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' MOTION TO STRIKE REPLY BRIEF OF APPELLANT AND FOR SANCTIONS

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No. 19-14387

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:

Alliance Defending Freedom

The Alliance for Therapeutic Choice and Scientific Integrity

Burr & Forman, LLP

Bursch, John. J.

Carlton Fields Jorden Burt, PA

City of Tampa

Clemons, J. Tyler

Crampton, Stephen M.

Dinielli, David C.

Equality Florida Institute, Inc.

Family Foundations Counseling, PLLC

Florida State Representative Byron Donalds

Florida State Representative Brett Hage

Florida State Representative Stan McClain

Florida State Representative Scott Plakon

Florida State Representative Spencer Roach

Florida State Representative Anthony Sabatini

Florida State Representative Clay Yarborough

Florida State Senator Ben Albritton

Florida State Senator Dennis Baxley

Florida State Senator Doug Broxson

Florida State Senator Kelli Stargel

Freedom of Conscience Defense Fund

Gannam, Roger K.

Harvey, David E.

Jonna, Paul M.

Jung, William F.

Liberty Counsel, Inc.

LiMandri, Charles S.

LiMandri & Jonna, LLP

Lindell Farson & Zebouni, P.A.

Lindell, J. Michael

McAlister, Mary E.

McCoy, Scott D.

Mihet, Horatio G.

Minter, Shannon P.

National Center for Lesbian Rights

Piedra, Daniel J.

Porter, Brian C.

Price, Max R.

Richardson, Ursula D.

Robbins, Dana Lee

Sansone, Amanda Arnold

Schandevel, Christopher P.

Schmid, Daniel J.

Soli Deo Gloria International, Inc.

Southern Poverty Law Center

Staver, Mathew D.

Stoll, Christopher

Trissell, Jeffrey M.

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' MOTION TO STRIKE REPLY BRIEF OF APPELLANT AND FOR SANCTIONS

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 and 46, and 11th Cir. R. 27-1 and 46-9, respectfully move the Court for an order striking the Reply Brief of Appellant, City of Tampa ("Tampa" or the "City"), and imposing an appropriate sanction, to include the fees and costs necessitated by this motion. Appellees show the Court as follows in support of this motion:

1. The Reply Brief should be stricken because it is scurrilous, misrepresents the record, and otherwise exceeds the bounds of proper advocacy. As shown herein, the City proceeds beyond mere argument or strained inference to misrepresent and mischaracterize the record facts to vilify Appellees and their viewpoints.[1] In the order on appeal, however, the district court quite correctly

[1] Appellees, for the reasons stated herein, believe this motion to strike and impose sanctions is the appropriate vehicle for addressing the City's misrepresentations of the factual record and scurrilous references to Appellees, as opposed to a motion seeking leave to file a sur-reply brief, which would be the appropriate vehicle for addressing the City's arguments (none of which Appellees concede). If the Court determines that Appellees should have instead filed a motion seeking leave to file a sur-reply brief to address the matters raised herein, then Appellees respectfully request that the Court treat this motion as a motion for leave to file a sur-reply brief, and accept the contents of this motion as Appellees' sur-reply brief.

pointed out that the City's "confident certitude" that its ordinance reflected enlightenment was unfounded, as revealed by none other than the City's own experts. (R-213 at 32–33.) And the City still does not get it—or pretends not to get it so as to continue caricaturing Appellees as crackpot bigots who, though not welcome at the table of the counselors who agree with the City's enlightened viewpoint, should nonetheless be happy with the free speech crumbs thrown to them by the ordinance.

