

No. 19-14387

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

ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, and SOLI
DEO GLORIA INTERNATIONAL, INC. d/b/a NEW HEARTS OUTREACH
TAMPA BAY, individually and on behalf of its members, constituents and clients,

Plaintiffs–Appellees,

v.

CITY OF TAMPA, FLORIDA,

Defendant–Appellant.

On Appeal from the United States District Court
for the Middle District of Florida
In Case No.: 8:17-cv-02896-T-02AAS before the Honorable William F, Jung

**PLAINTIFFS-APPELLEES' UNOPPOSED
MOTION TO EXPAND WORD LIMIT FOR BRIEF**

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VAZZO, *etc., et al.* v. CITY OF TAMPA, FLORIDA

**PLAINTIFFS-APPELLEES’
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Plaintiffs-Appellees hereby certify that the following individuals and entities are known to have an interest in the outcome of this case:

Burr & Forman, LLP

Carlton Fields Jordan Burt, PA

City of Tampa

Clemons, J. Tyler

Dana Lee Robbins

Dinielli, David C.

Equality Florida Institute, Inc.,

Gannam, Roger K.

Harvey, David E.

Jung, William F.

Liberty Counsel, Inc.

Porter, Brian C.

McCoy, Scott D.

Mihet, Horatio G.

Minter, Shannon P.

National Center for Lesbian Rights

VAZZO, *etc., et al.* v. CITY OF TAMPA, FLORIDA

Porter, Brian C.

Richardson, Ursula D.

Sansone, Amanda Arnold

Schmid, Daniel J.

Soli Deo Gloria International, Inc.

Southern Poverty Law Center

Staver, Mathew D.

Stoll, Christopher

Vazzo, Robert L.

Walbolt, Sylvia H.

Williams, Robert V.

No publicly traded company or corporation has an interest in the outcome of
this case.

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

**PLAINTIFFS-APPELLEES' UNOPPOSED MOTION
TO EXPAND WORD LIMIT FOR BRIEF**

Plaintiffs–Appellees, ROBERT L. VAZZO, LMFT (“Vazzo”), and SOLI DEO GLORIA INTERNATIONAL, INC. d/b/a NEW HEARTS OUTREACH TAMPA BAY (“New Hearts”), pursuant to Fed. R. App. P. 27, 11th Cir. R. 27-1, and 11th Cir. R. 32-4, and on an unopposed basis, respectfully move the Court for an order expanding the word limit for Appellees’ brief by 3,000 words, for a total of 16,000 words. Appellees show the Court as follows in support of this motion:

1. This appeal arises from the granting of Appellees’ motion for summary judgment in their challenge, on First Amendment and state preemption grounds, to the ordinance passed by Defendant–Appellant, City of Tampa (“Tampa” or the “City”), which ordinance bans the speech-only, voluntary counseling provided by Vazzo, and for which New Hearts provides referrals, for minors who seek and desire help with reducing or eliminating unwanted same-sex attractions or behaviors, or sexual or gender identity conflicts.

2. There are several reasons why this appeal presents exceptional circumstances warranting a modest, 3,000-word increase for Appellees’ brief, which amounts to a 23% increase of the 13,000-word limit imposed by the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i):

a. The case below, and this appeal, raise significant and complex state preemption issues, the resolution of which issues formed the basis of the

decision of the district court below to invalidate the ordinance, as explained in the court's 41-page order granting Appellees' motion for summary judgment.

b. In addition to the significant and complex preemption issues, however, Appellees raised below numerous and weighty First Amendment issues as grounds for invalidating the ordinance, including the extent to which the ordinance burdens Appellees' protected speech; whether the ordinance is content-neutral or content-based; whether the ordinance is viewpoint-neutral or viewpoint-based; the appropriate level of scrutiny; whether the ordinance is unconstitutionally vague or overbroad, or an unconstitutional prior restraint; and whether Tampa has met its burden of demonstrating that its ordinance is narrowly-tailored; all of which issues required separate argument and factual development.

c. To develop both the preemption and First Amendment issues below, the district court permitted the parties to engage in significant, pre-hearing written and deposition discovery, and conducted three merits-related hearings, all of which produced a voluminous record comprising over 12,500 pages of transcripts and documents.

d. The number and importance of issues raised, and the voluminous record amassed, necessitated lengthy merits briefing below, totaling

approximately 64,000 words, comprising preliminary injunction briefing (docs. 85, 99, 114, 145, 160) and summary judgment briefing (docs. 189, 190, 193, 194), and excluding briefing involving district court amicus curiae and discovery matters.

e. Although the court below declined to rule on the First Amendment issues, invoking the doctrine of constitutional avoidance, and instead ruled solely on the state preemption issue, this Court is able to affirm the lower court's invalidation of the ordinance on any basis supported by the record, even if different from the basis of the lower court's decision.¹ Thus, the substantial First Amendment issues developed on the record below are necessarily before this Court, along with the substantial preemption issues covered in the district court's 41-page order and Tampa's brief to this Court, and Appellees must address all of it in their brief.

3. Appellees' counsel are diligently working to focus their arguments in order to provide a **clear and concise** submission to this Court which is **much** shorter than the totality of the merits briefing that was allowed in the lower court.

4. This Court, having been presented with circumstances similar to the foregoing in the related case *Otto v. Boca Raton*, No. 19-10604, involving a

¹ See *Thompkins v. Lil' Joe Records, Inc.*, 476 F.3d 1294, 1303 (11th Cir. 2007).

challenge to city and county ordinances nearly identical to Tampa's, granted expansions of the word limits for plaintiffs-appellants' principal and reply briefs by 2,000 and 1,000 words, respectively, which total of 3,000 words is equivalent to the increase requested by Appellees herein.

5. Appellees are mindful of this Court's time, and of the disfavored nature of motions for word limit expansion. Appellees do not seek this relief lightly, and do so only because, in their reasoned judgment, it is not possible to adequately address all of the relevant and weighty issues before this Court without it. Appellees further believe the requested expansion will assist the Court's thorough review and consideration of the order on appeal.

6. Granting the relief requested herein will not prejudice any party, nor unduly delay the efficient resolution of this appeal or the administration of justice. Prior to filing this motion, the undersigned counsel for Appellees conferred with counsel for Tampa, who advised that Tampa has no objection to the requested expansion. The motion is, therefore, **unopposed**.

WHEREFORE, for good cause shown, Appellees respectfully request that the Court enter an order expanding their word limit for their brief by 3,000 words.

Dated this January 27, 2020.

/s/ Roger K. Gannam
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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). Not counting the items excluded from the length by Fed. R. App. P. 32(f), this document contains 816 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This document has been prepared using Microsoft Word in 14-point Times New Roman font.

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

CERTIFICATE OF SERVICE

I hereby certify that, on this January 27, 2020, a copy of the foregoing was electronically filed through the Court’s ECF system, which will effect service on the following parties and counsel of record:

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