

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

**CHELSEY NELSON PHOTOGRAPHY
LLC and CHELSEY NELSON,**

Plaintiffs,

v.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT, et al.,**

Defendants.

Case No. 3:19-cv-851-BJB-CHL

**DEFENDANTS' NOTICE OF COMPLIANCE WITH
MEMORANDUM OPINION AND ORDER
DATED JUNE 2, 2022 (DOC. 127)**

On June 2, 2022, the Court issued a Memorandum Opinion and Order (Doc. 127) with respect to the sealing and redactions of certain case files from discrimination complaints filed with the Louisville Metro Human Relations Commission, which were submitted to the Court by Plaintiffs to supplement briefing on the parties' pending motions for summary judgment. Defendants hereby provide notice of compliance with the Court's Order that they file unredacted versions of the documents filed at DN 119-3, PageID # 4984–5021 and DN 119-3, PageID # 5073–5118. The documents attached hereto as Exhibit 1 are unredacted versions of pages from the Scooter's Triple B case file that were filed in redacted form as DN 119-3, PageID # 4984–5021. The documents attached hereto as Exhibit 2 are unredacted versions of pages from the Teen Challenge of Kentucky, Inc. case file that were filed in redacted form as DN 119-3, PageID # 5073–5118.

Respectfully submitted,

/s/ Casey L. Hinkle

David S. Kaplan
Casey L. Hinkle
KAPLAN JOHNSON ABATE & BIRD LLP
710 W. Main Street, 4th Floor
Louisville, KY 40202
(502)-416-1630
dkaplan@kaplanjohnsonlaw.com
chinkle@kaplanjohnsonlaw.com

MIKE O'CONNELL
JEFFERSON COUNTY ATTORNEY

John F. Carroll
Jason D. Fowler
Assistant Jefferson County Attorneys
200 S. 5th Street, Suite 300 N
Louisville, Kentucky 40202
(502) 574-6321
john.carroll2@louisvilleky.gov
jason.fowler@louisvilleky.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, the foregoing was filed via the Court's electronic filing system, which will automatically send notice of such filing to all counsel of record.

/s/ Casey L. Hinkle

Counsel for Defendants

AMENDED COMPLAINT OF DISCRIMINATION

C20-PA6244

REPLY TO:

Louisville Metro Human Relations Commission
745 West Main Street, Suite 251
Louisville, KY 402



Louisville Metro Human Relations Commission Enforcement Board

NAME TELEPHONE NUMBER

745 W. Main Street Louisville KY 40202
STREET ADDRESS CITY STATE ZIP CODE

WAS THE DISCRIMINATION IN ... (CHECK ONE)

[] Employment [] Housing [X] Public Accommodations [] Hate Crimes

BECAUSE OF ... (CHECK ONE)

[] Race [] Age [] National Origin [] Sexual Orientation [X] Gender Identity
[] Sex [] Handicap [] Retaliation [] Religion [] Other

Who discriminated against you? Give name and address of employer, labor organization, employment agency, apprenticeship committee, licensing agency, public accommodation, real estate broker or lender or apartment manager.

LIST ALL:

Scooter's Triple B's

NAME TELEPHONE NUMBER

3840 S. Hurstbourne Pkwy Louisville KY 40299
STREET ADDRESS CITY STATE ZIP CODE
AND (OTHER PARTIES, IF ANY)

THE ACTUAL DATE OF THE MOST RECENT DATE OF ALLEGED DISCRIMINATION:

February 9 2020
MONTH DAY YEAR

**LOUISVILLE METRO
HUMAN RELATIONS COMMISSION**

**AMENDED COMPLAINT OF DISCRIMINATION UNDER LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT CODE OF ORDINANCES, CHAPTER 92**

On or around February 9, 2020, a Facebook post from The Fairness Campaign, brought attention to the establishment known as Scooter’s Triple B’s, located at 3840 S. Hurstbourne Parkway, Louisville, Jefferson County, Kentucky, and defined as a public accommodation under Louisville/Jefferson County Metro Government Code of Ordinances (“LMCO”), Chapter 92, that the restaurant has a sign posted stating “Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We’re One Nation Under God. If You Do Not Like This, Get Your Politically Correct Ass Outta Here!”

