriage and family therapists, such as Vazzo and Pickup, obtain “appropriate informed consent to therapy or related procedures” and that they inform the clients regarding all information necessary for the client to make such a decision.

82. Standard 1.8 of the AAMFT Code requires licensed marriage and family therapists, such as Vazzo and Pickup, to “respect the rights of clients to make decisions and help them understand the consequences of these decisions.”

83. Standard 1.9 of the AAMFT Code prohibits licensed marriage and family therapists, such as Vazzo and Pickup, from continuing any therapeutic relationship if it becomes reasonably clear that the clients are not benefitting from the relationship.

84. Thus, under existing Florida law regulating licensed mental health counselors and the other ethical obligations imposed upon such counselors, the City's stated rationale for adopting the Ordinance is demonstrably fallacious and unsupported by any government interest.

**E. VAGUENESS PROBLEMS WITH THE ORDINANCE**

85. Despite the Ordinance's presumptions that same-sex attractions, behaviors, or identity are easily understandable and measurable, there are actually tremendous difficulties in measuring sexual orientation or gender identity.

86. Because of the difficulty in measuring sexual orientation or gender identity, the prohibitions in the Ordinance are hopelessly vague and leave Plaintiffs guessing at what practices are permitted or prohibited.

87. Even in the City's own cited study, the APA Report, the difficulty in understanding exactly what is prohibited by the Ordinance is recognized. The APA Report states that "[s]ame-sex sexual attractions occur in the context of a variety of sexual orientations and sexual orientation identities, and for some, sexual orientation identity (i.e., individual or group membership and affiliation, self-labeling) **is fluid or has an indefinite outcome.**" (Dkt. 1, Ex. B at 2 (emphasis added)).

88. The Ordinance prohibits Vazzo and Pickup under any circumstances from engaging in any practice that seeks to reduce or eliminate same-sex sexual attractions, behaviors, or identity. This prohibition is virtually impossible for Vazzo and Pickup to comply with because it is well understood in the mental health profession, and conceded by the City's own references, that sexual orientation and gender identity are difficult to define and encompass a number of factors, including behavior, practices, identity, attractions, sexual fantasy, romantic attractions, and erotic desires.

89. Given that sexual orientation is considered “fluid,” even among the references the City cites in the Ordinance, Vazzo and Pickup are left to guess at what counseling practices might constitute a violation of the Ordinance.

90. The Ordinance does not specify which clients would be classified as seeking to “change” and those that would merely be deemed conforming their behavior with their original “sexual orientation.” As Vazzo’s and Pickup’s clients do not always immediately present wanting to “change,” they are left to guess at which point any of their counseling practices would be deemed to constitute efforts to reduce or eliminate unwanted same-sex attractions.

91. Sexual orientation is also nearly impossible to measure, and there is no agreement on whether sexual orientation is a categorical construct or exists on a continuum. A client’s motives, attractions, identification, and behaviors vary over time and circumstances with respect to one another, which makes them dynastically changing features of an individual’s concept of self and sexual orientation.

92. Despite the difficulty in measuring sexual orientation and its fluid and changing nature, Vazzo and Pickup must now put their professional licenses in jeopardy when even discussing something that could be perceived as “changing” sexual orientation or identity.

93. The Ordinance also permits licensed counselors to provide counseling that provides “acceptance, support, and understanding” of a client’s unwanted same-sex attractions, behaviors, or identity. This presents another major source of confusion, uncertainty, and vagueness for Vazzo and Pickup.

94. Under the Ordinance, it is impossible for Vazzo and Pickup to provide acceptance and support to a client who comes in for counseling and requests assistance in seeking to eliminate unwanted same-sex attractions, behaviors, or identity.

95. Many of Vazzo's and Pickup's clients do not initially request counseling to specifically reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, but instead want help and counseling to understand the sources, causes, and origins of their anxiety over such feelings.

96. During the course of such counseling, and without ever specifically setting out to reduce or eliminate unwanted same-sex attractions, behaviors, or identity, many clients will experience a change in their sexual attractions, behaviors, or identity, and this is true despite never specifically seeking to experience such a change or elimination of their unwanted feelings.

97. Vazzo and Pickup are left to guess at whether counseling simply discussing the confusion, anxiety, conflict, or stress a client feels about their unwanted same-sex attractions, behaviors, or identity, without specifically seeking to reduce or eliminate such feelings, runs afoul of the Ordinance's prohibitions.

98. As the APA Report upon which the Ordinance relies admits, same-sex attractions, behaviors, or identities are fluid and can often spontaneously disappear, particularly in minors. If Vazzo and Pickup are merely counseling an individual to understand the origins of their attractions or helping them to understand and resolve the conflict with their religious beliefs, they are unable to know whether such counseling may result in a spontaneous change for the minor client, even though it was not the topic or goal of their counseling.

99. Plaintiffs Vazzo and Pickup are left to guess at what topics are permissible when a minor client presents with anxiety, confusion, distress, or conflict over their unwanted same-sex attractions, behaviors, or identity, and the Ordinance provides no clear guideposts on such issues.

**F. PLAINTIFF ROBERT L. VAZZO, LMFT**

100. Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio. Vazzo is also a Licensed Professional Counselor in California.

101. Vazzo received his Master of Marriage and Family Therapy from the University of Southern California in 2004. He is a member of the American Association of Marriage & Family Therapists, the California Association of Marriage and Family Therapists, the Alliance for Therapeutic Choice, and the National Task Force for Therapeutic Equality.

102. In his current practice, Vazzo specializes in SOCE counseling, including the areas of unwanted same-sex attractions, pedophilia, hebephilia, ephebophilia, and transvestic fetishism. His practice includes approximately 17-25 clients each week and ten percent of those clients are minors seeking SOCE counseling.

103. Prior to engaging in SOCE counseling with any client, Vazzo provides them with an extensive informed consent form and requires them to review and sign it prior to commencing SOCE counseling. This informed consent form outlines the nature of SOCE counseling, explains the controversial nature of SOCE counseling, including the fact that some therapists do not believe sexual orientation can or should be changed, and informs the client of the potential benefits and risks associated with SOCE counseling.

104. Many of Vazzo's clients who desire SOCE counseling profess to be Christians with a sincerely held religious belief that homosexuality is harmful and destructive and therefore seek SOCE counseling in order to live a lifestyle that is in congruence with their faith and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs.

105. Vazzo has never received any complaint or report of harm from any of his clients seeking and receiving SOCE counseling, including the many minors that he has counseled. In fact, all of Vazzo's clients who have engaged in SOCE counseling for at least one year have experienced some degree of positive change with respect to their unwanted same-sex attractions, behaviors, or identity.

106. Vazzo does not coerce his clients into engaging in SOCE counseling, but respects the clients' right of self-determination and treats each client with unconditional positive respect regardless of the client's concept of self or feelings of unwanted same-sex attractions, behaviors, or identity.

107. Vazzo has had many clients who decided that their same-sex attractions were not unwanted. Even though they knew his personal views about the effectiveness of SOCE counseling for unwanted same-sex attractions, behaviors, or identity, they chose to remain in counseling with him because of the fact that his counseling has helped them in dealing with other issues and has been an extremely positive experience and helpful for their concept of self.

108. Vazzo has had numerous clients in Florida, provides counseling to clients in Florida, and constantly receives inquiries from all over the State concerning SOCE counseling.

109. Vazzo has been contacted by individuals in the City who desire to discuss and engage in SOCE counseling with Vazzo.

110. Vazzo currently has a minor client who is fifteen years old and desires SOCE counseling from Vazzo in the City. Vazzo's client desires to receive SOCE counseling from a licensed professional counselor with expertise in this particular area.

111. Vazzo's client struggles with unwanted same-sex attractions, behaviors, and identity and desires to engage in SOCE counseling with Vazzo to assist in helping to reduce or eliminate those unwanted same-sex attractions, behaviors, and identity.

112. Vazzo is prohibited from engaging in SOCE counseling with his minor client because of the Ordinance, and his client is currently prohibited from receiving such counseling from a licensed professional.

**G. PLAINTIFF DAVID H. PICKUP, LMFT**

113. Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to provide mental health counseling in California and Texas. Pickup is also currently seeking licensure in Florida and is currently engaged in the process required for licensure as a marriage and family therapist in Florida.

114. Pickup has only one more requirement to complete to satisfy the requirements for becoming a licensed marriage and family therapist in Florida, which is taking the National Marriage and Family Therapist Exam. Pickup is sitting for this examination in August 2018, which has a testing window of August 18-August 25. Pickup has completed all other requirements for licensure in Florida as a Licensed Marriage and Family Therapist. Pickup will be licensed to provide marriage and family therapy in Florida immediately after passing the August examination.

115. Pickup has a Master of Arts degree in Counseling Psychology. He is a member of the National Association of Research and Therapy of Homosexuality ("NARTH"), where he served as the Chairman of the NARTH Clients Rights Committee; a member of the California Association of Marriage and Family Therapists; an associate member of the American Psychological Association; the Co-founder of the National Task Force for Therapy Equality; and a member of the American Association of Christian Counselors.

116. In his professional practice, Pickup specializes in providing heterosexual minors and adults with authentic Reparative Therapy, which includes the psychological industry standards of Psychodynamic, Cognitive-Behavioral and EMDR methods to help them reduce or eliminate unwanted same-sex attractions, behaviors, or identity due to emotional and/or sexual abuse during childhood and beyond. The specific therapy that Pickup specializes in would fall under the category of SOCE counseling prohibited by the Ordinance.

117. Pickup has particular expertise and experience in the area of SOCE counseling and received and benefitted from counseling that would fall under the City's definition of SOCE counseling.

118. Pickup's practice arises from personal experience and success with reparative therapy for unwanted same-sex attractions, behavior, or identity. When he was 5 years old, he was sexually molested by a 16-year-old high school boy. As a child, he also suffered severe emotional abuse at the hands of other children. When he reached puberty and for many years after it, he was sexually attracted to men. For all of those years, he carried a feeling of immense and crushing shame for his same-sex attractions.

119. For 20 years following puberty, Pickup became clinically depressed twice, dealt with tremendous anxiety, experienced obsessive compulsive disorder, and knew that he was very confused about his sexual orientation and gender identity. In the latter years of that 20-year period, Pickup found a course of counseling that was tremendously helpful to his mental health issues. Pickup engaged in authentic Reparative Therapy with the late Dr. Joseph Nicolosi, which is a form of counseling that would be considered SOCE counseling under the City's Ordinance.

120. Pickup participated in Dr. Nicolosi's counseling for many years and credits it with saving his life. This counseling, a form of SOCE counseling, helped him get rid of the shame that

he had for experiencing same-sex attractions and led to the dissipation of his same-sex attraction. Dr. Nicolosi's counseling helped Pickup solidify his gender identity, which resulted in a profound increase in his self-confidence as a man and in his self-esteem.

121. Dr. Nicolosi's counseling allowed Pickup to understand the nature and source of his same-sex attractions and allowed him to do the deep emotional work that he needed to do to understand those unwanted feelings. As part of the counseling, Pickup learned the importance of healthy male relationships and his sexual attractions to women increased.

122. Pickup saw a real and profound change in his sexuality that resulted from Dr. Nicolosi's counseling, and he pursued training to offer others the chance to achieve the profound and life-saving assistance he found in such counseling.

123. Many of Pickup's clients who desire SOCE counseling profess to be Christians with a sincerely held religious belief that homosexuality is harmful and destructive. They seek SOCE counseling in order to live a lifestyle that is in congruence with their faith, and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs.

124. Pickup has never received any complaint or report of harm from any of his clients seeking and receiving SOCE counseling, including the many minors that he has counseled. In fact, all of Pickup's clients who have engaged in SOCE counseling for at least one year have experienced some degree of positive change with respect to their unwanted same-sex attractions, behaviors, or identity.

125. Pickup does not coerce his clients into engaging in SOCE counseling, but respects the clients' right of self-determination and treats each client with unconditional positive respect regardless of the client's concept of self or feelings of unwanted same-sex attractions, behaviors, or identity.

#### **H. PLAINTIFF NEW HEARTS OUTREACH**

126. New Hearts Outreach is a confidential healing and discipleship ministry fostering sexual and relational wholeness in people's lives through the hope of Jesus Christ.

127. New Hearts Outreach practices a three-fold approach to recovery: (a) one-on-one mentoring, (b) weekly support group participation, and (c) daily accountability with trusted members of the body of Christ.

128. New Hearts Outreach began in 1996 when Mark Culligan, its Founder and Chief Executive Officer, caught a vision for a large, spiritual renewal center designed and equipped for the restoration and healing of people experiencing emotional, sexual, and relational problems and hurts.

129. New Hearts Outreach is dedicated to bringing businesses, schools, churches, counselors and Christian organizations together to aid individuals in need and who are hurting.

130. New Hearts Outreach is dedicated to sharing the hope of the Gospel of love of Jesus Christ to those who choose to pursue sexual and relational wholeness.

131. New Hearts Outreach is an unapologetically Christian organization that has sincerely held religious beliefs founded on the Bible and its teachings.

132. New Hearts Outreach's mission is glorifying God by connecting the sexually and relationally challenged to Jesus Christ.

133. As part of its ministry, New Hearts Outreach offers referrals to individuals, including minors, who are struggling with unwanted same-sex attractions, behaviors, and identity.

134. New Hearts Outreach is approached by minors desiring to receive counseling to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, and many of those minors desire to receive counseling from licensed mental health professionals.

135. New Hearts Outreach desires to be able to refer these minors and their families to Plaintiffs Vazzo and Pickup, but are unable to offer such referrals because Vazzo and Pickup are prohibited from offering such counseling under the Ordinance.

136. As part of its ministry, New Hearts Outreach offers its annual Pastors and Counselors Luncheon, which is an event provided to families in Tampa free of charge.

137. During the Pastors and Counselors Luncheon, New Hearts Outreach invites speakers, licensed counselors, and ministry leaders to speak to families and minors who attend about relational and sexual wholeness in Jesus Christ.

138. In 2018, New Hearts Outreach's Pastors and Counselors Luncheon included father and son speakers who shared their testimony of how Jesus Christ changed the son's life and was able to redeem him and restore the relationship with his father.

139. New Hearts Outreach's Pastors and Counselors Luncheon involves speakers, such as those in 2018, who share Biblical teaching on sexuality and offer expertise on reducing and/or eliminating unwanted same-sex attractions, behaviors, or identity.

140. New Hearts Outreach's Pastor and Counselors Luncheon has also frequently included licensed mental health counselors who provide teaching and discussion on helping individuals, including minors, from reducing and/or eliminating their unwanted same-sex attractions, behaviors, or identity.

141. New Hearts Outreach desires to continue to offer such speakers at the Pastors and Counselors Luncheon, but cannot do so because the Ordinance prohibits licensed mental health counselors from providing such teaching and discussion to minors and their families in attendance.

142. Because a licensed counselor speaking at the Pastors and Counselors Luncheon would be engaging in efforts aimed at reducing or eliminating the unwanted same-sex attractions,

behaviors, or identity of those in the audience, including minors, such counselors would run afoul of the prohibitions of the Ordinance.

143. By prohibiting such discussion from licensed counselors, the Ordinance has diminished and hindered New Hearts Outreach's ability to effectively communicate its message to its constituents, and has chilled its ability to carry out its core mission of assisting those individuals who desire the hope that Jesus Christ offers them.

144. New Hearts Outreach's Founder, Mark Culligan, founded New Hearts Outreach to minister to individuals and minors seeking to reduce and/or eliminate their unwanted same-sex attractions, behaviors, and identity because of his own experience with successfully eliminating his unwanted same-sex attractions.

145. Mr. Culligan experienced same-sex attractions while a teenager in high school, and he continued to experience and act on such feelings for 20 years of his life.

146. Mr. Culligan became spiritually convicted of such attractions, behaviors, and identity and sought answers on how to conform his attractions, behaviors, and identity to his sincerely held religious beliefs.

147. Mr. Culligan himself sought the assistance of professional counselors to help him conform his attractions and behaviors to his religious beliefs.

148. Mr. Culligan believes that the journey of conforming his attractions, behaviors, and identity to his sincerely held religious beliefs was extraordinarily rewarding, beneficial, and gave him a growing and deepening relationship with Jesus Christ.

149. Mr. Culligan believes that the counseling he received from professional counselors provided him the tools necessary to reduce and/or eliminate his unwanted same-sex attractions,

and that conforming his sexual attractions and behaviors to his religious convictions gave him a peace that passes understanding.

150. Mr. Culligan knows from his own personal experience that SOCE counseling can assist minors and others who struggle with unwanted same-sex attractions, behaviors, and identity, and provide them great benefits, positive outcomes, and the saving grace of Jesus Christ.

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

151. Vazzo and Pickup have incurred monetary expense to lease office space in the City to offer and provide SOCE counseling to clients in the City, including minors.

152. Consistent with his First Amendment rights, Vazzo desires to advertise his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to advertise his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

153. Consistent with his First Amendment rights, Vazzo desires to offer his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to offer his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

154. Consistent with his First Amendment rights, Vazzo desires to provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

155. Consistent with their First Amendment rights, Vazzo and Pickup would like to be able to inform religious leaders, organizations, and ministries that there is help from licensed

mental health professionals with expertise in this area and that it is available to individuals desiring assistance in the area of unwanted same-sex attractions, behaviors, and identity.

156. Both Vazzo and Pickup have received inquiries from various potential clients in the City, including minors, who desire to receive SOCE counseling.

157. Because of the Ordinance, Vazzo and Pickup are prohibited from advertising SOCE counseling to clients and potential clients, including minors, in the City.

158. Because of the Ordinance, Vazzo and Pickup are prohibited from offering SOCE counseling to clients and potential clients, including minors, in the City.

159. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in SOCE counseling with clients and potential clients, including minors, in the City.

160. Because of the Ordinance, Vazzo and Pickup have been unable to take advantage of the office space they lease in the City.

161. Because of the Ordinance, Vazzo and Pickup are restricted from engaging in constitutionally protected speech, including advertising their SOCE counseling to clients and potential clients in the City.

162. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including offering their SOCE counseling to clients and potential clients in the City.

163. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including providing their SOCE counseling to clients and potential clients in the City.

164. Because of the Ordinance, New Hearts Outreach is unable to engage in constitutionally protected expression, invite licensed mental health counselors to speak at its

Pastors and Counselors Luncheon, and is unable to provide the referrals to licensed mental health counselors in Tampa that its clients desperately desire to receive.

165. Because of the Ordinance, Plaintiffs have been chilled in their constitutionally protected expression.

166. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including providing their SOCE counseling to clients and potential clients in the City in violation of their clients and potential clients' First Amendment right to receive information.

167. Because of the Ordinance, Vazzo and Pickup have been and will be forced to deny SOCE counseling to their clients and potential clients in violation of their and their clients' sincerely held religious beliefs.

168. Because of the Ordinance, Vazzo and Pickup have been and will be forced to deny SOCE counseling to their clients and potential clients in violation of the clients' fundamental rights to self-determination.

169. Because of the Ordinance, Vazzo is currently prohibited from providing SOCE counseling to his minor client, who is fifteen years old and desires to obtain SOCE counseling from a licensed professional with knowledge and expertise in this area.

170. Because of the Ordinance, Plaintiffs have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to freedom of speech.

171. Because of the Ordinance, Plaintiffs have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to free exercise of religion.

172. Because of the Ordinance, Vazzo and Pickup's clients have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to receive information.

173. Because of the Ordinance, Vazzo's current minor client, who is fifteen years old, is currently prohibited from receiving the SOCE counseling that the client desires to obtain from a licensed professional with expertise in this area.

174. Vazzo's minor client has thus suffered, is suffering, and will continue to suffer ongoing, immediate, and irreparable injury to the client's cherished First Amendment rights to receive information.

175. Because of the Ordinance, Vazzo and Pickup's clients have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to free exercise of religion.

176. Plaintiffs and their clients and potential clients have no adequate remedy at law to protect the ongoing, immediate, and irreparable injury to their cherished First Amendment liberties.

**COUNT I – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT.**

177. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

178. The Free Speech Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging Plaintiffs' freedom of speech.

179. Ordinance 2017-47, on its face and as applied, is an unconstitutional prior restraint on Plaintiffs' speech.

180. Ordinance 2017-47, on its face and as applied, unconstitutionally discriminates on the basis of viewpoint.

181. Ordinance 2017-47, on its face and as applied, authorizes only one viewpoint on SOCE counseling and unwanted same-sex sexual attractions, behaviors, and identity by forcing Plaintiffs to present only one viewpoint on the otherwise permissible subject matter of same-sex attractions, behaviors, or identity. The Ordinance also forces Plaintiffs' clients and their parents to receive only one viewpoint on this otherwise permissible subject matter.

182. Ordinance 2017-47, on its face and as applied, discriminates against Plaintiffs' speech on the basis of the content of the message they offer and that Plaintiffs' clients seek to receive.

183. Defendants lack a compelling, legitimate, significant, or even rational governmental interest to justify Ordinance 2017-47's infringement of the right to free speech.

184. Ordinance 2017-47, on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose sought to be served by the law.

185. Informed consent provisions outlining the required disclosure prior to engaging in SOCE counseling with a minor would have been far less restrictive of Plaintiffs' speech, and mental health counseling organizations have written letters in the past with similar legislation urging that the legislature adopt informed consent provisions. A copy of the California mental health organizations' letter to the California legislature concerning legislation virtually identical to Ordinance 2017-47 is attached to Plaintiffs' Verified Complaint (dkt. 1) as EXHIBIT E and incorporated herein.

186. Ordinance 2017-47 does not leave open ample alternative channels of communication for Plaintiffs.

187. Ordinance 2017-47, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected speech.

188. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs to freely communicate information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

189. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs' clients to freely receive information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

190. Ordinance 2017-47's prohibition on licensed mental health counselors offering SOCE counseling that could change, reduce, or otherwise address a minor client's unwanted same-sex attractions, behaviors, or identity, which would include a referral to someone who offers SOCE counseling, on its face and as applied, abridges Plaintiffs' right to offer and Plaintiffs' clients right to receive information.

191. Ordinance 2017-47 vests unbridled discretion in government officials, including Defendants, to apply or not apply the Ordinance in a manner to restrict free speech, and subjects Plaintiffs to ethical code violations.

192. Ordinance 2017-47, on its face and as applied, is impermissibly vague as it requires licensed professionals subject to its dictates and government officials tasked with enforcing it to guess at its meaning and differ as to its application.

193. Ordinance 2017-47, on its face and as applied, is under-inclusive by limiting the prohibition on using SOCE counseling to minors.

194. Ordinance 2017-47, on its face and as applied, is unconstitutionally overbroad as it chills and abridges the free speech rights of all licensed mental health providers in the City of

Tampa who use counseling techniques to provide assistance to a minor seeking to reduce or eliminate his or her unwanted same-sex attractions, behaviors, or identity and does not leave open alternative methods of communication.

195. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' rights of free speech has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

196. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

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

197. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

198. The First Amendment, as applied to the states by the Fourteenth Amendment, protects an individual's freedom of speech, and the corollary to that right, the right to receive information.

199. To withstand constitutional scrutiny, restrictions on the fundamental right of Plaintiffs' clients to receive information must be supported by a compelling government interest and must be narrowly tailored to meet that end.

200. Plaintiffs' clients have sincerely held religious beliefs that shape their desire to receive SOCE counseling and the information that Plaintiffs can provide on reducing or eliminating unwanted same-sex attractions, behaviors, and identity.

201. Ordinance 2017-47 prevents Plaintiffs' clients from receiving SOCE counseling and deprives them of the opportunity to even obtain the information about SOCE counseling from a licensed mental health professional in the City.

202. Ordinance 2017-47 is not supported by a compelling government interest.

203. Even if Ordinance 2017-47 were supported by a compelling government interest, it is not narrowly tailored to achieve that purpose and therefore violates the fundamental rights of Plaintiffs' clients to receive information.

204. Ordinance 2017-47's violation of the fundamental rights of Plaintiffs' clients has caused, is causing, and will continue to cause undue and actual hardship and irreparably injury.

205. Plaintiffs' clients have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT III – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHT TO FREE EXERCISE OF RELIGION**

206. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

207. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging Plaintiffs' right to free exercise of religion.

208. Many of Plaintiffs' clients have sincerely held religious beliefs that same-sex sexual attractions, behaviors, or identity are wrong, and they seek to resolve these conflicts between their religious beliefs and their attractions in favor of their religious beliefs.

209. Plaintiffs Vazzo and Pickup also have sincerely held religious beliefs to provide spiritual counsel and assistance to their clients who seek such counsel. Plaintiffs hold sincerely

held religious beliefs that they should counsel clients on the subject matter of same-sex attractions, behaviors, or identity from a religious viewpoint that aligns with their religious beliefs and those of their clients.

210. Plaintiff New Hearts Outreach also has sincerely held religious beliefs that it should aid those struggling with sexual and relationship issues, that it should offer and facilitate mentoring and counseling from a Christian perspective on such issues, and that its ministry should help minors struggling with unwanted same-sex attractions, behaviors, or identity to reduce and/or eliminate them and conform their attractions, behaviors, and identity to Biblical teachings.

211. Ordinance 2017-47, on its face and as applied, targets Plaintiffs' and their clients' beliefs regarding human nature, gender, ethics, morality, and SOCE counseling, which are informed by the Bible and constitute central components of their sincerely held religious beliefs. Ordinance 2017-47 causes them a direct and immediate conflict with their religious beliefs by prohibiting them from offering, referring, and receiving counseling that is consistent with their religious beliefs.

212. Ordinance 2017-47, on its face and as applied, has impermissibly burdened Plaintiffs' and their clients' sincerely held religious beliefs and compels them to both change those religious beliefs and to act in contradiction to them. Ordinance 2017-47 has also forced Plaintiffs and their clients to choose between the teachings and requirements of their sincerely held religious beliefs and the City-imposed value system.

213. Ordinance 2017-47 places Plaintiffs and their clients in an irresolvable conflict between compliance with their sincerely held religious beliefs and compliance with Ordinance 2017-47.

214. Ordinance 2017-47 puts substantial pressure on Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental tenets of their faith concerning same-sex attractions, behaviors, or identity.

215. Ordinance 2017-47, on its face and as applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily targets the religious speech, beliefs, and viewpoint of those individuals who believe change is possible, and thus expressly on its face and as applied constitutes a substantial burden on sincerely held religious beliefs that are contrary to the City-approved viewpoint on same-sex attractions, behavior, or identity.

216. The City's alleged interest in protecting minors from the so-called harm of SOCE counseling is unsubstantiated and does not constitute a compelling government interest.

217. No compelling government interest justifies the burdens Defendants impose upon Plaintiffs and their clients' rights to the free exercise of religion.

218. Even if Ordinance 2017-47's provisions were supported by a compelling government interest, they are not the least restrictive means to accomplish any permissible government purpose which Ordinance 2017-47 seeks to serve.

219. Ordinance 2017-47, both on its face and as-applied, has failed and refused to accommodate Plaintiffs' sincerely held religious beliefs.

220. Ordinance 2017-47, both on its face and as-applied, specifically targets religion for disparate treatment and has set up a system of individualized exemptions that permits certain counseling on same-sex attractions, behaviors, or identity while denying religious counseling on the same subjects.

221. Ordinance 2017-47, both on its face and as-applied, constitutes a religious gerrymander.

222. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' and their clients' rights to free exercise of religion has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

223. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

**COUNT IV – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHTS TO LIBERTY OF SPEECH UNDER ARTICLE 1, SECTION 4 OF THE FLORIDA CONSTITUTION**

224. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

225. Article I, §4 of the Constitution of the State of Florida states, "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

226. Ordinance 2017-47, on its face and as applied, is an unconstitutional prior restraint on Plaintiffs' speech.

227. Ordinance 2017-47, on its face and as applied, unconstitutionally discriminates on the basis of viewpoint.

228. Ordinance 2017-47, on its face and as applied, authorizes only one viewpoint on SOCE counseling and unwanted same-sex sexual attractions, behaviors, and identity by forcing Plaintiffs to present only one viewpoint on the otherwise permissible subject matter of same-sex attractions, behaviors, or identity. The Ordinance also forces Plaintiffs' clients to receive only one viewpoint on this otherwise permissible subject matter.

229. Ordinance 2017-47, on its face and as applied, discriminates against Plaintiffs' speech on the basis of the content of the message they offer or that Plaintiffs' clients seek to receive.

230. Defendants lack a compelling, legitimate, significant, or even rational governmental interest to justify Ordinance 2017-47's infringement of the right to free speech.

231. Ordinance 2017-47, on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose sought to be served by the law.

232. Informed consent provisions outlining the required disclosure prior to engaging in SOCE counseling with a minor would have been far less restrictive of Plaintiffs' speech, and mental health counseling organizations have written letters in the past with similar legislation urging that the legislature adopt informed consent provisions. (*See* Dkt. 1, Ex. E).

233. Ordinance 2017-47 does not leave open ample alternative channels of communication for Plaintiffs.

234. Ordinance 2017-47, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected speech.

235. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs to freely communicate information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

236. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs' clients to freely receive information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

237. Ordinance 2017-47's prohibition on licensed mental health counselors offering SOCE counseling that could change, reduce, or otherwise address a minor client's unwanted same-

sex attractions, behaviors, or identity, which would include a referral to someone who offers SOCE counseling, on its face and as applied, abridges Plaintiffs' right to offer and Plaintiffs' clients' right to receive information.

238. Ordinance 2017-47 vests unbridled discretion in government officials, including Defendants, to apply or not apply the Ordinance in a manner to restrict free speech, and subjects Plaintiffs to ethical code violations.

239. Ordinance 2017-47, on its face and as applied, is impermissibly vague as it requires licensed professionals subject to its dictates and government officials tasked with enforcing it to guess at its meaning and differ as to its application.

240. Ordinance 2017-47, on its face and as applied, is under-inclusive by limiting the prohibition on using SOCE counseling to minors.

241. Ordinance 2017-47, on its face and as applied, is unconstitutionally overbroad as it chills and abridges the free speech rights of all licensed mental health providers in the City of Tampa who use counseling techniques that have the potential help a minor reduce or eliminate his or her unwanted same-sex attractions, behaviors, or identity and does not leave open alternative methods of communication.

242. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' rights of free speech has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

243. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

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

244. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

245. Article I, § 3 of the Florida Constitution states, “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.”

246. Many of Plaintiffs’ clients have sincerely held religious beliefs that same-sex sexual attractions, behaviors, or identity are wrong, and they seek to resolve these conflicts between their religious beliefs and their attractions in favor of their religious beliefs.

247. Plaintiffs Vazzo and Pickup also have sincerely held religious beliefs to provide spiritual counsel and assistance to their clients who seek such counsel. Plaintiffs hold sincerely held religious beliefs that they should counsel clients on the subject matter of same-sex attractions, behaviors, or identity from a religious viewpoint that aligns with their religious beliefs and those of their clients.

248. Plaintiff New Hearts Outreach also has sincerely held religious beliefs that it should aid those struggling with sexual and relationship issues, that it should offer and facilitate counseling from a Christian perspective on such issues, and that its ministry should help minors struggling with unwanted same-sex attractions, behaviors, or identity to reduce or eliminate them and conform their attractions, behaviors, and identity to Biblical teachings.

249. Ordinance 2017-47, on its face and as applied, targets Plaintiffs and their clients’ beliefs regarding human nature, gender, ethics, morality, and SOCE counseling, which are informed by the Bible and constitute central components of their sincerely held religious beliefs. Ordinance 2017-47 will cause them a direct and immediate conflict with their religious beliefs by

prohibiting them from offering, referring, and receiving counseling that is consistent with their religious beliefs.

250. Ordinance 2017-47, on its face and as applied, has impermissibly burdened Plaintiffs' and their clients' sincerely held religious beliefs and compels them to both change those religious beliefs and to act in contradiction to them. Ordinance 2017-47 has also forced Plaintiffs and their clients to choose between the teachings and requirements of their sincerely held religious beliefs and the City-imposed value system.

251. Ordinance 2017-47 places Plaintiffs and their clients in an irresolvable conflict between compliance with their sincerely held religious beliefs and compliance with Ordinance 2017-47.

252. Ordinance 2017-47 puts substantial pressure on Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental tenets of their faith concerning same-sex attractions, behaviors, or identity.

253. Ordinance 2017-47, on its face and as-applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily targets the religious speech, beliefs, and viewpoint of those individuals who believe change is possible. The Ordinance, expressly on its face and as applied, constitutes a substantial burden on sincerely held religious beliefs that are contrary to the City-approved viewpoint on same-sex attractions, behavior, or identity.

254. The City's alleged interest in protecting minors from the so-called harm of SOCE counseling is unsubstantiated and does not constitute a compelling government interest.

255. No compelling government interest justifies the burdens Defendants impose upon Plaintiffs' and their clients' rights to the free exercise of religion.

256. Even if Ordinance 2017-47's provisions were supported by a compelling government interest, they are not the least restrictive means to accomplish any permissible government purpose which Ordinance 2017-47 seeks to serve.

257. Ordinance 2017-47, both on its face and as-applied, has failed and refused to accommodate Plaintiffs' sincerely held religious beliefs.

258. Ordinance 2017-47, both on its face and as-applied, specifically targets religion for disparate treatment and has set up a system of individualized exemptions that permits certain counseling on same-sex attractions, behaviors, or identity while denying religious counseling on the same subject.

259. Ordinance 2017-47, both on its face and as-applied, constitutes a religious gerrymander.

260. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' and their clients' rights to free exercise of religion has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

261. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

**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. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

263. Article VIII, §2(b) of the Florida Constitution provides that “[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal

government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.”

264. Fla. Stat. Ann. § 166.021(1) provides: “municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.”

265. Fla. Stat. Ann. § 166.021(2) defines “municipal purpose” as “any activity or power which may be exercised by the state or its political subdivisions.”

266. Fla. Stat. Ann. § 166.021(3)(c) states that the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except “[a]ny subject expressly preempted to state or county government by the constitution or by general law.”

267. As a municipality in the State of Florida, the City is limited to enacting ordinances for “municipal purposes” as provided in Fla. Stat. Ann. § 166.021(2), but only to the extent that said purposes do not seek to impose regulations on any subject that has been preempted by the State of Florida.

268. The Legislature of the State of Florida has pre-empted the field of regulation of mental health professionals, through enactment of Florida Statutes, Title XXXII, Chapter 491.

269. More particularly, the Legislature of the State of Florida has pre-empted the field of disciplinary actions for licensed mental health professionals in Fla. Stat. Ann. § 491.009 and the regulations promulgated thereunder, Fla. Admin. Code Ann. r. 64B-5001.

270. Fla. Admin. Code Ann. r. 64B-5001 sets forth procedures for determining whether a licensed mental health professional in the State of Florida has engaged in conduct that is subject to discipline, and establishes schedules of fees and penalties for said conduct.

271. The Legislature of the State of Florida has not prohibited the use of so-called “conversion therapy” or SOCE counseling or otherwise included the use of such counseling in the list of conduct that can subject a licensed mental health professional to disciplinary action under Fla. Stat. Ann. §491.009 or Fla. Admin. Code Ann. r. 64B-5001.

272. In fact, in its capacity as the sole regulator of mental health professionals in the State of Florida, the Legislature has specifically declined to adopt such restrictions on SOCE counseling. Indeed, H.B. 137, 2016 Leg. (Fla. 2016) and S.B. 258 2016 Leg. (Fla. 2016), which were both proposals to prohibit SOCE counseling, were defeated in committee and thus not adopted by the sole regulator of mental health professionals in Florida.

273. Ordinance 2017-47 prohibits licensed mental health professionals from practicing a type of mental health counseling that is not prohibited by the state and that the state specifically chose not prohibit when it had the opportunity.

274. The City had no authority to adopt any ordinance or provision that exceeded state law in a preempted field, and its action is void *ab initio* as an *ultra vires* act in violation of the Constitution of the State of Florida.

275. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

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

276. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

277. Plaintiffs’ clients have the “right to impartial access to medical treatment or accommodations, regardless of . . . religion.” Fla. Stat. Ann. § 381.026(4)(d)(1).

278. Plaintiffs’ clients have the “right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of § 456.41.” Fla. Stat. Ann. § 381.026(4)(d)(3).

279. Plaintiffs Vazzo and Pickup are “health care practitioners” under the Florida Patient’s Bill of Rights and Responsibilities because they are health care practitioners under Fla. Stat. Ann. § 456.41. *See* Fla. Stat. Ann. §456.41(2)(b) (defining “health care practitioner” as that terms is defined in Fla. Stat. Ann. § 456.001(4), which includes marriage and family therapist licensed under Fla. Stat. Ann. § 491.003(5)).

280. Fla. Stat. Ann. § 456.41 states that “[i]t is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods.” Fla. Stat. Ann. § 456.41(1).

281. Fla. Stat. Ann. § 456.41 states that “[i]t is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments.” *Id.*

282. “Complementary or alternative health care treatment means **any treatment** that is designed to provide patients with an effective option to the prevailing or conventional treatments methods.” Fla. Stat. Ann. § 456.41(2)(a) (emphasis added).

283. If SOCE counseling is considered “complementary or alternative health care treatment,” Plaintiff have a right to offer and their clients have a right to receive such counseling under Florida law.

284. Plaintiffs Vazzo and Pickup desire to offer SOCE counseling in the City to those minor clients who desire such counseling and are seeking their expertise in engaging in such counseling.

285. Plaintiffs Vazzo and Pickup comply with all requirements of Fla. Stat. Ann. § 456.41(3) by providing all required information to their clients prior to engaging in SOCE counseling and obtaining informed consent from the client.

286. In Plaintiffs Vazzo and Pickup’s informed and best judgment SOCE counseling is in the best interest of those clients experiencing unwanted same-sex attractions, behaviors, or identity.

287. In Plaintiffs’ clients’ informed and best judgment, SOCE counseling is in their best interest.

288. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs Vazzo and Pickup’s right to offer SOCE counseling in compliance with Fla. Stat. Ann. § 381.026(d)(2) and Fla. Stat. Ann. § 456.41.

289. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs’ clients’ right to receive SOCE counseling under Fla. Stat. Ann. § 381.026(d)(3).

290. Plaintiffs’ clients have sincerely held religious beliefs that they should seek counseling to aid them in reducing or eliminating their unwanted same-sex attractions, behaviors, and identity, and Plaintiffs Vazzo and Pickup have sincerely held religious beliefs that they should

offer such counseling to those clients who seek such counseling to conform their attractions, behaviors, and identity to their sincerely held religious beliefs.

291. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs' clients' right to impartial access of medical treatment and accommodations based on their religious beliefs under Fla. Stat. Ann. § 381.026(d)(1).

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

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

292. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-176.

293. Fla. Stat. Ann. § 761.03 prohibits the government from substantially burdening a person's exercise of religion, "even if the burden result from a rule of general applicability." Fla. Stat. Ann. § 761.03(1).

294. If the government does burden an individual's exercise of religion, it must demonstrate that "application of the burden to the person: (a) Is in furtherance of a compelling government interest; and (b) Is the least restrictive mean of furthering that compelling government interest." Fla. Stat. Ann. § 761.03(1)(a)-(b).

295. Any person whose religious beliefs were burdened by the government "may assert that violation as a claim or defense in a judicial proceeding." Fla. Stat. Ann. § 761.03(2).

296. Plaintiffs and their clients have sincerely held religious beliefs that same-sex sexual attractions, behaviors, or identity are wrong, and they seek to resolve these conflicts between their religious beliefs and their attractions in favor of their religious beliefs.

297. Plaintiffs Vazzo and Pickup also have sincerely held religious beliefs to provide spiritual counsel and assistance to their clients who seek such counsel. Plaintiffs hold sincerely

held religious beliefs that they should counsel clients on the subject matter of same-sex attractions, behaviors, or identity from a religious viewpoint that aligns with their religious beliefs and those of their clients.

298. Plaintiff New Hearts Outreach also has sincerely held religious beliefs that it should aid those struggling with sexual and relationship issues, that it should offer and facilitate counseling from a Christian perspective on such issues, and that its ministry should help minors struggling with unwanted same-sex attractions, behaviors, or identity to reduce or eliminate them and conform their attractions, behaviors, and identity to Biblical teachings.

299. Ordinance 2017-47, on its face and as applied, targets Plaintiffs' and their clients' beliefs regarding human nature, gender, ethics, morality, and SOCE counseling, which are informed by the Bible and constitute central components of their sincerely held religious beliefs. Ordinance 2017-47 causes them a direct and immediate conflict with their religious beliefs by prohibiting them from offering, referring, and receiving counseling that is consistent with their religious beliefs.

300. Ordinance 2017-47, on its face and as applied, has substantially and impermissibly burdened Plaintiffs' and their clients' sincerely held religious beliefs and compels them to both change those religious beliefs and to act in contradiction to them. Ordinance 2017-47 has also forced Plaintiffs and their clients to choose between the teachings and requirements of their sincerely held religious beliefs and the City-imposed value system.

301. No compelling government interest justifies the burdens Defendants impose upon Plaintiffs and their clients' rights to the free exercise of religion.

302. Even if Ordinance 2017-47's provisions were supported by a compelling government interest, they are not the least restrictive means to accomplish any permissible government purpose which Ordinance 2017-47 seeks to serve.

303. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as hereinafter set forth in their prayer for relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

A. That this Court issue a Preliminary Injunction enjoining Defendants, Defendants' officers, agents, employees, attorneys, and all other persons acting in active concert or participation with it, from enforcing Ordinance 2017-47 so that:

- i. Defendants will not use Ordinance 2017-47 in any manner to infringe Plaintiffs' constitutional and statutory rights in the counseling of their clients or from offering a viewpoint on an otherwise permissible subject matter;
- ii. Defendants will not use Ordinance 2017-47 in any manner to prohibit Plaintiffs from engaging in SOCE counseling with those minor clients who seek such counseling;
- iii. Defendants will not use Ordinance 2017-47 to prohibit Plaintiffs' clients from seeking or receiving SOCE counseling for unwanted same-sex sexual attractions, behaviors, or identity; and

- iv. Defendants will not use Ordinance 2017-47 in any manner to punish Plaintiffs or their clients for engaging, referring to, seeking, or receiving SOCE counseling.

B. That this Court issue a Permanent Injunction enjoining Defendants, Defendants' officers, agents, employees, attorneys, and all other persons acting in active concert or participation with them, from enforcing Ordinance 2017-47 so that:

- i. Defendants will not use Ordinance 2017-47 in any manner to infringe Plaintiffs' constitutional and statutory rights in the counseling of their clients or from offering a viewpoint on an otherwise permissible subject matter;
- ii. Defendants will not use Ordinance 2017-47 in any manner to prohibit Plaintiffs from engaging in SOCE counseling with those minor clients who seek such counseling;
- iii. Defendants will not use Ordinance 2017-47 to prohibit Plaintiffs' clients from seeking or receiving SOCE counseling for unwanted same-sex sexual attractions, behaviors, or identity; and
- iv. Defendants will not use Ordinance 2017-47 in any manner to punish Plaintiffs or their clients for engaging, referring to, seeking, or receiving SOCE counseling.

C. That this Court render a Declaratory Judgment declaring Ordinance 2017-47 and Defendants' actions in applying Ordinance 2017-47 unconstitutional under the United States Constitution and Florida Constitution, and declaring that:

- i. Defendants violated Plaintiffs' and their clients' right to freedom of speech by prohibiting them from providing, referring to, seeking, or receiving information concerning SOCE counseling;
- ii. Defendants violated Plaintiffs' and their clients' right to free exercise of religion by prohibiting Plaintiffs from providing, referring to, seeking, or receiving information concerning SOCE counseling in accordance with their sincerely held religious beliefs;
- iii. Defendants acted without authority under Article VIII, § 2(b) of the Florida Constitution, and that its *ultra vires* actions in adopting and approving Ordinance 2017-47 were thus void *ab initio* such that Ordinance 2017-47 is of no force and effect;
- iv. Defendants violated Fla. Stat. Ann. § 381.026(d)(3) by infringing Plaintiffs' right to offer, and their clients' right to receive, available methods of treatment that Plaintiffs and their clients believe are in their best interest;
- v. Defendants violated Fla. Stat. Ann. § 381.026(d)(1) by infringing Plaintiffs' clients' right to receive medical treatment regardless of their religious beliefs; and
- vi. Defendants violated Fla. Stat. Ann. § 763.01 by substantially burdening Plaintiffs' free exercise of religion, that Defendants had no compelling interest in enacting Ordinance 2017-47, and that Ordinance 2017-47 is not narrowly tailored to achieve any government interest.

D. That this Court award Plaintiffs nominal damages for the violation of Plaintiffs' constitutional rights.

E. That this Court award Plaintiffs actual damages in an amount to be determined at trial;

F. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy so that such declaration shall have the force and effect of final judgment;

G. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order;

H. That this Court award Plaintiffs the reasonable costs and expenses of this action, including a attorney's fee, in accordance with 42 U.S.C. § 1988.

I. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Respectfully submitted,

/s/ Horatio G. Mihet

---

Mathew D. Staver (FL Bar 0701092)  
Horatio G. Mihet (FL Bar 026581)  
Roger Gannam (FL Bar 240450)  
Daniel J. Schmid\*  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
Facsimile: (407) 875-0770  
Email: court@lc.org

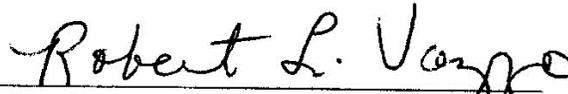
*Attorneys for Plaintiffs*

\*Admitted pro hac vice

**VERIFICATION**

I, Robert L. Vazzo, LFMT, am over the age of 18 and one of the Plaintiffs in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify as to their truthfulness, I would and could do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed this 25th day of May, 2018

  
\_\_\_\_\_  
Robert L. Vazzo

**VERIFICATION**

I, David H. Pickup, LFMT, am over the age of 18 and one of the Plaintiffs in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify as to their truthfulness, I would and could do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed this 25th day of May, 2018

A handwritten signature in cursive script that reads "David Pickup".

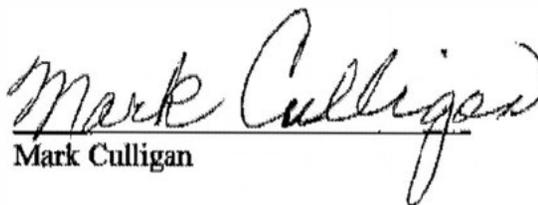
---

David H. Pickup

**VERIFICATION**

I, Mark Culligan, am over the age of 18 and one of the Plaintiffs in this action. The statements and allegations that pertain to me or which I make in this VERIFIED COMPLAINT are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify as to their truthfulness, I would and could do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed this 25th day of May, 2018

  
Mark Culligan

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of June, 2018, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic service system.

Original service of process will be effectuated upon the new defendant, SAL RUGGIERO, in his official capacity as Manager of the City of Tampa Neighborhood Enhancement Division, unless counsel for Defendant City of Tampa agrees in writing to accept service on his behalf.

/s/ Horatio G. Mihet  
Horatio G. Mihet

*Attorney for Plaintiffs*

# Tab 213

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

ROBERT L VAZZO and SOLI DEO  
GLORIA INTERNATONAL, INC.  
d/b/a NEW HEARTS OUTREACH  
TAMPA BAY,

Plaintiffs,

v.

No. 8:17-cv-2896-T-02AAS

CITY OF TAMPA,

Defendant.

---

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

This matter comes to the Court on Motions for Summary Judgment filed by Plaintiffs Robert Vazzo and New Hearts Outreach Tampa Bay, Dkt. 194, and Defendant, City of Tampa, Dkt. 189. With the benefit of full briefing and able argument by both sides at a hearing, the Court grants Plaintiffs' motion for summary judgment as to Count VI of the Amended Complaint, Dkt. 78, pursuant to Fed. R. Civ. P. 56.

*INTRODUCTION*

This case involves a challenge to the City of Tampa's municipal ordinance prohibiting sexual orientation change efforts ("SOCE") on minors during licensed

psychotherapy and counseling. The Eleventh Circuit follows “the longstanding principle that federal courts should avoid reaching constitutional questions if there are other grounds upon which a case can be decided.” *BellSouth Telecomms., Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1176 (11th Cir. 2001). The Supreme Court has long endorsed this “sound general policy.” *District of Columbia v. Little*, 339 U.S. 1, 3–4 (1950). Following this policy, the Court turns first to Count VI, a preemption Count based upon Florida law. According to the City, the Ordinance regulates medical professionals and “part of the practice of medicine” within the City limits. Dkt. 189 at 17. The City is unaware of any child ever receiving proscribed SOCE in the City.<sup>1</sup> The City has never before substantively regulated and disciplined the practice of medicine, psychotherapy, or mental health treatment within City limits. Nor does the City possess charter or home rule authority to do so. The City Ordinance is preempted by the comprehensive Florida regulatory scheme for healthcare regulation and discipline. Accordingly, the Court strikes the Ordinance under the implied preemption doctrine and grants the Plaintiffs’ motion for summary judgment on Count VI. Dkt. 194.

#### *PROCEDURAL BACKGROUND*

**The Ordinance:** The City of Tampa passed Ordinance 2017-47 (attached here as an appendix) on April 6, 2017. It was signed into law by Mayor Bob

---

<sup>1</sup> Dkt. 134-18 at 8 & 9; Dkt. 133-3 at 109.

Buckhorn four days later.<sup>2</sup> Broadly stated, the Ordinance bars therapy within the City by medical doctors and mental health professionals that seeks to assist a minor patient in a goal to change gender expression or to change sexual orientation/attraction. These two subjects are separate and distinct, but related. The cases have generically referred to these two subjects as “SOCE” or sexual orientation change efforts. The Ordinance uses the term “conversion therapy.” Neither term is entirely accurate, but the Court will use the term “SOCE” for these two subjects as that seems more prevalent in the case law and literature and that term was preferred by the City’s expert.<sup>3</sup> The Tampa Ordinance prohibiting SOCE on minors is very similar to one present in other lawsuits now pending.<sup>4</sup>

Specifically, the Ordinance contains a lengthy preamble, citing a number of psychological and medical studies offering criticism of SOCE. Tampa, Fla., Ordinance 2017-47 (April 10, 2017). The preamble, which serves as legislative factfinding by the City Council, cites as legal authority “two federal circuit courts of appeal [that] have upheld bans on conversion therapy.”<sup>5</sup> These two cases, from

---

<sup>2</sup> Tampa, Fla., Ordinance 2017-47 at 4 (April 10, 2017) (codified at Tampa, Fla., Code of Ordinances §§ 14-310 to -313 (2019)); see also Dkt. 1 at 41–47.

<sup>3</sup> *E.g. Pickup v. Brown*, 740 F.3d 1208, 1221 (9th Cir. 2014); *King v. New Jersey*, 767 F.3d 216, 221 (3d Cir. 2014); *Otto v. City of Boca Raton*, 353 F. Supp. 3d 1257, 1241 (S.D. Fla. 2019); Dkt. 192-1 at 58–59, 64–65; Dkt. 133-3 at 52–53.

<sup>4</sup> *Otto*, 353 F. Supp. 3d at 1243–44; Dkt. 133-3 at 60; see also City of West Palm Beach, Ordinance 4666-16 (2016).

<sup>5</sup> See Tampa, Fla., Ordinance 2017-47 at 4 (April 10, 2017) (citing *King v. New Jersey*, 767 F.3d 216 (3d Cir. 2014); *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014)).

the U.S. Ninth and Third Circuit Courts of Appeals, were criticized by name and possibly abrogated on First Amendment grounds by the U.S. Supreme Court in 2018 in *Nat'l Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371–72 (2018).

The Ordinance states that the City Council found “overwhelming research demonstrating that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, and that being lesbian, gay, bisexual, transgender or questioning is not a mental disease, mental disorder, mental illness, deficiency, or shortcoming.” Tampa, Fla., Ordinance 2017-47 at 4 (April 10, 2017). Relevant text is as follows:

**Sec. 14-310.–Intent.**

The Intent of this Ordinance is to protect the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning youth, from exposure to the serious harms and risks caused by conversion therapy or reparative therapy by licensed providers, including but not limited to licensed therapists. These provisions are exercises of police power of the City for the public safety, health, and welfare; and its provisions shall be liberally construed to accomplish that purpose.

**Sec. 14-311.–Definitions.**

*Conversion therapy or reparative therapy* means, interchangeably, any counseling, practice or treatment performed with the goal of changing an individual’s sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling

that provides support and assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

*Minor* means any person less than 18 years of age.

*Provider* means any person who is licensed by the State of Florida to provide professional counseling, or who performs counseling as part of his or her professional training under chapters 456, 458, 459, 490 or 491 of the Florida Statutes, as such chapters may be amended, including but not limited to, medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors. A Provider does not include members of the clergy who are acting in their roles as clergy or pastoral counselors and providing religious counseling to congregants, as long as they do not hold themselves out as operating pursuant to any of the aforementioned Florida Statutes licenses.

**Sec. 14-312.—Conversion Therapy Prohibited.**

It shall be unlawful for any Provider to practice conversion therapy efforts on any individual who is a minor regardless of whether the Provider receives monetary compensation in exchange for such services.

Tampa, Fla., Code of Ordinances §§ 14-310 to -312 (2019).

The Ordinance provides for a \$1000 fine for the first offense and a \$5000 fine for subsequent offenses. *Id.* § 14-313. The City's Department of Neighborhood Enhancement (formerly Code Enforcement) enforces the Ordinance. *Id.* Although this is the City Department that usually enforces code violations like overgrown weeds and unpermitted contracting, the City's

Neighborhood Enhancement director testified that he would take any suspected violation of the SOCE Ordinance to the City Attorney before issuing a notice of violation. Dkt. 133-1 at 23–25, 29. The Assistant City Attorney tasked as representative on this matter has been a lawyer for four years but has no training in counseling, therapy, or medicine; and stated that the City would consult Webster’s Dictionary to understand the terms in the Ordinance. Dkt. 133-3 at 23, 25, 67–68.

If contested, the City would employ a “special magistrate” to adjudicate the alleged violation as a code enforcement proceeding. Dkt. 134-3 at 8; Dkt. 133-3 at 102–03. The City’s special magistrates are unpaid volunteers appointed by the mayor. *Id.* The City has no plan in connection with the Ordinance to appoint someone who is a licensed mental health provider. *Id.* at 104.

The Ordinance does not preclude providers from speaking about SOCE to any persons including patients and in any setting, other than as part of therapy with minor patients. The Ordinance applies only to licensed practitioners while giving mental health therapy to minors within City limits, and applies to no other persons such as ministers, lay providers, parents, unlicensed persons, etc. Tampa, Fla., Ordinance 2017-47 at 4 (April 10, 2017). The Ordinance does not differentiate between coercive or aversive therapy, and simple “talk therapy.”

**The Plaintiffs:** Plaintiff Vazzo is a marriage and family therapist licensed in Florida and other states. Dkt. 78 ¶ 14. His practice includes providing SOCE

counsel to minors. *Id.* ¶ 102. According to Vazzo, SOCE counseling may help clients including minors “reduce or eliminate same-sex sexual attractions, behaviors, or identity.” *Id.* ¶¶ 60, 88, 116. Vazzo employs no coercive or aversive techniques. *Id.* ¶ 61. During SOCE counseling, Vazzo uses speech to help clients “understand and identify their anxiety or confusion regarding their attractions, or identity and then help the client formulate the method of counseling that will most benefit that particular client.” *Id.* ¶ 65.

Vazzo states that clients initiate SOCE counseling by giving informed consent. *Id.* ¶ 8. Some clients request SOCE counseling to “address the conflicts between their sincerely held religious beliefs and goals to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity.” *Id.* ¶ 9.

Plaintiff New Hearts Outreach is a Christian ministry in Tampa. *Id.* ¶¶ 16, 126. Part of its ministry is to refer individuals, including minors, “struggling with unwanted same-sex attractions, behaviors, and identity” to mental health professionals to receive SOCE counseling. *Id.* ¶¶ 132–34.

Vazzo cannot provide SOCE counseling to minors in Tampa under Ordinance 2017-47. *Id.* ¶ 112. Nor can New Hearts Outreach refer minors to Vazzo for SOCE counseling in Tampa. *Id.* ¶ 135.

Plaintiffs sue the City and allege Ordinance 2017-47 violates their federal and state constitutional rights. Dkt. 78. The Plaintiffs allege Ordinance 2017-47

violates their right to freedom of speech under the First Amendment (Count I), a claim to which the parties have devoted great attention. *Id.* ¶¶ 177–96; *see* Dkt. 189 at 5–17; Dkt. 194 at 2–20.

Among their other claims, Plaintiffs allege in Count VI that the Florida legislature preempted the field of regulating mental health professionals. *Id.* ¶¶ 262–75. Because this Court grants summary judgment on the preemption claim in Count VI, the other counts in the Amended Complaint are not discussed.<sup>6</sup>

#### *SUMMARY JUDGMENT STANDARD*

Rule 56 of the Federal Rules of Civil Procedure provides that a summary judgment “shall [be granted] if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “The moving party bears the initial burden of showing the Court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial.” *Jeffrey v. Sarasota White Sox*, 64 F.3d 590, 593 (11th Cir. 1995) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)). The Court must view the evidence in the light most favorable to the non-movant and resolve all doubts in the non-movant's favor. *Id.* at 594.

---

<sup>6</sup> In addition to the “free speech” First Amendment claim in Count I, Plaintiffs assert in Count II a First Amendment claim based on their clients’ rights to receive information. Dkt. 78 at 197–205. In the other remaining counts, Count IV asserts a claim under the Florida Constitution’s Article I § 4 free speech clause. *Id.* at 224–43. Count VII asserts a claim under Florida Statute § 381.026(04), the Florida Patient’s Bill of Rights. *Id.* at 276–91.

However, when “the party seeking summary judgment meets the initial burden of demonstrating the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to come forward with sufficient evidence to rebut this showing with affidavits or other relevant and admissible evidence.”

*Avirgan v. Hull*, 932 F.2d 1572, 1577 (11th Cir. 1991) (citing *Celotex*, 477 U.S. at 324). To satisfy its burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Furthermore, “[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict—‘whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.’” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (quoting *Schuylkill and Dauphin Imp. Co. v. Munson*, 81 U.S. 442, 448 (U.S. 1871)).

*FLORIDA'S LAW OF IMPLIED PREEMPTION*

The Supreme Court of Florida most recently addressed the implied preemption doctrine in *D'Agastino v. City of Miami*, 220 So. 3d 410 (2017) (finding portion of Miami ordinance impliedly preempted). The Court noted that, “in Florida, the power of a municipal government to legislate is derived from both constitutional provisions and statute. Generally speaking, the Florida Constitution authorizes and empowers municipalities to exist and conduct municipal powers except as otherwise provided by law.” *Id.* at 420. Concerning municipal powers, the Florida Constitution states:

(b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Fla. Const. art. VIII, § 2(b); *see also D'Agastino*, 220 So. 3d at 420.

Acting on its constitutional authority to address municipal powers, the Legislature clarified the powers of municipal government by enacting the Municipal Home Rule Powers Act, which is now codified in section 166.021 of the Florida Statutes. *D'Agastino*, 220 So. 3d at 420. Specifically, section 166.021(1) provides in full:

166.021 Powers.—

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary

powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Fla. Stat. § 166.021(1) (2008); *see also D'Agastino*, 220 So. 3d at 420. *D'Agastino* noted that:

However, these powers are subject to limitations; among others, municipalities may not enact legislation concerning subjects expressly preempted to the state by general law:

“(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- (b) Any subject expressly prohibited by the constitution;
- (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
- (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.”

220 So. 3d at 420 (quoting Fla. Stat. § 166.021(3) (2008)) (emphasis omitted).

Against this backdrop, the *D'Agastino* court observed that “a local government enactment may be inconsistent with state law where the Legislature has preempted a particular subject area.” *Id.* at 420–21 (quoting *Sarasota All. for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010)). The Florida Supreme Court noted that Florida law recognizes both express preemption and implied preemption. *Id.* at 421.

Unlike the explicit nature of express preemption, “implied preemption occurs when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme.” *Id.* Put another way, “preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature.” *Id.* Thus, explicit words are not required for preemption “so long as it is clear from the language utilized that the Legislature has clearly preempted local regulation of the subject.” *Id.* (citing to *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla. 1989)). The *D’Agastino* Court held that the test for implied preemption requires that the courts look “to the provisions of the whole law, and to its object and policy.” *Id.* (citing *Browning*, 28 So. 3d at 886); *see also State v. Harden*, 938 So. 2d 480, 486 (Fla. 2006). Additionally, “[t]he nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute” are all vital in this analysis. *Id.*

*D’Agastino* cautioned judges to “be careful and mindful in attempting to impute intent to the Legislature to preclude a local elected governing body from exercising its home rule powers.” *Id.* (citing *Tallahassee Mem’l Reg’l Med. Ctr.*,

*Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996)).

Despite this caveat the Florida Supreme Court went on to explain:

Nevertheless, as we reemphasized in *City of Palm Bay*, because the Legislature is ultimately superior to local government under the Florida Constitution, preemption can arise even where there is no specifically preclusive language. 114 So. 3d at 928 (“But we have never interpreted either the constitutional or statutory provisions relating to the legislative preemption of municipal home rule powers to require that the Legislature specifically state that the exercise of municipal power on a particular subject is precluded.”). We further reaffirmed in *City of Palm Bay* that the language “except as otherwise provided by law” contained in the constitutional provision “establishes the constitutional superiority of the Legislature’s power over municipal power.”

*Id.*

“Although implied preemption involving a municipality’s home rule powers may be disfavored, [courts] must carefully consider the intent of the Legislature with regard to the preemptive operation even though it may not be expressly stated.” *D’Agastino*, 220 So. 3d at 423. The *D’Agastino* court found that a portion of municipal disciplinary proceedings for local police officers was impliedly preempted by an extensive state statutory and regulatory scheme set up for police disciplinary matters. *Id.* at 423–24. The Court found it readily apparent that the field of police disciplinary investigations was regulated by multiple Florida statutes. *Id.* at 424. The municipal creation of a local subpoena power over police officers, as part of police discipline and police conduct investigations, was impliedly preempted. *Id.* at 427.

The test is simple: “implied preemption is found when the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme.” *Classy Cycles, Inc. v. Bay Cty. Fla.*, 201 So. 3d 779, 788 (Fla. 1st DCA 2016) (citing to *Browning*, 28 So. 3d at 886). The state legislative scheme should be “so pervasive as to evidence an intent to preempt the particular area, and [] strong public policy reasons exist for finding such an area to be preempted by the Legislature.” *Phantom of Clearwater, Inc. v. Pinellas Cty.*, 894 So. 2d 1011, 1019 (Fla. 2d DCA 2005) (citing *Tallahassee Mem’l*, 681 So. 2d at 831). “[T]he preempted field is usually a narrowly defined field, ‘limited to the specific area where the Legislature has expressed their will to be the sole regulator.’” *Id.* (citing *St. Johns Cty. v. N.E. Fla. Builders Ass’n*, 583 So. 2d 635, 642 (Fla. 1991)).

Examples of these principles in action can be seen in *D’Agastino* where a survey of the relevant state statutes relating to police disciplinary investigations showed a legislative intent to cover the entire spectrum of subpoenaed police testimony. 220 So. 3d at 420–26. There was no room for municipal intrusion into subpoenaing police officers concerning discipline. That the city’s police subpoenas conflicted somewhat with the State’s showed that the State occupied the field exclusively. Likewise, in *Classy Cycles*, the municipality imposed insurance

requirements for motor vehicle usage (tourist-style scooters). 201 So. 3d at 782–

83. In finding implied preemption, the appellate court stated:

[T]he Legislature has created a pervasive scheme of regulation, coverage requirements, and limitation of liability, including specific requirements for coverage necessary to operate various motor vehicles in Florida. *Thus, the ordinances are an attempt to regulate in an area well-covered by existing statutes. The local governments' ordinances attempting to mandate insurance are therefore impliedly preempted.*

*Id.* at 788 (emphasis added).

Some courts have found no implied preemption when the state regulatory scheme was brief, or only a few pages in the law books. *See, e.g., Phantom of Clearwater, Inc.*, 894 So. 2d at 1019 (noting the state statute at issue was only 3 pages long); *Bloom v. Miami-Dade Cty.*, No. 09-51205 CA 13, 2009 Fla. Cir. LEXIS 4303 at \*4–6 (Fla. Cir. Ct. Sept. 6, 2009), *aff'd sub nom. Exile v. Miami-Dade Cty.*, 35 So. 3d 118 (Fla. 3d DCA 2010). As discussed below, this is manifestly not the case here with Florida health regulations.

Other courts have found no implied preemption when the municipal ordinance is local in nature, or tied to a situation unique to the locale. For example, in *Exile v. Miami-Dade Cty.*, 35 So. 3d 118 (Fla. 3d DCA 2010), the District Court of Appeal found that an ordinance prohibiting convicted sex offenders from living within 2500 feet of a school was not preempted by a state statute with a 1000 feet prohibition. In the trial court opinion, which the Third District Court of Appeal appeared to rely upon, the court noted there was no need

for statewide uniformity because the most effective buffer zone would depend upon local conditions and local property boundaries, varying across municipalities. *Bloom*, 2009 Fla. Cir. LEXIS 4303 at \*8–10.

But in *Classy Cycles*, the county argued its local conditions, involving untrained and unruly tourists driving scooters and motorcycles in the beach area, showed a need for its local insurance requirements and local safety regulations for motor vehicle traffic. 201 So. 3d at 789. The court rejected this, noting that 1) no grant from the Legislature to localities existed regarding vehicle insurance; and 2) rowdy tourists are not a local phenomena in Florida to permit differing laws in Bay County, when the Legislature’s broad program of regulation occupied the field. *Id.* at 788–89.

*Classy Cycles* is apt here. There is no grant of authority by the Florida Legislature to municipalities to substantively regulate healthcare treatment and discipline. The State, not localities, occupies this field. Just as in *Classy Cycles*, here there is nothing local or unique to Tampa about SOCE that would suggest the statewide, uniform medical regulation regime should vary because of Tampa’s peculiarities, and should vary across the State, from town to town and from county to county. The matter legislated against—SOCE—is statewide, not Tampa-specific. And, a uniform and statewide system of healthcare treatment and practitioner discipline already exists, for sound reasons. Implied preemption is a

disfavored remedy because cities have broad powers to address municipal concerns. But substantive regulation of psychotherapy is a State, not a municipal concern.

Additional cases considering implied preemption have considered whether the Florida Legislature via statute has delegated some enforcement or regulation to local government. Thus, in *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 887–88 (Fla. 2010) the court found implied preemption to be improper, in part because Florida election law specifically delegated certain responsibilities and powers to local authorities concerning voting systems. Similar cases finding delegation to local authorities include *Phantom of Clearwater*, 894 So. 2d at 1011 (finding no implied preemption on local fireworks legislation; the State statutory scheme expressly delegated enforcement to local government, with municipalities to regulate displays and set and require bonds for firework sales) and *Hillsborough County v. Florida Restaurant Ass’n, Inc.*, 603 So. 2d 587 (Fla. 2d DCA 1992) (finding Florida alcohol statute expressly reserved local authority on issue for municipalities). In stark contrast to these cases, the State statutory scheme for healthcare regulation leaves nothing substantive at all for municipalities to do; there is no grant or delegation at all to localities.

*FLORIDA'S BROAD AND EXCLUSIVE  
REGULATION OF HEALTHCARE MODALITIES AND DISCIPLINE*

The City of Tampa's Ordinance instructs medical doctors, osteopathic doctors, psychologists, and licensed mental health counselors as to what they may and may not say within patient therapy. Tampa has never regulated healthcare substantively in any other way before Ordinance 2017-47.<sup>7</sup> Nor does Tampa substantively regulate services similar in nature to healthcare such as massage therapy, acupuncture, optometry, tattoos, piercings, hearing aids, medical labs, or funeral services.

This contrasts with the State of Florida's pervasive and all-encompassing regulation in this field. To say that the State of Florida's regime of healthcare regulations is vast is an understatement. There seems nothing more regulated and addressed by the Florida legislative and administrative body than healthcare, and a material part of this is mental health related. In addition to its breadth and depth, this Florida regulatory scheme is uniform across each of the 400 plus municipalities in the State. In contrast, the Tampa Ordinance covers only the 114 square miles of city limits, leaving the substantive mental health therapy rules to

---

<sup>7</sup> Dkt. 133-3 at 111. During the proliferation of "pill mills" in the City, Tampa passed a permitting ordinance on pain management clinics. Tampa, Fla., Code of Ordinances § 6-253 to -262 (2019). It says nothing substantively about treatment, practice of pain management, or medicine.

vary depending which of the 400 plus Florida municipalities one is in, or even where one is within Hillsborough County.<sup>8</sup>

**A. Five State-Mandated Areas the Ordinance Encroaches Upon:**

Before the Court surveys specific Florida regulations concerning the practice types Tampa wishes to regulate, it is important to note five areas of Florida healthcare law that the Tampa Ordinance seeks to occupy or partly alter. Because State law and policy already reside in these areas broadly, there is “danger of conflict with that pervasive regulatory scheme.” *Classy Cycles*, 201 So. 3d at 788 (citing *Sarasota Alliance*, 28 So. 3d at 886.).

**1. Florida’s Broad Right of Privacy:**

Nothing is more intimate, more private, and more sensitive, than a growing young man or woman talking to a mental health therapist about sex, gender, preferences, and conflicting feelings. The Ordinance inserts the City’s code enforcers into the middle of this sensitive, intense and private moment. But this moment is already governed by Florida’s very broad rights of privacy, something the Ordinance ignores.

Article I, Section 23 of the Florida Constitution states in pertinent part:

“Right of Privacy.— Every natural person has the right to be let alone and free from

---

<sup>8</sup> Tampa’s land area is 114 square miles while Hillsborough County is 1021 square miles in land area. *See* Community Facts, [factfinder.census.gov](http://factfinder.census.gov) (last accessed Oct. 2, 2019).

governmental intrusion into the person’s private life except as otherwise provided herein.” Fla. Const. art. I, § 23. This provision applies to minors. *See generally In Re. T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989). Further, this Florida constitutional right of privacy “embraces more privacy interests, and extends more protection to the individuals in those interests, than does the federal Constitution.” *Id.* at 1191–92; *see also Von Eiff v. Azicri*, 720 So. 2d 510, 513 (Fla. 1998). In a more recent amendment, the Florida Constitution affirmed that “[t]he Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States constitution as interpreted by the Supreme Court.” Fla. Const. art. X, § 22 (enabling parental abortion notification).

The Florida Constitution’s privacy right has been implicated in a wide variety of cases.<sup>9</sup> “The drafters of the amendment rejected the use of the words ‘unreasonable’ or ‘unwarranted’ before the phrase ‘governmental intrusion’ in order to make the privacy right as strong as possible.” *Winfield v. Div. of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985). The Florida Constitution’s privacy amendment suggests that government should stay out of the therapy room. The Tampa Ordinance does not address this constitutional issue, and in doing so

---

<sup>9</sup> *See, e.g., N. Fla. Women’s Health Servs., Inc. v. State*, 866 So. 2d 612, 619 n.6 (Fla. 2003) (citing to fourteen additional examples) (court’s holding superseded by constitutional amendment).

the City attempts to occupy a very private space, contrary to a strong statewide policy.