2. "One of the most important aspects of the work of an appellate lawyer is the obligation to provide the court with a fair and accurate presentation of the relevant facts. . . . [T]here is no valid reason for any lawyer to do otherwise." *In re Liotti*, 667 F.3d 419, 429 (4th Cir. 2011). Misrepresenting the factual record to a federal appellate court is "unbecoming a member of the bar . . . and sanctionable under Fed. R. App. P. 46(c)." *In re Disciplinary Action Boucher*, 850 F.2d 597, 599 (9th Cir. 1988). These principles are embodied in the Eleventh Circuit's rule for statements of facts in briefs: "A proper statement of facts reflects a high standard of professionalism. It must state the facts accurately, those favorable and those unfavorable to the party. Inferences drawn from facts must be identified as such . . . ." 11th Cir. R. 28-1(i)(ii). As demonstrated below, the Reply Brief fails to uphold the obligation to provide the Court "with a fair and accurate presentation of the relevant facts."

3. Any purportedly factual portions of a brief that cannot be supported by the record or that rely on evidence not presented to the district court are due to be stricken. *See Gupta v. Walt Disney World Co.*, 256 Fed. Appx. 279, 282 (11th Cir. 2007). Furthermore, scurrilous, abusive, and offensive references to litigants are inexcusable and due to be stricken under the Court's "inherent power to impose order, respect, decorum, silence, and compliance with lawful mandates." *Pola v. Utah*, 458 Fed. App'x 760, 763 (10th Cir. 2012) (internal quotation marks omitted); *Radtke Patents Corp. v. Coe*, 121 F.2d 103, 103 (D.C. Cir. 1941) ("Some of the language of the briefs is inexcusable. Under no circumstances could such language be proper in a brief; no matter how meritorious the case or how righteous the indignation of counsel."). *A fortiori*, a brief substantially based on misrepresentations of the record, which necessarily cannot be supported by the record, and on inexcusably scurrilous references, is due to be stricken in its entirety.

4. The City's misrepresentations begin in the Reply Brief's first sentence, where it characterizes the Facts section of Appellees' Answer Brief as "a resuscitation of so-called "Facts."" (Reply Br. 1 (internal quotation marks unaltered).) Thereafter, however, the City provides no substantiation whatsoever of its blanket denunciation of Appellees' Facts section. To the contrary, Appellees' Facts section cites the verified allegations of the Amended Complaint (which the City never attempted to rebut through fact discovery), the 2009 APA Report and

other record authorities, the deposition testimony of City officials, and the declarations and deposition testimony of the City's experts—in a word, Appellees cite the *record*. The City thus mischaracterizes the *record* by referring to it as "a resuscitation of so-called "Facts."" Unfortunately, the City's lead-off invective merely sets the table for what is to come.

5. In the next paragraph, the City intentionally mischaracterizes the record facts as to the counseling Appellee Vazzo provides, and for which Appellee New Hearts provides referrals: "[T]heir desired change is a one-way street that travels only from gay to straight. Only that path arrives at Plaintiffs' desired destination—a cure for the 'disease' of homosexuality." (Reply Br. 1 (internal quotation marks unaltered).) The City does it again on page 3 of the brief, mockingly reinterpreting Vazzo's unrefuted verified allegations to imply "Vazzo's claimed 100% 'success rate' means that all such clients ended up claiming to have been fully or partially "cured" of their homosexuality." (Reply Br. 3 (internal quotation marks unaltered).) First, no Appellee ever refers to same-sex attraction or homosexuality as a "disease" in need of "cure." By using the terms "disease" and "cure" in quotes, the City dishonestly implies Appellees are the source of the terms when in fact they are the City's own terms, and nothing more than false premises on which the City's stricken ordinance was based. (R-213 at 44.) As is clear from the verified allegations of the Amended Complaint, **which the City never attempted to refute through fact**

discovery or otherwise,[2] Appellees never premise counseling "on the notion that homosexuality is an illness, defect, or shortcoming" or needs a "cure." (R-78 ¶¶ 67–71.) Second, the unrebutted record facts show Vazzo never begins counseling with any predetermined goals other than goals his client identifies and sets. (Answer Br. 8 (citing R-78 ¶¶ 64–65).) The City intentionally misrepresents the unrebutted record by pejoratively characterizing client change goals as **Appellees'** "desired change" and "desired destination." (Reply Br. 1.)[3]

6. The City's misrepresentation of the record concerning Vazzo's counseling practice is multiplied on page 2 of the brief, where the City writes,

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[2] Although Appellees took the depositions of several City officials, **the City did not bother to depose either Appellee**, accepting instead the verified allegations in the Amended Complaint regarding the counseling that Vazzo provides or for which New Hearts provides referrals.