In a follow up Facebook posting, Scooter’s Triple B’s also stated, “Yes our sign says we do not have transgender restrooms. They just need to use the one that goes with the gender they were born with.” LMCO 92.05(B) (“Unwelcome Clause”) states it is an unlawful practice for a place of public accommodation to publish or circulate a communication or advertisement which indicates the availability of the public accommodation’s facilities may be refused, withheld or denied based on an individual’s gender identity. LMCO § 92.02 defines Gender Identity as “[m]anifesting an identity not traditionally associated with one’s biological maleness or femaleness.”

By Scooter’s Triple B’s publication of the aforementioned sign and Facebook comments, this Complaint alleges Scooter’s Triple B’s has violated the Unwelcome Clause, causing Patrons of a protected class to feel unwelcome in its place of public accommodation, all of which has been done in violation of Louisville/Jefferson County Metro Government Code of Ordinances, Chapter 92.

Marie S. Dew
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF May, 2020.
Notary Public, State at Large, KY
MY COMMISSION EXPIRES ON My commission expires (Max 18, 2022)

[Signature]
SIGNATURE OF NOTARY PUBLIC

Case Name: LMHRC- Enforcement Board v. Scooter's Triple B's

Case Number: C20-PA6244 (LOCAL)

REPLY TO RESPONSE TO AMENDED COMPLAINT

The Human Relations Commission - Enforcement Board ("HRC"), by and through the Jefferson County Attorney, hereby replies to Respondent's Response to the Amended Complaint and respectfully states as follows:

The purpose of this reply is to respond to the defenses asserted by the Respondent in its Response to the Amended Complaint. Specifically, the HRC responds to the contention that Scooter's is not in violation of the law because nothing in federal, state, or local law requires Scooter's to have transgender restrooms and its sign merely states a policy that is in full compliance with the law. Furthermore, the HRC responds to the assertion that the sign cannot be penalized because it is truthful commercial speech entitled to First Amendment Protection and the "Unwelcome Clause" itself is an unconstitutional, content-based restriction on speech.

ARGUMENT

I. The ordinance does not penalize Scooter's for failure to comply with public accommodations law, but LMCO § 92.05(B), which defines unlawful practices in connection with public accommodations.

The Respondent claims that its sign cannot violate LMCO § 92.05(B) because "there is no requirement at the federal, state, or local level that public accommodations have transgender restrooms or that customers have to be allowed to use restrooms for the opposite sex." However, this assertion misstates the Complaint of the HRC. While LMCO § 92.05(B) falls under "Unlawful Practices in Connection with Public Accommodations," the ordinance does not penalize failure to provide transgender restrooms or failure to allow a customer to use restrooms

for the opposite sex. Rather, LMCO § 92.05(B) prohibits communications which indicate that public accommodations will be denied because of gender identity. As the Respondent's Response to Amended Complaint explains, they may lawfully segregate their restrooms. However, under LMCO § 92.05(B), Respondent may not display communications that indicate those restrooms will be denied to customers who "[manifest] an identity not traditionally associated with one's biological maleness or femaleness." LMCO § 92.02. Scooter's has chosen to display a sign which indicates restroom facilities may be denied to transgender customers because of inconsistent political values:

"Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do No Like This, Get Your Politically Correct Ass Outta Here!"

Further, Scooter's explicitly stated that restroom facilities would be denied to transgender customers by posting the following comment on Facebook: "Yes our signs says we do not have transgender restrooms. They just need to use the one that goes with the gender they were born with." This comment makes it clear that Scooter's would not allow transgender customers to use the restroom that match their manifested identity, thereby denying them access to restroom facilities altogether. Again, Scooter's is not being penalized for failure to comply with public accommodations law, but for unwelcoming communications in connection with the provision of public accommodations.

II. Although the ordinance does not penalize Scooter's for failure to comply with public accommodations law, Scooter's itself is not in full compliance with public accommodations law, where sex encompasses gender identity.

The Respondent claims that its restroom policy is in full compliance with Kentucky and Jefferson County law. The Respondent cites 815 KAR 20:191, which requires separate restroom facilities, and LMCO 92.05(c), which provides that a restaurant can restrict usage of restrooms

on the basis of sex. However, while the separation of restrooms remains lawful, the complete denial of facilities on the basis of sex would constitute impermissible sex discrimination. Further, Respondent neglects the fact that transgender status is inextricably bound up with sex in modern jurisprudence. *Bostock v. Clayton Cty., GA*, 140 U.S. 1731 (2020).