## **2. Parental Choice in Healthcare:**

The law in Florida is that, with very few exceptions,<sup>10</sup> parents are responsible for selecting the manner of medical treatment received by their children, and this continues until age 18. *See Fla. Stat. § 743.07 (2019); DeCosta v. N. Broward Hosp. Dist.*, 497 So. 2d 1282, 1283–84 (Fla. 4th DCA 1986) (parents “educate, protect, and provide reasonable and necessary medical attention for child”). The Ordinance eliminates this longstanding parental right without discussion or exception—Florida already occupied this ground. Parental rights, which the Florida Supreme Court has noted are fundamental and protected by the state constitution,<sup>11</sup> are reduced or increased within Hillsborough County, Florida, depending on whether one steps across the Tampa city line or not.

---

<sup>10</sup> *E.g., J.V. v. State*, 516 So. 2d 1133 (Fla. 1st DCA 1987) (court ordered blood transfusion to child of Jehovah’s Witnesses who refused the transfer); Fla. Stat. § 390.01114(4)(a) (judicial override of parental notification for minor’s abortion); Fla. Stat. § 394.4784 (adolescent crisis intervention).

<sup>11</sup> *E.g., D.M.T. v. T.M.H.*, 129 So. 3d 320, 334–35 (Fla. 2013) (“The interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized in American law[;] . . . parents’ fundamental right to raise their children is protected by Florida’s state constitutional right of privacy[.]”) (internal citations and quotations omitted).

### **3. Florida Patient's Bill of Rights:**

Besides impacting Florida privacy rights and rights to parental choice in healthcare, the Ordinance alters within the City a patient's rights under the Florida Patient's Bill of Rights and Responsibilities. This section of the Public Health Chapter, Chapter 381 of the Florida Statutes, states in part:

A patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of s. 456.41.

Fla. Stat. § 381.026(4)(d)(3). Because Florida has already staked out this regulatory territory, the Tampa Ordinance enters this area at odds with this portion of the Florida statutory scheme. Nor did the City appear to consider this Legislative enactment when it was considering the Ordinance. The Ordinance would appear to substitute the City's judgment for the judgment of the patient and practitioner, an express contradiction of what the Legislature requires in section 381.026(4)(d)(3).

### **4. Florida's Endorsement of Alternative Healthcare Options:**

The Ordinance also encroaches upon, without mention or consideration, a provision in Chapter 456 of the Florida Statutes, which is titled "Health Professions and Occupations: General Provisions." In this chapter, the Legislature stated its intent for health professions:

**Legislative Intent.**—It is the intent of the Legislature that citizens be able to make informed choices *for any type* of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition. It is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods. It is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments, with the same requirements, provisions, and liabilities as those associated with the prevailing or conventional treatment methods.

Fla. Stat. § 456.41(1) (2019) (emphasis added).

Although the City outlaws the practice, the Florida statute goes on to read:

(c) The health care practitioner may, in his or her discretion and *without restriction*, recommend any mode or treatment that is, in his or her judgment, in the best interest of the patient . . . in accordance with the provisions of his or her license.

.....

(5) EFFECT.—This section does not modify or change the scope of practice of any licensees of the department, nor does it alter in any way the provisions of the individual practice acts for those licensees, which require the licensees to practice within their respective standards of care and which prohibit fraud or exploitation of patients.

Fla. Stat. § 456.41(3)(c) & (5) (emphasis added). This statute gives practitioners great leeway to recommend “any mode” of treatment “without restriction.” The only constraint is the applicable standard of care and proper treatment of patients, both of which are set and are policed in great detail by the Department of Health and the professional disciplinary boards organized pursuant to the all-encompassing legislative scheme.

This very plain statement of legislative intent in section 456.41 ordains that the patients choose their treatment modality through an informed choice, including alternative or nonconventional choices, with the practitioner free to recommend any modality without restriction. Fla. Stat. § 456.41(1). Although the State occupies this field by statute, the City Ordinance seeks to override this legislative intent: there will be no patient choice or unrestricted practitioner discretion for SOCE in Tampa, notwithstanding what the Board of Medicine, the disciplinary bodies, or the relevant standard of care says.

**5. Florida’s Well-Established Doctrine of Informed Consent:**

The Ordinance appears to impact the well-traveled Florida statutory doctrine of informed consent. For SOCE there will be no informed consent in Tampa although the Florida Legislature has set up a complete and developed scheme of informed consent. *E.g.*, Fla. Stat. § 766.103 (2019).

This informed consent concept notes that some medical procedures have “substantial risks and hazards inherent in the proposed treatment or procedures[.]” *Id.* § 766.103(3)(a)(2). Under Florida law, in the face of those substantial risks and hazards, the healthcare provider may perform the healing function sought so long as fully informed consent by the patient is given “in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community.” *Id.* §

766.103(3)(a)(1). In such a case, if the maladies or risks occur about which informed consent was given, no tort recovery may occur. *Id.* § 766.103(3). The purpose of this law is to permit patients to receive the healthcare they desire and their caregivers feel they need, so long as the substantial risks and hazards are fully disclosed and accepted. Healthcare treatment is risky. There is a risk in all healthcare treatments, and this provision permits a patient to assume that risk as long as it is an informed fashion, guided by the statute.

Informed consent is a bedrock principle of healthcare in a free society. The concept vindicates the individual's right to make his or her own informed decision as to what health treatment he or she will undergo. When the patient is denied the ability to exercise or even consider informed consent, the patient's personal liberty suffers.

According to the Florida Supreme Court, in Florida “[t]he doctrine of informed consent is well recognized, has a long history, and is grounded in the common law and based in the concepts of bodily integrity and patient autonomy.” *State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006). The Florida Supreme Court adopted the “general rule on this subject as follows: The patient must be the final arbiter as to whether he will take his chances with the operation, or take his chances living without it.” *Id.* at 117. The court further noted, “[N]o right is held more sacred, or is more carefully guarded, by the common law, than

the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Id.* (citing *Cruzan v. Dir., Mo. Dep’t of Health*, 497 U.S. 261, 269 (1990)).

The Tampa Ordinance simply ignores this well-known and broad Florida concept of informed consent. The City Council has determined that SOCE is too dangerous for even a patient fully informed of all risks, who desires to proceed.

All of these topics such as constitutional privacy rights, parental choice, patient choice as to treatment, and the availability of non-conventional or alternative treatments show that the Legislature has occupied entirely the very wide healthcare swath, whether it is called “informed consent” or “patient’s rights.” No room exists in this pervasive and uniform statewide program for the more than four-hundred Florida municipalities to regulate where legislative intent resides so broadly.

**B. Legislative Regulation of the Practice Areas:**

The Ordinance outlaws some therapeutic speech in the fields of medicine, osteopathic medicine, psychology, and all types of licensed clinical counseling. In order to determine if the Florida regulatory apparatus shows the State intends to be the sole regulator of these fields, the Court must survey this Florida regulatory program.

The Legislature created the Department of Health by Florida Statute § 20.43. One of its duties is to “[r]egulate health practitioners for the preservation of the health, safety, and welfare of the public.” Fla. Stat. § 20.43(2)(g). Section 20.43 enables the practitioner governing boards discussed below.

The first source to consult in assessing Florida’s regulation in this area is Florida Statutes Chapter 456, entitled “Health Professions and Occupations: General Provisions.” Spanning 50 pages of the statute book, this Chapter sets forth the elaborate administrative governing rules for healthcare practice in Florida, placing the State Department of Health as overseer. All relevant persons practicing healthcare and healing arts in Florida are included under this Department’s supervision. All practice types regulated by Tampa’s Ordinance are included in Chapter 456’s program of regulation. Chapter 456 states that “The Legislature . . . believes that such professions shall be regulated only for the preservation of health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when . . . [t]he public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinance, or federal legislation.” Fla. Stat. §§ 456.003(2) & (2)(b).<sup>12</sup> While Chapter 456 left

---

<sup>12</sup> Florida courts have looked to whether the statutes provide a specific grant of authority to local governing bodies when evaluating whether there is implied preemption. *Classy Cycles*, 201 So. 3d at 788. This provision is the Legislature explaining why it occupies the field: cities have never regulated medicine before, and do not do so now. When asked by this Court to supply examples of its similar ordinances, the City could not provide any. This language is the same text as when the current iteration of the Department of Health was initially established in 1996,

open the possibility that the State could set aside areas for local regulation, no such local regulation exists historically and the State has provided no grants to localities prospectively. Neither Chapter 456 nor other statutes or State regulations provide any opening or suggestion that municipal regulation should supplement the State's comprehensive healthcare coverage.

In fact, the healthcare regulatory scheme created in Chapter 456 provides for an exhaustive disciplinary regime, leaving no set-aside areas for localities to regulate. Chapter 456 enables the establishment of regulatory boards, based in Tallahassee, for governance and discipline of the various medical professions. *Id.* §§ 456.004 & 456.006.<sup>13</sup> This enabling statement of legislative intent omits any reference to municipal powers. The enabling statement also limits the power of the Department of Health and any state board by barring unreasonable regulations; no similar limitation is mentioned for a municipality, suggesting municipalities have no role. *Id.* § 456.003(4)(a). The statute notes “[t]he Legislature shall evaluate proposals to increase the regulation of regulated professions . . . .” *Id.* §

---

S. 38, ch. 97-261; Fla. Stat. § 455.517(2)(b) (1997), and is pulled directly from the language of the Department of Business and Professional Regulation, Fla. Stat. § 455.201(2)(b) (1997), which, in 1997, both were under Chapter 455: “Regulation of Professions and Occupations: General Provisions.” Since then, the Department of Health general provisions have expanded to be their own section of the code and gone from being 30 pages to 50 pages, in addition to the hundreds of practice specific statutes and administrative regulations. The statutory reference to the absence of local ordinances explains the pervasive legislative scheme created by the Legislature which clearly occupies the field.

<sup>13</sup> The individual boards are established in Florida Statute § 20.43(2)(g).

456.003(4)(c). Chapter 456 sets up an elaborate scheme to qualify, test, license, regulate, adjudicate, and discipline Florida professionals in each of the healthcare fields.

Section 456.072 is entitled “Grounds for discipline; penalties; enforcement.” The final provision of that section states: “The purpose of this section is to facilitate uniform discipline for those actions made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.” *Id.* § 456.072(8). It appears clear from reading this chapter that the Legislature intended a uniform system of discipline to run throughout the State. The section mandates, statewide, that how one investigates and disciplines healthcare professionals should be uniform.

The text makes clear the Legislature intended for uniform discipline to apply throughout the State when it comes to healthcare providers. But Tampa’s Ordinance creates a different and encroaching process in this area.

For disciplinary proceedings brought pursuant to Florida statute, the State must prove the allegations against a medical professional by “clear and convincing” evidence, subject to investigation at several levels and final review by a peer-review board, trained in the field.<sup>14</sup> *Id.* § 456.073. Yet Tampa’s Ordinance

---

<sup>14</sup> Sanctions for the violation of a statute must be proven by “clear and convincing” evidence. *See Dep’t of Banking & Fin. v. Osborne Stern & Co.*, 670 So. 2d 932, 933 (Fla. 1996); *Ferris v. Turlington*, 510 So. 2d 292, 294–95 (Fla. 1987).

only requires that a violation be proven by “the greater weight of the evidence” before a code enforcement magistrate. Tampa, Fla., Code of Ordinances § 9-108(1). The Florida Administrative Procedure Act prohibits this lesser “greater weight of the evidence standard” in licensure disciplinary proceedings. Fla. Stat. § 120.57(1)(j). So, the Tampa Ordinance creates two standards for therapy subject to discipline (whether inside or outside the City limits) and also has a different and less complete adjudicator, who uses a different and less rigorous burden of proof.

The practitioners’ appellate remedies are also greatly lessened by Tampa. A practitioner disciplined under the Tampa Ordinance would have an appeal right to the Circuit Court and review would be limited to the record below, not *de novo*. Fla. Stat. § 162.11. A practitioner disciplined under the statewide Department of Health statute is entitled to more robust rights—direct review in the District Courts of Appeal, with a *de novo* review of statutory interpretation and a factual review upon “competent, substantial evidence.” Fla. Stat. § 120.68; *Safirstein v. Dep’t of Health, Bd. of Med.*, 271 So. 3d 1178, 1180 (Fla. 3d DCA 2019).

As to professional discipline, the Ordinance occupies the same field as the Legislature but differs greatly from the statewide model adopted by the Legislature. The reason for this difference is clear. Under Florida law,

“professional disciplinary statutes are penal in nature.”<sup>15</sup> The Ordinance alters Florida law and makes professional disciplinary action not penal, but civil in nature.

Tampa’s divergent standard for punishing errant mental health therapy is relevant in the preemption analysis because it creates a danger of conflict with an area pervasively regulated, for which the Legislature has stated a policy of statewide uniformity. For this same reason the Florida Supreme Court in *D’Agastino* found state law impliedly preempted a local ordinance permitting police subpoenas in local police misconduct investigations. 220 So. 3d at 423–24. In *D’Agastino* the local ordinance reduced protections present in the statewide mechanism for investigating and disciplining police officers. *Id.* at 426. In Tampa, the local ordinance reduces protections present in the statewide mechanism for investigating and disciplining healthcare providers. Tampa does not complement protections the State gives to healthcare providers; it reduces them.

The Legislative requirement for “uniform discipline” exists because health care modalities are highly complex and dynamic, but they do not vary across the state. With due respect for the citizen legislators on the Tampa City Council, none

---

<sup>15</sup> *Cone v. State Dep’t of Health*, 886 So. 2d 1007, 1011 (Fla. 1st DCA 2004); *Fleischman v. Dep’t of Prof’l Regulation*, 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983).

are skilled in mental health issues,<sup>16</sup> nor are any of the City's code enforcement personnel. In contrast the Florida Department of Health, with its skilled adjudicatory bodies, is equipped to address this dynamic area of psychotherapy.

And dynamic it is, indeed. Although the City expresses confident certitude, the City's experts, one or both, expressly agreed with the following points:

- Minors can be gender fluid and may change or revert gender identity. Dkt. 192-2 at 38–40.
- Gender dysphoria during childhood does not inevitably continue into adulthood. Dkt. 192-2 at 85–87.
- Formal epidemiologic studies on gender dysphoria in children, adolescents, and adults are lacking. Dkt. 192-2 at 92.
- One Tampa expert testified there is not a consensus regarding the best practices with prepubertal gender nonconforming children. Dkt. 192-2 at 120–21.
- A second Tampa expert testified consensus does not exist regarding best practices with prepubertal gender nonconforming children, but a trend toward a consensus exists. Dkt. 192-1 at 159.
- Emphasizing to parents the importance of allowing their child the freedom to return to a gender identity that aligns with sex assigned at birth or another gender identity at any point cannot be overstated. Dkt. 192-2 at 123.
- One cannot quantify or put a percentage on the increased risk from conversion therapy, as compared to other therapy. Dkts. 192-2 at 131; 192-1 at 198–99.
- Scientific estimates of the efficacy of conversion therapy are essentially nonexistent because of the difficulties of obtaining samples following individuals after they exit therapy, defining success, and obtaining objective reassessment. Dkt. 192-1 at 136–37.
- Based on a comprehensive review of this work, the American Psychological Association 2009 SOCE Task Force concluded that no study to date has demonstrated adequate scientific rigor to provide a clear picture of the prevalence or frequency of either beneficial or harmful SOCE outcomes.

---

<sup>16</sup> Dkt. 190-2 at 93; Dkt. 133-3 at 25. At oral argument the City's lawyer conceded no council member had skilled knowledge in the field. The main sponsor of the Ordinance on the council was unaware of the difference between talk therapy and aversive practices, and testified that council and participating staff are untrained in the mental health field. Dkt. 190-2 at 36, 93.

More recent studies claiming benefits and/or harm have done little to ameliorate this concern. Dkt. 192-1 at 148.

- No known study to date [looking at 2014 article Dkt. 192-6 at 2] has drawn from a representative sample of sufficient size to draw conclusions about the experience of those who have attempted SOCE. Dkt. 192-1 at 149.
- No known study [looking at same 2014 article] has provided a comprehensive assessment of basic demographic information, psychosocial wellbeing, and religiosity, which would be required to understand the effectiveness, benefits and/or harm caused by SOCE. Dkt. 192-1 at 150.
- Although research on adult populations has documented harmful effects of SOCE, no scientific research studies have examined SOCE among adolescents. Dkt. 192-1 at 153.
- With extraordinarily well-trained counseling “in a hypothetically perfect world” it may be an appropriate course of action for a counselor to aid a gender-dysphoric child who wants to return to biological gender of birth. Dkt. 192-1 at 171–72.
- There is a lack of published research on efforts to change gender identity among childhood and adolescents. Dkt. 192-1 at 177.
- As of October 2015 no research demonstrating the harms of conversion therapy with gender minority youth has been published. Dkt. 192-1 at 180–81. In 2018 an article was published on youth but causal claims could not be made from that 2018 report. Dkt. 192-1 at 181.

As the citations above show, the City’s highly-credentialed experts, one or both, expressly agreed with the above bullet points. This illustrates the complex and dynamic subject matter of human gender and sexual preference. This shows the wisdom of the Legislature’s program of uniform statewide governance and defining and disciplining the field statewide by medical experts. The field of gender expression is especially complex. Tampa’s lay attempt at psychotherapy regulation crowds into this very complex, evolving area.

### **1. Specific Regulations for Medical Doctors (M.Ds.):**

After the lengthy set-up of the Florida Department of Health in Chapters 20 and 456, the Legislature then set forth practitioner-specific statutes. M.Ds. are more specifically regulated by Chapter 458—spanning 37 pages in the statute book. Fla. Stat. § 458. Expanding upon Chapter 456, this Chapter is entitled “Medical Practice.” Chapter 458 creates the Florida Board of Medicine to license and discipline M.Ds. This Board is comprised of 15 members appointed by the Governor subject to Florida Senate approval. *Id.* § 458.307(1).

Chapter 458 restricts certain dangerous psychiatric procedures such as electroconvulsive and psychosurgical procedures, *id.* § 458.325, but omits any reference to SOCE psychological treatment. It appears that the Florida legislature has considered SOCE regulation in the recent past,<sup>17</sup> but has not acted upon it. Committing medical (psychiatric) malpractice (defined as “failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure”) is grounds for discipline. *Id.* § 458.331(1)(t)(1) (citing Fla. Stat. § 456.50(1)(g)).

This far into the Court’s survey of Florida law it is apparent that the Florida statutes *already* provide the City with its desired protection against SOCE. The City and its experts adamantly assert that even non-aversive SOCE violates the

---

<sup>17</sup> H.B. 137, 2016 Leg. (Fla. 2016); S.B. 258 2016 Leg. (Fla. 2016).

prevailing treatment standard of care, and constitutes psychiatric, psychological, and counseling malpractice.<sup>18</sup> This is the essence of the Ordinance. The present Florida legislative scheme already outlaws such professional behavior, and it is subject to statewide discipline.

All the City, the City's Neighborhood Enhancement director, or the Assistant City Attorney need do if the SOCE they describe is detected within Tampa limits is file a complaint with the Department of Health. As the Board of Medicine notes, "Who can file a complaint? Anyone can file a complaint." Board of Medicine, Complaints Process FAQs, <https://flboardofmedicine.gov/complaints-process-faqs/> (last accessed Oct. 3, 2019).

The Florida regulatory scheme punishes and bars all mental health therapy that is beneath the prevailing standard of care. *See* Fla. Stat. §§ 458.331(1)(t)(1) & 456.50(1)(e) (adopting the tort "standard of care" from Fla Stat. § 766.102 for discipline). And, it obviously bars all unreasonably dangerous treatment. In this vein, the reason why the City has never reported SOCE to Florida disciplinary boards may be because the City has yet to find any in Tampa. Likewise, in the similar *Otto* case from Palm Beach County, the court noted that "[t]he Florida

---

<sup>18</sup> Dkt. 192-11, Spack Declaration at 3–4; Dkt. 192-2 at 131–33; Dkt. 192-3, Glassgold Declaration at ¶¶ 23, 41, 47, 51; Dkt. 189 at 21.

Department of Health had no records regarding complaints against medical providers regarding SOCE.” *Otto*, 353 F. Supp. 3d at 1264.

To complete the Court’s review of Chapter 458, it is noteworthy that Section 458.331 lists “grounds for disciplinary action” of M.Ds. Like Chapter 456, the Legislature in the final subsection notes “The purpose of this section is to facilitate uniform discipline . . . .” Fla. Stat. § 458.331(tt)(11). This legislative scheme does not contemplate divergent professional disciplinary standards among and between the Florida cities and towns.

The Florida regulatory scheme for medical doctors then goes beyond the statute book, to the Florida Administrative Code. Starting at Chapter 64B8-1.001, the administrative code stretches some 143 pages of regulations concerning how medical doctors must run their practices, their assistants, and how they must treat patients. The administrative code supplements and expands the disciplinary functions set forth in the statute book. Fla. Admin. Code 64B8-8.001. Practicing below the general standard of care is punishable by fines and sanctions ranging from one year probation and a \$1000 fine to a \$10,000 fine and permanent license revocation. *Id.* at 64B8-8.001(2)(t).

## **2. Specific Regulations for Osteopaths (D.Os.)**

The Tampa Ordinance applies to Osteopathic Medicine. The Florida Legislature regulates D.Os. through Chapter 459, Florida Statutes, entitled

“Osteopathic Medicine.” The 29 pages of this Chapter set forth the regulatory framework for osteopaths. The Chapter creates a gubernatorial appointed and senate-approved 7-member “Board of Osteopathic Medicine” to screen, license, and provide disciplinary framework for those practicing osteopathic medicine. Fla. Stat. § 459.004.

Discipline for osteopathic physicians is set forth in section 459.015 and that section repeats the legislative mantra: “The purpose of this section is to facilitate uniform discipline for those acts made punishable under this section . . . .” *Id.* § 459.015(11). Grounds for discipline include practice beyond the standard of care, and “[t]he board may establish by rule standards of practice and standard of care for particular practice settings . . . .” *Id.* § 459.015(1)(z). This statutory provision about the Board of Osteopathy’s ability to establish standards of practice by rule did not include any reference to Florida municipalities establishing osteopathic practice standards.

Florida’s regulation of osteopathic medicine is supplemented by the Florida Administrative Code, with separate and lengthy administrative code provisions albeit along the same lines as those administrative regulations appertaining to medical doctors. *See* Fla. Admin. Code 64B15. The administrative regulations for osteopathic physicians say nothing about local ordinances supplementing or contradicting the State rules.

### **3. Specific Regulations for Psychologists**

The Tampa's Ordinance also seeks to regulate licensed psychologists. Psychologists are subject to 21 pages of statutory regulation by Florida Statutes Chapter 490, entitled "Psychological Services." Fla. Stat. § 490. As with the other disciplines, this Chapter invokes a "Board of Psychology" appointed by the Governor and approved by the Florida Senate, that regulates the field from pre-license education to testing, professional behavior and practice standards, and discipline. *Id.* § 490.004. The statute includes the familiar requirement that the practitioner perform within "the minimum standards of performance in professional activities when measured against generally prevailing peer performance," or face discipline. *Id.* § 490.009(1)(r).

As with the other practitioners, Florida goes beyond the statute book and provides 31 pages of regulations in the Florida Administrative Code for psychologists. Fla. Admin. Code 64B19. The regulations cover licensure, limited licensure, discipline, consent for treatment for minors, special rules for treating juvenile sex offenders, etc. The regulations do not refer to local rules.

### **4. Specific Regulations for Licensed Counselors:**

Plaintiff Vazzo is a Florida-licensed marriage and family therapy counselor, and the Ordinance applies to him. Vazzo and his fellow practitioners are regulated under Chapter 491, Florida Statutes, entitled "Clinical, Counseling, and

Psychotherapy Services.” Fla. Stat. § 491. This 13-page statute sets up a disciplinary and regulatory 6-member appointed board known as the “Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling.” Fla. Stat § 491.004. The Chapter regulates the conduct of Vazzo and licensed therapists in this state, including discipline. *Id.* § 491.009. The Legislature specifically defines “mental health counseling” as “the use of scientific and applied behavioral science theories, methods, and techniques for the purpose of describing, preventing and treating undesired behavior and enhancing mental health . . . .” *Id.* § 491.003(9). This practice includes “behavior modification” to address “dysfunctions,” related to “behavioral disorders” and “sexual dysfunction[.]” *Id.* Gender dysphoria is listed in the American Psychological Associations Diagnostic and Statistic Manual of Mental Disorders (5<sup>th</sup> ed. 2013) (“DSM”),<sup>19</sup> and licensed counseling on that subject is clearly included in this statutory definition.

The disciplinary provisions of Chapter 491 make sanctionable any counseling practice that fails to meet the minimum standard of care “when measured against generally prevailing peer performance[.]” Fla. Stat § 491.009(1)(r). As with the other professions, the mental health counselor statute is accompanied by regulations in the Florida Administrative Code. Fla. Admin. Code

---

<sup>19</sup> See DSM at 451–59 for a discussion of this sensitive topic.

64B4. These 45 pages of administrative regulations control the qualifications, licensing, practice, and discipline in the entire licensed counselor area. No delegation to cities can be found.

Among the disciplinary sanctions for counseling beneath the prevailing standard of care are a \$5000 fine and permanent license revocation. *Id.* at 64B4-5.010(s). The rules contain a continuing professional education requirement for licensed counselors. Ongoing training courses are required but only from an approved list of courses and providers, as set forth in the regulations. *Id.* at 64B4-6.002.

The regulations add additional license requirements for Vazzo's specialty of marriage and family therapy. *Id.* at 64B4-22.110. That license requires additional course content in, among other subjects: i) psychopathology, defined as "the evaluation and classification of abnormal human behavior and psychiatric disorders in individuals according to current diagnostic standards (DSM IVTR and ICD9 or ICD10);" and ii) human sexuality theory and counseling techniques, defined as "a broad understanding of human sexual development, both normal and abnormal sexual functioning and appropriate counseling techniques for sexual dysfunctions;" and iii) psychosocial theories, defined as: "the interrelationship of psychology and sociology in understanding the growth and development of living human systems within their larger, social systems context. Courses in family

sociology, gender, anthropology or culture and ethnicity in counseling offer psychosocial awareness.” *Id.* at 64B4-22.110(5), (6), (8).

For the reasons noted above, the Court concludes that Florida’s substantive regulation of healthcare practices, modalities, and discipline is so pervasive that it occupies the entire field. The City’s Ordinance creates a danger of conflict with the Legislature’s broad program for the healing arts in Florida. The strong policy reasons for a statewide, uniform system of substantive healthcare regulation and discipline are clear, as is the Legislature’s intent for same.

*CONCLUSION*

Accordingly, the Court grants Plaintiffs’ motion for summary judgment, Dkt. 194, on Count VI. Tampa Ordinance 2017-47 is stricken under the doctrine of implied preemption. The Defendant is permanently enjoined from enforcing it. The Clerk is instructed to enter judgment for Plaintiffs and to close this case.

DONE AND ORDERED, at Tampa, Florida, on October 4, 2019.

*/s/ William F. Jung*

---

**WILLIAM F. JUNG**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

# Appendix



Code Change

ORDINANCE NO. 2017- 47

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, RELATING TO CONVERSION THERAPY ON PATIENTS WHO ARE MINORS, MAKING REVISIONS TO CITY OF TAMPA CODE OF ORDINANCES, CHAPTER 14 (OFFENSES); CREATING ARTICLE X, SECTIONS 14-310 – 14-313; AMENDING CHAPTER 19 (PROPERTY MAINTENANCE AND STRUCTURAL STANDARDS); AMENDING SECTION 19-4(a)(2), DEPARTMENT OF CODE ENFORCEMENT; DUTIES AND SCOPE OF AUTHORITY OF THE DIRECTOR; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, as recognized by major professional associations of mental health practitioners and researchers in the United States and elsewhere for nearly 40 years, being lesbian, gay, bisexual, transgender or gender nonconforming, or questioning (LGBT or LGBTQ) is not a mental disease, disorder or illness, deficiency or shortcoming; and

WHEREAS, the American Academy of Pediatrics in 1993 published an article in its Journal, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation;"<sup>1</sup> and

WHEREAS, the American Psychiatric Association in December 1998 published its opposition to any psychiatric treatment, including reparative or conversion therapy, which therapy regime is based upon the assumption that homosexuality is a mental disorder *per se* or that a patient should change his or her homosexual orientation;<sup>2</sup> and

WHEREAS, the American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Task Force") conducted a systematic review of peer-reviewed journal literature on Sexual Orientation Change Efforts ("SOCE"), and issued its report in 2009, citing research that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual

<sup>1</sup> <http://pediatrics.aappublications.org/content/pediatrics/92/4/631.full.pdf>  
<sup>2</sup> [https://www.camft.org/ias/images/PDFs/SOCE/APA\\_Position\\_Statement.pdf](https://www.camft.org/ias/images/PDFs/SOCE/APA_Position_Statement.pdf)

E2017-48  
E2017-8CH14  
E2017-8CH19

RECEIVED AS A  
CITY OF TAMPA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources;<sup>3</sup> and

WHEREAS, following the report issued by the APA Task Force, the American Psychological Association in 2009 issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts, advising parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth;<sup>4</sup> and

WHEREAS, the American Psychoanalytic Association in June 2012 issued a position statement on conversion therapy efforts, articulating that "As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice" and that psychoanalytic technique "does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression," such efforts being inapposite to "fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes;"<sup>5</sup> and

WHEREAS, the American Academy of Child & Adolescent Psychiatry in 2012 published an article in its Journal stating that clinicians should be aware that there is "no evidence that sexual orientation can be altered through therapy and that attempts to do so may be harmful;" that there is "no medically valid basis for attempting to prevent homosexuality, which is not an illness;" and that such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts; and that, for similar reasons cumulatively stated above, carrying the risk of significant harm, SOCE is contraindicated<sup>6</sup>; and

WHEREAS, the Pan American Health Organization, a regional office of the World Health Organization, issued a statement in 2012 stating: "These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements." The organization also noted that conversion therapies "lack medical justification and represent a serious threat to the health and well-being of affected people;"<sup>7</sup> and

<sup>3</sup> <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>  
<sup>4</sup> <http://www.apa.org/about/policy/sexual-orientation.pdf>  
<sup>5</sup> <http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender>  
<sup>6</sup> [http://www.jaacap.com/article/S0890-8567\(12\)00500-X/pdf](http://www.jaacap.com/article/S0890-8567(12)00500-X/pdf)  
<sup>7</sup> [http://www.paho.org/hq/index.php?option=com\\_content&view=article&id=6803%3A2012-therapies-change-sexual-orientation-lack-medical-justification-threaten-health&catid=740%3Apress-releases&Itemid=1926&lang=en](http://www.paho.org/hq/index.php?option=com_content&view=article&id=6803%3A2012-therapies-change-sexual-orientation-lack-medical-justification-threaten-health&catid=740%3Apress-releases&Itemid=1926&lang=en)

Printed as filed  
to court file

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

WHEREAS, in 2014 the American School Counselor Association issued a position statement that states: "It is not the role of the professional school counselor to attempt to change a student's sexual orientation or gender identity. Professional school counselors do not support efforts by licensed mental health professionals to change a student's sexual orientation or gender as these practices have been proven ineffective and harmful;"<sup>8</sup> and

WHEREAS, a 2015 report of the Substance Abuse and Mental Health Services Administration, a division of the U.S. Department of Health and Human Services, "Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth" further reiterates based on scientific literature that conversion therapy efforts to change an individual's sexual orientation, gender identity, or gender expression is a practice not supported by credible evidence and has been disavowed by behavioral health experts and associations, perpetuates outdated views of gender roles and identities, negative stereotypes, stating, importantly, that such therapy may put young people at risk of serious harm, and recognizing that, same-gender sexual orientation (including identity, behavior, and attraction) is part of the normal spectrum of human diversity and does not constitute a mental disorder;<sup>9</sup> and

WHEREAS, the American College of Physicians wrote a position paper in 2015 opposing the use of "conversion," "reorientation," or "reparative" therapy for the treatment of LGBT persons, stating that "[a]vailable research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons;"<sup>10</sup> and

WHEREAS, In 2016, the American Medical Association issued policy statement H-160.991, which expressly opposed the use of "reparative" or "conversion" therapy for sexual orientation or gender identity;<sup>11</sup> and

WHEREAS, The World Psychiatric Association issued a policy statement in March, 2016 on Gender Identity and Same-Sex Orientation, which stated, "There is no sound scientific evidence that innate sexual orientation can be changed. Furthermore, so-called treatments of homosexuality can create a setting in which prejudice and discrimination flourish, and they can be potentially harmful. The provision of any intervention purporting to 'treat' something that is not a disorder is wholly unethical;"<sup>12</sup> and

WHEREAS, The National Association of Social Workers ("NASW") issued a policy statement stating that "No data demonstrates that reparative or conversion therapies are effective, and in fact they may be harmful." The NASW went further and stated that "conversion and reparative therapies are an infringement to the guiding principles inherent to social worker ethics and values;"<sup>13</sup> and

<sup>8</sup> [https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS\\_LGBTQ.pdf](https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf)  
<sup>9</sup> <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>  
<sup>10</sup> <http://annals.org/article.aspx?articleid=2292051>  
<sup>11</sup> <https://www.ama-assn.org/delivering-care/policies-lesbian-gay-bisexual-transgender-queer-lgbtq-issues>  
<sup>12</sup> [http://www.wpanet.org/WPA\\_in\\_News.php](http://www.wpanet.org/WPA_in_News.php)  
<sup>13</sup> <http://www.naswdc.org/diversity/lgb/reparative.asp>

2025 RELEASE UNDER E.O. 14176

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

WHEREAS, The Agency for Healthcare Research and Quality issued a clinician’s guideline for practitioners who work with children and adolescents based on research provided by the American Academy of Child and Adolescent Psychiatry. It stated that “There is no empirical evidence that adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness, and caring, which are important protective factors against suicidal ideation and attempts;”<sup>14</sup> and

WHEREAS, At least two federal circuit courts of appeal have upheld bans on conversion therapy.<sup>15</sup> Both courts found that bans on conversion therapy did not violate free speech rights; nor did such bans run afoul of the Free Exercise Clause; nor were such bans vague or impermissibly overbroad. Further the courts found that counseling is professional speech, subject to a lower level of judicial scrutiny because the government has a substantial interest in protecting citizens from ineffective or harmful professional practices; and

WHEREAS, the City does not intend to prevent mental health providers from speaking to the public about SOCE; expressing their views to patients; recommending SOCE to patients; administering SOCE to any person who is 18 years of age or older; or referring minors to unlicensed counselors, such as religious leaders. This ordinance does not prevent unlicensed providers, such as religious leaders, from administering SOCE to children or adults; nor does it prevent minors from seeking SOCE from mental health providers in other political subdivisions or states outside of the City of Tampa, Florida; and

WHEREAS, City of Tampa has a compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and questioning youth, and in protecting its minors against exposure to serious harms caused by sexual orientation and gender identity change efforts; and

WHEREAS, the City Council hereby finds the overwhelming research demonstrating that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, and that being lesbian, gay, bisexual, transgender or questioning is not a mental disease, mental disorder, mental illness, deficiency, or shortcoming; and

WHEREAS, the City Council finds minors receiving treatment from licensed therapists in the City of Tampa, Florida who may be subject to conversion or reparative therapy are not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and

<sup>14</sup> <https://www.guideline.gov/summaries/summary/38417>

<sup>15</sup> King v. Governor of the State of New Jersey, 767 F.3d 216 (3<sup>rd</sup> Cir. 2014) and Pickup v. Brown, 740 F.3d 1208 (9<sup>th</sup> Cir. 2013)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

WHEREAS, the City Council desires to prohibit, within the geographic boundaries of the City, the practice of sexual orientation or gender identity change efforts on minors by licensed therapists only, including reparative and/or conversion therapy, which have been demonstrated to be harmful to the physical and psychological well-being of lesbian, gay, bisexual, transgender and questioning persons.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL  
OF THE CITY OF TAMPA, FLORIDA,

Section 1. That the Whereas Clauses are adopted as if set forth fully herein.

