

**NO.: 19-14387**

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

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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*

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

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**DEFENDANT-APPELLANT'S RESPONSE TO PLAINTIFF-APPELLEES'  
MOTION TO STRIKE REPLY BRIEF OF APPELLANT AND FOR  
SANCTIONS**

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 and 28-1(b), Defendant-Appellant City of Tampa hereby states that the following individuals and entities are known to have an interest in the outcome of this case:

Judge William Jung, United States District Court Judge for the Middle District of Florida, Tampa Division

Magistrate Judge Amanda Sansone, United States District Court, Middle District of Florida, Tampa Division

City of Tampa, Appellant

Robert L. Vazzo, Appellee

Soli Deo Gloria International, Inc. d/b/a New Hearts Outreach Tampa Bay, Appellee

Equality Florida Institute, Inc., Amicus Curiae

David E. Harvey, Counsel for Appellant

Liberty Counsel, Inc., Counsel for Appellee

Horatio Mihet, Counsel for Appellees

Roger Gannam, Counsel for Appellees  
Daniel Schmid, Counsel for Appellees  
Matthew Staver, Counsel for Appellees

National Center for Lesbian Rights, Counsel for Amicus Curiae Equality Florida

Shannon Minter, Counsel for Amicus Curiae Equality Florida

Chris Stoll, Counsel for Amicus Curiae Equality Florida

Carlton Fields, Counsel for Amicus Curiae Equality Florida

Sylvia H. Walbolt, Counsel for Amicus Curiae Equality Florida

Brian C. Porter, Counsel for Amicus Curiae Equality Florida

Southern Poverty Law Center, Counsel for Amicus Curiae Equality Florida

Scott D. McCoy, Counsel for Amicus Curiae Equality Florida

David C. Dinielli, Counsel for Amicus Curiae Equality Florida

J. Tyler Clemons, Amicus Curiae Equality Florida

Family Foundations Counseling, PLLC, Amicus Curiae

Christopher P. Schandavel, Counsel for Amicus Curiae Family Foundations  
Counseling, PLLC

John J. Bursch, Counsel for Amicus Curiae Family Foundations Counseling, PLLC

The Alliance for Therapeutic Choice and Scientific Integrity, Amicus Curiae

Max R. Price, Counsel for Amicus Curiae The Alliance for Therapeutic Choice  
and Scientific Integrity

Freedom of Conscience Defense Fund, Amicus Curiae

Charles S. LiMandri, counsel for Amicus Curiae Freedom of Conscience Defense  
Fund

J. Michael Lindell, counsel for Amicus Curiae Freedom of Conscience Defense  
Fund

Florida State Senators/Representatives, Amicus Curiae:

- a. Ben Albritton
- b. Dennis Baxley
- c. Doug Broxson
- d. Kelli Stargel
- e. Byron Donalds

- f. Brett Hage
- g. Stan McClain
- h. Scott Plakon
- i. Spencer Roach
- j. Anthony Sabatini
- k. Clay Yarborough

Stephen M. Crampton, counsel for Amicus Curiae State Senators/Representatives

Mary E. McAlister, counsel for Amicus Curiae State Senators/Representatives

Local governments within the State of Florida that have enacted an ordinance prohibiting conversion therapy, including:

- a. City of Boca Raton
- b. City of Boynton Beach
- c. City of Delray Beach
- d. City of Greenacres
- e. City of Key West
- f. City of Lake Worth
- g. City of Miami
- h. City of Miami Beach
- i. City of North Bay Village
- j. City of Oakland Park
- k. Palm Beach County
- l. City of Riviera Beach
- m. Town of Bay Harbor Islands
- n. Village of El Portal
- o. Village of Wellington
- p. City of West Palm Beach
- q. City of Wilton Manors

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

/s/ David E. Harvey  
David E. Harvey  
*Attorney for Defendant-Appellant*

**DEFENDANT-APPELLANT’S RESPONSE IN OPPOSITION TO  
PLAINTIFFS-APPELLEES’ MOTION TO STRIKE REPLY BRIEF OF  
APPELLANT AND FOR SANCTIONS**

Defendant-Appellant City of Tampa (“City”) files this response in opposition to the Motion to Strike Reply Brief of Appellant and for Sanctions (“Motion”) filed by Plaintiffs-Appellees Robert Vazzo (“Vazzo”) and Soli Deo Gloria International, Inc. d/b/a New Hearts Outreach Tampa Bay (“New Hearts”) (collectively, “Appellees”).