Courts have grappled with this issue in numerous contexts. Title IX forbids discrimination by educational institutions on the basis of sex. On May 13, 2016, the U.S. Department of Education and Justice provided guidance that the definition of “sex” under Title IX included gender identity. While the U.S. Department of Education withdrew this earlier guidance because it did not undergo a formal public process, courts have consistently held that adherence to biological definitions of sex does not permit discrimination against transgender individuals. Rather, such courts have held “that a policy that prohibits transgender students from using the bathroom matching their gender identity [separates] students on the basis of sex within the meaning of Title IX.” *Adams v. Sch. Bd.*, 318 F. Supp. 3d 1293, 1323 (M.D. Fla. 2018). *See also Grimm v. Gloucester City. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2017), *vacated*, 137 S.Ct. 1239 (2017), *remanded* to 822 F.3d 709 (4th Cir. 2017); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075 (D. Or. 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267 (W.D. Pa. 2017); and *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

In the employment context, Title VII of the Civil Rights Act of 1964 provides “it shall be an unlawful employment practice for an employer... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, *sex*, or national origin.” Courts have found that although opponents argue “that Title VII only prohibits discrimination based on biological sex, not gender identity... Title VII prohibits discrimination based on sex stereotypes, too.” *Roberts v. Clark*

Cnty. Sch. Dist., 215 F.Supp. 3d 1001, 1004 (D. Nev. 2016). In 2016, a transgender man was banned from both men’s and women’s restrooms. *Id.* at 1004-1008. The Nevada District Court granted summary judgment in his favor, holding that Title VII’s use of the word ‘sex’ encompassed protections for discrimination against gender identity. *Id.* at 1011-1018. Indeed, in *Bostock*, the Supreme Court held that “sex is necessarily a but-for cause” of discrimination on the basis of sexual orientation or gender identity. *Bostock*, 140 U.S. at 23. The Supreme Court explained their reasoning:

“[T]ake an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth... [T]he employee’s sex plays an unmistakable and impermissible role in the discharge decision.” *Id.* at 21.

While the Supreme Court has not reiterated this holding in public accommodations lawsuits, there is little doubt the precedent established in *Bostock* will persist and be extended. Thus, although Scooter’s may separate restroom facilities, Scooter’s may not deny use of those restroom facilities to transgender individuals without committing discrimination on the basis of sex.

III. Scooter’s sign is not constitutionally protected speech.

Scooter’s argues that LMCO § 92.05(B) is an unconstitutional, content-based regulation. Indeed, in *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992), the Supreme Court declared content-based regulations presumptively invalid. In *Turner v. Broadcasting Systems v. Federal Communications Commission*, 512 U.S. 622, 641-642 (1994), the Court established that content-based restrictions must meet strict scrutiny. A government regulation is content-based if the law applies to a particular speech because of the topic discussed or the idea expressed. *Id.* at 644-646. See also *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Here, LMCO § 92.05(B) cannot be

considered an unconstitutional, content-based regulation because the ordinance does not implicate communications based on the topic discussed or the idea expressed. Rather, the ordinance evenhandedly applies to communications which may cause negative secondary effects the city wishes to prevent. The City has a significant interest in maintaining a peaceful and welcoming environment for its citizens and, as the Court held in *Kovacs v. Cooper*, 366 U.S. 77 (1949), a city is not powerless to protect its citizens from unwanted exposure to certain methods of expression which may legitimately be deemed a public nuisance. Even if the ordinance were to be considered a content-based regulation, there are numerous exceptions that permit such regulation, including categories of less protected speech or unprotected speech, or content-based regulations that have a permissible content-neutral purpose or impose a constitutional time, place, and manner restriction.