[3] In addition to its rank misrepresentations, the City intentionally confounds rhetoric with science to score cheap points. For example, the City takes exception to Appellees' criticism of the political term "conversion therapy" as derisive, feigning it is no different than the clinical term "sexual orientation change efforts" ("SOCE"). (Reply Br. 1.) "Conversion," however, is a patently religious term, and the obvious purpose of its use by politicians and activists is to suggest the counseling provided by therapists like Appellee Vazzo is not clinical or scientific. (*Cf.* Reply Br. 8 ("The Ordinance does not prevent Plaintiffs from screaming from the rooftops that homosexuality is immoral and that conversion therapy is the only path towards salvation.").) To be sure, Tampa's own expert, the chair of the APA Task Force that published the 2009 APA Report primarily relied on by Tampa in enacting its ordinance (R-213 at 44; Ans. Br. 13–14), explained that the Task Force intentionally chose the term SOCE because of the connotations and potential misinterpretation of terms like "conversion therapy," which would have been inconsistent with the Task Force's clinical charge. (R-192-1 at 71:12–25.)

"Conversion therapists **like Vazzo** attempt to change their gay clients because they view homosexuality as a deviancy that is caused by childhood trauma." (Reply Br. 2 (citing R-78 ¶¶ 116, 138) (emphasis added).) First, as shown in paragraph 5 above, Vazzo never "attempt[s] to change" any client. Second, the City imputes a made-up rationale to Vazzo, for nowhere in the Amended Complaint paragraphs cited by the City (or anywhere else in the record) does Vazzo or New Hearts call homosexuality "deviancy" or claim that homosexuality is uniquely "caused by childhood trauma." On the contrary, paragraph 116 of the Amended Complaint, cited by the City, is an allegation specific to former Plaintiff David H. Pickup who is not a party to this appeal. Moreover, the allegation quite clearly refers to counseling aimed at a specific issue addressed by Pickup and does not purport to describe Vazzo's counseling, or even "SOCE" counseling in general:

> 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.

(R-78 ¶ 116 (emphasis added).)

7. Furthermore, the City attempts to bolster its mischaracterization with citation to a non-record source. (Reply Br. 2 n.1.) As shown above, purportedly

factual assertions in briefs not supported by the record or relying on non-record material should be stricken as a matter of course. *See Gupta*, 256 Fed. App'x at 282 (granting motion to strike portions of reply brief presenting facts without citation to record and attaching evidence not presented to district court).

8. The City also blatantly mischaracterizes a quote from the unrefuted, verified allegations of the Amended Complaint, which provides:

> 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.

(R-78 ¶ 105.) After correctly quoting these facts (Reply Br. 3[4]), the City nonetheless asserts a patently false characterization of the facts: "The juxtaposition of these two sentences makes clear that, in Plaintiffs' view, the only possible harm to a minor undergoing SOCE would be if the minor was not able to repress his/her homosexual feelings." (Reply Br. 3.) Quite the contrary, Appellees do not equate harm with persistence of same-sex attraction in the quoted passage. Rather, Vazzo makes a

[4] The City erroneously cites Appellees' Answer Brief as the source of this passage (Reply Br. 3 (citing Ans. Br. 9)); the passage in the Answer Brief is substantially similar and cites to the same paragraph of the Amended Complaint, but is not the actual passage quoted by the City in its brief.

categorical statement on the absence of harm in his experience providing SOCE counseling, and then a qualified statement on the success of those whom he has counseled. It may be reasonably implied that some clients are not successful in their goals, but it may not be reasonably implied that any clients are harmed. (*Cf.* Ans. Br. 13 ("The City received no complaints of harm from 'conversion therapy' or SOCE provided in Tampa.").) There is no obvious point to the City's feint, other than to vilify Appellees' viewpoint that change of unwanted same-sex attraction is a valid goal for a client which can be beneficial if desired by the client.