Section 2. That "Chapter 14, Article X" is created as follows:

**"CHAPTER 14, ARTICLE X, CONVERSION THERAPY"**

Section 3. That "Sec. 14.310. – Intent." is hereby created by adding the underlined language as follows:

**"Sec. 14-310. – Intent.**

The Intent of this Ordinance is to protect the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning youth, from exposure to the serious harms and risks caused by conversion therapy or reparative therapy by licensed providers, including but not limited to licensed therapists. These provisions are exercises of police power of the City for the public safety, health, and welfare; and its provisions shall be liberally construed to accomplish that purpose."

Section 4. That "Sec. 14-311. – Definitions." is hereby created by adding the underlined language as follows:

**"Sec. 14-311. – Definitions.**

(a) Conversion therapy or reparative therapy means, interchangeably, any counseling, practice or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides support and assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

Approved as to  
Form and Content

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

- (b) Minor means any person less than 18 years of age.
- (c) Provider means any person who is licensed by the State of Florida to provide professional counseling, or who performs counseling as part of his or her professional training under chapters 456, 458, 459, 490 or 491 of the Florida Statutes, as such chapters may be amended, including but not limited to, medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors. A Provider does not include members of the clergy who are acting in their roles as clergy or pastoral counselors and providing religious counseling to congregants, as long as they do not hold themselves out as operating pursuant to any of the aforementioned Florida Statutes licenses."

Section 5. That "Sec. 14-312. – Conversion Therapy Prohibited." is hereby created by adding the underlined language as follows:

"Sec. 14-312. – Conversion Therapy Prohibited.

It shall be unlawful for any Provider to practice conversion therapy efforts on any individual who is a minor regardless of whether the Provider receives monetary compensation in exchange for such services."

Section 6. That "Sec. 14-313. – Enforcement and Civil Penalties." is hereby created by adding the underlined language as follows:

"Sec. 14-313. – Enforcement and Civil Penalties.

- (a) This article may be enforced pursuant to Chapter 9, Article II of this Code.
- (b) The violation of Sec. 14-312 of this Division is deemed an irreparable or irreversible violation.
- (c) Each separate incident of a violation of Sec. 14-312 shall constitute a separate violation for enforcement purposes.
- (d) The fine for a first violation of Sec. 14-312 is \$1000.00. The fine for a second and subsequent violation(s) of Sec. 14-312 is \$5000.00
- (e) These penalties shall not preclude any other remedies available at law or in equity, including, injunctive relief in the circuit court."

Section 7. That "Sec. 19-4(a)(2). – Department of Code Enforcement; duties and scope of authority of the director" is hereby amended by adding the underline language as follows:

"Sec. 19-4(a)(2). – Department of Code Enforcement; duties and scope of authority of the director

(a)The director shall have all powers, duties and responsibilities to administer and enforce the following City Code chapters or sections: The director shall be deemed to be an officer for the purpose of enforcing the provisions of this chapter under authority provided in section 1-14 of this Code.

(1)Section 5-105;

Printed as to  
and Purposes

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

- (2)Chapter 14, articles III, IV, and X;
- (3)Chapter 19;
- (4)Chapter 21, articles I, II, III and V;
- (5)Chapter 22, articles I and III;
- (6)Chapter 25, article I;
- (7)Chapter 27."

**Section 8.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 9.** Should any section or provision of this Ordinance or any portion, paragraph, sentence, or word be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance.

**Section 10.** Authority is hereby granted to codify the text amendment set forth in Section 1 of this Ordinance.

**Section 11.** That this Ordinance shall take effect immediately upon its adoption.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON APR 0 6 2017.

*Luanna Galie Cepin*  
CHAIRMAN/CHAIRMAN PRO-TEM,  
CITY COUNCIL

ATTEST:  
*Shirley Fox-Knowles*  
SHIRLEY FOX-KNOWLES, CITY CLERK

APPROVED BY ME ON APR 1 0 2017

*Bob Buckhorn*  
BOB BUCKHORN, MAYOR

Approved As to Legal Sufficiency:  
E/S  
Ernest Mueller, Senior Assistant City Attorney

RECEIVED  
CITY CLERK  
APR 10 2017

# Tab 226

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

ROBERT L. VAZZO, ET AL., )  
 ) 8:17-cv-02896-WFJ-AAS  
 PLAINTIFFS, ) Tampa  
 ) September 24, 2019  
 v. ) 1:02 p.m.  
 )  
 CITY OF TAMPA, FLORIDA, )  
 )  
 DEFENDANT. )

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE WILLIAM F. JUNG  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:  
MR. ROGER K. GANNAM  
MR. HORATIO G. MIHET  
Liberty Counsel  
PO Box 540774  
Orlando, FL 32854-0774

For the Defendant:  
MR. ROBERT V. WILLIAMS  
MS. DANA LEE ROBBINS  
Burr & Forman, LLP  
201 North Franklin Street, Suite 3200  
Tampa, FL 33602

For the Amicus Curiae Equality Florida Institute, Inc.:  
MS. SYLVIA H. WALBOLT  
Carlton Fields Jordan Burt, PA  
4221 West Boy Scout Boulevard  
Suite 1000  
Tampa, FL 33601-3239

Court Reporter: Tracey Aurelio, CRR, RMR, RDR  
Federal Official Court Reporter  
801 N. Florida Avenue, 15th Floor  
Tampa, Florida 33602  
(813) 301-5448

Proceedings recorded by mechanical stenography,  
transcript produced by computer.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

(Proceedings commenced at 1:02 p.m.)

THE COURT: Good afternoon. Let's call the case, please.

THE COURTROOM DEPUTY: Yes, Your Honor.

Robert L. Vazzo, LMFT, individually and on behalf of his patients, and others, v. City of Tampa, Florida, Case Number 8:17-cv-2896.

Counsel, please state your appearances starting with counsel for the Plaintiffs.

MR. GANNAM: Good afternoon, Your Honor. Roger Gannam for the Plaintiffs.

MR. MIHET: Good afternoon, Your Honor. Horatio Mihet for the Plaintiffs. And we have with us this afternoon Plaintiff Robert Vazzo and Plaintiff Mark Culligan, representative for New Hearts as well.

THE COURT: All right. Thank you.

MR. WILLIAMS: Good afternoon, Your Honor. Rob Williams representing the City of Tampa. I'll let Ms. Robbins introduce herself.

MS. ROBBINS: Dana Robbins on behalf of the City of Tampa.

MS. WALBOLT: Sylvia Walbolt on behalf of the Amici.

THE COURT: All right. Well, good afternoon. Welcome, everybody. Thanks for coming in.

1 It's such both a pleasure and a challenge to have  
2 such great lawyering and work product. So I appreciate that  
3 from both sides. And thank you all for your patience.

4 You probably figured out I -- every time I took a  
5 look at that injunction piece, it was just so ephemeral -- I  
6 guess that's the right word -- evanescent, gauzy, just wasn't  
7 concrete enough, and I'm much more comfortable handling  
8 something on the merits, on the substance.

9 So in order to get things done, I try and put a  
10 deadline on things in-house. We are going to -- we, me and my  
11 crack staff, are going to meet and talk about this and then  
12 hope to get out a ruling by -- at least on my calendar I have  
13 it a week from Friday. So you won't be delayed any further.

14 Okay. So, you know, the City filed first. So why  
15 don't we just proceed that way. Unless anyone has an  
16 objection with that, I'll hear from the City first. Is that  
17 all right? And however you all want to do it. You can stand,  
18 you can sit. You can -- whatever you want. This is very  
19 informal.

20 So why don't I recognize the City first. And I want  
21 you to know I've read everything. I just finished Dr. Spack.  
22 I also read Dr. Glassgold, and I read everything that the  
23 Plaintiff has submitted as well, including a lot of those  
24 cases, you know, everything from Otto to -- you know, there's  
25 four or five pertinent First Amendment cases.

1 All right. So I'll recognize the City. And we don't  
2 have a clock. So with the two thoughts there's no clock, I  
3 don't want anybody to leave here when they haven't had their  
4 full say. And the caveat, the second caveat to that is all  
5 good lawyers are concise and that the mind can only absorb  
6 what the backside can endure.

7 With that, Counsel, you are recognized.

8 MR. WILLIAMS: Thank you, Your Honor. Rob Williams  
9 on behalf of the City of Tampa.

10 Your admonition reminds me of my high school English  
11 teacher's admonition about the length of an essay. Like a  
12 woman's dress, long enough to cover the subject, short enough  
13 to keep it interesting. So I'll try to follow that admonition  
14 in Your Honor's courtroom.

15 THE COURT: I thought your briefs were that way as  
16 well.

17 MR. WILLIAMS: Thank you, Your Honor.

18 Your Honor's comment about the motion for preliminary  
19 injunction and the legal issues that evolve upon all of us in  
20 this interesting case have caused me as a long-term lawyer to  
21 think long and hard about the application of the First  
22 Amendment in this case and in, frankly, in general, given the  
23 robust political environment that we live in today, we lived  
24 in when I started practicing law and ever since then.

25 So I think I can say with categorical assurance that

1 the City of Tampa respects and wants to protect the First  
2 Amendment and every aspect of it. And enacting the ordinance  
3 that is before Your Honor this afternoon and before the Court  
4 in general, the City of Tampa, I think, did about as good of  
5 job as one can do.

6           So before I get into the actual merits of the various  
7 motions that are in front of Your Honor, let me just provide  
8 what I think is a bedrock approach to this or any other First  
9 Amendment case as it relates to protecting the freedom of  
10 speech, yet also protecting governments, local, state, federal  
11 ability and, frankly, obligation to properly regulate its  
12 environment and behavior of human beings.

13           I reduced and I think the Supreme Court cases reduce  
14 down to two core values of what the First Amendment was all  
15 about. First and frankly foremost, in my opinion, is the  
16 importance of a robust marketplace of ideas as being the crux  
17 of the First Amendment. It's why we fought the revolution so  
18 that we could debate and say whatever we want instead of  
19 having a dictator or a king tell us what we should do. This  
20 ordinance accomplishes that, I think, with perfection.

21           The second core value that I identified is the  
22 freedom not to have a viewpoint imposed on me by the  
23 government. I have lots of people who impose their viewpoints  
24 on me, but they aren't the government. And this ordinance  
25 achieves that goal equally as well.

1           So with that as my starting point, I would like to  
2 address our motion for summary judgment, which I think is the  
3 first motion. I'm going to go, if Your Honor doesn't mind, in  
4 the order which my notebook is.

5           THE COURT: You got it.

6           MR. WILLIAMS: The question, I guess, that is really  
7 at the heart of this case is, first of all, what is the  
8 standard of scrutiny by which this court or any other court,  
9 wherever this goes, should test the language of this ordinance  
10 and so forth.

11           We have set forth our arguments in our submissions.  
12 And I'm not going to elaborate on that in depth, but I do want  
13 to start with something that I think is very important as a  
14 foundation for attaching this ordinance to a particular level  
15 of scrutiny.

16           The ordinance is very well crafted, and including in  
17 its contents are a number of legislative findings. And those  
18 legislative findings are very specific. They incorporate the  
19 numerous reports and studies by every national organization in  
20 this arena, the America Psychiatric Association, American  
21 Psychological Association, and so forth. And they adopt those  
22 reports as their findings, the legislative findings. That  
23 body of scientific evidence became the legislative findings  
24 and the purpose for this ordinance.

25           And towards the end of those legislative findings,

1 the city council also found that there were no other means  
2 that would effectively protect the children of the City of  
3 Tampa than what is embodied in this ordinance. And that was  
4 the product not only of the consideration of the other  
5 findings that preceded this penultimate finding but also to  
6 robust -- going back to the first value that I identified, the  
7 robust public hearings that took place in front of the city  
8 council whereby both sides of the argument appeared and made  
9 their positions known about the various pros and cons and whys  
10 and wherefores. And from those public hearings and from the  
11 various studies that become that consensus of scientific  
12 evidence, they adopted these legislative findings.

13 In short, this ordinance is designed to protect  
14 children from the harm of conversion therapy. And this  
15 ordinance is bottomed upon a vast overwhelming consensus of  
16 scientific thinking, data, reporting, and so forth. Of that  
17 there can be no doubt in my opinion.

18 The Supreme Court has said on multiple occasions, the  
19 most obvious of which is the Turner decision, that courts  
20 should give substantial deference to legislative findings by  
21 legislative bodies. The predictive knowledge of the  
22 legislative bodies as embodied in those findings is for the  
23 legislative branch, not for the judicial branch. The  
24 exception to that might be a situation where the legislative  
25 findings were not based on anything but superficial evidence,

1 such as, frankly, the Wollschlaeger case in my opinion.

2 This case, however, is quite the opposite. This case  
3 is the epitome of what an ordinance and what a legislative  
4 body should do when it decides to enact this type of  
5 ordinance.

6 THE COURT: Two questions. Notwithstanding the  
7 legislative deference, you would agree that this legislature  
8 had no particular knowledge or training in this field. There  
9 is not anybody on the city council that knew anything about  
10 counseling or medicine.

11 MR. WILLIAMS: If there was, I'm not aware of  
12 anybody.

13 THE COURT: And then the next question is -- and the  
14 reason why I ask that is an argument can be made -- and I'm  
15 sure your esteemed colleague will -- that, come on, Judge, we  
16 know what they did. They cut and pasted from Boca Raton and a  
17 couple other jurisdictions where this is happening.

18 And your comment -- and I think it is important that  
19 the finding was made by the council that there is no other  
20 means, no lesser means to effect this end.

21 Well, so here's your question. Certainly Spack, and  
22 I think Glassgold opined I think pretty clearly, and I think  
23 it's your position as well, that conversion therapy or SOCE,  
24 or whatever you want to call it, is beneath -- or violates the  
25 standard of care of these practitioners. It's outside the

1 standard of care.

2 I mean, does the City -- is that the City's position,  
3 that this behavior by these therapists as described in the  
4 ordinance is outside the psychological or counseling --  
5 whatever discipline we're in -- standard of care?

6 MR. WILLIAMS: Well, this isn't a medical malpractice  
7 case.

8 THE COURT: Well, I'm asking you. I mean, Spack  
9 opined on it. Your expert opined on it in his depo. I just  
10 read it. So is it the City's position that this type of  
11 counseling is outside the professional standard of care for  
12 the therapist or the psychologist or the medical doctor that  
13 does it?

14 MR. WILLIAMS: I think the answer is yes, but I think  
15 a more accurate way that I would articulate the City's  
16 position is that the conversion therapy runs totally against  
17 the majority consensus of thoughtful evidence on behalf of any  
18 number of experts in this field.

19 THE COURT: So it's outside the acceptable standard  
20 of care.

21 MR. WILLIAMS: Yes, sir. Yes, sir.

22 THE COURT: So then why couldn't you -- you know, a  
23 counselor -- as I read this statute, if he commits counseling  
24 or engages in counseling outside the standard of care, okay,  
25 there's a board and you complain against him. We have all

1 represented, as private practitioners, doctors.

2 Why couldn't the City, who perceived this counseling  
3 outside the standard of care, file a complaint on this  
4 person's license in Tallahassee, like the statute says there's  
5 a board enacted to do that, to adjudicate that and discipline  
6 and defrock, if punished, if the act is outside the standard  
7 of care? Why isn't that a least restrictive means that  
8 doesn't have anything to do with the First Amendment? You  
9 just file the complaint because it's outside the standard of  
10 care and you did it.

11 MR. WILLIAMS: That is an opportunity that anybody  
12 would have, but that --

13 THE COURT: Yeah. So would the City of Tampa.

14 MR. WILLIAMS: That would beg the question, Your  
15 Honor. The question is we want -- and it really is embedded  
16 in the ordinance itself, and let me read that because it goes  
17 to the very question that you are posing.

18 The very first paragraph makes it very clear that the  
19 intent of this ordinance is to protect minor children. Now,  
20 protect is prophylactic, in my opinion. And so if children  
21 are to be protected, you outlaw, you prohibit bad behavior.

22 THE COURT: So you just said -- well, we have got a  
23 prior restraint then, right?

24 MR. WILLIAMS: No, no, no, not a prior restraint.

25 THE COURT: I thought you said that this was -- when

1 it happens, they're punished, they get a fine.

2 MR. WILLIAMS: They could be.

3 THE COURT: It's not a prior restraint.

4 MR. WILLIAMS: No, not at all.

5 THE COURT: Okay. So begging the question -- the  
6 term you used means you are avoiding answering the question by  
7 discussing something else. The question is, the least  
8 restrictive means you said you have -- there are no lesser  
9 restrictive means to stop this in the City of Tampa. Of  
10 course, we know it never happened in the City of Tampa, but it  
11 might one day. The least restrictive means you say is this  
12 ordinance.

13 And my question to you is, why doesn't the Florida  
14 disciplinary rules that defrock or punish someone practicing  
15 outside the standard of care with a board already set up to do  
16 that, why isn't that a restrictive means to enforce the  
17 standard of care which you say is violated?

18 MR. WILLIAMS: Well, I'm not trying to avoid Your  
19 Honor's question. I want to make that clear.

20 THE COURT: I mean, you could do that. Instead of --  
21 I don't mean you personally or the City, but whoever  
22 complains, I assume there would be a complaint lodged with the  
23 City that Vazzo is over here, you know, in South Tampa doing  
24 this. They could complain to the State, because there's a  
25 board already set up for that, and say Vazzo is violating the

1 standard of care, punish him. Couldn't they do that?

2 MR. WILLIAMS: That's one thing they could do.

3 THE COURT: Okay. If you're right that what he is  
4 doing is outside the standard of care, then he gets punished.

5 MR. WILLIAMS: But that doesn't necessarily prohibit  
6 him from doing it and breaking the law and so forth. And  
7 that's the whole purpose of the statute. It's prophylactic.  
8 It's designed to prohibit something.

9 THE COURT: To prior restrain.

10 MR. WILLIAMS: Not to seek forgiveness but to protect  
11 it in the first place.

12 THE COURT: To punish that conduct, harmful conduct,  
13 right?

14 MR. WILLIAMS: Right.

15 THE COURT: Isn't that what the board in Tallahassee  
16 has done?

17 MR. WILLIAMS: They can do that too, but that doesn't  
18 make it prohibitive.

19 THE COURT: So we have two remedies, don't we?  
20 Tallahassee board, outside the standard of care, buddy, you  
21 are disbarred or you're fined or you're suspended. We have  
22 two remedies now, the city ordinance and the board in  
23 Tallahassee.

24 I mean, I'm representing to you that the Florida  
25 statute says it's a ground for discipline for counselors -- I

1 don't think they use outside the standard of care, but  
2 basically to deviate from appropriate therapy on a  
3 peer-reviewed basis. So this is supplemental, isn't it?  
4 Doesn't that remedy already exist?

5 MR. WILLIAMS: No.

6 THE COURT: Why not?

7 MR. WILLIAMS: Because you could apply that to any  
8 professional.

9 THE COURT: Psychiatrists, doctors.

10 MR. WILLIAMS: Lawyers.

11 THE COURT: Well, sure.

12 MR. WILLIAMS: There are things that lawyers can't do  
13 because they are against the law, and those same things would  
14 violate professional ethics. And so you would have a  
15 violation of the law that prohibits it, and you would also  
16 have an ethical matter that would cause you to lose your  
17 license perhaps or be suspended or whatever the case may be.  
18 And they're two different things. One is prohibitory --

19 THE COURT: So notwithstanding that there is a  
20 mechanism to punish therapy outside the standard of care, you  
21 say that's not good enough and the City needs this ordinance  
22 to punish this act which is outside the standard of care.

23 MR. WILLIAMS: The City has, first, I think, the  
24 obligation, given the overwhelming evidence in support of this  
25 prohibition, to enact this ordinance in order to protect its

1 minor children, it's citizens, children who are citizens,  
2 residents of the City of Tampa. It has that right. And  
3 therefore given the evidence, it has that obligation. And it  
4 does so, again as I said earlier, from a prophylactic point of  
5 view to prevent harm in the first place as opposed to punish  
6 in the aftermath.

7           If it is violated, obviously there is punishment that  
8 attaches to it. But what Your Honor is suggesting could apply  
9 to just about any course of conduct that would violate both a  
10 code of conduct in any professional context but is also a  
11 violation of law. There are two different -- although allied,  
12 they are two different approaches to the same problem, and  
13 they are not mutually exclusive.

14           THE COURT: The question is whether the City's  
15 ordinance is narrowly tailored to the least restrictive means  
16 given that that act that you say is bad, and certainly there  
17 is a bad history here on this aversive side, is already  
18 proscribed and punished by the state.

19           MR. WILLIAMS: You could have a professional who  
20 could care less about his or her license but might care a lot  
21 about being fined money for having violated the law. This  
22 does not have a criminal punishment component, but you  
23 could -- if it did, then the same principle would apply.

24           So a prohibition in a statute or an ordinance of this  
25 type has a different impact, it would seem to me, on the

1 parties to whom it applies than simply an after-the-fact  
2 punishment that might cause you --

3 THE COURT: So you are saying it works as a prior  
4 restraint.

5 MR. WILLIAMS: A prior restraint.

6 THE COURT: It puts the umbrella, the prophylactic  
7 umbrella over these children and prohibits them from  
8 speaking -- from attempting to speak, less they violate the  
9 prophylactic protection.

10 MR. WILLIAMS: It doesn't. It doesn't prohibit any  
11 of these counselors --

12 THE COURT: In therapy, I understand. As part of  
13 therapy to a minor in the city limits, we all got that. Okay.

14 MR. WILLIAMS: I want to make clear my position. The  
15 prohibition of this ordinance is very specific and very  
16 narrow, which goes I think in some part to your question. The  
17 ordinance very specifically states -- and if I may, I'll read  
18 it -- that it -- the prohibition is later on in the statute,  
19 but the definition, which is really the critical language,  
20 basically prohibits the performance, which is an act. You  
21 don't perform speech.

22 THE COURT: Actual therapy.

23 MR. WILLIAMS: With the goal -- with the goal of  
24 changing. Now, that four-word phrase is critical to I think  
25 what Your Honor is talking about and critical to the First

1 Amendment issues here. A counselor can talk about conversion  
2 therapy to a minor client and actually extol the virtues of  
3 conversion therapy. The counselor can talk about it in every  
4 way, shape, and form they want to, the pros, the cons, the  
5 whys, the wherefore, and they can even recommend that that  
6 child undergo conversion therapy. They simply cannot perform  
7 that act with the goal of change, the predetermined goal.

8 THE COURT: Apropos to that, let's go to scenario  
9 one.

10 MR. WILLIAMS: Your scenarios, Your Honor?

11 THE COURT: Number 1, yeah. A 16-year-old biological  
12 male identified with femininity and during pre- and early  
13 adolescence expressed himself and considered himself female.  
14 He dressed and acted female to the greatest extent possible.  
15 As he nears later puberty, he develops into a full male body.  
16 He isn't sure anymore. He starts to think he might want to  
17 align his feelings with his biological body, i.e., male. He  
18 wants to talk to a licensed family counselor about this.

19 And my question is, can he do that in the City of  
20 Tampa?

21 MR. WILLIAMS: Yes.

22 THE COURT: Okay. How come? Because it's not a  
23 predetermined goal.

24 MR. WILLIAMS: Correct.

25 THE COURT: All right. So Vazzo says, well, I don't

1 do predetermined goals. Do I discount that? Is that sort of  
2 a latter-day him trying to -- I mean, the last pleadings I  
3 read said this isn't an a priori. I guess that means  
4 predetermined.

5 MR. WILLIAMS: I think that's what it means. I'm not  
6 sure myself.

7 THE COURT: Is that sufficiently developed that maybe  
8 he doesn't fall under this statute, or he does other stuff as  
9 well?

10 MR. WILLIAMS: Well, if you apply the statute as it's  
11 worded -- I'll go back to that four-word phrase and the word  
12 "perform." If he doesn't perform conversion therapy with the  
13 goal of changing an individual's -- the goal of changing.  
14 That's the key thing. If he doesn't do that, then I think it  
15 would be very difficult for the City to enforce this ordinance  
16 against him because they would have to prove that he was doing  
17 it with a goal.

18 So he could, Dr. Vazzo could talk to the child about,  
19 as I said earlier, pretty much anything he wants to up to the  
20 point of saying, I recommend it, I think it would be good for  
21 you.

22 THE COURT: And how about scenario two?  
23 Seventeen-year-old female enters womanhood. She starts to  
24 feel a change in her sexual attraction. She goes to the  
25 library. There's actually some very thoughtful literature on

1 this in the public library. She now wants help and advice  
2 from a female psychologist.

3 And if you go online and type in LGBT friendly  
4 psychologists, there are plenty of them in there. She wants  
5 to change her outlook and become a -- she's no longer, you  
6 know, going to the religious thing she was raised with, you  
7 know, traditional gender -- not gender -- traditional sex  
8 roles. She wants to be a lesbian and express what is now her  
9 view. She wants help from this female psychologist to make  
10 this change. Can she do that in Tampa?

11 MR. WILLIAMS: Yes.

12 THE COURT: Even though -- so what's your position?  
13 She's not changing anything; she was always a lesbian?

14 MR. WILLIAMS: Well, I don't know -- in our  
15 hypothetical 17-year-old girl, I assume from Your Honor's  
16 hypothetical that she was -- one interpretation of that  
17 hypothetical is that this child was already a lesbian.

18 THE COURT: Well, what if she wasn't? As Spack will  
19 tell you, and I think Glassgold will tell you, that it's very  
20 fluid during puberty, both gender identity and -- whatever you  
21 call it -- sex attraction, sexual orientation are very fluid.  
22 And she says, well, by golly, I'm not going, you know, to the  
23 Southern Baptist Church anymore and I'm not going to be a  
24 cheerleader. I have this feeling. I'm changing. Okay?

25 MR. WILLIAMS: Whether she is --

1 THE COURT: She is going to change her sexual  
2 attraction because she's feeling that as she's now a woman.  
3 Can this counselor help her out in Tampa make that change?

4 MR. WILLIAMS: He can't provide conversion therapy  
5 with the predetermined goal of changing her. What he can do  
6 is talk to her. I'm not a counselor, at least not a mental  
7 health counselor. Hopefully I'm a decent legal counselor, but  
8 he or she can talk to this child.

9 THE COURT: And help her with the goal of changing to  
10 be a lesbian?

11 MR. WILLIAMS: Well, you know, that's when you get  
12 into semantics.

13 THE COURT: Well, isn't that what an ordinance is?  
14 It's words. It's English words. She wants to change her  
15 sexual orientation to be an out lesbian. She has had enough  
16 of this traditional old school, you know, raised in a  
17 traditional. Can she do that in Tampa?

18 It happens all the time. We all know that. You  
19 become an adult and you have a different outlook on life and  
20 you see things differently. Can this therapist help her in  
21 the city limits change her sexual attraction and develop into  
22 this full woman that she feels she is?

23 MR. WILLIAMS: Not with the predetermined goal of  
24 changing her. But if she, the child, is in the process of  
25 changing to -- if I understand Your Honor's comments, then can

1 he or she -- I don't want to being misogynist here -- provide  
2 help and assistance to that child as that child goes through  
3 this changing transition.

4           The counselor simply cannot perform the counseling  
5 with the predetermined goal of changing her, but there is a  
6 lot aside from that that this ordinance clearly allows, and  
7 advances even. A child who is 17 is going through this  
8 changing process, I'm assuming, and has a lot of thoughts in  
9 her mind and a lot of tug of wars emotionally and some angst  
10 and probably some parental and peer pressures and things like  
11 that. Can a counselor assist that child in dealing with all  
12 of that? Absolutely.

13           THE COURT: Now --

14           MR. WILLIAMS: And should. And should.

15           THE COURT: Because I know you, I know all of you in  
16 here, this is a very intimate, difficult, emotionally racked  
17 privacy, intimate thing, mystery of human existence that we  
18 are dealing with here. And then let's say that there's a  
19 complaint filed. This happens, okay, and one of the --  
20 someone who doesn't like Mr. Vazzo -- and he's not that  
21 popular in many quarters -- files a complaint. The City of  
22 Tampa law department is going to adjudicate whether Mr. Vazzo  
23 either talked and helped or whether this series of, I assume  
24 privileged, but series of counseling therapies had a goal. I  
25 mean, how is that going to be adjudicated practically? He's

1 just not going to do it in Tampa, right?

2 MR. WILLIAMS: I've actually given that question a  
3 great deal of thought.

4 THE COURT: This is so sensitive, so tactile to human  
5 essence that that's not going to happen. No Tampa magistrate  
6 or ALJ is going to adjudicate this. He is just not going to  
7 do it in Tampa and avoid the problem, right?

8 MR. WILLIAMS: Well, that may be true. But speaking  
9 from personal experience, in the early '70s when I started  
10 practicing law, one of the jobs that I had was the Assistant  
11 City Attorney in the City of Temple Terrace at a night court,  
12 much like the TV series by the way. And when the police  
13 officers out there or the code enforcement people out there  
14 had questions, they would call me. And I would have to make a  
15 decision as to whether under those facts and circumstances we  
16 should enforce that infraction. It wasn't a criminal. The  
17 worst thing we did was DUIs, which is not good. So I had to  
18 go through that charging decision as I guess a quote, unquote  
19 quasi-prosecutor. It was good training for a young lawyer. I  
20 have since gone that with Assistant State Attorneys and with  
21 Assistant U.S. Attorneys when they go through that process.

22 So to orient that background that I can speak  
23 personally about, I can go to the City of Tampa. And I think  
24 what would happen if a complaint was lodged with the code  
25 enforcement unit, that complaint would be sent down to the

1 City Attorney's Office. And the designated hitter, which I  
2 was for the City of Tampa -- or Temple Terrace, I should say,  
3 would have to look at the facts and circumstances.

4 I would think that he or she would do at a minimum  
5 the following: They would investigate it and make sure they  
6 had all of the facts and circumstances as best as those could  
7 be determined. And then to the extent that that investigation  
8 led to a conundrum that required expertise, the City could  
9 consult with experts to determine whether or not they should  
10 make that charging decision.

11 I say the charging decision because it has a criminal  
12 context to it, but it's an infraction, make that decision,  
13 that enforcement decision.

14 THE COURT: And the entire issue of whether he  
15 counseled her with a goal in mind or he just helped her out,  
16 because she's got all kinds of problems. She's got the daddy  
17 who is retired military. He is a deacon of the Baptist  
18 Church. This is a real problem in this hypothetical.

19 The question of whether it was a goal or just some  
20 talk, helping out through this process, all wrapped up, as we  
21 all agree, is kind of what the human soul and spirit and  
22 intimacy and all that. Your law is not vague? Your law is  
23 not imposing some vague standards on whether that's legal or  
24 illegal when they're talking in there in the therapy room?

25 MR. WILLIAMS: Not at all. I mean, I can analogize

1 it with federal statutes that I'm familiar with, 18 United  
2 States Code 1001. I have handled a number of those cases.  
3 What's material? What's nonmaterial?

4 I tried a case many, many decades ago where the trial  
5 court said it was material and the Fifth Circuit said it  
6 wasn't. I tried to get the prosecutor to convince him that it  
7 wasn't material, and it took the Fifth Circuit to tell both he  
8 and the district judge that it wasn't material. So that's a  
9 prosecution decision that I failed in convincing that AUSA not  
10 to charge my client. And I regret that because ultimately he  
11 prevailed but not after an awful lot of angst on his part.

12 In this case, I think you go through the same  
13 process. The Assistant City Attorney would have to -- as I  
14 said earlier -- assemble all the facts and circumstances and  
15 make a decision as to whether or not this case is one that  
16 should be enforced.

17 If the facts --

18 THE COURT: By what standards? Where are the  
19 standards? Just kind of made up? He told her, you know,  
20 throw away your Barbie dolls and dress different and that  
21 means it's a predetermined goal to change. I mean, what are  
22 the standards that the code enforcement people use?

23 MR. WILLIAMS: I think if I can take it from the  
24 extreme and perhaps work backwards a bit, let's assume a  
25 hypothetical whereby a 17-year-old girl who fits your

1 hypothetical comes to the counselor and says, I know I'm a  
2 lesbian, I don't want to be a lesbian, I want to go back to  
3 being a nonlesbian, and I understand from the Internet that  
4 you know how to do that. You are a conversion therapist.

5 THE COURT: That's illegal.

6 MR. WILLIAMS: And the therapist can say several  
7 things, at least two if he or she is in the City of Tampa. If  
8 they are in the City of Tampa, they can say, I can work with  
9 you, I can help you, I can -- we can discuss it, this process,  
10 this milieu of emotions that you are going through, but I  
11 cannot in the City of Tampa perform emergent therapy with the  
12 goal of changing you. I cannot do that. I can send you out  
13 to Temple Terrace.

14 THE COURT: Right. And we don't disagree on that  
15 one. The ordinance is easy. I didn't type that ordinance up.  
16 I'm trying to give you the hard ones.

17 And you would also agree with me that whatever the  
18 rule is here and however you divine what happened between the  
19 therapist and patient/client when they are discussing the most  
20 intimate of human things, whatever standard that is, which I  
21 understand you say is not vague, might vary over the 425  
22 municipalities in the State of Florida. It certainly will  
23 vary if they cross 50th Street into Temple Terrace.

24 That psychotherapy counseling rule that Tampa now  
25 has, we might have -- it's theoretically possible -- three or

1 four different rules in Hillsborough County. Maybe Plant City  
2 is a little more conservative. They don't want such a rule.

3 MR. WILLIAMS: If they had an ordinance like this?  
4 Is that what you're saying?

5 THE COURT: I'm just saying that you will agree with  
6 me that whatever standard this is, it could vary from  
7 municipality to municipality, and in fact now does so. In  
8 this county, there's at least two standards, Tampa's and  
9 everyone else's.

10 MR. WILLIAMS: It's not prohibited in any place other  
11 than the City of Tampa.

12 THE COURT: Right. So it's a different standard for  
13 counseling and psychotherapy depending which side of 50th  
14 Street you're on up there on the Temple Terrace border, right?

15 MR. WILLIAMS: I don't know that I can respectfully,  
16 Your Honor, agree with that, because to me the word "standard"  
17 assumes that it's legal to do so. In the City of Tampa, it's  
18 not.

19 THE COURT: Well, it's legal in Temple Terrace  
20 because they don't have an ordinance.

21 MR. WILLIAMS: Right.

22 THE COURT: And it controls what a psychotherapist  
23 may discuss in therapy with their minor patients.

24 MR. WILLIAMS: Right.

25 THE COURT: So that rule changes if you cross 50th

1 Street from Tampa into Temple Terrace.

2 MR. WILLIAMS: It does. There is no question about  
3 that, but in the City of Tampa I would think -- and that's all  
4 we are really concerned about in connection with this  
5 ordinance in this case is the boundary lines of the City of  
6 Tampa. I would think that the City Attorneys --

7 THE COURT: Well, Plaintiffs' not because they work  
8 all over the state.

9 MR. WILLIAMS: I'm sorry?

10 THE COURT: Go ahead.

11 MR. WILLIAMS: I would think that the standard for  
12 enforcing this ordinance, for implementing this ordinance -- I  
13 would hope would be very systematized. You get the complaint,  
14 you investigate it, much like any prosecutor, federal, state  
15 or local, you get all the facts and circumstances, and then  
16 you say to yourself do I have enough to make a charging  
17 decision, an enforcement decision? And if I don't, maybe I  
18 need expert help. Maybe I need -- in a tax case in federal  
19 court, maybe I need to get one of our tax guys.

20 THE COURT: Dr. Glassgold or get someone.

21 MR. WILLIAMS: Yes, exactly.

22 THE COURT: Let me ask you this: Isn't there already  
23 a board of experts in Tallahassee that adjudicates whether  
24 therapy is against the standard of care? Don't they already  
25 have experts up there lined up? There's a team, right? At

1 any given time, there's a board up there. So they don't need  
2 experts.