A. Scooter's sign is not commercial speech entitled to First Amendment protection.

The Supreme court has identified some categories of less protected speech where the government has more latitude to regulate than usual under the First Amendment. Commercial speech is considered lower value speech because the underlying expression is largely transactional. However, in *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 760 (1976), the Supreme Court made it clear that commercial speech remains protected by the First Amendment. The Court held unconstitutional a Virginia statute that prohibited the advertisement of prescription drug prices, explaining the free flow of information actually protected the authenticity of commercial information. *Id.* at 761-766. However, the Court clarified this does not mean commercial speech can never be regulated - commercial speech only receives qualified protection. *Cent. Hudson Gas & Elec. Corp. v. Public*

Serv. Comm'n, 447 U.S. 557, 562-563 (1980).¹ While *Cent. Hudson*, 446 U.S. at 561, defined commercial speech as an “expression related solely to the economic interests of the speaker and its audience,” the Court relied upon various factors to define commercial speech in *Bolgers v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66-68 (1983). The factors include: the form of the speech, whether or not it was economically motivated, and the function of the speech

Here, Scooter’s sign cannot be considered commercial speech entitled to qualified protection. While Scooter’s Triple B’s may consider its sign an important part of its branding during a time where many businesses take political and social stances, the sign cannot be considered *solely* related to the economic interests of Scooter’s and its patrons. Indeed, even if the sign motivates more customers to frequent Scooter’s because their sociopolitical beliefs align, that is not the sign’s sole purpose. Scooter’s admits in its Response to the Amended Complaint that the sign is a statement of opinion by Scooter’s and its owner on “a genuine, contentious, issue of debate in today’s society.” *Response to Amended Complaint*, p. 13. Even considering the less rigorous definition of commercial speech under *Bolgers*, the form of the speech suggests it was not economically motivated. Rather than appearing on an advertisement or flyer broadly distributed to the public, the statement was made on a sign located within the restaurant. Moreover, as stated above, Scooter’s itself admitted the sign was meant to be a political statement. In sum, Scooter’s sign cannot be considered commercial speech entitled to qualified protection.

¹ In *Cent. Hudson*, 446 U.S. at 563-565, the Court identified four types of commercial speech that remain subject to government regulation: (1) advertising of illegal activities; (2) false and deceptive advertising; (3) true advertising that inherently risks becoming false or deceptive; and, (4) advertising that is incompatible with legitimate policy goals, such as “enhancing the image of lawyers, decreasing consumption of alcohol or tobacco products, preventing panic selling of houses in neighborhoods, or decreasing gambling.” Said regulations must still meet rational basis review.

B. Scooter's sign is political speech

There is little disagreement that political speech is at the core of that protected by the First Amendment. Scooter's statements were plainly political in nature or, as Scooter's itself admitted in its Response to the Amended Complaint, "the statement of its opinion on a matter of public concern." *P. 14*. The HRC agrees that Scooter's speech is political speech, but that classification does not entitle the sign to more or less protection. Furthermore, it does not prevent Scooter's speech from falling into another category subject to government regulation. *See e.g. San Diego Committee against Registration & Draft (CARD) v. Governing Bd. of Grossmont Union High School Dist.*, 790 F.2d 1471 (1986).

C. Scooter's sign constitutes fighting words unprotected by the First Amendment.

The Supreme Court has also identified some categories of unprotected speech that the government can prohibit and punish. Fighting words is one category of unprotected speech. Fighting words may be (1) speech that is directed at another and likely to provoke a violent response; but also implicates situations (2) where a speaker may be punished because of the reaction of the audiences. In *Chaplinsky v. New Hampshire*, 316 U.S. 568, 572 (1942), the Court explained fighting words "are not an essential part of any exposition of ideas." Rather, such words have a direct tendency to cause of acts that would breach the peace. Thus, government action that restricts fighting words is generally considered constitutional, though the ordinance or statute must be narrowly drawn to "[implicate] expressions which by their very utterance inflict injury or tend to incite an immediate breach of peace." *Id. See also Gooding v. Wilson*, 405 U.S. 518 (1972).

Here, Scooter's sign plainly constitutes fighting words. Scooter's admitted that the sign was intended to be a political comment on "a genuine, and *contentious*, issue of debate in today's

society.” *Response to Amended Complaint*, p. 13. [Emphasis added]. Thus, Scooter’s knew that not only was the sign a political comment, but a highly controversial political comment in an incredibly charged debate. Furthermore, Scooter’s intent to inflame this debate was manifest when it engaged other Facebook users regarding its sign, commenting “Yes our signs says we do not have transgender restrooms. They just need to use the one that goes with the gender they were born with.” The sign, coupled with Scooter’s subsequent actions, demonstrates speech that was targeted at the LGBT+ community and likely to provoke a violent response. Indeed, this is the type of communication that the “Unwelcome Clause” implicates and the type of secondary effects it attempts to avoid. In sum, Scooter’s sign plainly constitutes fighting words unprotected by the First Amendment.

