

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 TAMPA DIVISION

3 ROBERT L. VAZZO, ET AL.,)
4) 8:17-cv-02896-WFJ-AAS
5 PLAINTIFFS,) Tampa
6) September 24, 2019
7 v.) 1:02 p.m.
8)
9 CITY OF TAMPA, FLORIDA,)
10)
11 DEFENDANT.)

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

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(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.)
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1 UNITED STATES DISTRICT COURT)
2 MIDDLE DISTRICT OF FLORIDA)

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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*

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Tracey Aurelio, RMR, RDR, CRR
Official Court Reporter
United States District Court
Middle District of Florida
Tampa Division
Date: November 5, 2019

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:

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