3 MR. WILLIAMS: Whether they need experts or not,  
4 that's a loaded question for me, Your Honor, because I have  
5 dealt with the board of medicine and I sometimes wonder what  
6 they have there, to be honest with you.

7 But on a more direct answer, there's a difference, it  
8 strikes me, between the enforcement of the specific language  
9 of this prohibition and a standard of care in front of a  
10 regulatory board. I see them as two different --

11 THE COURT: Third hypothetical. Now, Spack will tell  
12 you this happens. I read some of that stuff. Spack was  
13 the -- it really is two different things we're dealing with  
14 here. Gender expression and sexual orientation are -- you  
15 know, we combine them all. But Spack was the gender  
16 expression expert obviously. And this happens. He said it  
17 does.

18 A 17-year-old transwoman, that means a female who was  
19 born male, says this is not working, I'm unhappy as a woman,  
20 it was a mistake, I want to return back to being a male, and I  
21 need a mental health therapist to help me deal with this  
22 planned change in Tampa. I'm from Tampa. This is not  
23 working. I'm going to change back to being a male. It  
24 happens all the time according to Spack. It's not unusual.  
25 Can't do it in Tampa, right?

1 MR. WILLIAMS: Not with the goal of changing.

2 THE COURT: So that person, that transwoman has got  
3 to go to Temple Terrace.

4 MR. WILLIAMS: That transwoman can go to a therapist  
5 in the City of Tampa and maybe get all of the help she needs  
6 that falls short of the therapist having a predetermined goal  
7 of changing her back.

8 THE COURT: She says I'm done being a female, it was  
9 a mistake. You know, it happens maybe 5 percent of the time,  
10 but all right. Can't do it here.

11 MR. WILLIAMS: Your Honor, if I may, just to  
12 elaborate a little, much like a client in a legal context,  
13 they come in confused, they come in not being totally  
14 knowledgeable about things. They come in highly emotional.

15 I spent two hours Saturday morning with a Russian  
16 lady who was about as perplexed as anything about how we do  
17 things in this country. And by the time she was done, I think  
18 hopefully I had cleared a lot of things up for her because she  
19 had a predetermined decision as to what she was going to do.  
20 And she's not going to do that anymore, and it would have been  
21 foolish for her to go down that road in my humble opinion as a  
22 lawyer.

23 So a 17-year-old transwoman who comes into the office  
24 of a counselor, he can't go through the act, the conduct of  
25 performing with the goal of changing back, but he or she can

1 sit down and talk through it. And in that talk, the result of  
2 that discussion could help her a great deal so that the angst  
3 that she came in with is militated quite highly.

4 THE COURT: But if there's a predetermined goal, I'm  
5 done being female, I want to go back, they have to go to  
6 Temple Terrace.

7 MR. WILLIAMS: If there's a predetermined goal that  
8 she has and she says --

9 THE COURT: The patient has.

10 MR. WILLIAMS: Yes. And she says, Dr. Williams, I'm  
11 done. If you can't help me go back, if you can't effectuate  
12 that change through conversion therapy, then, yeah, you would  
13 have to go someplace else.

14 THE COURT: It's a lot more than conversion therapy,  
15 but it's psychotherapy and counseling. You have got to go to  
16 Temple Terrace for that.

17 MR. WILLIAMS: And there's nothing wrong with that  
18 counselor recommending somebody in Temple Terrace.

19 THE COURT: Who is not burdened by the ordinance.  
20 Tell me this. We all agree that the State of Florida law  
21 trumps municipal regulations, right, that are in conflict?

22 MR. WILLIAMS: Sometimes, if they are a true  
23 conflict.

24 THE COURT: It's usually the feds beat Florida. So  
25 why -- what you just told me, that in that instant the

1 transwoman has got to go to Temple Terrace. So we are just  
2 going to pretend that the Florida statute that reads as the  
3 following: "A patient has the right to access any mode of  
4 treatment that is, in his or her own judgment and the judgment  
5 of his or her health care practitioner, in the best interests  
6 of the patient", that's that Bill of Rights thing. So we just  
7 kind of slough that off. And Tampa is saying -- correct me if  
8 I'm wrong -- that's generally true but not in the City for  
9 SOCE therapy to minors. It doesn't apply to that transwoman  
10 even though she wants that and her doctor wants it. Florida  
11 statute is just aside. How do you deal with that statute?

12 It says, "Any mode of treatment that is, in his or  
13 her own judgment and in the judgment of the practitioner, in  
14 the best interest of the patient." Just say, well, they  
15 didn't really mean this because it's too dangerous.

16 MR. WILLIAMS: Well, I don't think you can take that  
17 patient's Bill of Rights to be that literal, in all due  
18 respect, because a patient may want a lot of things.

19 THE COURT: Yeah. If she wants heroin, I understand.  
20 So this isn't a heroin category.

21 MR. WILLIAMS: No, it's not, but the principle is  
22 still the same.

23 THE COURT: Well, it is. It's dangerous medical  
24 treatment is what you're saying --

25 MR. WILLIAMS: Right.

1 THE COURT: -- that the City has a right to outlaw.

2 MR. WILLIAMS: Exactly.

3 THE COURT: What case says phrenology? You know, if  
4 the patient wanted -- which I think is the practice of  
5 medicine by feeling the knots in one's skull, you are saying  
6 this is phrenology and the City can outlaw it and it's not  
7 medical care as considered by the Florida statute.

8 MR. WILLIAMS: Well, I'm not familiar with  
9 phrenology, to be honest with you.

10 THE COURT: You know what I mean.

11 MR. WILLIAMS: I do, Your Honor.

12 THE COURT: You agree with that. You are saying that  
13 SOCE or conversion therapy is not a mode of treatment as  
14 contemplated by this Florida statute.

15 MR. WILLIAMS: Because it's inherently harmful and  
16 potentially fatal any more than if I as a patient and fed up  
17 with my oncologist and I want to go to doctor whoever,  
18 Dr. Voodoo, and say I understand you've got some Amazonian  
19 root tap.

20 THE COURT: Psilocybin. I want mushrooms. Can't do  
21 it.

22 MR. WILLIAMS: You can't do that either because it's  
23 outlawed in the City of Tampa. The City has the right to do  
24 that as long as it has gone through the rigor, the discipline  
25 of determining that there's a basis for prohibiting that kind

1 of conduct. And that's exactly what they've done here,  
2 exactly what they've done here.

3 And I want to reiterate, Judge, that because of the  
4 narrow parameters of this ordinance, I think that counselors  
5 such as Dr. Vazzo in the City of Tampa have an awful lot of  
6 freedom to do all kinds of counseling that would probably help  
7 the vast majority of people.

8 They can't do the conversion therapy with the  
9 predetermined goal of changing, but as I said earlier, it  
10 strikes me as an old lawyer, 73, having counseled an awful lot  
11 of people who came to my office in a great state of  
12 consternation and I feel like I have helped them leave without  
13 that same state of consternation without changing a whole lot,  
14 but that's part of my purpose.

15 Your Honor will recall, and I remind people of this  
16 all the time, that the old letterhead used to say attorneys  
17 and counselors at law. And I believe a great deal in that  
18 counseling component of lawyering because that's what eases  
19 people's mind, and that's why I tell people call me on  
20 Saturday night. Don't lose sleep over it.

21 And I think this ordinance provides that flexibility,  
22 that freedom. It certainly doesn't impinge on the freedom of  
23 speech in any significant way whatsoever. In fact, it  
24 encourages what I've been talking about. You just can't  
25 perform -- and the word is "perform." It's in the ordinance.

1 It says perform with the goal, predetermined goal. So that is  
2 conduct, and we haven't gotten to that part of the argument,  
3 but I do want to reemphasize that the speech part of this is  
4 really not inhibited much, if at all.

5 And by the way, I don't think -- if I recall the  
6 pleadings, and forgive me if I'm wrong -- I don't think that  
7 the Plaintiff has asserted a conflict preemption argument.

8 THE COURT: No, not as a cause of action, but in the  
9 preemption issue -- implied preemption, the issue is whether  
10 Florida has, you know, like the thousand pound gorilla, sat on  
11 the entire subject matter. And when it erects a board to  
12 discipline therapists who exceed the standard of care and has  
13 a specific disciplinary procedure for such therapist doing  
14 something that you claim is beyond the standard of care and  
15 when it has various statutes which provide rights to patients  
16 that suggests it may not be a thousand pound gorilla but, you  
17 know, it's a pound or two on the scale anyway.

18 MR. WILLIAMS: Well, in brief response, because I  
19 don't think that's the issue that Your Honor has been focusing  
20 on, and maybe I shouldn't have even raised it, but as we've  
21 said in our submissions, the State of Florida or any state  
22 knows how to expressly preempt something, just like the  
23 federal government when it passed HIPAA back in 1995, I think  
24 it was.

25 THE COURT: Should I disregard this type of ordinance

1 that sort of meandered through a committee once or twice in  
2 Tallahassee and foundered and went nowhere? I think that's in  
3 this record, that this SOCE or conversion therapy law was kind  
4 of bubbled around in the legislature the last couple years and  
5 went nowhere. That's not relevant?

6 MR. WILLIAMS: It was dead on arrival.

7 THE COURT: Maybe. I mean, if it was, so my  
8 question, is there any relevance to that?

9 MR. WILLIAMS: I don't know that there is a lot of  
10 relevance. I would point out that in the recent case that we  
11 cited that was handed down on Friday, the Doyle case, State of  
12 Maryland, that was a state statute and not a city ordinance.

13 THE COURT: Which would be a lot stronger on  
14 preemption.

15 MR. WILLIAMS: It would be. I agree. But the State  
16 of Florida has not covered the field, to use that phraseology,  
17 in this area. And I think our submission makes very clear  
18 that that really, in my opinion, is not really an issue in  
19 this case.

20 I'd like to go back to where I started, if I may,  
21 Your Honor, because I think it would be appropriate for me to  
22 address this dichotomy of content-based versus  
23 content-neutral, if that's okay with Your Honor.

24 The Plaintiffs rely, of course, on Reed which is a  
25 fairly recent Supreme Court case that involves a sign

1 ordinance out in Arizona, nothing even remotely close to this.  
2 And it involves specific wording in that sign -- I was going  
3 to say language, but sign ordinance. And so that is your  
4 classic content-based statute ordinance where it says you have  
5 to say this or you can't say that.

6 Wollschlaeger is a similar type of statute where you  
7 can't ask your patient do you own a gun or words to that  
8 effect, very specific, very specific. That is your classic  
9 content-based statutory regime.

10 What we have here in this case is not even remotely  
11 close to that, because in this case, as I've said before, the  
12 objective of the ordinance is to prevent harm. That's the  
13 sole objective of this ordinance, as it says in the opening  
14 paragraph when it says here's the intent of this ordinance.  
15 And then, again, it narrowly, narrowly, narrowly proscribes  
16 the conduct that you cannot do in the City of Tampa.

17 The question then becomes is this ordinance  
18 content-based or content-neutral? If it's content-neutral,  
19 then of course one standard applies. And if it's  
20 content-based, a different standard applies. Our position is  
21 that it's content-neutral because it doesn't proscribe any  
22 specific speech of any kind whatsoever.

23 As I said earlier, in a counseling session the  
24 counselor can say just about anything he or she wants to say  
25 about conversion therapy, including saying to the hypothetical

1 teenage child that conversion therapy is I think a great form  
2 of therapy and you should seriously consider it, let's discuss  
3 it so I can tell you what it's all about and I can explain to  
4 you what the pros and the cons are. I think they can do that  
5 without violating that ordinance for hours on end. And I  
6 don't want to sound facetious, but I want to emphasize that  
7 the freedom of speech component is very broad, very broad  
8 indeed.

9           And the reason I say that is because unlike Reed, for  
10 example -- I'm using Reed as an example because they have used  
11 it in that vein -- the flexibility of the speech is wide open.  
12 And therefore, I go back to my two values, robust public  
13 debate, marketplace of ideas. This ordinance doesn't impinge  
14 on that in the slightest. If anything, it probably implicitly  
15 encourages it.

16           And as far as imposing a viewpoint, it doesn't impose  
17 any viewpoint whatsoever because it prohibits the performance  
18 of the therapy, not what you say. Not what you say. And so  
19 therefore to the extent that this Court wants to deem this  
20 even content-based, I would suggest that the flexibility of  
21 the scrutiny is appropriate.

22           Judge Rosenberg in her case down in West Palm Beach,  
23 the Otto case, I thought did a good job of reconciling all of  
24 the various doctrines of law that devolve upon these kind of  
25 things, and I would say -- I think I can say this and should

1 say it -- the First Amendment jurisprudence out of the Supreme  
2 Court is all over the map.

3 THE COURT: I think the word that Rosenberg used was  
4 morass.

5 MR. WILLIAMS: She's a federal judge. I'm not.

6 THE COURT: Did I mispronounce that? Morass. I  
7 don't know.

8 MR. WILLIAMS: It's hard to divine. It's very  
9 difficult to identify with any continuity. I kind of like  
10 continuity. I like to have a benchmark from which to operate,  
11 which is why as I went through the process of defending the  
12 City in this case, I had to frankly come to grips with myself  
13 with my own values as it relates to the First Amendment, and  
14 that's why I identify those two core values which I think are  
15 the bedrock of the First Amendment. That's why I continue to  
16 return to them.

17 This ordinance is hardly anywhere near remotely like  
18 Reed or even Wollschlaeger. Wollschlaeger, of course, was a  
19 statute that was enacted after I think six anecdotes, two of  
20 which were almost silly and the other four were just that,  
21 anecdotes. It's smacked of political motivation, and I'm not  
22 going to get into that part of it, but it also says you can't  
23 do this specific -- you can't ask this specific question: Do  
24 you own a gun or not? And there's various ways you could do  
25 that, but the essential message was do you own a gun. This

1 ordinance doesn't even come remotely close to that.

2           So to the extent that Your Honor feels compelled to  
3 even think of this as a content-based ordinance, I would  
4 submit that if you are going to apply strict scrutiny, it  
5 would be a flexible version of strict scrutiny. It is not a  
6 content-based ordinance. It is at worst, at worst -- to use  
7 that terminology -- a content neutral.

8           And the case law in the Eleventh Circuit and frankly  
9 the case law out of the Supreme Court of the United States  
10 provides that flexibility in terms of how you apply  
11 intermediate scrutiny to a content-neutral ordinance, or  
12 statute as the case may be.

13           And in this case, this ordinance passes those tests  
14 with flying colors. There can be no question, I hope, by even  
15 the Plaintiffs that the protection of minor children from harm  
16 is a paramount concern of any governmental entity, and any set  
17 of parents for that matter. That's Roman Numeral I.

18           Roman Numeral II, of course, is does this ordinance  
19 achieve that in a reasonable fashion? Is it narrowly tailored  
20 to achieve that fashion, and I think it is. I don't think  
21 there's any question that the City of Tampa went through a lot  
22 of care to adopt a statute that is narrowly tailored.

23           Now, let me punctuate that with this observation. I  
24 think I'm correct because the Doyle case was rendered on  
25 Friday. We got a copy of it, which was great so we had the

1 weekend. I have not read the Maryland statute, but it was  
2 quoted in the decision by the federal judge up in Maryland.  
3 That statute does not include the four words that I have been  
4 focusing on. That statute didn't say "with the goal of."  
5 This ordinance does.

6 And by including those four words, the City of Tampa  
7 has even more narrowly constrained the measure that they are  
8 using to protect their children, consistent with First  
9 Amendment doctrine as we read it from the Supreme Court and  
10 from other.

11 So as it relates to intermediate scrutiny, this  
12 ordinance passes with flying colors. If you were to even  
13 apply traditional strict scrutiny, I would submit to you that  
14 the compelling interest is still there. And the narrowed  
15 tailoring as we've discussed earlier in our colloquy, Your  
16 Honor, was done with almost perfection.

17 THE COURT: You know, compelling interest. On that  
18 point, you know, Otto noted that nobody has ever filed a  
19 complaint against a therapist with the Florida regulators for  
20 conversion therapy. And on that, whether it's a psychiatrist,  
21 which would be the Board of Medicine, no one has ever filed a  
22 complaint in the State of Florida. They couldn't find one.  
23 And of course, there is no instance of this ever happening  
24 with consent or not consent in the City of Tampa.

25 You know, I mean, I read your response to the request

1 to admit. Is that irrelevant, or is that relevant? Because  
2 if there's no -- you know, your colleague is going to say it's  
3 just a big will-o'-the-wisp and the whole thing is just for  
4 content reasons to shut us down because we're bad. You say  
5 we're bad and you want the imprimatur of the government, but  
6 there's never been any incidence of this happening.

7           And Ms. Walbolt makes a good point. We don't have to  
8 wait until some child hurts themselves or is injured because  
9 of this, but is it the fact that maybe in an entire state  
10 there's never been an instance of this, at least in the record  
11 we have, which is Otto and this record, that's not relevant to  
12 their argument that this is a political content-based event?

13           MR. WILLIAMS: I think it is totally irrelevant, Your  
14 Honor. And the reason I think it is totally irrelevant is  
15 because as the father of an almost 14-year-old, my child isn't  
16 going to be the poster child for this. She is not going to be  
17 the guinea pig. So I'm glad -- I don't live in the city, but  
18 if I did, I would be happy that we have this ordinance in the  
19 City of Tampa.

20           You could say that about so many ordinances and  
21 statutes that prohibit things. There has been -- it's very  
22 difficult to enforce sometimes, and oftentimes there are very  
23 few instances that you can point to, but that begs the  
24 question. The overwhelming evidence is that it's harmful and  
25 potentially fatal. And --

1 THE COURT: Yeah, although --

2 MR. WILLIAMS: -- Ms. Walbolt said that, and I  
3 remember when she said it.

4 THE COURT: I have read good -- like you, I kind of,  
5 as I noted in your comment in the deposition -- I kind of read  
6 these in lieu of Sominex and chamomile tea when I'm trying to  
7 get to sleep, but I have read a bunch of them. They don't --  
8 your colleagues point out that it's not quite as stark as you  
9 make it. And I think the deposition of Dr. Glassgold, you  
10 know, it wasn't exactly -- especially with the juvenile gender  
11 expression cases.

12 MR. WILLIAMS: You mean the evidence --

13 THE COURT: The clarity -- assuming at some point you  
14 are calling on me -- maybe not if it's low scrutiny. There  
15 seems to me there's three levels, but if it's intermediate or  
16 strict, I do have to adjudicate and weigh these and conclude,  
17 do I not, that the basis is, you know -- whatever the word  
18 is -- extremely heightened basis for this conclusion that it's  
19 dangerous? I have to review all these attachments, all these  
20 what I call law review articles, peer-reviewed journals. And  
21 I understand you say it's abundantly clear, it's a no-brainer  
22 that it's across the board bad news, but I have to make that  
23 finding, don't I, unless I determine that it's the lowest  
24 level rational basis test?

25 MR. WILLIAMS: I think what you have to do is give

1 substantial deference to the findings of the legislative body,  
2 as I said at the outset of my presentation. And that is  
3 embodied in the legislative findings. And those legislative  
4 findings go back to Dr. Glassgold. She was the chairman of  
5 the APA committee that rendered that report. There is nobody  
6 in the country that knows it better than she does.

7 THE COURT: And I read her depo, and it's just not as  
8 just airtight as -- I will grant you it's very strong.

9 MR. WILLIAMS: Very strong indeed.

10 THE COURT: Okay. And it's not quite the level of  
11 phrenology or doping people with psilocybin.

12 MR. WILLIAMS: But, Your Honor, it is so  
13 overwhelming. And if you read the list --

14 THE COURT: Yeah. There's a horrible history of  
15 aversive conversion therapy.

16 MR. WILLIAMS: And the case law out of the Supreme  
17 Court doesn't require what I call, I think in one of my  
18 submissions, metaphysical certainty. You're never going to  
19 get that. I don't care what the topic is.

20 THE COURT: Right, and I agree with your point you  
21 made in one of your recent pleadings. You are not required to  
22 have a triple blind 386, you know, Johns Hopkins University  
23 subject test, subject to 16 peer reviews.

24 Let me ask you a question. You mentioned kind of  
25 family. I also -- you think about these things as a parent.

1 Historically in Florida these are minors. Some of them we  
2 might be talking about 12-year-olds. And the parent or the  
3 guardian -- I'll just use the term parent -- kind of was the  
4 captain of the ship.

5 We just had a case here where the parent wasn't  
6 giving the child leukemia treatment, and that was  
7 countermanded. But did the City even -- I didn't see a whole  
8 lot in the record, and maybe I missed it, that they gave kind  
9 of, you know, parental rights and informed consent with  
10 parents. Did they give that much shrift, and where would that  
11 be in the record? It just seems like they blew by it. And  
12 the reason why is -- because there are parents, you know,  
13 maybe not among the set that we all travel in, there are  
14 parents that care a lot about this, and they've got a  
15 ten-year-old kid. They don't have any say in this?

16 MR. WILLIAMS: To answer your specific question, Your  
17 Honor, you will see some in the reports that are set forth in  
18 the legislative findings, but more acutely in this case it  
19 came up I think in both of the public hearings.

20 THE COURT: Right.

21 MR. WILLIAMS: The transcripts are in the public  
22 hearings, and we can double-check that. And I think that -- I  
23 mean, you have to give the legislative members -- I mean, the  
24 members of the city council here are pretty impressive to me  
25 with the devotion they give to the job that they have

1 undertaken.

2 THE COURT: They work hard. The problem is none of  
3 them have any background in psychotherapy or counseling.

4 MR. WILLIAMS: No.

5 THE COURT: You don't need to go through all their --  
6 I'm very familiar with them having lived here since the mid  
7 '80s. And they are citizen legislators and well respected,  
8 but I'm not sure one of them is learned in this field.

9 MR. WILLIAMS: No, but I think common sense. I mean,  
10 they've made a big deal about how the enforcement crowd is  
11 just high school graduates. That frankly offends me almost  
12 because my father-in-law who was about the brightest guy I  
13 ever knew was a high school graduate. And these city council  
14 people certainly have common sense. When it comes to parental  
15 consent, I have to believe that they were listening.

16 THE COURT: And the ruling is, as far as SOCE therapy  
17 on minors, parental consent is eviscerated. It's not going to  
18 happen. There's no opening or potential for a hearing or an  
19 exception if the parent in the city limits wants a 12-year-old  
20 to confer in therapy with the goal to change gender  
21 preference.

22 MR. WILLIAMS: If you add performance with the goal  
23 of changing, that's the key phrase.

24 THE COURT: The parent is out of luck.

25 MR. WILLIAMS: Anything beyond that, which is pretty

1 much the universe, the therapist can do.

2 THE COURT: Right.

3 MR. WILLIAMS: And to go back to what I said, common  
4 sense dictates that before I decide whether I should consent  
5 to something, I would want to rely on other people and so  
6 forth. Hopefully my clients and your clients when you were  
7 practicing law relied on our judgment because hopefully we  
8 knew what we were talking about. And sometimes I wonder if I  
9 know what I'm talking about, but the consent issue did come up  
10 in the public hearings. And I have to believe that in that  
11 context people gave it serious thought because I'm sure, if  
12 not all of them, a number of those council people are in fact  
13 themselves parents.

14 THE COURT: Sure. Of course.

15 Is there a Florida statute that says parents have the  
16 right to control their child's health care decisions? There  
17 must be. I haven't looked at it closely. I probably should.

18 MR. WILLIAMS: I don't have an accurate answer to  
19 that. In my household, my wife is the boss and she is the  
20 statute.

21 THE COURT: Yeah, me too. And I have been chided, by  
22 the way, recently about having a skeet gun in the garage after  
23 my daughter came back from her last pediatrician visit. They  
24 warned me it needed to be better secured according to the good  
25 doctor.

1 MR. WILLIAMS: I had to get rid of mine when we  
2 became parents.

3 THE COURT: Right.

4 MR. WILLIAMS: My wife is not bashful. I'm sure your  
5 wife isn't either.

6 In any event, I don't want to dismiss or dilute the  
7 importance of parental consent because I'm a parent and it's  
8 very important to all of us as parents. But it was  
9 considered, and I think it's imbued into the legislative  
10 findings because they all adopted it.

11 Your Honor said earlier maybe they just rubber  
12 stamped this stuff. I rather doubt that. When you have two  
13 public hearings -- I don't know if you were able to read  
14 Councilman Maniscalco's deposition.

15 THE COURT: I did.

16 MR. WILLIAMS: And he's a very thoughtful guy, very  
17 impressive guy.

18 THE COURT: But he never gave a thought ahead of time  
19 to aversive versus nonaversive. Just poosh, out it all goes.  
20 We're not even going to think about that.

21 MR. WILLIAMS: But if you read the whole thing -- and  
22 I'm sure you did -- very thoughtful guy, and I think that he  
23 probably is an example of what everybody else did. Maybe not  
24 to the extent that he did.

25 THE COURT: My impression was that he decided to do

1 this because someone just told him, a friend or something  
2 suggested why don't you do this, this would be a good idea. I  
3 didn't think he tried to do it because he was aware of  
4 particular, in his knowledge and history, particular victims.

5 MR. WILLIAMS: Well, actually he testified to  
6 childhood experiences with friends of his who had grown up  
7 with, shall I say -- I would call it parental abuse if you're  
8 abusing your child without trying to sit down and talk to  
9 them.

10 THE COURT: I thought the impetus on it was some  
11 supporter that said I'm suggesting you do this.

12 MR. WILLIAMS: In his deposition, you will read that  
13 he testified as to specific instances of friends of his who  
14 went through frankly --

15 THE COURT: Something like that.

16 MR. WILLIAMS: -- hell with the parents who just  
17 disapproved of all of that. So it was more than just a  
18 constituent starting the ball rolling. He actually had  
19 personal experience with, apparently as I recall it, dear  
20 friends of his. So it was up close and personal. Let's put  
21 it that way. Great guy and a very thoughtful guy.

22 I want to make sure --

23 THE COURT: You have all the time in the world. I  
24 saw you looking at your watch. Mr. Williams, I don't want  
25 anybody to leave here -- and I know I've been dominating and

1 annoying, but I so enjoy fleshing these issues out. So all  
2 the time in the world. And if anybody needs a break, they've  
3 just got to throw their hand up and we'll take a break, at  
4 least anybody on this side of the bar.

5 MR. WILLIAMS: I'm in good shape. And I frankly  
6 prefer to have a hot bench as the saying goes. It makes it  
7 more fun, frankly. Hopefully for both sides of the equation.

8 We have said in our submissions -- I don't want to  
9 ignore some issues. And I assume I will have a chance to  
10 rebut whatever they put up.

11 THE COURT: Of course.

12 MR. WILLIAMS: I want to touch the bases as we go  
13 along. I've already talked about how I think in First  
14 Amendment jurisprudence and First Amendment common sense, I  
15 went back to the core values that courts should strike the  
16 appropriate balance depending on the harm at one end and the  
17 freedom at the other end.

18 And I would urge the Court to adopt that approach,  
19 but I want to address one other item that we have asserted in  
20 our submissions which the Plaintiffs took great umbrage at,  
21 and that's the secondary effects doctrine which is bottomed  
22 upon basically three Supreme Court cases, one of which is from  
23 the City of Erie, which I spent some time with in the summer.  
24 So I'm familiar with the City of Erie. Nice town. I think  
25 that doctrine, if the Court is looking for something to hang

1 its hat on, I think it fits like a glove here.

2 Now, the doctrine stands for the following  
3 proposition, I would submit and as we have argued in our  
4 motions and memoranda. The City of Erie is a good example,  
5 and I'm going to use it since I was there this summer. They  
6 banned public nudity. That's pretty broad. You just can't  
7 run around naked in the City of Erie, Pennsylvania. And the  
8 reason that they did so is because they had the goal, the  
9 objective, the motive behind it was to hopefully reduce crime  
10 in the City of Erie.

11 That was the essence of what that case was all about.  
12 And of course one of the, I guess, strip joints sued and they  
13 didn't like it because public nudity was their business model,  
14 I guess. I won't go into the details because I don't think  
15 it's important. I found it a bit amusing, frankly, some of  
16 the comments in that case.

17 But that aside, if Erie is a classic example of the  
18 adoption of the secondary effects doctrine -- which goes like  
19 this. If the ordinance is content-based on its face, if you  
20 will, but the City's motive was to prevent harm, then the  
21 Supreme Court in that case deemed that ordinance to be  
22 content-neutral and used a lower form of scrutiny. It was as  
23 simple as that. That's the way I read it, and I think that's  
24 the only way you can read that case, and you can apply it to  
25 the other cases as well.

1 We have cited the Flanigan case in the Eleventh  
2 Circuit. It's an unreported case, but I think it's persuasive  
3 under Eleventh Circuit jurisprudence.

4 This case follows that same became paradigm. The  
5 intent of the ordinance, as I said earlier, is set forth in  
6 black and white in the ordinance itself. It says we want to  
7 protect minors. In essence, that's what it says. That's the  
8 purpose of the ordinance. That's the motivation for enacting  
9 the ordinance right off the bat, right out of the box, and  
10 then they go into the definition of the thing.

11 So this ordinance -- and it has to be unrelated to  
12 the speech. I mean, that's the other component of the  
13 secondary effects doctrine. It has to be unrelated to the  
14 speech.

15 Well, think about it. In Erie the speech was  
16 expressive speech, I guess public nudity. And I'm confident  
17 some people see that as a form of expression, and I think it  
18 is. I think it can be.

19 Here there is no speech that's being prohibited. All  
20 that's being prohibited is the performance of a medical -- or  
21 excuse me -- a counseling modality with the goal of changing.  
22 And so there is no relationship whatsoever between the motive  
23 to prevent harm and the so-called speech involved because the  
24 speech is virtually nonexistent.

25 As I've said over and over again over the last hour

1 and a half, this ordinance allows the counselor to pretty much  
2 say anything he or she wants as long as they are not  
3 performing -- to use the language of the ordinance --  
4 conversion therapy with the goal of changing.

5           So if you read between the lines of the secondary  
6 effects doctrine, it has stricken me that -- it struck me -- I  
7 should say it better. It struck me what the Supreme Court is  
8 doing is saying you know what? Localities have a right to  
9 regulate. And we as judges shouldn't be acting as quasi  
10 appellate legislative bodies to say that their wisdom in  
11 enacting this for the local arena is bad.

12           And so if the objective of that local ordinance is a  
13 good objective, prevent harm, whatever the harm may be -- in  
14 Erie it was crime -- and we will deem that ordinance to be  
15 content-neutral and thereby allow it to be judged by a lower  
16 standard than the strict scrutiny that is advanced in the Reed  
17 case.

18           And to me that's an eminently sensible way of  
19 approaching these sometimes thorny questions that are raised.  
20 The law is just legion that federalism applies. And local  
21 legislatures, city councils, county commissions, state  
22 legislatures should have the freedom to legislate because they  
23 are in the best position to know what's best for their  
24 constituents. And that's exactly what the secondary effects  
25 doctrine in my opinion addresses.

1           And so going to this case, in my opinion at least,  
2 and I would advance that to Your Honor, the harm in this case  
3 is probably more palpable and more -- the nexus is pretty  
4 clear there as opposed to I don't know how public nudity  
5 prevents crime in Erie. I thought it was a pretty nice place.  
6 I haven't checked their crime statistics since that ordinance  
7 was adopted, but apparently the Supreme Court -- not  
8 apparently. The Supreme Court said that's fine by us. We  
9 applied the secondary effects doctrine. We deem -- we deem  
10 that ordinance to be content-neutral not content-based and  
11 thereby apply a different scrutiny level. And in that case,  
12 as in the other cases, the ordinance was allowed.

13           This case is very similar to that. So whether you  
14 look at it in terms of an ordinance that is arguably  
15 content-based but is at the lower end of harm, using my two  
16 harm values, or as the product of the secondary effects  
17 doctrine, the level of scrutiny cannot be realistically  
18 commonsensically in our system of a Republican/Democratic  
19 system cannot be any more than strict -- excuse me --  
20 intermediate scrutiny.

21           Otherwise, as the courts have said over and over  
22 again, local legislatures are going to have their hands tied.  
23 They are going to be afraid to do anything. They are going to  
24 be afraid to do anything. If the courts don't adopt that  
25 approach, I think that legislative bodies are really going to

1 be concerned about what they can and cannot do without facing  
2 expensive lawsuits.

3 I note that -- over the weekend I happened to note --  
4 it's not part of the record but I'll comment. It's public  
5 record, public knowledge. Fort Carson, Colorado, gave up its  
6 fight out there because they just couldn't afford it anymore.  
7 They had \$300,000 in that case and they just said "no mos,"  
8 we're done. We have potholes to fill and roads to fix and  
9 things like that.

10 So I will leave that, if I may, Your Honor, unless  
11 Your Honor has some questions. We've already talked about the  
12 subject matter.

13 Likewise, we have addressed in our motion for summary  
14 judgment the ordinance does not discriminate based on  
15 viewpoint. I don't think I need to dwell on that because I've  
16 already talked about how the freedom of speech is very, very,  
17 very, very, very broad here and not constrained really at all.  
18 So whether it's viewpoint, subject matter, or somewhere in  
19 between, this ordinance doesn't discriminate about pro  
20 conversion therapy or con conversion therapy. A therapist can  
21 talk about both or either one, or none for that matter.  
22 There's no constraint whatsoever in this ordinance that  
23 prevents that viewpoint from being advanced, either one of  
24 those viewpoints. It's certainly not overbroad, and it's  
25 certainly not a prior restraint as we set forth in our

1 submissions.

2 I'm going through my motion. And we've touched a lot  
3 of these bases, perhaps not in the order we set forth in our  
4 motion, but I want to make sure I'm not ignoring something  
5 that perhaps shouldn't be ignored. And I don't think I need  
6 to elaborate more on what we already have in our submission.

7 So let me turn, if I may, to our response to their  
8 motion for summary judgment. And there is a quote that I  
9 think is very pertinent to this case. And it is quoted from  
10 *Rumsfeld v. Forum for Academic and Institutional Rights*, which  
11 actually quotes a 1949 Supreme Court decision verbatim. So it  
12 didn't originate with the Rumsfeld decision. It originated  
13 back in 1949.

14 And it says, "It has never been deemed an abridgment  
15 of freedom of speech or press to make a course of conduct  
16 illegal merely because the conduct was in part initiated,  
17 evidenced, or carried out by means of language, either spoken,  
18 written, or printed." And that's the Rumsfeld case that we  
19 cite in our case.

20 And the Sorrell case is similar to that as well. And  
21 they cite to these older case. So this is bedrock law. This  
22 is bedrock law. And we cited that because we have taken the  
23 position, as I said earlier, that this ordinance is not a  
24 regulation of speech. It's a regulation of a specific  
25 therapeutic modality. And I won't bore you with reaffirming

1 that.

2           The NIFLA case left the door wide open for what we  
3 are talking about here. And it reaffirmed Casey, which is  
4 another Supreme Court case which I think is probably as close  
5 to this case as one can get aside from the Otto case or the  
6 Maryland case we've been talking about. But it's the Supreme  
7 Court case that reaffirmed -- NIFLER reaffirmed Casey's  
8 holding and stated that when speech is tied to a medical  
9 procedure conducted by a licensed professional, it is subject  
10 to reasonable regulation by the State or the City or whoever.  
11 That's exactly what we have here.

12           It is consistent with engrained Supreme Court  
13 jurisprudence First Amendment doctrines. And for that reason,  
14 we should not consider it otherwise.

15           They have also related to the Holder case. That's an  
16 interesting case, for me at least, because I have talked to  
17 people who belong to the PKK. And I understand the stuff  
18 that's going on over there by talking to those people. I  
19 haven't given them material assistance, I want the Court to  
20 know, but I have talked to them. And it's an interesting  
21 group.