D. LMCO § 92.05(B) constitutes a reasonable time, place, and manner restriction targeting the secondary effects of unwelcoming speech at a place of public accommodation.

Content-based regulations are also upheld when the government demonstrates a permissible content-neutral purpose and/or impose a constitutional time, place, and manner restriction. *See, e. g., Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 647-648 (1981); *Schad v. Mount Ephraim*, 452 U.S. 61, 68-71 (1981); *Carey v. Brown*, 447 U.S., at 470-471 (1980); *Grayned v. City of Rockford*, 408 U.S. 104, 115-117 (1972); *Police Department of Chicago v. Mosley*, 408 U.S., at 98. In *Lehman v. City of Shaker Heights*, 418 U.S. 298, 316-321 (1974), the Court upheld a city’s prohibition of political advertisements on buses, stating that the city was entitled to protect unwilling viewers against intrusive advertising that may interfere with the city’s goal of making it buses “rapid, convenient, pleasant, and inexpensive.” The Court held “neutral regulations... can be narrowly tailored to allay the city’s fears.” *Id.* at 321. In *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640

(1981), the Court said such restrictions were permissible “provided they are justified without regard to the content of the speech, that they serve a significant government interest, and that they leave open ample alternative channels for communication.”

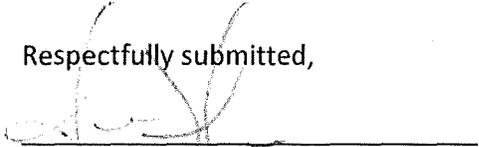
Here, LMCO § 92.05(B) does not implicate communications because of the social or political viewpoint they manifest. Rather, the “Unwelcome Clause” targets the type of communications that would cause fighting and disrupt the peace in places of public accommodation. The City has a significant interest in preserving a positive, welcoming commercial environment. Not only does this interest involve the economic livelihood of the City, but also the safety of citizens who wish to frequent its restaurants and businesses. LMCO § 92.05(B) does not prevent Scooter’s from making sociopolitical comments or engaging in sociopolitical debate, but it does prevent communications that would target protected classes of individuals and potentially cause disruption in the community. Thus, even if LMCO § 92.05(B) is considered a content-based regulation, it a content-based regulation that serve a permissible content-neutral purpose.

IV. Conclusion

Scooter’s Response to Amended Complaint misstates the Complaint of the HRC, incorrectly assumes that the lawful separation of restrooms permits sex discrimination, and wrongfully claims that its sign is protected under the First Amendment. Scooter’s has been implicated under LMCO § 92.05(B), which prohibits communications which indicate that public accommodations will be denied because of gender identity. Although Scooter’s may separate its restrooms on the basis of sex, Scooter’s may not withhold access to restroom facilities on the basis of sex, which encompasses withholding restroom facilities from transgender customers. Furthermore, Scooter’s sign does not constitute commercial speech, but political speech. At the

same time, Scooter's sign constitutes fighting words and poses serious secondary effects that threaten the peace and safety of the City of Louisville. While political speech is traditionally protected under the First Amendment, fighting words and speech that is restricted because of its secondary effects are excluded from First Amendment protection. In conclusion, Scooter's defenses and its motion to dismiss should be denied and the violation should be affirmed.

Respectfully submitted,



Jason D. Fowler
Assistant Jefferson County Attorney
COUNSEL FOR HUMAN RELATIONS COMMISSION
Jefferson County Attorney's Office
531 Court Place, Ste. 900
Louisville, KY 40202
jason.fowler@louisvilleky.gov
(502) 574-3349

CASE NO. C20-PA-6244

**LOUISVILLE METRO HUMAN RELATIONS
COMMISSION - ENFORCEMENT BOAR**

COMPLAINANT

V.

SCOOTER'S TRIPLE B's

RESPONDENT

RESPONSE TO AMENDED COMPLAINT

The Respondent, Scooter's Triple B's, ("Scooter's"), states as follows for its Response to the Amended Complaint filed by the Louisville Metro Human Relations Commission ("Commission").