9. Next, the City misrepresents the record regarding what counseling practices were covered by its stricken ordinance, and what practices supposedly are "condemned" by the APA. (Reply Br. 3–4.) However, as recognized by the district court, "SOCE" is not a precise term, and "conversion therapy" is even less so. (R-213 at 3.) The record shows Vazzo refers to his counseling as SOCE only to the extent it involves clients' change goals that he agrees to facilitate, having no predetermined change goals of his own. (Ans. Br. 8 (citing R-78 ¶¶ 63–64).) But Vazzo's use of the term SOCE is fundamentally different from the APA's use of the term—the APA expressly intended to refer to "efforts that have the a priori goal, prior to even meeting the client, that homosexuality should be changed or that sexual orientation should be changed," and practices that "attempted, a priori to seeing the client and listening to the client's concerns, that the client needed to eliminate or

eradicate those feelings." (R-134-17 at 12 n.5; R-192-1 at 58:20–60:1 (testimony of City's expert and APA Task Force chair); Ans. Br. 15 n.6.) Thus, contrary to the City's disingenuous characterization of Vazzo as dishonest (Reply Br. 3–4 (e.g., "Were that the case . . . ." and "if the true aim of Vazzo's therapy was—as he claims . . . .")), Vazzo's "suggest[ion] that Vazzo's practice is not inconsistent with the APA's position" is fully supported by the record, and the City fails to show otherwise.[5]

10. Further, the City misrepresents the record in pushing the narrative that, if Vazzo is being honest, the ordinance would not have applied to him. (Reply Br. 3–4.) This misrepresentation is particularly egregious because **it was the City's own official who testified under oath that the City interpreted its ordinance to prohibit counselors like Vazzo** from adopting or affirming a client's change goals, even where the counselor does not initiate or predetermine the goal. (Ans. Br. 12 (citing R-133-3 at 66:8–21).) Indeed, clearly understanding that its ordinance's "conversion therapy" prohibitions extended even to Vazzo's client-directed approach, the City did not dispute Vazzo's standing to challenge the ordinance when

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[5] To be sure, there is no empirical evidence of harm caused by SOCE even as SOCE is defined by the APA to refer to counseling with a priori change goals on the part of the counselor. (Ans. Br. 13–31.) The Equality Florida amicus brief "commend[ed]" to the Court by the City (Reply Br. 4) does not alter the APA's definition of SOCE, or add to or otherwise overcome the APA's acknowledged absence of empirical evidence of harm even as so defined. (*Cf.* Ans. Br. 28–31.)

the City challenged the standing of other plaintiffs. (R-148, Rep. & Recomm., at 8 ("The City does not dispute Mr. Vazzo's standing to bring his individual claims."), *adopted by* R-162, Order, at 2.)

11. The City continues its misrepresentation of the record where it pertains to Appellees' First Amendment claims by deploying a half-truth to attribute a concession to Appellees: "Plaintiffs have conceded that therapy provided to a minor can be regulated where it poses a risk of serious harm to the minor, even when such therapy is rendered solely through speech." (Reply Br. 9 (citing R-226 at 79:18–80:6).) However, a plain reading of the entire preliminary injunction hearing colloquy between the district court and Appellees' counsel, of which the City only cites a fragment, shows Appellees were not conceding the City's right to regulate counseling anything like the speech only counseling offered by Vazzo or for which New Hearts provides referrals:

> THE COURT: Before you run a PowerPoint, let me ask you a question or two. May I?
>
> Okay. So we're talking only about therapy, okay, the act of therapy. I think Judge Rosenberg—I didn't completely get the metaphor, but said it was like a prescription. So we're not talking about speech or this, that, and the other. The act of therapy, which is delivered verbally.
>
> But if your client or any therapist delivered verbal therapy and said, you know, what will really bring you emotional peace is if **you start using psilocybin mushrooms and, you know, threaten suicide**. And

another great thing would be **if you really wanted to get your parents' attention is cut yourself a couple times** as part of the therapy.

