

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’ REPLY IN SUPPORT OF
MOTION TO STRIKE REPLY BRIEF OF APPELLANT
AND FOR SANCTIONS**

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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:

Alliance Defending Freedom	Florida State Representative Scott Plakon
The Alliance for Therapeutic Choice and Scientific Integrity	Florida State Representative Spencer Roach
Burr & Forman, LLP	Florida State Representative Anthony Sabatini
Bursch, John. J.	Florida State Representative Clay Yarborough
Carlton Fields Jordan Burt, PA	Florida State Senator Ben Albritton
City of Tampa	Florida State Senator Dennis Baxley
Clemons, J. Tyler	Florida State Senator Doug Broxson
Crampton, Stephen M.	Florida State Senator Kelli Stargel
Dinielli, David C.	Freedom of Conscience Defense Fund
Equality Florida Institute, Inc.	Gannam, Roger K.
Family Foundations Counseling, PLLC	Harvey, David E.
Florida State Representative Byron Donalds	Jonna, Paul M.
Florida State Representative Brett Hage	
Florida State Representative Stan McClain	

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Jung, William F.	Price, Max R.
Liberty Counsel, Inc.	Richardson, Ursula D.
LiMandri, Charles S.	Robbins, Dana Lee
LiMandri & Jonna, LLP	Sansone, Amanda Arnold
Lindell Farson & Zebouni, P.A.	Schandavel, Christopher P.
Lindell, J. Michael	Schmid, Daniel J.
McAlister, Mary E.	Soli Deo Gloria International, Inc.
McCoy, Scott D.	Southern Poverty Law Center
Mihet, Horatio G.	Staver, Mathew D.
Minter, Shannon P.	Stoll, Christopher
National Center for Lesbian Rights	Trissell, Jeffrey M.
Piedra, Daniel J.	Vazzo, Robert L.
Porter, Brian C.	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’ REPLY IN SUPPORT OF
MOTION TO STRIKE REPLY BRIEF OF APPELLANT
AND FOR SANCTIONS**

Vazzo and New Hearts filed their Motion to Strike Reply Brief of Appellant and for Sanctions (“Motion to Strike”) because the City’s Reply Brief is scurrilous, misrepresents the record, and otherwise exceeds the bounds of proper advocacy. (Mot. Strike 1.) The primary question in the City’s appeal is whether the regulation of licensed counseling, such as that provided by Vazzo and for which New Hearts provides referrals, is preempted to the State of Florida. (City Br. 1.) The secondary or alternative question is whether the City’s “conversion therapy” ban violates Appellees’ First Amendment rights. (Ans. Br. 57–58.) But the City paid little attention to these questions in its Reply Brief, opting instead to denigrate Appellees and their beliefs through misrepresentations of the record and half-truths. The City’s Response to Appellees’ Motion to Strike (“Response”) does nothing to tie these denigrations to the questions on appeal or otherwise rehabilitate the Reply Brief.

1. The City’s labeling its assertions “Argument” (Resp. 1–2) does not change their intended factual nature. Labeling factual assertions “Argument” does not lessen the City’s obligation to “provide the court with a fair and accurate presentation of the relevant facts,” *In re Liotti*, 667 F.3d 419, 429 (4th Cir. 2011), or lessen the importance of the ethics of accuracy and professionalism embodied in Eleventh Circuit Rule 28-1(i)(ii). Moreover, the City’s “Arguments” to which the

Motion to Strike is directed do not produce any answers to the questions before the Court on appeal.

2. Caught misrepresenting Appellees' views towards same-sex attraction (Mot. Strike 4-5), the City doubles down in its Response (Resp. 2–3), straining credibility even further to make an unwarranted inference. To be sure, Appellees are clear that they do not premise counseling “on the notion that homosexuality is an illness, defect, or shortcoming” or needs a “cure.” (Mot. Strike 5 (quoting R-78 ¶¶ 67–71).) The City counters with a partial, cherry-picked quotation from the Amended Complaint allegations regarding Appellee New Hearts: “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*.’” (Resp. 2 (quoting R-78 ¶¶ 127–28).) Not only is this partial quote insufficient to support the City’s intended (and false) inference, but the full quote reveals New Hearts is concerned with people’s entire relational wellbeing, not “curing” homosexuality: “New Hearts Outreach began in 1996 when . . . its Founder . . . 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.” (R-78 ¶ 128 (emphasis added).) Furthermore, the City intentionally obfuscates what it cannot refute, which is that Appellee Vazzo “seek[s] to treat the anxiety and confusion that arises from a client’s unwanted same-sex

attractions, behaviors, or identity” (R-78 ¶ 67), and “focus[es] 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” (R-78 ¶ 66). Thus, the unrefuted, verified allegations establish Appellees are not seeking to “cure” homosexuality as a “disease,” but rather are concerned with the healing of anxiety and distress resulting from a minor client’s same-sex attractions, behaviors, or identity **when they are unwanted**, and healing broken relationships between minor clients and their parents.

3. The City attempts to turn its improper inclusion of non-record material in its Reply **Brief** back on Appellees by pointing to the non-record material cited by Appellees in their **Motion** to Strike. (Resp. 3.) The obvious and critical difference, however, is that the City relied on non-record material in a merits **brief** where such material is prohibited and due to be stricken—and not to advance argument on a question before the Court, but in support of an ad hominem attack on Appellees. (Mot. Strike 6–7.) Appellees, by contrast, cited non-record material in their **Motion** to Strike, and only to expose the objective falsity of a different ad hominem attack by the City in its brief. (Mot. Strike 14–15, n.7.)

4. Finally, the City attempts to paper over its attack of Appellees’ religious beliefs (Mot. Strike 14–15) by feigning it only intended a principled comparison of the religious beliefs of Appellees and Appellees’ clients. (Resp. 4–5.) But the City’s

defense only highlights its disdain for the shared religious beliefs of Appellees' and those clients who desire and voluntarily seek counseling to reduce or eliminate unwanted same-sex attractions, behaviors, or identity. The inference obviously intended by the City is that where Appellees' clients have the same (wrong) Christian or moral beliefs as Appellees regarding homosexuality, then the clients cannot have their own goals for treatment, and must necessarily bend to Appellees' goals. Such an inference is devoid of any factual basis in the record, and demonstrates the City's animus towards Christian counselors who share Appellees' beliefs, without any evidence whatsoever of harmful practices by such counselors. (Mot. Strike 7–9, n.5.)

WHEREFORE, for good cause shown above and in Appellees' Motion to Strike, 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 April 9, 2020.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

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

CERTIFICATE OF SERVICE

I hereby certify that, on this April 9, 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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