FACTS

1. Scooter's is a restaurant and bar located at 3840 S. Hurstbourne Parkway, Louisville, Jefferson County, Kentucky.
2. Scooter's has a sign that states:

Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do Not Like This, Get Your Politically Correct Ass Outta Here!
3. That sign is approximately 8 inches by 11 inches, and part of the overall decor of approximately 3800 square feet of restaurant space.
4. On or about February 9, 2020, The Fairness Campaign made a Facebook post about that sign.
5. In a reply to that post, Scooter's stated:

Yes our sign says we do not have transgender restrooms. They just need to use the one that goes with the gender they were born with.

6. The Complaint against Scooter's only cites the violation of one specific ordinance, the "Unwelcome clause".

7. The Complaint states:

LMCO 92.05(B) ("Unwelcome Clause") states it is an unlawful practice for a place of public accommodation to publish or circulate a communication or advertisement which indicates the availability of the public accommodation's facilities may be refused, withheld or denied based on an individual's gender identity.

8. The Complaint goes on to state:

LMCO § 92.02 defines Gender Identity as "[m]anifesting an identity not traditionally associated with one's biological maleness or femaleness."

9. Scooter's denies that its sign or Facebook post constitute any violation of this Ordinance.

ARGUMENT

The Commission's Complaint that Scooter's communications regarding transgender restrooms violated the "Unwelcome Clause" of Louisville Ordinance should be denied, for several reasons.

First, there is no legal requirement that Scooter's have transgender restrooms. Further, Scooter's is allowed, by law, to segregate restroom usage on the basis of sex.

Second, Scooter's communications could not violate the Ordinance because there were truthful statements of its lawful restroom policies. Scooter's cannot be found to "withhold, refuse or deny" access to restrooms because it states it does not have transgender restrooms (which it is not required to have). Scooter's cannot be found to "withhold, refuse or deny" access to restrooms because it states that restroom usage is segregated by sex, when the Louisville

Ordinance at issue in this case expressly allows for that.

Third, the Complaint about Scooter's communications would violate Scooter's rights under the First Amendment. Scooter's has a First Amendment right to state the truthful information about its lawful policies on restroom usage. Scooter's also has a First Amendment right to state its opinions on the issue of transgender restrooms, which is a matter of public concern.

I. There Is No Law That Public Accommodations in Jefferson County Have Transgender Restrooms, or that Businesses Cannot Restrict Restroom Usage by Sex.

The Complaint in this case is premised entirely on Scooter's communications regarding the lack of transgender restrooms and the expectation that patrons will use the restroom corresponding to their sex. However, that is a fundamental flaw with the Complaint, as there is no requirement at the federal, state, or local level that public accommodations have transgender restrooms or that customers have to be allowed to use restrooms for the opposite sex.

A. Federal Law

There is no federal statute or regulation that requires transgender restrooms in places of public accommodations, such as restaurants. Similarly, there is no statute or regulation that requires businesses to allow patrons to use restrooms of the opposite sex.

B. State Law

There is no statute or regulation in Kentucky that requires transgender restrooms in places of public accommodations, such as restaurants. In fact, Kentucky law expressly recognizes only Male and Female restrooms.

The 2018 Kentucky Building Code, Section 2901.1, Minimum Plumbing Facilities,

provides:

Minimum fixture requirements. In a *building* accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted. Each *building* shall have the minimum fixture requirements established by 815 KAR 20:191.

(See Exhibit 1, attached.) (Emphasis in original.)

815 KAR 20:191, Minimum Fixture Requirements, states, in pertinent part:

Section 2. General Requirements

- (6) Toilet rooms for males, females and unisex shall be clearly marked.¹

Additionally, 815 KAR 20:191, Section 18, Retail Food Stores and Restaurants provides, in pertinent part:

(2) Restaurants.

- (b) 1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, **toilet facilities *for each sex* shall be provided** and readily accessible for the use of both patrons and employees.

(See Exhibit 2, attached.) (Emphasis added.)

Thus, under Kentucky state law, only separate restrooms designated as male or female are required for a sit down restaurant such as Scooter's.