I'm not saying, of course, Mr. Vazzo would ever do this, but that's speech but not really. And that could be regulated or he could be defrocked or disciplined because of that therapeutic speech, right?

MR. GANNAM: I agree with those examples, Your Honor. Prescriptions are prescriptions. So if the City of Tampa said that Dr. Vazzo—or Mr. Vazzo couldn't dispense medicine or suggest or tell a client to take certain pills or certain chemicals or ingest certain substances.

THE COURT: Okay. So the fact that it's verbal doesn't stop the regulation, okay, right?

MR. GANNAM: Not in the situation where the speech is telling or directing the client to do—

THE COURT: To do something dangerous.

MR. GANNAM: That's an example, I think, of administration of some medical procedure or a drug where speech is incidental to it.

THE COURT: Well, all right. No. He is saying you feel you are unhappy with your mother. You feel like she is pushing you around. **I want you to go home and just get a little knife and just as part of your therapy to create your self-esteem, you're going to cut yourself**. He's offering therapy, and we would all agree that the City or the government could block that speech during the therapeutic session because it's harmful, right?

MR. GANNAM: **The harm would be telling the client to harm herself**.

THE COURT: So you agree that the City can block that speech during therapy because it's harmful.

MR. GANNAM: I agree that that could be regulated, Your Honor, yes.

THE COURT: All right. So the City, instead of saying, well, cutting yourself is harmful, gave it some thought. And, you know, they're from all over the city. They're not a bunch of snooty lawyers like me and Mr. Williams. They are regular people with a sense of the city, and they concluded that when that mom marches that 17-year-old into therapy and says, you need to—we tried to pray away the gay. Now I want you to therapy away the gay, Mr. Therapist. The 17-year-old is telling me he's gay. That can't happen in our family. Okay. That's the therapy that we're going for and here is your, you know, $80 an hour to do it.

The City, rather than cutting, has determined in their wisdom, and I'm not sure they're wrong, that that's harmful. Okay. What's the difference? Just a matter of degree between one's obviously and clearly harmful, and the other one, you know, there's a pretty good argument that's harmful to the kid too. What's the difference?

MR. GANNAM: Well, **cutting can be empirically demonstrated to be harmful**.

THE COURT: Well, he claims he has empirically demonstrated or the City has decided that mom doing that to a 17-year-old is harmful. So do I have to say, no, it's not, down you go City?

MR. GANNAM: I think what the Court would have to say is that **the City did not receive in its legislative record or did not consider any empirical evidence of harm caused by what they are defining as conversion therapy**.

THE COURT: So I have to adjudicate that body of the whereas clauses and say, well, Number 3 has been debunked and this one was superseded. I have to

> adjudicate what the City determined was—how the City arrived at harmfulness.
>
> MR. GANNAM: **That is the narrow tailoring analysis under strict scrutiny, Your Honor, is to determine whether the City considered concrete or empirical evidence of harm that would justify the regulation** . . . .

(R-226 at 78:12–81:17 (emphasis added).) Rather, and obviously, the referenced colloquy between Appellees' counsel and the district court was a hypothetical discussion of whether government could regulate the prescription of harmful substances or self-harm (cutting) for minors, and Appellees' counsel conceded only that government's regulation of these far-fetched scenarios could be permitted. But the City's half-truth representation that this "concession" has anything to do with Appellees' First Amendment claims in this case is a complete falsehood.[6]

12. Importantly, the above hypothetical discussion of whether or not government may regulate certain conduct focused only on First Amendment considerations, and not on whether or not **the City** could regulate SOCE from a preemption consideration. (R-226 at 78:12–81:17 (discussing strict scrutiny standard of review for First Amendment claims).) Indeed, Appellees made it clear that their arguments on what the government or the City could or could not regulate under the

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[6] "Half the Truth is often a great Lie." Benjamin Franklin, *Poor Richard's Almanack*, July 1758.