Appellees argue that the City’s Reply Brief violates this Court’s Rule 28-1(i)(ii) concerning “[a] proper statement of facts.” Motion, p. 2. However, Rule 28-1 lists the requirements of “[e]ach *principal* brief.” (Emphasis added). Reply briefs are separately governed by Rule 28-3, which makes plain that reply briefs need not even include a statement of the case or statement of facts. 11th Cir. R. 28-3. Consistent with that Rule, the City’s Reply Brief contained no such statements. Thus, all portions of the City’s Reply Brief with which Appellees’ Motion takes issue are explicitly labeled ‘Argument.’ See Reply Brief, p. 1. Because the Motion seeks to rebut the City’s *argument*, it is, for all practical purposes, a sur-reply brief.<sup>1</sup>

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<sup>1</sup> Indeed, Appellees request that this Court “treat [th]e motion as a motion for leave to file a sur-reply brief and accept the contents of th[e] motion as [their] sur-reply brief” should the Court conclude such motion to have been “the appropriate vehicle.” Motion, p. 1, n.1.

As such, the City declines to rehash legal arguments already addressed in the parties' briefing, but feels compelled to address the core accusations levied by Appellees.

Appellees' Motion states that "no Appellee ever refers to same-sex attraction or homosexuality as a 'disease' in need of 'cure.'" Motion, p. 4. Yet, in Plaintiffs' First Amended Complaint ("FAC"), New Hearts describes itself as being engaged in "the *restoration* and *healing* of people experiencing ... sexual ... *problems and hurts*," and boasts of its "three-fold approach to *recovery*." Doc. 78, ¶¶126-127 (emphasis added). Elsewhere, the FAC speaks of providing 'Reparative Therapy' to those with same-sex attractions. *Id.* at ¶116.<sup>2</sup> Thus, semantics notwithstanding, Appellees' contention that they do not view homosexuality as an "illness, defect, or

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<sup>2</sup> It is true, as Appellees' Motion notes, that the FAC references 'Reparative Therapy' in describing former-Plaintiff Pickup's practice. Motion, p. 6. However, while Appellees now apparently seek to distance Vazzo's practice from Pickup's (see Motion, p. 6), the FAC repeatedly portrays the two men as engaging in the same practice. See Doc. 78 (under the heading "SOCE Counseling") at ¶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..."); ¶63 ("Speech is the only tool that *Vazzo and Pickup* use in their counseling..."); ¶65 (Plaintiffs *Vazzo and Pickup* employ speech to help clients understand and identify their anxiety or confusion..."); ¶66 ("*Vazzo and Pickup* focus on helping the client and parents to heal any wounds or frustrations..."); ¶70 ("The only relevant consideration *in Vazzo's and Pickup's counseling* is that...") (all emphasis added). As such, where the Reply Brief alludes to Pickup as being a "[c]onversion therapist like Vazzo," such reference is plainly supported by the record. Reply Brief, p. 2. Moreover, even with Pickup no longer a party to the case, the allegations concerning his practice remain relevant because Plaintiff New Hearts "desires to be able to refer these minors and their families to Plaintiffs *Vazzo and Pickup*." Doc. 78, ¶135 (emphasis added).

shortcoming,” (see Motion, p. 5) is belied by their stated desire to heal, repair, and enable recovery of those with same-sex attractions. See Merriam-Webster Dictionary, available at [www.merriam-webster.com/dictionary](http://www.merriam-webster.com/dictionary) (defining “heal” as “to make free from injury or disease”; defining “reparative” as “relating to, or effecting repair,” defining “repair” as “to restore by replacing a part or putting together what is torn or broken”; and defining “recovery” as “the process of combating a disorder (such as alcoholism) or a real or perceived problem”).

Appellees take issue with the footnote in the City’s Reply Brief that references a website describing ‘Reparative Therapy.’ Motion, p. 6. The City recognizes that such website is not part of the record, but cited it in the context of explaining why Plaintiffs’ FAC (and thus, the City’s Reply) capitalized the term ‘Reparative Therapy’ but not the term ‘conversion therapy.’ Reply Brief, p. 2, n.1 (explaining that Reparative Therapy is apparently a registered trademark). In any event, Appellees’ demand that the footnote be stricken is puzzling, given that their own Motion includes a footnote citation to a non-record source. See Motion, p. 15, n. 7 (referencing Psychology Today article on pedophilia).

Appellees’ Motion asserts that “Vazzo never ‘attempt[s] to change’ any client,” and takes offense to the Reply Brief’s assertion to the contrary. Motion, p. 6. Yet, Appellees acknowledge that Vazzo “specializes in SOCE counseling,” (Doc. 78, ¶102), which—by definition—involves Sexual Orientation ***Change Efforts***.

Likewise, while New Hearts refutes that it has claimed that homosexuality is caused by childhood trauma (Motion, p. 6), paragraph 138 of the FAC, especially when read in the context of the paragraphs surrounding it, plainly insinuates a causal connection between minors' same-sex attractions and their fractured relationships with their fathers. Doc. 78, ¶138.