Further, there is no Kentucky statute or regulation that requires businesses to allow

¹ The regulation does not mandate unisex restrooms in any situation. Rather, it allows for the option of one unisex restroom, instead of separate male and female restrooms, in certain settings such as historical buildings with limited usage and small carry out restaurants.

patrons to use restrooms designated for the opposite sex.

C. Jefferson County Ordinance

There is no Jefferson County Ordinance that requires transgender restrooms in places of public accommodations, such as restaurants. Further, the same Ordinance that the Commission relies upon as the basis of this Complaint expressly allows segregation of male and female restrooms.

LMCO § 92.05(C) provides:

It shall be an unlawful practice to deny an individual, because of sex, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(1) **The provisions of this subsection shall *not* apply to:**

(a) ***Restrooms***, shower rooms, bath houses ***and similar facilities which are in their nature distinctly private***;

(b) YMCA, YWCA and similar type dormitory lodging facilities;

(c) The exemptions contained in the definitions of "Place of Public Accommodations, Resort or Amusement" set forth in § 92.02;

(d) Hospitals, nursing homes, penal or similar facilities, to require that men and women be in the same room.

(Emphasis added.) Thus, not only does the Jefferson County Ordinance not require transgender restrooms, it expressly recognizes that restrooms are, by their very nature, distinctly private, and that usage of restrooms can be restricted to the designated sex.

When read together, Kentucky's laws and Jefferson County's Ordinance makes clear it is

proper for a business to deny access to restrooms to members of the opposite sex.

815 KAR 20:191 requires that restaurants have separate toilets for males and females, and that they be clearly marked as such.

LMCO 92.05(C) provides that a restaurant can deny access to restrooms on the basis of sex.

Thus, under Kentucky law read as a whole, Scooter's:

is required to have separate male and female restrooms;

is required to mark its restrooms as male or female; and

is expressly allowed to restrict their usage in conformity with those designations.

As explained below, because of the state of the law in Jefferson County, Kentucky, regarding restrooms, none of the communications set forth in the Complaint can be a violation.

II. Scooter's Communications Cannot Be a Violation of the Ordinance, Because They Simply State a Policy That Fully Complies with State Law and the Ordinance.

The Complaint alleges that Scooter's communications violate the "Unwelcome Clause" of the cited Ordinance. Scooter's submits, as a matter of law, that they do not, because Scooter's communications simply state a policy that is in full compliance with state law and the Ordinance.

A. Unwelcome Clause

The Complaint states:

LMCO 92.05(B) ("Unwelcome Clause") states it is an unlawful practice for a place of public accommodation to publish or circulate a communication or advertisement which indicates the availability of the public accommodation's facilities may be refused, withheld or denied based on an individual's gender

identity.²

Scooter's assumes that because the Commission, in its Complaint, paraphrased the Ordinance as it did, the sole basis of the Complaint is that Scooter's communications indicate that its restrooms may be refused, withheld or denied based on an individual's gender identity. Scooter's reserves the right to supplement this Response if the Commission later asserts any arguments that Scooter's has violated the "Unwelcome Clause" in some other way.

B. Scooter's sign did not violate the Ordinance, because the statement it had no transgender restrooms was a truthful statement of fact.

First, as to Scooter's sign, the statement that it has "no transgender restrooms" is a truthful statement of fact. As shown above, nothing in federal, state or local law requires Scooter's to have transgender restrooms. Thus, Scooter's statement that it does not, in fact, have any transgender restrooms, is not a statement that any of Scooter's facilities may be "refused, withheld or denied" to transgender individuals. Rather, it is simply a statement that the facility of transgender restrooms does not even exist. It is axiomatic that Scooter's cannot "refuse, withhold or deny" a facility - transgender restrooms - that it does not have.

² The full text of LMCO 92.05(B) provides:

It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral or visual communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement, will be refused, withheld, or denied an individual on account of his race, color, religion, national origin, disability, sexual orientation or gender identity, or that patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual, on account of his race, color, religion, national origin, disability, sexual orientation or gender identity is objectionable, unwelcome, unacceptable, or undesirable.

Additionally, Scooter's submits that nothing about its truthful statement that it does not have transgender restrooms would imply that transgender individuals would be "refused, withheld or denied" access to the restrooms that are designated for males and females in accordance with state law, as set forth in Section II.A.