First Amendment should not be taken as any concession that the City had authority to regulate a field that had been preempted to the State. (R-226 at 126:5–18 ("[B]ack to the example the Court gave of telling a client to cut or to harm themselves in a manner. . . . [W]e think that certainly the State could regulate that. . . . [W]e wouldn't want to concede that Tampa necessarily could regulate that, again for the same preemption reasons that we think it can't regulate this field.").)

13. Finally, the City's misrepresentation of the record, and its bad faith in doing so, is accentuated by the City's expressed hostility towards the sincerely held religious beliefs of Appellees. The City's disdain for Appellees is made apparent not only by its feints described above, but also by its extreme comparisons of Appellees to flat-earthers and Westboro Baptists. (Reply Br. 8.) Ironically, the City's base characterizations of Appellees' views and practices exhibits precisely the kind of flat-earth ignorance the City strains to condemn. Furthermore, that the City persists in characterizing Appellees' views and counseling in this manner after the substantial record developed in the district court, and taking no fact discovery itself (*see supra* note 2), indicates the City's ignorance is intentional—to vilify Appellees'

viewpoints and beliefs.[7] In any event, such disdain for Appellees' views—expressed by the government—smacks of the "clear and impermissible hostility toward . . . sincere religious beliefs" rightfully censured by the Supreme Court in *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729 (2018).

14. Prior to filing this motion, on March 20, 2020, Appellees' counsel wrote to the City's counsel requesting the City's withdrawal of the Reply Brief on or before March 26, and advising the City's counsel that this motion to strike and for sanctions would be filed today absent the City's withdrawal of the brief. The City refused the request, and the City did not withdraw the brief.

15. In addition to striking the City's improper Reply brief, the Court should impose whatever sanctions it deems appropriate to disincentivize such conduct in the future and to make Appellees whole, such as awarding Appellees the fees and

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[7] As another example of the City's confounding rhetoric with science to denigrate Appellees (*see supra* note 3), the City feigns incredulity with Vazzo's inclusion of "unwanted same-sex attractions" in the same sentence as "pedophilia," where Vazzo was simply summarizing the areas of SOCE counseling he provides for purposes of the Amended Complaint. (Reply Br. 1 ("[H]e puts individuals with same-sex attractions in the same category as pedophiles.") (citing R-78 ¶ 102).) Given, however, that pedophilia is clinically recognized as a "sexual orientation," Vazzo's summary of his "sexual orientation change efforts" counseling areas was patently clinical and descriptive, and made no value or equivalence judgments of persons or conduct as feigned by the City. *See, e.g.*, *Pedophilia*, Psychology Today, https://www.psychologytoday.com/us/conditions/pedophilia (last visited Mar. 26, 2020) ("[A] person may have a **pedophilic sexual orientation** but not pedophilic disorder." (emphasis added)).

costs incurred in bringing this motion, to be proven by subsequent evidentiary submission from Appellees' counsel. *See In re Liotti*, 667 F.3d at 429 ("Misrepresentations of fact by an officer of the court will, if ignored, cast a menacing shadow on a judicial system that is designed to illuminate truth and promote fairness."); *Pola*, 458 Fed. App'x at 763 ("This court has the inherent power to impose order, respect, decorum, silence, and compliance with lawful mandates." (internal quotation marks omitted)); *cf. Mullen v. Galati*, 843 F.2d 293, 294 (8th Cir. 1988) ("Appellant is ordered to show cause . . . why the court should not enter an order assessing double costs and reasonable attorney's fees pursuant to Fed. R. App. P. 38 and 28 U.S.C. § 1912 against the appellant based upon the frivolousness of this appeal combined with the improvident, insolent and scandalous language utilized by appellant in his brief on this appeal.").

WHEREFORE, for good cause shown, Appellees respectfully request that the Court enter an order striking the City's Reply Brief, and sanctioning the City and its counsel for the brief's misrepresentations of the record and scurrilous references to Appellees.

Dated this March 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 4,164 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 March 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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