22           And the Plaintiffs seem to identify the Holder case  
23 with this case as if they are almost identical. And they are  
24 about as far apart as you can get. Holder, of course,  
25 involved two groups: One, the group out of Sri Lanka that's

1 the Tamil tribe down there that's been fighting for liberty  
2 for decades and finally gave up I think about ten years ago;  
3 and the Kurds in Northern Iraq, Southern Turkey, parts of  
4 Syria, parts of Iran, and the PKK which the Turkish  
5 government, of course, deems to be terrorists. So does our  
6 government.

7           Whether they are or not, as the old saying in the  
8 Revolutionary War goes, "One man's patriot is another man's  
9 Tory," and that kind of stuff. I'm not going to get into  
10 that. That's not the point of my bringing it up.

11           What is the point of my bringing it up is that  
12 Holder, as an analogue to this case is a poor example of what  
13 we're talking about.

14           The conduct in this case, as I've said, is very  
15 limited, very narrow, purposely so in order that the freedom  
16 of speech is not only protected but enhanced.

17           Nothing in Holder -- nothing in Holder, Your Honor,  
18 altered the holding in Casey. In fact, it reinforced the fact  
19 that Casey is the paradigm case that we need to use for this  
20 case, not Holder, because the conduct in Holder is so far  
21 removed from the conduct in this case that it is, in my  
22 opinion, almost legally irrelevant.

23           I'll let the Plaintiffs make their argument and  
24 perhaps respond after they do so, but I wanted to touch that  
25 base so Your Honor didn't think I'm ignoring it.

1 I mentioned the Flanigan case, to go back to the  
2 secondary effects case. And I think it's relevant simply  
3 because, while it's an unreported case, it is persuasive.

4 THE COURT: They count with me. Those people grade  
5 my papers.

6 MR. WILLIAMS: I understand. But it is a clear  
7 indication that the secondary effects doctrine is alive and  
8 well in the Eleventh Circuit, as well as in the Supreme Court  
9 of the United States.

10 We've talked about substantial deference. We've  
11 talked about the empirical evidence of harm. I should remind  
12 the Court -- in our response, we have reminded the Court about  
13 the SAMHSA report which postdated the APA report but  
14 confirmed, I think, everything in the APA report, if not more  
15 so.

16 And then more recently you have the peer-reviewed  
17 2018, which was just last year, Ryan study that provided or  
18 said that it's three times more likely for those who were  
19 subjected to the conversion therapy to attempt suicide than  
20 others. So the harm is palpable. The harm is real. The harm  
21 is very, very dangerous, including the potential for fatal  
22 harm.

23 We have a number of motions that are pending before  
24 Your Honor. And we filed our -- we both filed motions as it  
25 relates to the experts. And so I should probably address

1 that. But if Your Honor doesn't mind before I switch to that  
2 gear, could we have a short break?

3 THE COURT: Sure. And then we will hear the expert  
4 piece. So why don't -- do y'all want to take 15 minutes?

5 MR. WILLIAMS: That would be fine.

6 THE COURT: We will meet you back here at quarter  
7 'til.

8 (Recess taken from 2:30 p.m. until 2:46 p.m.)

9 THE COURT: All right. Thank you.

10 Mr. Williams, you still have the floor.

11 MR. WILLIAMS: Thank you, Your Honor.

12 We were going to move on to the expert opinions, but  
13 in reflecting on this afternoon's session up until the break,  
14 in reviewing Your Honor's three scenarios, I wanted to make  
15 sure that I had communicated to you answers to your questions  
16 that were direct and cogent.

17 If there is any question in Your Honor's mind about  
18 what the counselor can or cannot do, I want it to be clear  
19 that all three of these hypothetical children can receive  
20 counseling in the City of Tampa. And the counseling is broad  
21 and uninhibited, and it can deal with all of their emotions,  
22 all of the things that we talked about at some length this  
23 morning -- or this afternoon I should say.

24 The only thing they can't do -- if I didn't make it  
25 clear this afternoon, please let me clarify it right now --

1 the only thing they can't do, as I said again, is they cannot  
2 engage, perform conversion therapy with the predetermined goal  
3 of changing back or changing, one way or the other.

4           And in saying that, the phrase "conversion therapy"  
5 is the defined in the ordinance very clearly and very  
6 specifically, but I don't want the Court to think that  
7 conversion therapy isn't a well known concept in the  
8 psychological community, and the legislative findings  
9 obviously confirm that fact.

10           Your Honor had suggested or at least raised the  
11 question of whether or not a professional regulatory sanction  
12 wouldn't be a sufficient remedy of some sort. Well, from the  
13 City's point of view, I'm not sure the City would have  
14 standing to do it, Number 1. I probably should have said  
15 that, although I think it's obvious that the City doesn't  
16 really have that power. A child is hardly likely to do  
17 something like that. So who would? Who knows? Maybe  
18 parents, maybe a stranger, maybe a friend. Who knows? But  
19 certainly the City doesn't have it.

20           And as happens in a lot of those regulatory  
21 sanctioning processes, it takes a long time. And it is not  
22 preventative; it is after the fact. And so therefore in that  
23 sense, it is clearly not an adequate remedy to the potential  
24 harm that is set forth in all of these findings.

25           And there's nothing unclear about what I -- hopefully

1 what I just said, because conversion therapy, as I said, is a  
2 very well known concept in the psychological and psychiatric  
3 counseling profession. So there's no mystery here about what  
4 it entails. And that is, I think, reinforced by the fact that  
5 all of these organizations have said it's not good, don't do  
6 it. So therefore, I wanted to make sure that I confirmed that  
7 point.

8           And last, if it is also not clear to Your Honor --  
9 and I think it should be, but I want to make sure that I made  
10 this clear -- the ordinance itself is so narrowly tailored as  
11 to allow an abundance of speech, as I just indicated, and  
12 prohibit a very narrow, well known procedure that has been  
13 condemned by every major society in the United States of  
14 America. And that was the purpose of the statute, of the  
15 ordinance, and that's set forth in the ordinance itself.

16           So I don't want to dwell on that any more than I  
17 already have, but I do want to make sure that I was clear  
18 about that as it relates to --

19           THE COURT: And you know, you are clear. And your  
20 position has been clear. I'm just not real sure that the  
21 literature is all that clear. If there was a scale or a  
22 preponderance or whatever, you would win hands down.

23           So like the guidelines, I know Spack said he didn't  
24 like them, but the guidelines, APA guidelines which are  
25 December of 2015, so they're not that old.

1 As I understand this ordinance, if a child -- we are  
2 talking about gender expression now. If a child, biological  
3 male expresses a female gender, the ordinance prohibits the  
4 therapist from counseling with the purpose -- with the  
5 predetermined goal of getting the child to reorient back to  
6 the biological expression. In other words, we have got a born  
7 male. He's now expressing a female gender expression. And  
8 what you are telling me in the City is that in the city limits  
9 the therapist cannot perform therapy with the goal of having  
10 that child express back to the biological status.

11 I mean, that appears to me to be what the ordinance  
12 says. You can't have the predetermined goal to get the child  
13 back to change. So then we've got this APA that says,  
14 "Emphasizing to parents the importance of allowing their child  
15 the freedom to return to a gender identity that aligns with  
16 sex assigned at birth or another gender identity at any point  
17 cannot be overstated."

18 In other words, it seems to suggest that a lot of  
19 kids go back to their -- gender dysphoria happens in  
20 preadolescent children. And a lot of them revert back to  
21 their biological, and allowing them to do that cannot be  
22 overstated, but the therapist can't help with that?

23 MR. WILLIAMS: No. I don't think the ordinance  
24 prohibits that at all. What the ordinance says is you can't  
25 embark on the process of performing a treatment, a conversion

1 therapy modality treatment, practice, whatever you want to  
2 call it, with the predetermined goal.

3 THE COURT: Change, but it says --

4 MR. WILLIAMS: The objective, the goal of changing as  
5 opposed to with the goal of working with the child.

6 THE COURT: Of allowing -- okay. So you can't -- you  
7 can't engage in therapy with the goal of changing, but you can  
8 with the goal of allowing the child the freedom to return to  
9 the gender identity.

10 MR. WILLIAMS: Sure. It says --

11 THE COURT: Isn't that remarkably vague? You are  
12 going to have some ALJ determine that Vazzo either did or did  
13 not do that?

14 MR. WILLIAMS: Well, if you go further into the  
15 definition, Your Honor, it says, conversion therapy, again, a  
16 well known treatment modality which has been, you know,  
17 castigated by every organization known. It does not --

18 THE COURT: I know you always say that, and you  
19 generally win heavily on -- you took the -- you sat through  
20 Glassgold's depo. It's not quite that stark. Okay. It's not  
21 quite that stark, especially on gender identity. I have read  
22 your depo line by line. Anyway, go ahead.

23 MR. WILLIAMS: It's not a hundred percent. I'm not  
24 arguing that point, but I think the great weight of authority,  
25 using that terminology, clearly is in favor of what we are

1 talking about here.

2 THE COURT: All right. So the APA guidelines say  
3 that it cannot be overstated to emphasize to parents the  
4 importance of allowing the child the freedom to revert to the  
5 biological expression.

6 MR. WILLIAMS: Sure. This ordinance doesn't --

7 THE COURT: Doesn't that suggest that oftentimes  
8 children will revert, meaning change back to their biological  
9 expression, but Vazzo can't advise them with that goal in  
10 mind? Can't therapy them with that goal in mind?

11 MR. WILLIAMS: He can't implement, perform the  
12 therapy --

13 THE COURT: Provide therapy with that goal in mind.

14 MR. WILLIAMS: The ordinance says as follows:  
15 "Conversion therapy does not include counseling that provides  
16 support and assistance to a person undergoing gender  
17 transition or counseling that provides acceptance, support,  
18 and understanding of a person or facilitates a person's  
19 coping, social support, and development, including sexual  
20 orientation," et cetera, et cetera, "so long as such  
21 counseling does not seek to change sexual orientation or  
22 gender identity."

23 So if you're not trying to change it, you can  
24 certainly allow the child herself to go through that process.  
25 You can certainly counsel the child on how to deal with all of

1 that. The ordinance doesn't prohibit that in the slightest.  
2 It leaves the door wide open as to what the counselor can do  
3 other than to effectuate, perform conversion therapy with the  
4 goal of change.

5 THE COURT: So the counselor may emphasize, may  
6 emphasize the child's freedom to return to the biological --

7 MR. WILLIAMS: Sure, of course.

8 THE COURT: So he just can't therapy with the  
9 predetermined goal to get them there. It just -- it gets a  
10 little gauzy on some of these what I call law review articles.

11 And then here we've got this abstract by -- you know,  
12 this has got to be a learned -- well, of course I don't know.  
13 He's from Columbia University, Meyer, and he's talking about  
14 gender expression fading. And some of the numbers are huge.  
15 Spack's depo said those gender expressions fade out maybe as  
16 much as 80 percent when a biological male expresses female  
17 fading.

18 And this Columbia University professor of clinical  
19 psychology has developed a cost-effective treatment that  
20 speeds up the fading process. And he says that would be  
21 beneficial. I mean, isn't that close to violating the statute  
22 if he did it in Tampa?

23 MR. WILLIAMS: I don't think so because --

24 THE COURT: All right. So he is expressing a female  
25 gender. And he's likely, if you go with statistics, according

1 to Spack, that that will fade. He may just be a male  
2 homosexual. It might -- in rarer cases he might be a male  
3 heterosexual, but it is likely that it will fade, it will  
4 change.

5 Well, Meyer here, Meyer-Bahlburg from Colombia says  
6 have therapy with the goal in mind to speed up that change.  
7 And that seems like this guy isn't a crank, is he? I mean,  
8 it's in the clinical -- what journal is it?

9 MR. WILLIAMS: But the ordinance doesn't really  
10 interfere with that process. Because the way I understand  
11 what you're talking about, Your Honor, that therapeutic  
12 modality wouldn't seek to change the sexual orientation or  
13 gender identity.

14 THE COURT: It would speed up the change. "We expect  
15 that we can diminish these problems if we are able to speed up  
16 the fading of the cross-gender identity that will typically  
17 happen in any case." So they take these children and they  
18 start to fade. So then they have therapy to hasten the return  
19 back to the biological gender.

20 MR. WILLIAMS: Counsel the children in their own  
21 natural hastening process, that's not seeking to change --

22 THE COURT: You can speed it up but -- you can speed  
23 up the change, but you can't change.

24 MR. WILLIAMS: You can counsel the minor child in  
25 just about any way you think as long as you're not seeking to

1 change. That's your goal. That's your goal. They already  
2 have the goal.

3 THE COURT: All right. You can take steps to speed  
4 up the normal fading which typically happens by adolescence of  
5 this gender presentation. That's what this guy says.

6 MR. WILLIAMS: Well, that's what that guy says, but  
7 the ordinance allows the counselor to counsel the client in a  
8 way that may speed it up, may slow it down. The counselor can  
9 assist the client in any way he or she thinks is appropriate  
10 from a professional point of view. Just can't -- I know we've  
11 talked about it.

12 THE COURT: A priori goal.

13 MR. WILLIAMS: Yeah. You can't have that  
14 predetermined goal from the outset. But if you think about it  
15 in terms of a continuum, counseling is an ongoing process.  
16 And during that counseling process, the child could go through  
17 any number -- or an adult for that matter -- any number of  
18 emotional states that may speed it up, slow it down.

19 And part of what counseling does, and this ordinance  
20 doesn't prohibit it, is assist them in terms of dealing with  
21 all of that. That's not prohibitive. That's not prohibitive  
22 at all because that's not the predetermined goal of changing.

23 Predetermined goal means this is what we're going to  
24 do. We're going to get there. Hell or high water, we're  
25 going to get there. And that's what this prohibits, but it

1 doesn't prohibit in any way, shape, or form the counselor  
2 helping the client go through this process, whether it speeds  
3 it up, slows it down, or somewhere in between.

4           Hopefully I have answered your questions as to --

5           THE COURT: Yeah. It's just -- okay. And whether he  
6 sped it up or he actually planned to change it is some ALJ  
7 that we're going to get over there in city hall and have a  
8 little trial on that.

9           MR. WILLIAMS: Well, the first decision would be  
10 whether or not the facts and circumstances are sufficient to  
11 enforce it in the first place. And as I said earlier, some  
12 cases may be very easy. Other cases may require the benefit  
13 of expert consulting to determine whether this is a case that  
14 involves that. I certainly think that the City Attorney's  
15 Office is totally competent to use experts.

16           THE COURT: Although they have never done one before,  
17 any psychotherapy. There'll always be a first time.

18           MR. WILLIAMS: Always a first time for everything,  
19 but they have used experts in other scenarios. Zoning. I can  
20 think of one. They use it there. In fact, one of my partners  
21 does it. Just like bankruptcy courts use health care lawyers  
22 when they have health care issues that are independent experts  
23 to guide them. That's what the City Attorney's Office  
24 obviously is prepared to do if they think there's any doubt  
25 about the case.

1           And again, I go back to what I think is the plainly  
2 obvious approach, and that is you have to investigate all the  
3 facts and circumstances and make an enforcement decision,  
4 whatever that may entail. And this ordinance certainly  
5 embraces the notion of expert consultations to determine  
6 whether this ordinance was violated by this conduct and these  
7 facts and circumstances.

8           I want to make sure that I've answered all of your  
9 questions and there's no ambiguity in terms of what --

10           THE COURT: No. I appreciate your answers.

11           MR. WILLIAMS: Thank you, Your Honor.

12           Let me then turn to the experts. We filed our motion  
13 addressing the experts that the Plaintiffs put forth. And I'm  
14 sure you've read the transcripts of Dr. Rosik and Dr. Hudson.

15           Let me focus on Dr. Rosik because our motion  
16 addressed two components of the Daubert standard, and that is  
17 first and foremost the relevancy argument. And a starting  
18 point for that analysis is actually the legislative findings  
19 themselves, which I think the cases are legion that this Court  
20 should give not only deference but substantial deference.

21           THE COURT: I give deference to them. What do I do  
22 about these cases that they cited to Dr. Glassgold that kind  
23 of go on and on about how there's not enough data, we don't  
24 really know? Just kind of -- I mean, there were a few of  
25 them. I've got them tabbed here. You don't want me to cite

1 them to you. They kind of go on and on. Well, there's not  
2 enough studies, and it's mostly articles she cited. Well, do  
3 you agree with this statement, Doctor, that there's not enough  
4 studies to determine efficacy of the safety of SOCE? I mean,  
5 there's probably, you know, half a dozen or more of these in  
6 her depo.

7 MR. WILLIAMS: If you -- what they did was they  
8 picked --

9 THE COURT: Cherry picked little items, of course.

10 MR. WILLIAMS: That's exactly what they did. If you  
11 read the totality of all of those reports, there is one  
12 compelling conclusion that you reach, and that is that  
13 conversion therapy is bad stuff and it causes harm. And  
14 that's the point of the legislative findings. Federal courts  
15 shouldn't be interfering with the protective judgments of  
16 legislative bodies who have gone through the trouble to go  
17 through that process.

18 So that gets to the expert witnesses. If you read  
19 Dr. Rosik's deposition -- I remember vividly because his  
20 methodology basically is, I think, basically political. In  
21 other words, he kept saying left of center, right of center  
22 and conservative versus liberal. In a nutshell, what he says  
23 is all of these organizations are a bunch of liberals who  
24 don't give the other side of the coin fair play.

25 Well, whether you agree with that or not is, in my

1 opinion, not the point. The point is, is that a legitimate  
2 methodology by which to reach an opinion. I say no, and I  
3 think Daubert says no. And I think the relevancy issue comes  
4 into play, as I said, because of the legislative findings.  
5 Because once those findings are given deference, then the  
6 relevancy becomes a moot point in many ways.

7 Just because they disagree, which is what they do,  
8 they disagree with that overwhelming majority consensus, that  
9 doesn't -- that doesn't debunk the legislative findings of the  
10 city council when they adopted that majority consensus.

11 And so whether Dr. Rosik disagrees for any number of  
12 reasons in his case -- I'm using his as the paradigm here --  
13 because he thinks that those guys are a bunch of liberals and  
14 they don't give the conservatives a fair shake, that begs the  
15 question -- whether it's true or not true is not the question.  
16 The question is, is that a basis upon which to debunk and  
17 effectively emasculate the legislative findings.

18 Our position is, no, it's not even relevant. But  
19 then you get to the point of whether or not the opinions of  
20 their experts even get to the point where they measure up to  
21 the Daubert standard. And we articulated that in our motion,  
22 in our submissions and so forth. And it's pretty obvious that  
23 their positions and opinions are not consistent with generally  
24 accepted standard of care. They are the exception to it.  
25 They are the minority report. They are the people that

1 disagree with the generally accepted, but that's not what  
2 Daubert is all about just because they disagree. And we  
3 outlined, of course, all of the various reports set forth in  
4 our motion and in our argument.

5 Dr. Rosik and Dr. Hudson are really not qualified, as  
6 we say in our submission, to discredit the objectivity of  
7 those professional organizations. They can disagree with them  
8 all they want, but that doesn't emasculate the consensus that  
9 is evidenced by all of those professional organizations and  
10 the reports as, frankly, Dr. Glassgold went through in great  
11 detail.

12 So on that basis, their expert opinions should be  
13 disqualified and rejected and excluded because they don't  
14 assist the Court in any way, shape, or form in any way that  
15 will help Your Honor resolve this question. They don't cite  
16 to any reliable evidence that conversion therapy works. All  
17 they do is throw stones at the majority. That's all they do.

18 They can't show anything that it actually works.  
19 And, in fact, the majority reports that we have talked about  
20 for the last two or three hours certainly are reports that  
21 stand for the proposition that conversion therapy, it only  
22 doesn't work, it's very dangerous.

23 So I don't want to repeat all of the arguments in our  
24 motion, but I do want you to understand that we filed that  
25 motion because we believe that Your Honor should ignore their

1 experts. And I would reinforce the fact that Dr. Glassgold  
2 was the chairman of the study group, the subcommittee or  
3 whatever it was called that created and led to the report by  
4 the APA.

5 And that APA report, as I recall, was 2009. This  
6 ordinance was passed in 2017, but in between there you had the  
7 SAMHSA report, and then more recently you had the Ryan study.

8 So all of the consensus that is embodied in the APA  
9 report and followed by all of these other well known  
10 organizations has been corroborated and resupported by the  
11 SAMHSA report, which is a federal report, as Your Honor knows,  
12 and the Ryan study.

13 There's no question that the evidence before this  
14 Court is that conversion therapy is bad, it's potentially  
15 fatal, and there's no evidence that it works. So we ask the  
16 Court to reject those opinions for the reasons we've  
17 articulated in our submissions. We replied to their response  
18 I think in specific detail as it relates to the SAMHSA report  
19 and the Ryan study and so forth. And I don't think it would  
20 be helpful to reiterate that, but I think it does bear  
21 repeating that as Judge Rosenberg in Otto that further  
22 research on minors to determine certain things to harm would  
23 be unethical, and that's why it doesn't exist. But if you go  
24 back through those reports, they --

25 THE COURT: Okay. So you say it's bad and it doesn't

1 exist, but we can't get any. So all right.

2 MR. WILLIAMS: Well, the reason you can't get any is  
3 because who wants to subject their child to that kind of a  
4 study? This half gets conversion therapy and runs the risk of  
5 suicide. This half doesn't. That's just not something that  
6 is ethical in current scientific and clinical methodology.  
7 But to suggest that the harm isn't palpable and doesn't exist  
8 is to ignore the --

9 THE COURT: Your representations to me in the last  
10 ten minutes, you're telling me those are consistent with the  
11 cross-examination of Dr. Glassgold and all the studies that  
12 were cited to her?

13 MR. WILLIAMS: Well --

14 THE COURT: You know, there's more than a study or  
15 two that says, well, we can't tell, we don't know, there's not  
16 enough research. You know, SAMHSA and APA say -- I haven't  
17 read every single line. I mean, I'm not going to read you the  
18 tabs, but, "No known study to date has drawn from a  
19 representative sample of sufficient size to draw conclusions  
20 about the experience of those who have attempted SOCE." I'm  
21 on page 149. And she said -- but I read that -- these are the  
22 reports that she cited. Did I read that correctly?

23 MR. WILLIAMS: I believe so.

24 THE COURT: And she says that is an accurate  
25 statement. "Is that an accurate statement as of the date of

1 this article?"

2 "ANSWER: Yes."

3 And then she cites two other cases. Paragraph 150,  
4 "In spite of the APA's 2009 report, considerable debate  
5 continues about the meaning of the report focusing  
6 specifically around the lack of more conclusive SOCE related  
7 outcomes and research."

8 I agree with you that there's plenty of literature,  
9 and aversive SOCE has a horrible pedigree. I'm not real sure  
10 it's just as bald flat-out as the City says it is. And I  
11 guess if I would go anywhere to consider that, it would be to  
12 Glassgold's deposition.

13 MR. WILLIAMS: But I don't think Dr. Glassgold  
14 conceded that conversion therapy isn't harmful. She quite the  
15 opposite --

16 THE COURT: I think she said that there is no proof  
17 of its efficacy and there's a likelihood of harm.

18 MR. WILLIAMS: Very high likelihood. In fact, there  
19 are multiple studies involving patient reports.

20 THE COURT: All right.

21 MR. WILLIAMS: Puts them at high risk.

22 THE COURT: I have read the depo, and I got it all  
23 marked here. Do I need to make an adjudicatory finding on  
24 that point?

25 MR. WILLIAMS: On which point, Your Honor?

1 THE COURT: That it's abundantly rock solid clear as  
2 a matter of psychotherapy and medicine that what Vazzo is  
3 doing is harmful?

4 MR. WILLIAMS: I don't think you need to adjudicate  
5 what you just said.

6 THE COURT: Okay. Or that the conversion therapy as  
7 stated in the ordinance is beyond peradventure harmful and  
8 true. The ordinance is true as a matter of medicine.

9 MR. WILLIAMS: I think what Your Honor needs to do on  
10 the case law is to give those findings substantial deference  
11 and call it a day, because nothing they have submitted would  
12 debunk or emasculate those legislative findings. Because if  
13 this court or any other court would start slicing and dicing  
14 legislative findings, you can pick it apart any which way you  
15 want.

16 THE COURT: Sure.

17 MR. WILLIAMS: And that's the whole point of the  
18 substantial deference doctrine which is, I think, solid as a  
19 rock in terms of, as I said earlier in my remarks, solid as a  
20 rock in our Supreme Court First Amendment jurisprudence.

21 And in this case, as I said earlier, the findings are  
22 embedded into -- in fact, the findings are made a part of the  
23 ordinance itself. They're not just legislative history. The  
24 city council went to the next step of saying these findings  
25 are a part of this ordinance.

1 THE COURT: And also in those findings they cited to  
2 circuit court of appeal cases that have pretty much been  
3 eviscerated by the Supreme Court.

4 MR. WILLIAMS: Well, only in terms of the final  
5 analysis.

6 THE COURT: All right. So not fully. Only by name  
7 and on a different subject.

8 MR. WILLIAMS: But as to the clinical stuff in those  
9 cases, I don't think the Supreme Court has done that at all.  
10 Those were First Amendment kind of cases as it relates to what  
11 the Supreme Court --

12 THE COURT: You don't think they read those cases and  
13 knew quite well what they were doing when they slapped them a  
14 little bit?

15 MR. WILLIAMS: Well, they denied certiorari. The  
16 Supreme Court denied certiorari on both of those cases.

17 THE COURT: Okay. Good point. Although, if we were  
18 all in a common law class, we would agree that has no  
19 precedential value, but you are right. If they wanted to slap  
20 them directly, they would have taken it.

21 MR. WILLIAMS: Right, and they didn't, and they could  
22 have. And we will see where this case goes, obviously.

23 But --

24 THE COURT: Sure.

25 MR. WILLIAMS: -- the point I'm making is, to go back

1 to your fundamental question, you don't need to adjudicate  
2 what you said. What you need to do is provide deferential --  
3 substantial deference to those legislative findings. And then  
4 after that point, I think the expert witnesses are almost  
5 irrelevant.

6 But to the extent their expert witnesses attempted to  
7 debunk the threshold findings that this ordinance is bottomed  
8 on, they failed miserably. And Dr. Glassgold's and  
9 Dr. Spack's testimony certainly refuted what Dr. Hudson and  
10 Dr. Rosik said. So at best it's a tie. It's a toss-up. It's  
11 a tie, which gets us back to the legislative findings which  
12 are a part of this record and which are a part of the  
13 ordinance, which I think this Court should indeed give  
14 deferential, substantial deference to in adjudicating the  
15 issues in this case.

16 So with that, I'm going to retire.

17 THE COURT: Well done, Counsel. And we will give you  
18 the final word here.

19 MR. WILLIAMS: Thank you, Your Honor.

20 THE COURT: So Mr. Gannam, you can stand, sit,  
21 whatever you prefer.

22 MR. GANNAM: Your Honor, I would just recommend that  
23 the amicus who is here to support the City, that they go next.

24 THE COURT: Well, I didn't know if Ms. Walbolt wanted  
25 to be heard or heard later.

1 Do you want to be heard later or now?

2 MS. WALBOLT: Only, Your Honor, to join in the City's  
3 submissions.

4 THE COURT: All right. Well, thank you.

5 You are very lucky she didn't have more words for  
6 you. I kid you not. That's the luckiest break you've had all  
7 day, my friend.

8 Let me ask you a question. I could ask Mr. Williams.  
9 We don't have an oral argument date yet in Otto, do we, in  
10 Atlanta?

11 MR. GANNAM: We do not, Your Honor.

12 THE COURT: Before you run a PowerPoint, let me ask  
13 you a question or two. May I?

14 Okay. So we're talking only about therapy, okay, the  
15 act of therapy. I think Judge Rosenberg -- I didn't  
16 completely get the metaphor, but said it was like a  
17 prescription. So we're not talking about speech or this,  
18 that, and the other. The act of therapy, which is delivered  
19 verbally.

20 But if your client or any therapist delivered verbal  
21 therapy and said, you know, what will really bring you  
22 emotional peace is if you start using psilocybin mushrooms  
23 and, you know, threaten suicide. And another great thing  
24 would be if you really wanted to get your parents' attention  
25 is cut yourself a couple times as part of the therapy.

1 I'm not saying, of course, Mr. Vazzo would ever do  
2 this, but that's speech but not really. And that could be  
3 regulated or he could be defrocked or disciplined because of  
4 that therapeutic speech, right?

5 MR. GANNAM: I agree with those examples, Your Honor.  
6 Prescriptions are prescriptions. So if the City of Tampa said  
7 that Dr. Vazzo -- or Mr. Vazzo couldn't dispense medicine or  
8 suggest or tell a client to take certain pills or certain  
9 chemicals or ingest certain substances.

10 THE COURT: Okay. So the fact that it's verbal  
11 doesn't stop the regulation, okay, right?

12 MR. GANNAM: Not in the situation where the speech is  
13 telling or directing the client to do --

14 THE COURT: To do something dangerous.

15 MR. GANNAM: That's an example, I think, of  
16 administration of some medical procedure or a drug where  
17 speech is incidental to it.

18 THE COURT: Well, all right. No. He is saying you  
19 feel you are unhappy with your mother. You feel like she is  
20 pushing you around. I want you to go home and just get a  
21 little knife and just as part of your therapy to create your  
22 self-esteem, you're going to cut yourself. He's offering  
23 therapy, and we would all agree that the City or the  
24 government could block that speech during the therapeutic  
25 session because it's harmful, right?

1 MR. GANNAM: The harm would be telling the client to  
2 harm herself.

3 THE COURT: So you agree that the City can block that  
4 speech during therapy because it's harmful.

5 MR. GANNAM: I agree that that could be regulated,  
6 Your Honor, yes.

7 THE COURT: All right. So the City, instead of  
8 saying, well, cutting yourself is harmful, gave it some  
9 thought. And, you know, they're from all over the city.  
10 They're not a bunch of snooty lawyers like me and  
11 Mr. Williams. They are regular people with a sense of the  
12 city, and they concluded that when that mom marches that  
13 17-year-old into therapy and says, you need to -- we tried to  
14 pray away the gay. Now I want you to therapy away the gay,  
15 Mr. Therapist. The 17-year-old is telling me he's gay. That  
16 can't happen in our family. Okay. That's the therapy that  
17 we're going for and here is your, you know, \$80 an hour to do  
18 it.

19 The City, rather than cutting, has determined in  
20 their wisdom, and I'm not sure they're wrong, that that's  
21 harmful. Okay. What's the difference? Just a matter of  
22 degree between one's obviously and clearly harmful, and the  
23 other one, you know, there's a pretty good argument that's  
24 harmful to the kid too. What's the difference?

25 MR. GANNAM: Well, cutting can be empirically

1 demonstrated to be harmful.

2 THE COURT: Well, he claims he has empirically  
3 demonstrated or the City has decided that mom doing that to a  
4 17-year-old is harmful. So do I have to say, no, it's not,  
5 down you go City?

6 MR. GANNAM: I think what the Court would have to say  
7 is that the City did not receive in its legislative record or  
8 did not consider any empirical evidence of harm caused by what  
9 they are defining as conversion therapy.

10 THE COURT: So I have to adjudicate that body of the  
11 whereas clauses and say, well, Number 3 has been debunked and  
12 this one was superseded. I have to adjudicate what the City  
13 determined was -- how the City arrived at harmfulness.

14 MR. GANNAM: That is the narrow tailoring analysis  
15 under strict scrutiny, Your Honor, is to determine whether the  
16 City considered concrete or empirical evidence of harm that  
17 would justify the regulation that it's imposing on --

18 THE COURT: You know, if you lined up a hundred  
19 people out here on the street and you gave them that scenario,  
20 mom brings in 17-year-old high school junior and says, Doctor,  
21 we tried to pray away the gay. It didn't work. Okay. Now,  
22 Doctor, I'm in charge. I'm the mom. Your therapize him and  
23 make him straight. Okay. Eighty out of a hundred people on  
24 the street would say that that's going to harm that kid.

25 MR. GANNAM: There's not a record anywhere that says

1 that Mr. Vazzo would accept that assignment because Mr. Vazzo  
2 says --

3 THE COURT: But this ordinance would bar that.  
4 Putting aside Vazzo's facts, in that scenario you are saying  
5 the ordinance might be okay?

6 MR. GANNAM: I don't think so, Your Honor. Mr. Vazzo  
7 wouldn't have standing to challenge that aspect of the  
8 ordinance because that's not what he does. And Mr. Vazzo  
9 wouldn't believe that that was an ethical practice for him to  
10 have at the outset a directive to change my child or fix my  
11 child or cure my child. That's not what his counseling is  
12 about. That's not what he wants to do under the ordinance.

13 That is really the narrow tailoring problem here, or  
14 at least one aspect of it, is that the ordinance prohibits  
15 much more than it claims justification to prohibit.

16 As we put in our most recent filing, in our reply, we  
17 focused on the fact that there is a disconnect between what  
18 the so-called consensus condemns, which is therapy with a  
19 predetermine or an a priori outcome in mind. And  
20 Dr. Glassgold said this is why they chose the term SOCE. Or  
21 when they chose that term SOCE, they had in mind when the  
22 therapist's predetermined goal was to change the minor, and  
23 that's wrong. And we pointed out in the various sources that  
24 the City cited to that it's that predetermined goal on the  
25 part of the therapist is the evil that they want to prevent,

1 but the ordinance doesn't just prevent that.

2 THE COURT: You are saying you don't have an a priori  
3 goal.

4 MR. GANNAM: That's correct, Your Honor.

5 THE COURT: Is that clear in this record?

6 MR. GANNAM: It is, in the verified complaint.

7 THE COURT: If that's true, what do I do? Why don't  
8 I just dismiss this? I mean, it doesn't apply to you. Why do  
9 you care?

10 MR. GANNAM: Oh, absolutely not, Your Honor. What  
11 I'm prepared to show the Court through the testimony of the  
12 City's lawyers who are in charge of enforcing the ordinance is  
13 that they said if a client presents, a minor client presents  
14 to the therapist and it's the client's goal to seek change,  
15 whether that's a change from gay to straight or whether it's a  
16 reduction in same-sex attractions or it's a change from one  
17 gender identity that the child has affirmed for a period of  
18 time and wants to return back to it, what the City's  
19 enforcement lawyers say is that as soon as the therapist says,  
20 okay, I'll help you with that, that's not my goal but that's  
21 what you've come to me asking for help with and I will  
22 facilitate that, that at that point the therapist has violated  
23 the ordinance.

24 So the ordinance prohibits much more than what the  
25 so-called consensus says is wrong. Our client, Mr. Vazzo,

1 would never enter into a counseling relationship with a  
2 predetermined goal to change the child because that's not what  
3 he does. And I don't think he would consider that to be an  
4 ethical practice. I don't think any licensed counselor in the  
5 State of Florida would consider that to be an ethical  
6 practice.

7 And so that aspect of the narrow tailoring problem  
8 for the City is that the ordinance bans much more than it  
9 claims a justification to ban, and that's because they say  
10 that as soon as the therapist agrees or facilitates the  
11 client's goal to change, then the ordinance is violated.

12 And there is another big problem here, Your Honor.  
13 And what I was prepared to do --

14 THE COURT: Go ahead. I was nasty to Mr. Williams.  
15 So I had to reciprocate. I don't mean to interrupt. So go  
16 ahead.

17 MR. GANNAM: Absolutely.

18 THE COURT: And I have it both places. So if I'm  
19 looking here, I'm still paying attention.

20 MR. GANNAM: So, Your Honor, before the Court  
21 provided the three scenarios, it was already our intention to  
22 walk the Court through something like that and provide some of  
23 the new context that we have acquired through the expert  
24 testimony, particularly the testimony of Dr. Spack, the  
25 Defendant's expert.

1 Obviously much has already been said and written on  
2 the constitutional standards that apply, content-based, strict  
3 scrutiny, things like that. And we will touch on those  
4 things, but I think it's more important to address the Court's  
5 questions.