Appellees' Motion additionally takes offense to what they contend is the City conflating Appellees' goals with those of their clients. Motion, p. 5. But the FAC, at a bare minimum, strongly implies that the sincerely held religious belief "that same-sex sexual attractions, behaviors, and identity are wrong" (Doc. 78, ¶208) is held not just by Appellees' clients, but by Appellees themselves. Doc. 78, ¶209 (*"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."*) (emphasis added); ¶210 ("Plaintiff New Hearts Outreach also has sincerely held religious beliefs that ... its ministry should help minors ... conform their attractions, behaviors, and identity to Biblical teachings."). See also *id.*, ¶131 (describing New Hearts as "an unapologetically Christian organization that has sincerely held religious beliefs founded on the Bible and its teachings.").

In fact, Appellees' Motion accuses the City of "express[ing] hostility towards the sincerely held religious beliefs *of Appellees.*" Motion, p. 14 (emphasis added).

Again, common sense suggests that the religious beliefs to which Appellees refer mirror Appellees' clients' "sincerely held religious belief that homosexuality is harmful and destructive." Doc. 78, ¶123. Yet, rather than expressing hostility, the City's Reply Brief reiterates that the City's Ordinance is not aimed at prohibiting Appellees (or anyone else) from expressing anti-homosexual (or pro-heterosexual) beliefs or views. See Reply Brief, p. 8. Appellees object to the Reply Brief's citation to the *Snyder* case,<sup>3</sup> but the City's reference to that case was a recognition of the fact that governments may not suppress speech simply because it expresses an anti-gay viewpoint.<sup>4</sup> See Reply Brief, p. 8 (citing *Snyder v. Phelps*, 562 U.S. 443, 454, 131 S.Ct. 1207, 1216 (2011)).

Appellees conclude their Motion by citing to three cases in support of their request for sanctions. Motion, pp. 15-16 (citing *In re Liotti*, 667 F.3d 419, 429 (4th Cir. 2011); *Pola v. Utah*, 458 Fed. App'x 760 (10th Cir. 2012); and *Mullen v Galatti*, 843 F.2d 293 (8th Cir. 1988)). In *Mullen*, a show cause order was issued against a

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<sup>3</sup> According to Appellees, when the City discusses a Supreme Court case in a legal brief, it is "an extreme comparison" that shows "disdain" for Appellees, but when Appellees lump those with same-sex attractions into the same category as pedophiles, they are simply being "clinical and descriptive, and ma[king] no value or equivalence judgments of persons..." Motion, pp. 14-15.

<sup>4</sup> In certain respects, *Phelps* and the *Masterpiece Cakeshop* case cited by Appellees are opposite sides of the same coin: *Phelps* protected anti-homosexual speech, whereas *Masterpiece Cakeshop* ruled that a government cannot compel pro-homosexual (or, more specifically, pro-same sex marriage) speech. See Motion, p. 15 (citing *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S.Ct. 1719, 1729 (2018)).

pro se appellant who had accused the trial court of advocating fraud and perjury, and implying that the trial judge had been paid off and/or involved in a crime. 843 F.2d at 294. In *In re Liotti*, an attorney was sanctioned for, *inter alia*, falsely accusing the trial judge of suppressing evidence. 667 F.3d at 428. And in *Pola*, the pro se appellant's brief included accusations that the federal court had "support[ed] racketeering, slavery, and human trafficking," and that the district court judge had "promoted murder, police brutality, and ignorance for the law." 458 Fed. Appx. at 763.

While the City obviously disagrees with the District Court's decision in this case, the City has never questioned the court's integrity or motives. And contrary to Appellees' assertion, nowhere in its Reply Brief does the City make "scurrilous, abusive, [or] offensive references" to Appellees, or label them "crackpot bigots." Motion, pp. 2-3. Finally, whereas Appellees' Motion accuses undersigned counsel of engaging in conduct "unbecoming a member of the bar," undersigned counsel has never disparaged Appellees' counsel, and throughout this appeal has made every effort to meet the "high standard of professionalism" that this Court expects. Motion, p. 2 (citations omitted). To wit, undersigned counsel did not oppose Appellees' Motion for Extension of Time to File Brief in this matter or their subsequent Motion to Expand Word Limit for Brief. And even after Appellees failed to file their initial brief timely (despite the extension of time that had been granted),

undersigned counsel did not oppose Appellees' Motion for Leave to File Brief Out of Time.

WHEREFORE, Defendant-Appellant respectfully request that the Court deny Plaintiffs-Appellees' Motion to Strike Reply Brief of Appellant and for Sanctions.

Dated April 3, 2020.

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CITY ATTORNEY

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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 1,994 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/ David E. Harvey  
David E. Harvey  
*Attorney for Defendant-Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to the following parties and counsel of record:

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