6 Before I get there, I just want to provide, like I  
7 said, some of the context that applies and I think raises the  
8 stakes even higher on those questions.

9 First of all, Your Honor has already cited to the  
10 APA, what are called the TGNC or transgender and gender  
11 nonconforming guidelines. This is an exhibit that was put in  
12 front of Dr. Spack. And we provided the first page so the  
13 filing number is on there. The Court is obviously aware of  
14 it.

15 In Dr. Spack's deposition, we asked him what he  
16 thought of it. And what Dr. Spack said is, if we look at  
17 page 118 of his deposition, we read from that APA, 2015 APA  
18 report, and it says, "A clear distinction between care of TGNC  
19 and gender-questioning children and adolescents exists in the  
20 literature. Due to the evidence that not all children persist  
21 in a TGNC identity into adolescence or adulthood, and because  
22 no approach to working with TGNC children has been adequately,  
23 empirically validated, consensus does not exist regarding best  
24 practice with prepubertal children.

25 "Did I read that correctly?"

1 He says, "Yep."

2 And then the next slide we asked him to break down  
3 each of the premises in that statement. So it says, "Due to  
4 the evidence that not all children persist in a TGNC identity  
5 into adolescence or adulthood," we first asked him, "Do you  
6 agree with that premise?"

7 He said, "Yep."

8 The next premise is, "And because no approach to  
9 working with TGNC children has been adequately, empirically  
10 validated," and we stopped, and we said, "Do you agree with  
11 that premise, that no approach to working with TGNC children  
12 has been adequately, empirically validated?"

13 Again, he says, "Yes."

14 And then finally, the final statement is, "Consensus  
15 does not exist regarding best practice with prepubertal  
16 children. Do you agree with that conclusion?"

17 And he does say first that it's poorly written but  
18 that at the end of the day -- slide 82 here -- he would say  
19 that the answer is yes.

20 So according to Dr. Spack, the Defendant's expert,  
21 the consensus is there is no consensus when you're dealing  
22 with children who identify as transgender or children who  
23 identify as gender nonconforming. Their expert agrees that  
24 there's just not a consensus on what should be done.

25 The Court pointed out earlier Dr. Meyer-Bahlburg's

1 study about increasing the speed or speeding up desistance of  
2 gender nonconforming behavior or a return to biological  
3 gender. And as the Court probably noticed in Dr. Spack's  
4 deposition when we pointed out an article where Meyer-Bahlburg  
5 was one of the authors, Dr. Spack identified Meyer-Bahlburg as  
6 one of the people he would trust when it comes to gender  
7 issues dealing with children.

8 So as the Court recognized, Dr. Meyer-Bahlburg is not  
9 off the moon here. Dr. Meyer-Bahlburg is a respected  
10 researcher in this area. And his approach is one of the  
11 approaches that's been recognized.

12 If we go to the next slide, again reading from the  
13 2015 APA guidelines, "Two distinct approaches exist to address  
14 gender identity concerns in children."

15 Then after the citation, it says, "Some authors  
16 subdivide one of the approaches to suggest three."

17 Now the next paragraph begins. "One approach  
18 encourages an affirmation and acceptance of children's  
19 expressed gender identity.

20 "Did I read that correctly?"

21 "Yes."

22 The next paragraph says, "In the second approach,  
23 children are encouraged to embrace their given bodies and to  
24 align with their assigned gender roles. This includes  
25 endorsing and supporting behaviors and attitudes that align

1 with the child's sex assigned at birth prior to the onset of  
2 puberty.

3 "Did I read that correctly?

4 "Yes.

5 "Are you in agreement with the general proposition  
6 that there are two approaches to prepubertal children, one  
7 being to encourage and affirm the expressed gender identity,  
8 and the other approach to encourage children to embrace their  
9 given bodies that align with their biological sex?"

10 His answer, "Absolutely."

11 So here we see that even Dr. Spack recognizes there  
12 is more than one approach.

13 THE COURT: And your colleague said that's right.  
14 And so what? The ordinance doesn't bar that.

15 MR. GANNAM: Okay. But, Your Honor, let's --

16 THE COURT: Second approach.

17 MR. GANNAM: We'll come back to that.

18 So the next issue that we read from that 2015 APA  
19 guidelines is what the Court has already brought out, which is  
20 that it can't be overstated to parents that they must give  
21 their children the freedom to return to a gender identity or  
22 any gender identity when they want to, that they deserve the  
23 freedom to do that.

24 And I asked Dr. Spack, "Do you agree with this  
25 admonishment or this advice?"

1 And he said, "Yes."

2 And so their expert agrees with this approach. One  
3 approach is to encourage comfort with biological sex. And the  
4 other thing he agrees with is that parents must allow their  
5 children the freedom to return to a gender identity once  
6 they've left it.

7 Now, the next issue or the next document is an  
8 article that Dr. Spack was one of the authors of. This is  
9 Exhibit 40 to his deposition filed at 192-15. Here's where  
10 we're talking about irreversible interventions or medical  
11 interventions that Dr. Spack and his colleagues on his team  
12 will perform with these children who are gender nonconforming  
13 or who express gender dysphoria.

14 Going back to his deposition at page 103, which  
15 refers to page 7 of the article. "Only with an older  
16 adolescent, typically around age 16, are irreversible  
17 interventions initiated, and only after psychotherapy and a  
18 careful psychological evaluation has taken place." He agreed  
19 I read that correctly.

20 I asked him, "Can you summarize for me what are the  
21 irreversible interventions that could be initiated around age  
22 16?" So we are talking about a minor, someone who would be  
23 covered by this ordinance.

24 He answers, "So I'm trying to see if they're  
25 referring to males or females, right? It looks like they are.

1 "So they're talking about the institution of the  
2 actual hormones of the affirmed gender. Okay? And once you  
3 do that, you get breasts whether you want them or not. You  
4 get body hair, you get larynx. You get lower voice if you get  
5 testosterone.

6 "QUESTION: Did you just describe some examples from  
7 both sexes?

8 "ANSWER: From both, yeah.

9 "Okay.

10 "ANSWER: And so it's going to happen. And that's  
11 why we test them before we -- because this is the first time  
12 that we, at around age 15, 16, the first time that we do give  
13 irreversible treatment.

14 "And 18 is a timing of surgery, if desired.

15 "QUESTION: Now, is that a -- is 18 an absolute? Or  
16 are there situations where persons under the age of 18 may  
17 elect and proceed with surgical interventions?

18 "ANSWER: Yes. You raise an interesting point. We  
19 used to say 18 because that was a legal age of consent.  
20 However, the surgeons have told us that the worst outcomes  
21 that they have in feminized genitoplasty where the patients  
22 have to use dilation for four or five times a day for a year  
23 that we, in the past, were sending girls to the surgeons  
24 during the summer before going off to college, if 18.

25 "They tell us that the worst results they have are

1 with them."

2 THE COURT: I've read this. I'm just not sure how  
3 this -- okay. Get to your point.

4 MR. GANNAM: I'm going to tie this all together. I  
5 promise, Your Honor. I'm just providing context for the  
6 scenario.

7 THE COURT: And they wait until -- either do it  
8 before or after because the mom has got to be there to help  
9 them. And they go to college and they get distracted and they  
10 don't get it done, and then it's a bad first year result.

11 MR. GANNAM: That's correct, Your Honor.

12 And I think if you will permit me just to get a  
13 little bit --

14 THE COURT: Of course.

15 MR. GANNAM: -- more clinical for a moment, again I  
16 think this is important context for the scenarios we're about  
17 to talk about.

18 So I asked him, "Can you, just for the record,  
19 explain what you're talking about, about the dilation  
20 protocol.

21 "Well, they create a new vagina, and believe it or  
22 not, using inverted scrotal tissue.

23 "This would be in a male to female?

24 "ANSWER: A male to female. So that tissue needs to  
25 be expanded to be functional, for them to be sexually

1 functional.

2 "And it works. But unless the initial dilation after  
3 the surgery is required to keep the patient.

4 "QUESTION: What does that dilation involve? Is it  
5 something that would have to be --

6 "It looks a lot like a vibrator really.

7 "They may have a series of gradations of size, but  
8 they have to do it. If they don't do it, what happens is they  
9 go back to the doctor the spring after their operation, and  
10 the doctor finds he can't get the dilator in, in which case he  
11 has to do another surgery to cut a slit in the upper part of  
12 the vaginal wall, and it's a mess."

13 Again, Your Honor, we're talking about in Dr. Spack's  
14 view this is being recommended to minors, children who are  
15 under the age of 18.

16 THE COURT: I'm sure some of this has to do with the  
17 ordinance. I'm just missing the point.

18 MR. GANNAM: I'm getting there, Your Honor.

19 So finally in another section of that same article,  
20 we get to page 11 of his article and we ask him to comment on  
21 it. And it reads, "Watching clinical services grow is  
22 rewarding, especially when they translate into more contented  
23 and peaceful lives for youth and their families.  
24 Nevertheless, evidence-based practices are aspirational when a  
25 new field emerges with no guiding clinical precedent.

1 Controversies among providers in the mental health and medical  
2 fields are abundant. Drescher & Byne and Stein provide  
3 excellent discussions of issues of consensus versus continued  
4 controversies. These include differing assumptions regarding  
5 whether early intervention with gender variant youth can  
6 encourage desistance," again referring to the Bahlburg  
7 approach, "and whether that is an appropriate practice.

8 "Other areas of debate include the age at which  
9 children or adolescents should be encouraged or permitted to  
10 socially transition; whether cross-sex hormones and surgery  
11 should be offered to youth, and if so, at what age; whether  
12 parental consent be required for these medical interventions;  
13 and whether mental health involvement be required, including  
14 psychological evaluation, prior to each stage of medical  
15 intervention. The issues are complex, and providers in the  
16 field continue to be at odds in their efforts to work in the  
17 best interest of the youth they serve."

18 So we ask Dr. Spack to comment, asking -- and this is  
19 a 2015 document. "Is it still the case that these complex  
20 issues of disagreement continue?"

21 His answer, "Yes. But, you know, I would like to  
22 make one point. This is why we're a team. This is why every  
23 patient is discussed before they're in the clinic they're  
24 going to come in at, and everyone has a role about how the  
25 patient feels about this and helps to make these complex

1 decisions."

2 Now, that's the context I offer Your Honor for the  
3 scenarios that the Court presented where the questions have to  
4 do with a minor, a child who has affirmed a particular gender  
5 identity and may want to return to another one.

6 Going to the first one, a 16-year-old biological male  
7 identified with femininity and during pre- and early  
8 adolescence expressed himself and considered himself female.  
9 He dressed and acted female to the greatest extent possible.

10 As he nears later puberty and develops fully into a  
11 grown male body, he isn't sure anymore; he starts to think he  
12 might want to align his feelings with his biological body,  
13 that is male. He wants to talk to a licensed family  
14 counseling about this.

15 What does the Tampa ordinance say about that?

16 Well, if we go then to the testimony from Sal  
17 Ruggiero, who is City's -- the head of code enforcement, which  
18 is the department in the city responsible for enforcing the  
19 therapy ban -- page 95 of his deposition.

20 "Let's talk about another example." This mirrors  
21 what Your Honor has presented in scenario one. "Instead of  
22 the 17-year-old adolescent girl, we've got a prepuberty child,  
23 say a 10-year-old, born as a boy but has expressed a female  
24 gender identity."

25 Question at line 9, "Would the ordinance prohibit a

1 therapist in the City of Tampa from encouraging that child to  
2 embrace his given male -- biological male identity --"

3 Continuing at line 14 "-- and to align with his  
4 gender role?

5 "ANSWER: Yes.

6 "QUESTION: It would?

7 "ANSWER: Yes."

8 So here we have, responding to the Meyer-Bahlburg  
9 approach of speeding up desistance by encouraging a child  
10 experiencing gender dysphoria to become comfortable with his  
11 biological male body, if it's a boy, or -- I think all of his  
12 subjects were boys.

13 We have the City saying that would be a violation of  
14 the ordinance for a therapist to encourage a boy to become  
15 comfortable with his biological sex if he has at some period  
16 of time affirmed or expressed a female gender identity.

17 But if this -- if the boy, the biological male, 16  
18 years old, as the Court has suggested in the scenario, this  
19 16-year-old may well have received the input of someone like  
20 Dr. Spack or Dr. Spack's team who says, well, you affirmed a  
21 female gender identity because you experienced dysphoria with  
22 your biological male body. So you adopted a female gender  
23 identity.

24 Well, now the next step for you to feel better is to  
25 go through with this irreversible hormone therapy first and

1 then surgery to remove the penis and to construct what they  
2 call a pseudovagina that requires this dilation protocol  
3 several times a day for 30 minutes at a time, however  
4 Dr. Spack described that.

5 Well, it may well be that this 16-year-old who is  
6 still developing and growing receives that news and says,  
7 well, maybe I don't want to go through with that. That seems  
8 pretty extreme. I would like to get counseling from someone  
9 about maybe I could feel better with my biological body and  
10 that would solve my problem.

11 Well, the ordinance doesn't permit the counseling  
12 that would help that child's goal to embrace his biological  
13 body. The ordinance only would allow affirmation of the  
14 transition, because by its plain language it says that  
15 counseling to affirm or support transition is allowed.

16 So if the great crime here, the great evil sought to  
17 be remedied is to avoid counseling that has a predetermined  
18 outcome in mind, well, the ordinance has now codified a  
19 predetermined outcome by saying this 16-year-old in scenario  
20 one can only go this way, can only get affirmation to have the  
21 surgery to transition, but that same 16-year-old cannot get  
22 assistance with embracing his biological sex if that's the  
23 direction he wants to go in.

24 And I have another example from the testimony to  
25 illustrate this point. This comes from the -- again from the

1 deposition of Mr. Ruggiero. "Adolescent 17-year-old was born  
2 biologically as a female."

3 And I apologize. This is page 85. I'll repeat the  
4 question. "Adolescent 17-year-old was born biologically as a  
5 female.

6 "ANSWER: Okay.

7 "QUESTION: For some time, she identified as a male  
8 and lived with a male gender identity. That was in the past.  
9 Now she decides she wants to change her gender identity back  
10 to female to match her biological gender, and she decides she  
11 needs help with that change. She can't do it on her own.  
12 It's too difficult. There's too many mental issues involved.  
13 And so she goes to a counselor within the City of Tampa and  
14 says, Mr. or Mrs. Counselor, I need your help. I need your  
15 counseling. I need your therapy to help me with this change  
16 that I want to make back from a male gender identity to a  
17 female gender identity. The counselor says, if that's your  
18 goal, if that's your desire, I'm willing to help walk you and  
19 talk you through that. Let's go do some counseling.

20 "ANSWER: Okay.

21 "QUESTION: And they go do counseling. And, as a  
22 result of that counseling, now the female has changed; and she  
23 identifies as a female, no longer as a male. Is that example  
24 clear?

25 "ANSWER: Yes.

1 "QUESTION: Is that example a violation of the  
2 ordinance's prohibition on sexual orientation or gender  
3 identity change efforts?"

4 And his answer picks up on page 88, line 18. "My  
5 answer is that there is a violation in that it needs to be  
6 referred to the legal department to see how we would proceed  
7 further.

8 "QUESTION: Okay. So your conclusion would be that  
9 the example that we talked about is a form of conversion  
10 therapy that is prohibited by the ordinance?

11 "ANSWER: That would -- yes."

12 And just to be clear that it's not just Sal Ruggiero  
13 but actually the City's enforcement lawyer who has this view,  
14 we go to the next slide, which is from the deposition of  
15 Jerrod Simpson who testified as the City's 30(b)(6)  
16 representative. He is also the lawyer who gets called if a  
17 conversion therapy violation is identified by the code  
18 enforcers.

19 Page 78, line 22. "Suppose we have a 16-year-old  
20 biological girl who, for some period of time, has been  
21 identifying as a boy, has adopted a male gender identity, and  
22 that child presents to a therapist and expresses to the  
23 therapist, I've been living as a boy for some time. I don't  
24 want to anymore. I want to change back to my biological  
25 female gender identity I was born with. Will you help me?

1 And the therapist agrees to help and engages in therapy to --  
2 to help that child readopt or return to a female gender  
3 identity that aligns with her biological sex. Would that be a  
4 violation of the ordinance?"

5 Page 80, line 4. "ANSWER: Yeah. There's -- there's  
6 still an issue with your -- because your hypos are so limited  
7 in what you're presenting to me, there's an issue of what's --  
8 you know, what's changing and what the goals are.

9 "But, again, if the goal is -- if a female patient  
10 comes in and presents a goal of changing her gender identity,  
11 the therapist adopts the goal and then provides treatment with  
12 the goal of changing the identity, then that would be a  
13 violation of the ordinance."

14 Now, in both of those examples from Mr. Ruggiero and  
15 Mr. Simpson, those actually mirror the Court's third scenario  
16 that was presented where you have the teenager who has for  
17 some time really affirmed the other sex identity and wants to  
18 return. And both of those witnesses said that, as far as the  
19 City of Tampa is concerned, that would be a violation of their  
20 ordinance even if it's the client who presents to the  
21 therapist and said this is my goal, this is what I want to  
22 accomplish, will you help me. If the therapist accepts that  
23 assignment, that's a violation of the ordinance according to  
24 the people in charge of enforcing it.

25 So I think the result of today's argument, if

1 anything, would be to increase the meter on the vagueness  
2 claim here because we have the City's lawyer in charge of  
3 defending the ordinance against Mr. Vazzo's challenge who's  
4 saying it's conduct, not speech, and all these things would be  
5 permissible if you're just going to help the client change, if  
6 the client wants to change, and yet we have the City lawyer  
7 and code enforcement official responsible for actually  
8 enforcing the ordinance saying, no, that would be a violation  
9 of the ordinance even if it's the client's goal and not the  
10 therapist's goal on a predetermined or a priori basis.

11 And not to put too fine a point on it, if we just go  
12 to slide 105 -- this is page 65 of Mr. Simpson's deposition.  
13 We asked -- to really get to this issue about whose goal it is  
14 and whether that makes a difference, page 65, line 3:

15 "QUESTION: In the example I gave you, the -- as I  
16 said, the provider does not have a predetermined goal when the  
17 client enters the office. The therapist or the provider --  
18 the provider's only goal is to accommodate whatever help the  
19 client wants. And so the client expresses a desire to change  
20 sexual orientation. And the therapist is -- you know,  
21 supports and accepts and affirms that goal of the client. Is  
22 that -- is that therapist going to violate this ordinance by  
23 giving the client the therapy or the help that the client  
24 wants?

25 "ANSWER: I mean, I take a little -- I just still

1 can't really understand your question. But I'll try to answer  
2 it another way and see if I can give you something that you --  
3 that you find acceptable."

4 Same page, line 20. "If the goal of the treatment is  
5 to change the sexual orientation, whether that is the goal  
6 from the outset or at the moment that that becomes the goal,  
7 that -- then that creates a violation of the ordinance as it's  
8 written. So if the client -- or the patient comes in and then  
9 articulates a goal and then it becomes the therapist's goal to  
10 change the patient's -- the therapist is the one who's subject  
11 to violating the ordinance, not the patient. So it's the goal  
12 of the therapy that they're providing. They're the one that  
13 would be the potential violators. So, once it becomes their  
14 goal to change sexual orientation or gender identity, then it  
15 becomes a violation of the ordinance.

16 "QUESTION: So, if the City determines that the  
17 therapist has adopted the client's goal of changing sexual  
18 orientation or gender identity, then it's the therapist at  
19 that point is subject to liability under the ordinance for  
20 providing therapy, the goal of which is to change sexual  
21 orientation or gender identity?

22 "ANSWER: If the therapist has adopted the goal of  
23 changing sexual orientation or gender identity, then they have  
24 violated the ordinance.

25 "QUESTION: And just to clarify, that would be true

1 even if the goal initially came from the client's request and  
2 not -- and was not initialed by the therapist?

3 "ANSWER: Yes."

4 So it's pretty clear that the City's enforcement  
5 officials, both in code enforcement and the City Attorney's  
6 Office believe that adopting the client's goal for change  
7 violates the ordinance, even as the City's lawyers who are in  
8 charge of defending the ordinance say that that's not the  
9 case. They both can't be correct. And I think that that does  
10 create a really big vagueness problem in this ordinance is  
11 that the City's lawyers don't even know which one is a  
12 violation and which one isn't.

13 So the context for the Court's questions for the  
14 scenarios is that the City enforcement officials think in all  
15 those cases there would be a violation of the ordinance. And  
16 that's according to their sworn testimony, and that's binding  
17 on the City.

18 But I also want to point out the disconnect here  
19 between the idea that it's only parents of children who seek  
20 change who might be guilty of coercion or of forcing their  
21 kids into something. To refer to the Court's earlier example  
22 of we're not going to stand for that in this house or, you  
23 know, father's ex-military. We're important in our church and  
24 we can't have this with our child.

25 But then, on the other hand, we see Dr. Spack talking

1 very matter-of-factly about what happens when a 15- or  
2 16-year-old gets irreversible cross-sex hormones and then gets  
3 irreversible surgery to complete that transition. Are we to  
4 assume that parents never act in a coercive or a suggestive  
5 way in that scenario? We're okay with allowing a teenager to  
6 assent to irreversible hormone treatment and irreversible  
7 surgery as a matter of course, but we aren't willing to allow  
8 a teenager to assent to a conversation that may lead to a  
9 desire to change or a reduction in attractions or a reduction  
10 in gender confusion. These two concepts don't line up.

11           If what they're calling conversion therapy is  
12 inherently coercive, as the City has written in its briefs,  
13 then certainly irreversible cross-sex hormone treatment and  
14 surgery are inherently coercive, because all we're doing is  
15 saying that if the minor -- if the child or if the patient is  
16 under 18, they can't possibly make up their minds for  
17 themselves and it's always going to be the parents forcing  
18 them to do it. That doesn't make sense to hold those up as  
19 differing standards.

20           So now, Your Honor, again that's the vagueness issue.  
21 And the City would respond, at least my colleague,  
22 Mr. Williams, responded it's okay for the therapist to talk  
23 about conversion therapy and even to recommend it. But what I  
24 haven't heard is anyone explain what is the difference between  
25 talking about conversion therapy and conversion therapy, as if

1 conversion therapy is some off-the-shelf singular or unique  
2 treatment modality that is the same in every case.

3           If, for example, a client presents with distress over  
4 unwanted same-sex attractions, maybe it's a client in the  
5 religious family and this young person says I can't reconcile  
6 what I sincerely hold as my religious beliefs and these  
7 same-sex attractions that I'm feeling, can you help me with  
8 that?

9           Well, if the therapist says, well, change may be  
10 possible, you might benefit from therapy to reduce those  
11 unwanted attractions, what if that makes the client feel  
12 better just knowing that that's available? Has the counselor  
13 engaged in conversion therapy at that point? At what point  
14 does the counselor, according to the City of Tampa, flip the  
15 switch and start engaging in conversion therapy and when is  
16 the therapist only talking about conversion therapy?

17           This is why the Holder case absolutely is analogous  
18 to this situation, because in Holder we had a situation where  
19 a retired judge, professionals wanted to speak to these  
20 members of this group who they were not supposed to provide  
21 assistance to. And they wanted to use their skill and their  
22 training to impart wisdom, to impart skills, strategies, what  
23 have you, to the members of this group whom they wanted to  
24 help. And the Plaintiffs in that case said you're regulating  
25 our pure speech by saying we can't do that. And then we had

1 the government saying, no, we're just regulating conduct when  
2 we say that you can't do that.

3 And what the Court -- what the Supreme Court said is,  
4 look, you're both wrong. This isn't pure speech. This isn't  
5 conduct. What we have to ask is what do these Plaintiffs want  
6 to do? Well, they want to talk to the members of this group.  
7 And whether they're allowed to depends on what they say. So  
8 it's a content-based regulation of speech, and it's subject to  
9 strict scrutiny.

10 What Judge Rosenberg did in the Otto case is  
11 disregarded what Holder said. And she made the same mistake  
12 as the government did in Holder, because in Holder the  
13 government appealed to O'Brien, a case where it was allowed to  
14 categorize speech based on its function. In the Otto case,  
15 Judge Rosenberg referred to this speech as treatment. It's  
16 speech being used as treatment or like a prescription and  
17 referred specifically to O'Brien.

18 Well, the Holder court had already said O'Brien isn't  
19 the standard when we're talking about a content-based  
20 regulation of speech. That's before Reed and NIFLA even were  
21 on the scene. When you look at then Reed that says any  
22 content-based regulation of speech is subject to strict  
23 scrutiny, and then we look at NIFLA that affirmed that --

24 THE COURT: We know that's not true in therapy. I  
25 mean, we all agreed that the content -- you can bar the

1 content if you tell him to cut himself.

2 MR. GANNAM: You can bar the content if -- if you  
3 balance the interest under the strict scrutiny approach. So I  
4 think the City could demonstrate compelling interest against  
5 cutting and say don't cut or don't tell people to cut. That  
6 would be narrowly tailored.

7 THE COURT: Got it.

8 MR. GANNAM: So that, I think, is the critical  
9 distinction.

10 Now, this speech issue is important. I'm going to  
11 have to see if I can get to this slide quickly.

12 This ordinance was conceived as a regulation of  
13 speech. King and Pickup are cited in the ordinance itself.  
14 King, of course, held that conversion therapy is speech. It  
15 just said it's professional speech so it gets less scrutiny,  
16 but here we have the training slide provided by the City  
17 Attorney to the code enforcement officials that says under the  
18 First Amendment certain categories of speech receive lesser  
19 judicial protection. Conversion therapy is a form of  
20 professional speech.

21 This ordinance has always been about regulating  
22 speech. And I don't think the City can be heard now to say  
23 that it's not, that it's somehow conduct or it's only a little  
24 bit of speech or it's not speech at all. It absolutely was  
25 designed and intended to regulate speech. It's just this was

1 before NIFLA back when the City thought that it could  
2 downgrade the speech of conversion therapy to something less  
3 than strict scrutiny.

4 Well, NIFLA called out Pickup and King specifically  
5 in the context of trying to recategorize speech to avoid  
6 strict scrutiny. And the Court said, look, there is no  
7 professional speech category that we've ever identified. And  
8 for that reason, it's not appropriate to apply some lesser  
9 scrutiny.

10 That's the very mistake that the Otto court made.  
11 The same mistake was repeated by the Doyle court by deciding,  
12 contrary to NIFLA, that we can just recategorize this speech  
13 as something else or categorize it according to its function  
14 and make the O'Brien error.

15 Holder, Reed, Wollschlaeger in this circuit, and of  
16 course NIFLA, all of these cases disallowed that approach.  
17 Speech is speech.

18 THE COURT: Wollschlaeger didn't go off on strict  
19 scrutiny.

20 MR. GANNAM: No, but Wollschlaeger said -- first  
21 Wollschlaeger said speech is speech. And what Wollschlaeger  
22 said is, look, this ordinance or this law at issue here, it  
23 wouldn't even pass intermediate scrutiny. So we're not going  
24 to analyze in under strict. It didn't decide that issue.

25 THE COURT: Yeah. They were a little shy on going

1 there, I thought.

2 MR. GANNAM: Perhaps. But it's certainly not that  
3 the Eleventh Circuit could. It certainly doesn't change what  
4 we must do under NIFLA and what we must do under Reed. So  
5 there is no doubt that this ordinance was conceived as a  
6 regulation of speech.

7 And like the Holder court said, we have to ask what  
8 is it that Mr. Vazzo wants to do? Well, he wants to talk to  
9 his clients about change. And whether he's allowed to depends  
10 on what he says. The dichotomy according to the City is he  
11 can talk about it but he can't actually engage in it.

12 Well, the Holder court said that doesn't work either.  
13 The professionals in that case who wanted to talk to the  
14 members of this organization, the government said, well, they  
15 can talk about the subject matter generally but they just  
16 can't impart anything specific to them.

17 Well, if the client says Dr. -- or, Mr. Vazzo, help  
18 me with some strategies to not act on my same-sex attractions  
19 because I don't want to and Mr. Vazzo says, all right, here's  
20 some things that you can do to help you alleviate that the  
21 pressure, that distress, well, that's exactly what's going on.  
22 He is using his training and his experience to impart skills,  
23 to impart help to the client who wants it.

24 So the Holder court rejected the idea that it was  
25 legitimate for the government to say you can talk about it,

1 you just can't actually do it. The same problem -- Tampa  
2 suffers from the same problem here. It's not enough under the  
3 First Amendment to say you can talk about this thing we call  
4 conversion therapy, you just can't engage in it when all it is  
5 is speech.

6 Now, we talked about the evidence a little bit. And  
7 I want to come back to that. It's an oversimplification to  
8 say that there's no evidence of harm or no evidence of  
9 efficacy. That's simply not the case. There is some evidence  
10 of harm. The scientific term would be there's anecdotal  
11 evidence of harm. There's anecdotal evidence of benefit.

12 As the APA report itself said, some people said they  
13 felt better or were better off after SOCE. Some people said  
14 that they were worse off afterwards. So it's not the case  
15 that there's no evidence either way. But it is the case  
16 according to the 2009 APA report, the 2015 SAMHSA report that  
17 said all of the conclusions from the 2009 APA report are still  
18 valid. It's true from the 2018 Ryan study that Mr. Williams  
19 pointed out to the Court. All of them say we can't draw any  
20 conclusions about causation. And they've been unequivocal  
21 about that.

22 So if there is anything that's clear from the  
23 empirical record, from the scientific record is that we cannot  
24 assign any causal or make any causal attribution to conversion  
25 therapy and say that it causes harm.

1           It's also true that -- I think it's undisputed here  
2 all of the experts, I think, have recognized it, it's in all  
3 the literature that people, young people and old too identify  
4 as LGBT are already experiencing higher incidences of poor  
5 mental health outcomes from stress and anxiety, up to suicide.  
6 They already experience that to a greater extent than the  
7 population that does not identify as LGBT.

8           And so the question would be, can you say that the  
9 risk is greater when someone engages in or seeks what the City  
10 calls conversion therapy. Well, no one can quantify that.  
11 That's also clear in the literature. I think it's clear in  
12 Dr. Glassgold's deposition. She said that the task force  
13 didn't even try to quantify any increase in risk because they  
14 couldn't.

15           So when we're talking about levels of risk, it's  
16 improper to say that there's significant risk of harm. It's  
17 improper to say that there's empirical or scientific evidence  
18 of harm. It's improper to say that SOCE or conversion therapy  
19 causes harm because the empirical record does not permit that  
20 conclusion.

21           Ultimately, Your Honor, that's really the difference  
22 between the experts on the Plaintiffs' side and the experts on  
23 the Defendant's side. Plaintiffs' experts have the humility  
24 to tell the Court exactly what the science does and does not  
25 tell us. The Plaintiffs' experts, Dr. Hudson and Dr. Rosik,

1 did not attempt to say that we have an empirical way to  
2 validate the efficacy of conversion therapy. That wasn't  
3 their task, and that's not the Plaintiffs' burden in this case  
4 to prove that it's effective. What they show the Court is  
5 this is what the science actually says.

6 And Dr. Rosik, in particular, was critical of the  
7 methodology of the 2009 APA report and others that did not  
8 account for or properly account for bias that may have been  
9 involved, or in the case of the APA report apply a different  
10 standard to the anecdotal evidence of harm as compared to the  
11 anecdotal evidence of benefit. All of that is appropriate for  
12 an expert of Dr. Rosik's credentials to say.

13 THE COURT: And if we are using strict scrutiny, I  
14 have to adjudicate that, right?

15 MR. GANNAM: Well, that's a good question, your  
16 Honor. I actually don't think the Court needs the testimony  
17 of Dr. Rosik or Dr. Hudson, Plaintiffs' experts.

18 THE COURT: And I have to make a finding on -- pardon  
19 the pejorative term -- all the law reviewed articles that have  
20 been attached. Don't I have to make a finding that there's  
21 a -- whatever the lingo is -- compelling necessity under the  
22 strict scrutiny, etc., etc.?

23 MR. GANNAM: Yes. The Court must make a finding as  
24 to whether the City had empirical or other concrete evidence  
25 of harm to supply the compelling interest. Wollschlaeger said

1 it's not enough that the City has a general interest in  
2 protecting minors. No one would dispute that. Of course the  
3 government has an interest in protecting the health and safety  
4 of minors.

5 The question has to be more specific. Is there an  
6 interest in protecting minors from this thing called  
7 conversion therapy, and what's the evidence of that. What's  
8 the empirical or concrete evidence of harm.

9 Certainly Tampa itself had no evidence of any minor  
10 in its jurisdiction being harmed by something called  
11 conversion therapy.

12 And we talk about in Wollschlaeger how the  
13 legislature at most had six anecdotes. I don't think the City  
14 of Tampa had anything better than that in terms of actual  
15 testimony of harm occurring in Tampa as we laid out in our  
16 opposition to the City's summary judgment motion.

17 The people who appeared at the public hearings, none  
18 of them really gave a firsthand account of having received  
19 what the City calls conversion therapy within Tampa. The  
20 secondhand and thirdhand accounts were there, but none of them  
21 really explained what happened to those. So there is no way  
22 to determine if the thing that was done to them or that they  
23 experienced would fit under the ordinance as it's written.  
24 And we lay all of that out for the Court.

25 So Tampa really doesn't have a better record in terms

1 of what happened in Tampa than the legislature did in  
2 Wollschlaeger. And so if Tampa wants to look outside of its  
3 city limits and look at the empirical record, it's going to  
4 have to do better than the sources cited in its ordinance,  
5 because the ones that actually attempt to provide any  
6 empirical analysis say we can't reach any conclusions  
7 empirically.

8           The others are all position statements or opinions  
9 from various organizations that say you shouldn't do  
10 conversion therapy. Again, they're talking about  
11 predetermined outcome conversion therapy. But even so, just  
12 because a lot of people say don't do conversion therapy or say  
13 you shouldn't do it because it might be harmful, which is as  
14 much as the literature can tell you, that's not empirical or  
15 concrete evidence of harm sufficient to provide the compelling  
16 interest prong of strict scrutiny.

17           I'm going to jump through a couple of points here  
18 just to respond to what the City said. I think the Court  
19 discerned from Council Member Maniscalco's deposition that  
20 it's true he didn't give any thought to the difference between  
21 aversive and nonaversive therapies. He didn't know the  
22 difference when he proposed this ordinance. He also said that  
23 he wanted to ban torture. He wanted to ban sort of an  
24 undefined thing called conversion therapy because someone back  
25 in his past had talked about something that happened to them

1 that was bad, but he couldn't explain what this therapy was or  
2 whether it's even something that was done by a licensed  
3 counselor that would be allowed or that would be covered by  
4 this ordinance.

5 Certainly if what Mr. Maniscalco recalled from his  
6 past was a friend who had been forced into some kind of  
7 therapy or had received some kind of aversive therapy, he was  
8 certainly free to propose a ban of that, and that might pass  
9 the narrow tailoring prong. It certainly would have  
10 eliminated this lawsuit because Mr. Vazzo wouldn't have  
11 standing to challenge an ordinance that was against aversive  
12 or coerced therapy.

13 The Court asked about does the State of Florida have  
14 a law that gives parents control over their children's medical  
15 care. I think generally that is the case under the statutes.  
16 It's also a matter of constitutional law from the U.S. Supreme  
17 Court in the Troxel case. Generally speaking, parents do have  
18 a right to direct the health and education and upbringing of  
19 their children.

20 But that, again, that gets us to this issue of if  
21 conversion therapy is inherently coercive, then so is any  
22 other medical treatment or psychological treatment or  
23 psychiatric counseling that a child may receive, because if  
24 you're tested, whether it's inherently coercive is just  
25 whether the child is old enough to consent on their own, it

1 would apply across the board. Nothing can be demonstrated to  
2 be more dangerous about conversion therapy as the City defines  
3 it than some other kind of treatment.

4 As Dr. Rosik pointed out, there is a general  
5 understanding in the psychological community, the psychiatric  
6 community that all therapy carries some risk of harm. Some  
7 people will feel worse after therapy than when they began.  
8 None of the empirical sources can quantify a difference in  
9 risk of poor outcomes from conversion therapy as compared to  
10 therapy in general.

11 THE COURT: Is it just utterly irrelevant that -- you  
12 know, I mentioned this at the first hearing. There was never  
13 a child in the city limits that got this. Your client never  
14 had anyone in the city limits or showed up until this thing  
15 was passed. Now he says he's got one. I'm sure he does, a  
16 female or something, a 15-year-old.

17 And to the extent he's precluded from doing  
18 something, I suppose it's irrelevant, but I'm just giving you  
19 my thought here. Hillsborough County is 1,100 square miles.  
20 Tampa is 175 square miles. The places in this county where  
21 most doctors' offices are -- they're everywhere, but most of  
22 them, just because I've lived here for -- I hate to say how  
23 long now -- are in a place called Carrollwood that's not in  
24 the city, a place called Brandon that's not in the city, and  
25 then up around USF, Bears, Bruce B. Downs, most of which is

1 not in the city.

2           So I suppose you're going to tell me that's  
3 irrelevant because the First Amendment doesn't end at the  
4 City's border, but he's not really chilled. He can give this  
5 therapy all over the place, you know, at least in 80 percent  
6 of the county. So is this just completely irrelevant? The  
7 burden on him to comply by walking across 50th Avenue or  
8 50th Street up there by USF doesn't seem real great.

9           MR. GANNAM: Well, the First Amendment says that he's  
10 chilled in Tampa, and that's sufficient for him to assert his  
11 rights.

12           THE COURT: What if he was chilled in Mr. Williams'  
13 neighborhood only? It was just a zoning thing. Does he still  
14 have a right?

15           MR. GANNAM: Well, that's a different analysis, Your  
16 Honor. That gets us into the analysis where certain -- to go  
17 to, again, the adult strip clubs or adult entertainment  
18 establishments. Some cities have said you can do that in  
19 certain parts of the city.

20           THE COURT: Tampa has done that.

21           MR. GANNAM: And the courts have said as part of a  
22 city wide zoning scheme, that may be permissible because  
23 you're leaving open other opportunities. If Tampa said you  
24 can't do conversion therapy, you know, down by the harbor or  
25 you can't do it here or only here, we would have a different

1 case. And I don't know what the analysis would be there.

2 But I think that if Tampa's ordinance is allowed to  
3 stand, we've already seen that this ordinance spreads through  
4 municipalities in South Florida. It made it to Central  
5 Florida. Who knows where it will go next. So I think under  
6 the First Amendment we only look at Tampa.

7 THE COURT: I knew you were going to say that. I  
8 just wanted to tell you my -- I'll find that the world's  
9 biggest problem that whoever this 15-year-old can't get her  
10 therapy because we all know darned well she can get it all  
11 over Hillsborough County any day of the week.

12 MR. GANNAM: The secondary effects doctrine has been  
13 argued by the City. First of all, whether or not it still  
14 survives after Reed -- and I don't think that's clear. We  
15 cited a case from the Third Circuit that says maybe it does,  
16 maybe it doesn't. But what the Third Circuit says is even if  
17 it does, it's never been applied outside of the context of  
18 adult entertainment establishments, either the zoning aspect  
19 or the public nudity aspect.

20 And the secondary effects doctrine fundamentally is  
21 about a situation where a city says, look, if you want to have  
22 nude dancing in your establishment, to each his own. We don't  
23 have a problem with that. But what we do have a problem with  
24 is what happens to the neighborhood around that establishment.  
25 It's the crime that it attracts. It's the kind of people or

1 the kind of activities, drugs, crime, theft, whatever the case  
2 may be, it's the things that it attracts that we want to  
3 regulate. We want to regulate those secondary effects. And  
4 the Supreme Court has said that that's permissible.

5 No one has made the claim here that you open up a  
6 conversion therapy clinic and there goes the neighborhood  
7 because of all the riffraff or the drugs or the crime that  
8 it's going to attract. That's never been a part of this  
9 record. No one has even suggested that that's the harm that  
10 Tampa wants to prevent here. Tampa is talking about what goes  
11 on in the therapy office. This is not the secondary effects  
12 doctrine. This is regulation of the speech that goes on in  
13 that office.

14 If it was just enough that Tampa could say, well, we  
15 want to prevent harm, and so therefore that gives us the  
16 ability to regulate this, well, that would have worked in  
17 NIFLA too. California could have said, well, we just want to  
18 address the harm of women not knowing where they could get a  
19 free or low cost abortion so that's why we did it. And the  
20 Supreme Court would have rejected that and said, no, you're  
21 regulating their speech and it doesn't survive strict  
22 scrutiny.

23 In *Wollschlaeger*, if we wanted to --

24 THE COURT: And you are forcing an endorsement in  
25 NIFLA. You are requiring the Baptist to tell people to follow

1 the pope, you know.

2 MR. GANNAM: That's right, but NIFLA also had an  
3 aspect of regulating what could be said that wasn't just the  
4 forced speech. But I think the point is, is that any  
5 government entity could say, well, we're trying to prevent  
6 harm and so we don't have to engage in this strict scrutiny  
7 analysis. I don't think that works, the secondary effects  
8 doctrine especially because it's never been applied outside of  
9 adult entertainment.

10 Back to the experts. We filed a motion to exclude a  
11 particular opinion or set of opinions from Dr. Glassgold. And  
12 the reason was because they -- the opinions couldn't bridge  
13 the analytical gap as between the studies or articles and  
14 sources that the opinions purportedly rely on and the opinions  
15 themselves.

16 The best example is the mountain of material we  
17 provided that says there is -- no conclusion can be drawn, no  
18 causation can be decided, there's no empirical evidence of  
19 harm or causation and then Dr. Glassgold saying, well, it's  
20 unequivocal that it's ineffective and harmful. We just can't  
21 get there from here.

22 And then any opinion that attempts to or purports to  
23 assign a quantitative value to how much harm, whether it's  
24 significant harm or significant risk of harm, again, that's  
25 not supported by the sources that Dr. Glassgold purports to

1 rely on.

2 In the case of Dr. Rosik and Dr. Hudson, the City is  
3 attacking their opinions by really oversimplifying them and  
4 saying that they just disagree with the consensus and so  
5 they're trying to criticize it. Well, again, Dr. Rosik and  
6 Dr. Hudson, their opinions go to the quality of the research  
7 or the quality of the evidence on which these so-called  
8 consensuses rely. And it's perfectly appropriate for them to  
9 give their opinions on that subject.

10 The bar for admissibility of expert testimony is  
11 pretty low, certainly on the qualifications prong and on this  
12 relevance or helpfulness prong. The floor or the point that  
13 the Court can't go beyond is the point we raise in  
14 Dr. Glassgold's case, is where you just can't bridge the  
15 analytical gap. But otherwise, I don't think the City has  
16 been near specific enough or precise enough about what's wrong  
17 with Rosik's and Hudson's testimony or opinions to exclude  
18 them.

19 THE COURT: So you're just saying that the learned  
20 professor from -- the doctor from Rutgers is ipse dixit.

21 MR. GANNAM: That's correct. Not everything --

22 THE COURT: Although, she has a pretty strong resume.

23 MR. GANNAM: Well, qualifications is not an issue.

24 If it were, then we would lose on that. And that's why we  
25 didn't challenge it. Certainly she has the qualifications,

1 but it doesn't mean that she can come in and say something  
2 that's diametrically opposed to the literature she purportedly  
3 relies on.

4 At this point, Your Honor, again, we've said and  
5 written a lot. I don't think that Your Honor heard our  
6 presentation on the preemption issue because that wasn't  
7 challenged in the magistrate's report and recommendation, but  
8 I think it is still a live issue for summary judgment  
9 purposes.

10 And the preemption issue is what the Court has  
11 already pointed out. The question is has the State of Florida  
12 sufficiently occupied this field of regulating licensed mental  
13 health providers so much so that it's wrong, it's illegal for  
14 Tampa to regulate in that field.

15 And the standard -- of course, we are talking about  
16 implied preemption, because we all agree there's no explicit  
17 statute that says thou shalt not regulate in this area. But  
18 the test is has Florida so completely occupied this field as  
19 to make it improper for Tampa to do so.

20 And in answering that question, I think the case law  
21 says it's not necessary that the State of Florida has  
22 regulated every detail. It's just has it regulated enough of  
23 the details that it's clear that Tampa should not.

24 And as we recite in our papers that we filed, there  
25 are so many extensive regulations of every aspect of the

1 licensure and conduct of mental health professionals. And as  
2 the Court noticed, unethical practices are already prohibited.  
3 You want to talk about a prophylactic approach or a law  
4 against doing things. Unethical practices are prohibited.  
5 Fraudulent practices are prohibited. Practices that harm  
6 clients are prohibited.

7 If conversion therapy was happening around the state  
8 at the rate that's been suggested, I think by the amicus in  
9 this case, certainly there'd have been at least one complaint  
10 with the State of Florida or somewhere about harm occurring  
11 from this.

12 Now, the City might say, well, who is going to file  
13 that complaint? It's hard for a minor to file that complaint.  
14 Well, it's going to be just as hard for that minor to file a  
15 complaint in the City of Tampa. Nothing is different about  
16 the process. The fact is anyone could file a complaint, a  
17 school counselor, a friend, a neighbor. Anyone who thinks  
18 that something improper has been done to a child, either at  
19 the hands of the parents or at the hands of an unethical  
20 counselor, that can be brought to the attention of the state  
21 regulators.

22 And what the state regulators have is the benefit of  
23 a board of people with the same licensure, with the same  
24 education and training who can analyze it on a case-by-case  
25 basis and say was this a violation of the standard of care or

1 did this counselor act ethically.

2           Because as we've also pointed out, the APA report, it  
3 doesn't say that when the client presents in your office and  
4 says, I want to change my sexual orientation that you're  
5 supposed to say, get out, I can't help you with that. In  
6 fact, it says the opposite. It says don't be quick to shoot  
7 the client down. Find out what it is they really want, ask  
8 them questions. Try to figure out is it a conflict between  
9 their religious identity and their sexual orientation  
10 identity.

11           The counsel of the APA report is don't do therapy  
12 that has a predetermined or a priori change goal, but  
13 otherwise use your judgment and be careful with your clients  
14 that you don't make them feel rejection immediately by telling  
15 them what you want is wrong because that would also be a  
16 predetermined outcome and just as wrong to say, no, you can't  
17 do that.

18           And the APA report also says, as we pointed out in  
19 our filings, there's a difference between saying sexual  
20 orientation as a concept and sexual orientation identity. And  
21 what the APA report says is that we think it's important to  
22 make that distinction so people can understand what may  
23 actually change.

24           And they point out at least anecdotally that people,  
25 particularly religious people who have received what they call

1 SOCE in the APA report have experienced in some cases a change  
2 in their sexual orientation identity. That is something that  
3 is part of the client self-determination, the client's freedom  
4 to identify or resolve their religious and sexual identities  
5 in the way that best helps them, because the goal of  
6 counseling is to try to help that client, you know, reach  
7 their best, you know, psychological functioning.

8           So the idea that the state -- even the state board  
9 would receive a complaint and say automatically, oh, well, if  
10 you discuss a change or you help that client change, that  
11 that's automatically wrong or against the standard of care. I  
12 don't think that's the case. And I think that's why we don't  
13 see a lot of complaints about this, because I think the vast  
14 majority of licensed counselors don't want to harm kids. They  
15 do want to help them, and they don't have predetermined or  
16 a priori treatment goals in mind as if they exist to change  
17 kids or cure kids or fix kids who experience same-sex  
18 attraction or identify as LGBT.

19           So we think the preemption issue is decided by the  
20 extent to which the State already regulates this area, as we  
21 pointed out. And then the question is, is there evidence of  
22 public policy against local regulation? And I think apart  
23 from these conversion therapy ordinances that are a relatively  
24 recent thing, there really isn't any evidence of local  
25 regulation of the substance of a person's professional

1 practice in the mental health field.

2 The Court asked the City of Tampa to identify any  
3 other ordinance that regulates or that might regulate a  
4 professional related to this conversion therapy ordinance.  
5 And Tampa identified a permitting ordinance that applies to  
6 pain clinics.

7 And when you look at that ordinance, it doesn't  
8 attempt to talk to pain management doctors about what they can  
9 prescribe. It doesn't try to interfere at all with their  
10 doctor-patient relationship. It says if you're going to have  
11 a pain clinic, you have to meet certain physical and  
12 verifiable requirements, like you have to have a physician who  
13 is the director of the clinic. That person can't be a felon.  
14 You have to have certain, you know, property, plant, and  
15 equipment, or physical plant characteristics.

16 The City is able within its sort of zoning and land  
17 use function -- and it is the land use and police departments  
18 in that case that control the permitting ordinance. That's  
19 all verifiable. That's all something that a code enforcement  
20 officer or a city official can easily verify are the  
21 requirements in this ordinance. There's nothing that would  
22 require a city official to decide whether this patient is  
23 really in pain or to tell a doctor you can or can't prescribe  
24 a certain drug or a certain amount of drugs or anything like  
25 that. So Tampa certainly hasn't identified anything on its

1 books to show that there's some longstanding ability of cities  
2 or municipalities to regulate in this area.

3 And I'm just going to review my notes quickly, Your  
4 Honor. I think I would just like to conclude with where we  
5 began, and that's back to the example the Court gave of  
6 telling a client to cut or to harm themselves in a manner.

7 Certainly it's the case that we wouldn't be here  
8 challenging an ordinance like that because it's not something  
9 that our client would engage in. We don't -- we think that  
10 certainly the State could regulate that. We're not sure -- we  
11 wouldn't want to concede that Tampa necessarily could regulate  
12 that, again for the same preemption reasons that we think it  
13 can't regulate this field.

14 But at the end of the day, as I already said, an  
15 ordinance against cutting would certainly pass any level of  
16 scrutiny -- or an ordinance against telling kids to cut would  
17 pass any level of scrutiny because you could empirically  
18 demonstrate the harm and narrowly tailor it.

19 And with that, Your Honor, I'll conclude.

20 THE COURT: Very good. And we'll give your learned  
21 counsel rebuttal here. Thank you.

22 So the first question for learned counsel in rebuttal  
23 is what say you about the transcripts, Ruggiero and Jerrod --  
24 what's the last name? Newman?

25 MR. GANNAM: Simpson.

1 THE COURT: Simpson.

2 MR. WILLIAMS: I say that to read the entire  
3 transcript. You'll see I objected quite a bit because these  
4 hypotheticals are like so many hypotheticals that we lawyers  
5 like to throw out to people. They're incomplete in a lot of  
6 things. So I've objected, but we allowed him to testify.

7 He was very consistent -- Mr. Simpson I'm referring  
8 to, because Mr. Ruggiero is a former police officer. He  
9 doesn't make the decision to enforce or not enforce. He was  
10 giving his opinion based on the question posed. But what  
11 Mr. Simpson was saying, he was consistent with the ordinance,  
12 if you recall. If you have the goal, predetermined goal to  
13 change the -- to change, then you violate the statute.

14 THE COURT: All right. Now, what about if the goal  
15 arises in the middle of therapy?

16 MR. WILLIAMS: Well, that's an interesting question.  
17 And frankly, I have discussed that with myself and internally  
18 with the City Attorney's Office. If halfway through this  
19 therapeutic session that starts with no predetermined goal on  
20 the part of the therapist, and let's say there's a total ten  
21 sessions and halfway through, at the end of the fifth session,  
22 the beginning of the sixth session the child says, look, we've  
23 been through this for five sessions, thanks for all your help,  
24 I've made the decision that I want to go back, I want to go  
25 back, what says the ordinance about that, to use Your Honor's

1 question?

2 Well, what the ordinance says is as the therapist,  
3 you cannot -- to use the language of the ordinance -- you  
4 can't -- let me be precise. You can't perform conversion  
5 therapy with that goal and seek to change the sexual  
6 orientation or gender identity.

7 What you can do, what the ordinance doesn't prohibit  
8 in the slightest way, is assist that client in her or his  
9 effort to achieve their own goal. You just can't be the  
10 proactive person that causes that change. And that's the  
11 point.

12 THE COURT: Where is that? I don't see that. Where  
13 does it say that?

14 MR. WILLIAMS: Well, it says -- well, we've gone over  
15 the perform the goal of changing. Everything else is pretty  
16 much neutral. Everything else is pretty much neutral. You  
17 can --

18 THE COURT: You can't engage in any counseling  
19 performed with the goal of changing an individual's sexual  
20 orientation or gender identity. You can't do that.

21 MR. WILLIAMS: With the goal, that's correct. With  
22 the counseling -- one has to be very careful about precise  
23 language that's used in the ordinance. The counseling does  
24 not include counseling that provides support and assistance to  
25 a person undergoing these situations, provides acceptance and

1 support and understanding and so on and so forth. You just  
2 can't seek to change. You, as the counselor, can't seek to  
3 change.

4 THE COURT: You can't provide any counseling with the  
5 goal of changing an individual's -- let's just stick with  
6 sexual orientation for a minute.

7 MR. WILLIAMS: Sure.

8 THE COURT: Sexual orientation. You can't provide  
9 any counseling with that goal. So the fact he's coming to you  
10 or she's coming to you means they're troubled, they're unsure.  
11 So it's sort of like me as a criminal defense lawyer, you  
12 represent these people, and by definition many of them are  
13 criminals. And about halfway through when they suggest, I,  
14 the lawyer I'm going to do something illegal, oh, yeah, go  
15 tell the witness to shut up or something, first thing I would  
16 have to do is fire them, and I would for my own  
17 self-preservation.

18 MR. WILLIAMS: Of course.

19 THE COURT: So would not Mr. Vazzo or anyone else  
20 halfway through when the client says, oh, I was confused, I  
21 was troubled, and by golly, I said, you know what, I do want  
22 to change and get this done and go back to where I was before,  
23 says you can't -- the therapist can't counsel if that's the  
24 goal. Do you have to send him off and get rid of him?

25 MR. WILLIAMS: No, not at all. Not at all. What

1 Mr. Gannam said is most counselors want to help their clients.

2 THE COURT: Go ahead and I'll help you with this goal  
3 to change now that you've developed it.

4 MR. WILLIAMS: I'll help you work through it. You  
5 don't have to necessarily provide that counseling with a  
6 predetermined goal of converting them back. For example, just  
7 to make it start --

8 THE COURT: What if he wants that?

9 MR. WILLIAMS: If he says, look, I have decided that  
10 I want to go back --

11 THE COURT: Yeah.

12 MR. WILLIAMS: -- and I'm here for you to help me to  
13 change me back.

14 THE COURT: Halfway through.

15 MR. WILLIAMS: Right, right, right. So the question  
16 becomes what can the counselor do? The counselor can't say,  
17 okay, I'm your guy, I know how to change you back and let's  
18 get rolling. We are going to change you back. Follow the  
19 bouncing ball and we'll get you back to where you want to be.  
20 That's a predetermined goal with a goal of changing the  
21 individual and seeking to change. What the counselor can do  
22 is pretty much everything else. That's pretty stark and  
23 that's very narrow.

24 What the counselor can do, let's sit down and let's  
25 talk about this, because their goal of going back may be a

1 short-term goal. We don't know because we're not in that  
2 counseling session. This ordinance gives the counselor a  
3 great deal of flexibility and latitude to work through that  
4 problem.

5 I agree that whether it's at the beginning or the  
6 middle, if the counselor says, okay, I'm your guy, we're going  
7 to change back, follow these steps and we'll get you back,  
8 that violates the ordinance.

9 THE COURT: He fires the client like I did the  
10 client.

11 MR. WILLIAMS: Exactly, or the client --

12 THE COURT: Or he says let's go just north of the  
13 football stadium at my buddy's office and we'll do it there.

14 MR. WILLIAMS: We could go to my brother-in-law over  
15 in Temple Terrace or Carrollwood or someplace like that. If  
16 the counselor says, I can help you, I can do all of these  
17 things that the ordinance doesn't prohibit, which is pretty  
18 much everything, and the client says, look, are you telling me  
19 that you can't go take me through this fancy conversion  
20 therapy that I read on your website that guarantees that I'll  
21 go back?

22 If you are saying that, then I fire you and I'll --  
23 tell me somebody who can do that. And that's pretty simple.  
24 That's straightforward. That's very simple in my opinion.  
25 But the ordinance allows a great deal of latitude, a great

1 deal of flexibility on everything other than that precise  
2 prohibition.

3           And so in the milieu of a counseling session, you can  
4 see how it goes a lot of different ways. Just like clients --  
5 been through it many times, should I testify or not testify,  
6 and that's a tough decision. That's a very tough decision.  
7 Should I take the deal and plead to one felony or run the risk  
8 of getting indicted and getting charged with half a dozen  
9 felonies, or in this day and age, 24 or something like that.  
10 Those are tough decisions. And that spectrum goes back and  
11 forth and back and forth because these are highly emotional  
12 decision.

13           THE COURT: And the City has their snout right in the  
14 middle of it, don't they?

15           MR. WILLIAMS: What's that, sir?

16           THE COURT: The City's got their microscope right in  
17 the middle of it, don't they?

18           MR. WILLIAMS: Well, I don't know about that. The  
19 City has --

20           THE COURT: If there would be a trial on this, we  
21 would have to say on the fourth session, sir, what happened?  
22 Well, I said maybe I do want to go back. And, you know, I  
23 mean really? That's probably not a realistic scenario because  
24 no one is ever going to do this in the city limits if this  
25 ordinance stands.

1 MR. WILLIAMS: Not only that, I think the realistic  
2 approach is the facts and circumstances that I -- analysis  
3 that I alluded to earlier. And that is before Mr. Simpson, if  
4 he's the person that's going to make that charging decision,  
5 probably with the concurrence of the City Attorney, he's going  
6 to go through a very, very careful analysis, because I think  
7 the policy, the public policy of the City of Tampa would be we  
8 don't want to take these people to court unless we've got a  
9 solid case anymore than -- Your Honor is certainly familiar  
10 with the United States Attorneys' Manual. There are  
11 guidelines on what you should indict and what you shouldn't  
12 indict.

13 THE COURT: The City has no such guidelines, do they?

14 MR. WILLIAMS: No, but common sense.

15 THE COURT: When are we going to get those? We are  
16 going to take them on the fly, aren't we?

17 MR. WILLIAMS: Perhaps. Perhaps. But if you read  
18 the entire deposition of Mr. Simpson --

19 THE COURT: I did. I will read it again, of course.

20 MR. WILLIAMS: He's a very smart and mature lawyer,  
21 and he's got enough common sense, or his replacement. I'm not  
22 going down this road without giving it a great deal of factual  
23 investigation, make sure I understood every part of it because  
24 I know -- I know that this is going to be a donnybrook of a  
25 fight. So do I want to enforce this against somebody with a

1 weak case? No. Do I want to indict somebody with a weak case  
2 in the federal arena? No. Common sense tells you.

3 I mean, the guidelines are the guidelines in the  
4 federal arena. But, frankly, I think that a lot of AUSAs have  
5 a gut check about what's a good case to bring, what's a bad  
6 case to bring, and I think that's the case here.

7 And I think we have to emphasize the fact that other  
8 than that narrow thing that I have harped on through the  
9 afternoon, this ordinance gives the therapist great latitude.  
10 I agree with Mr. Gannam again. Most therapists are trying to  
11 help their clients. I would say the vast majority, if not all  
12 of them, really, other than the quacks, just like most lawyers  
13 are trying to help. And they have absolute liberty to do that  
14 in so many different ways that don't violate the narrow  
15 prohibition of this ordinance.

16 And they haven't -- all the stuff about the  
17 depositions and so forth, frankly, it doesn't, I think, push  
18 their ball or the Court's ball down the court at all because,  
19 as I said earlier, the legislative findings, they haven't done  
20 anything to debunk those legislative findings. They haven't  
21 done anything to debunk the City's right to rely on -- and I  
22 will quote from the case we cited.

23 The city council was entitled to rely on, "The  
24 empirical judgments of independent professional organizations  
25 that possess specialized knowledge and experience concerning

1 the professional practice under review." Now, that's from the  
2 King case, and that part wasn't reversed. That's common  
3 sense. Of course, the City has that right, just like congress  
4 and the legislature has that right. And they have presented  
5 no evidence that sufficiently debunks those legislative  
6 findings.

7           And unless they do, which they try, then I submit to  
8 this Court that the substantial deference doctrine gets  
9 implemented and this Court should give those findings  
10 substantial deference.

11           And on top of that, as we've said in our filings,  
12 subsequent reports, the SAMHSA report, the Ryan study -- the  
13 Ryan study, for example, here's what it says. We said it in  
14 our memo. "Plaintiffs ignore the peer-reviewed 2018 Ryan  
15 study which found that youth who were subjected to conversion  
16 therapy were nearly three times more likely to attempt suicide  
17 than other LGBT youth."

18           What else do you need? What else does a city council  
19 person need to say, wait a minute, this is dangerous. And  
20 they haven't refuted that in any way, shape, or form.

21           I don't want to be up here forever, Judge, because  
22 you've heard a great deal.

23           The secondary effects doctrine. It is accurate, and  
24 I think I conceded or stated in my initial presentation that  
25 the cases that are extant are generally zoning type of cases.

1 By the same token, none of those cases, particularly the  
2 Supreme Court cases have limited the secondary effects  
3 doctrine to zoning cases.

4 And in fact, if you read them in their entirety, a  
5 whole panoply of factual scenarios and the doctoral discussion  
6 that's contained in those cases, it is clear that the  
7 secondary effects doctrine can apply to other factual  
8 scenarios and should -- and should, because if a local  
9 legislative body wants to prevent harm and the First Amendment  
10 speech is somewhat affected, they can't be chilled in doing so  
11 simply because they touched that speech base and all of a  
12 sudden, boom, you can't do it.

13 And that's really what the secondary effects doctrine  
14 does, along with the other argument I made earlier, and I  
15 won't repeat it, but they haven't cited any case that  
16 restricts the secondary effects doctrine to zoning cases. And  
17 I could not find any language in any of those cases that did  
18 so, the Supreme Court cases, or in the Flanigan case for that  
19 matter. So I wanted to touch that base.

20 The preemption doctrine argument I see as a red  
21 herring. Take the drug abuse ordinance or the pain  
22 management, which is really a drug abuse thing, trying to  
23 address the opioid crisis in this country and in this state  
24 and in this community. The reason that ordinance was enacted  
25 obviously is because there was a void in the state legislative

1 and regulatory regime. And the City stepped in and completed  
2 that void.

3           There are any number of statutes in Florida that deal  
4 with drug abuse. Any number of them that deal with drug  
5 abuse. There's any number of regulations as it relates to how  
6 doctors handle this kind of stuff, and yet this particular  
7 ordinance was still not preempted by state law.

8           Likewise, conversion therapy, there is no state  
9 statute like there was in Maryland. If there was a state  
10 statute in Florida, then the City of Tampa, West Palm Beach,  
11 Boca Raton, Miami Beach, and the other municipalities and  
12 counties in Florida that have adopted this ordinance wouldn't  
13 have to do so because it is expressly preempted.

14           And as we say in our submissions, the legislature  
15 certainly knows how to expressly preempt a subject matter, and  
16 they haven't done it in this case, nor have they overwhelmed  
17 the field of this area. So implied preemption simply does not  
18 apply here. And I submit that Your Honor should rule that.

19           I want to go back to where I started, just like  
20 Mr. Gannam did. I started with identifying what I felt were  
21 the two core fundamental First Amendment values that any  
22 challenge to a statute or an ordinance on a First Amendment  
23 basis should embrace. One is the public debate, free market  
24 of ideas. As I said earlier, and I'll say it again, this  
25 ordinance doesn't affect that in one way or the other. In

1 fact, if anything, it promotes it.

2 As far as the viewpoint, as I've said before, there  
3 is no viewpoint discrimination. The City in its ordinance  
4 doesn't care what the counselor says as long as they're not  
5 performing conversion therapy that is designed predetermined  
6 to change somebody. And we don't care what you say. You just  
7 can't perform that particular therapeutic modality. Two  
8 different things. Whether it's conduct or not, it really begs  
9 the question. It really begs the question. There is no  
10 viewpoint discrimination. So where's the harm to the First  
11 Amendment?

12 I submit to Your Honor there's virtually no harm to  
13 the First Amendment. There would be harm to federalism if  
14 every time a city passed an ordinance that touched in some  
15 ephemeral way the First Amendment speech that's automatically  
16 unconstitutional, then we would have a difficult situation in  
17 this city and any other locality.

18 So whether it's that argument, the secondary effects  
19 argument or any of the other arguments that we have advanced  
20 in this case, this ordinance is constitutional both on a  
21 federal level and a state level. It hasn't been preempted.  
22 It's not vague. It's not overly broad. And Your Honor should  
23 grant our motion for summary judgment, deny theirs. And I  
24 thank you for your attention.

25 THE COURT: Well, I thank the both of you.

1 MR. GANNAM: Your Honor, may I just have three  
2 minutes?

3 THE COURT: All right.

4 MR. GANNAM: Thank you, Your Honor.

5 MR. WILLIAMS: Can I have one and a half after him,  
6 Your Honor?

7 THE COURT: We'll drop it down a minute each time.

8 MR. GANNAM: Your Honor, I'll just stand here if  
9 that's okay.

10 The first point I want to make is Mr. Williams cannot  
11 come up here and disagree with what the City's 30(b)(6)  
12 representative of enforcement said. I think that's binding on  
13 the City.

14 And Mr. Simpson was quite clear that as soon as it  
15 becomes the client's goal to seek change, if the therapist  
16 facilitates that goal or agrees or goes along with it, the  
17 statute or the ordinance has been violated.

18 What Mr. Williams argued for is an interpretation  
19 that says that the therapist can't guarantee change, the  
20 therapist can't promise that change will happen. But the  
21 ordinance is worded and the way that the 30(b)(6)  
22 representative testified is that if the therapist even agrees  
23 to try, that's a violation of the ordinance.

24 Secondly, Mr. Williams quoted from a case that says  
25 that the government is entitled to rely on the empirical

1 judgments of others. We don't disagree with that, but the  
2 City hasn't relied on anyone's empirical judgments here  
3 because there are none that can show causation.

4 And just to read from the Ryan study, where -- we  
5 cited this in our reply brief, Document 205 at page 9. The  
6 2018 Ryan study says, "Causal claims cannot be made" -- along  
7 with several other limitations that itself identified for its  
8 study. Causal claims cannot be made. I don't know how much  
9 clearer it could be that you can't take anything in this study  
10 and say that there's causation from sexual orientation or  
11 conversion therapy.

12 I would also point out, Your Honor, that the City  
13 brought in other article. It's a recent article that appeared  
14 in JAMA Psychiatry, or the Journal of the American Medical  
15 Association Psychiatry. And even in that study, it says --  
16 reading from the same reply we just filed -- "Limitations  
17 include its cross-sectional study design, which precludes  
18 determination of causation. It's possible that those with  
19 worse mental health or internalized transphobia may have been  
20 more likely to seek out conversion therapy rather than  
21 nongender identity change efforts therapy, suggesting that  
22 conversion efforts themselves were not causative of these poor  
23 mental health outcomes."

24 Now, we, in turn, brought to the Court's attention an  
25 article criticizing that article. And in that article, the

1 lead author of the JAMA investigation was quoted in a  
2 statement saying we think this is actually the first study of  
3 its kind linking mental health outcomes with gender identity  
4 change efforts. And the author of our article asked, I think,  
5 the pressing question. Well, if this is the first study of  
6 its kind, what business does any government have relying on it  
7 to enact a speech ban?

8 Now, of course, the 2018 Ryan study and this newer  
9 article cited by the City came after its counseling ban. So  
10 never could the City prove that those things were relied on at  
11 the time of enactment of its ban.

12 And then finally going to the issue of the pain  
13 management clinics, the City didn't tell the clinic you can't  
14 prescribe opioids anymore. You can't prescribe --

15 THE COURT: You are now repeating yourself, aren't  
16 you?

17 MR. GANNAM: Forgive me, Your Honor. I just thought  
18 that when the City says that really they're doing the same  
19 thing by regulating pain management clinics, they're not  
20 getting into the therapy or treatment involved.

21 Thank you, Your Honor.

22 THE COURT: Very good.

23 Last word?

24 MR. WILLIAMS: I will stand by Mr. Simpson's  
25 testimony, the entirety of his testimony. And I think even

1 the excerpts they picked out of his testimony, he was  
2 consistent in parroting the language "with the goal of." And  
3 you would have to get into the facts to determine what the  
4 true answer is. So I will rely on his testimony and common  
5 sense in how to filter that into that process.

6 THE COURT: Well, thank you very much. All right.  
7 So we're going to try to get an order out by a week from  
8 Friday. Let me say my worry is that since this is a  
9 tripartite arrangement here, that the -- and we have to speak  
10 in a horrible metaphor. We have a Ferrari here. We have a  
11 Lamborghini here, and a Toyota Camry with leather seats.

12 So, gentlemen, and all counsel, I am in awe of this  
13 level of legal presentations. It's, frankly, thrilling to  
14 watch, and challenging. And thank you very much. I really  
15 appreciate it. And you need to tell your clients that it's  
16 just stellar legal work. So thank you. We'll work on it.  
17 Thank you.

18 (Proceedings concluded at 4:51 p.m.)  
19  
20  
21  
22  
23  
24  
25

1 UNITED STATES DISTRICT COURT )  
2 MIDDLE DISTRICT OF FLORIDA )

3  
4 **REPORTER TRANSCRIPT CERTIFICATE**

5 I, Tracey Aurelio, Official Court Reporter for the United  
6 States District Court, Middle District of Florida, certify,  
7 pursuant to Section 753, Title 28, United States Code, that  
8 the foregoing is a true and correct transcription of the  
9 stenographic notes taken by the undersigned in the  
10 above-entitled matter (Pages 1 through 143 inclusive) and that  
11 the transcript page format is in conformance with the  
12 regulations of the Judicial Conference of the United States of  
13 America.

14 /s *Tracey Aurelio*

15 \_\_\_\_\_  
16 Tracey Aurelio, RMR, RDR, CRR  
17 Official Court Reporter  
18 United States District Court  
19 Middle District of Florida  
20 Tampa Division  
21 Date: November 5, 2019  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I, hereby certify that, on the 23rd day of December, 2019, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to all counsel of record, and that the foregoing was also sent via electronic mail to each of the following:

Liberty Counsel  
Mathew D. Staver, Esq.  
[mat@lc.org](mailto:mat@lc.org)  
Horatio G. Mihet, Esq.  
[hmihet@lc.org](mailto:hmihet@lc.org)  
Daniel Schmid, Esq.  
[dschmid@lc.org](mailto:dschmid@lc.org)  
Roger K. Gannam, Esq.  
[rgannam@lc.org](mailto:rgannam@lc.org)  
*Counsel for Appellees*

Southern Poverty Law Center  
J. Tyler Clemons, Esq.  
[tyler.clemons@splcenter.org](mailto:tyler.clemons@splcenter.org)  
David Dinielli, Esq.  
[david.dinielli@splcenter.org](mailto:david.dinielli@splcenter.org)  
*Counsel for Amicus Curiae Equality Florida*

Carlton Fields  
Sylvia H. Walbolt, Esq.,  
[swalbolt@carltonfields.com](mailto:swalbolt@carltonfields.com);  
Brian C. Porter, Esq.,

[bporter@carltonfields.com](mailto:bporter@carltonfields.com);  
*Counsel for Amicus Curiae Equality Florida*

National Center for Lesbian Rights  
Christopher f. Stoll, Esq.  
[cstoll@nclrights.org](mailto:cstoll@nclrights.org)  
*Counsel for Amicus Curiae Equality Florida*

David E. Harvey  
*Attorney for Defendant-Appellant*