C. Scooter's Facebook post does not violate the Ordinance, because the statement that restroom usage is segregated by sex is a truthful statement of a policy expressly allowed by the Ordinance.

Second, as to Scooter's Facebook statement that it has no transgender restrooms, and that individuals will have to use restrooms in accordance with their sex, that statement cannot violate the "Unwelcome Clause" because it simply states a policy that is in full compliance with the law.

As shown above, since Scooter's is not legally required to have transgender restrooms, the truthful statement that it doesn't have them does not result in any of Scooter's facilities being "refused, withheld or denied" to anyone.

Further, § 92.05(C)(1)(a) expressly provides that it is NOT an unlawful practice to deny an individual, because of their sex, access to a restroom, because it is distinctly private in nature. It is entirely allowable, under this section of the Ordinance, for Scooter's to segregate restrooms on the basis of sex.

Scooter's statement that individuals have to use the restroom appropriate to their sex was a truthful statement that it had a restroom policy that was expressly allowed by the Ordinance. Therefore, Scooter's statement did not communicate that any individual would be UNLAWFULLY "refused, withheld or denied" access to Scooter's restrooms on the basis of sex.

Scooter's is not required to have transgender restrooms. It is legal to segregate restrooms

on the basis of sex under the Ordinance cited in the Complaint. Thus, Scooter's did not violate the "Unwelcome Clause" by its sign or its statement that it had no transgender restrooms or would segregate restrooms on the basis of sex.

Scooter's anticipates that Jefferson County may attempt to argue that the "Unwelcome Clause" applies because LMCO 92.05(B) applies to individuals based upon "gender identity", whereas LMCO 92.05(C) applies to individuals based upon sex. However, Scooter's submits that such an argument would result in an absurd interpretation of the statute.

LMCO § 10.03 provides:

INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Code as those governing the interpretation of state law.

Under general rules of statutory construction is presumed the legislature "intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes." *Miller v. Tema Isenmann, Inc.*, 542 S.W.3d 265, 273 (Ky. 2018). It is also presumed the legislature did not intend an absurd result. *Id.*

In the event two statutory provisions directly conflict, it has been long established the specific provision takes precedence over the general provision. *Porter v. Com.*, 841 S.W.2d 166, 168-69 (Ky. 1992).

Applying those principles to this Ordinance finds that it is permissible for Scooter's to segregate restrooms based upon sex, regardless of the gender identity of the patron.

First, although the County may try to split hairs between "gender identity" and "sex",

courts have generally found that any question about gender identity necessarily implicates a person's sex. *See, Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018). Moreover, the definition of gender identity in LMCO § 92.02 is itself based on reference to a person's biological sex. Thus, it is impossible, particularly in this instance, to separate the two.

Second, although § 92.05 overall talks broadly about various forms of discrimination based up on sex or gender identity, § 92.05(C)(1)(a) expressly provides a specific exception for being allowed to segregate restrooms based upon sex. Scooter's submits that under standard rules of statutory interpretation, that specific, express exemption allowing segregation of restrooms based upon sex would trump the general prohibition on discrimination based upon gender identity.

Third, recognizing the specific exception in § 92.05(C)(1)(a) would harmonize the Ordinance as a whole. That is, that generally, a public accommodation cannot withhold facilities based upon gender identify. But, in the specific context of restrooms, as expressly set forth in the exemption, it can.

Scooter's sign and Facebook Post that it does not have transgender restrooms does not violate the Ordinance because there is no requirement it have transgender restrooms. Scooter's Facebook post does not violate the Ordinance because the Ordinance expressly allows Scooter's to segregate restrooms on the basis of sex.

Scooter's truthful statements about its policies, which are in full compliance with state and local law, cannot violate the "Unwelcome Clause", because they do not indicate that any of Scooter's facilities will be unlawfully "refused, withheld or denied" based upon an individual's

gender identity.

III. The Commission's Application of the Ordinance Against Scooter's Violates the Right to Free Speech under the Kentucky and United States Constitution.

The Complaint in this case improperly infringes upon the right to free speech by Scooter's and its owner.

Section 1 of the Kentucky Constitution provides, in pertinent part:

All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: . . .

Fourth: The right of freely communicating their thoughts and opinions.

Generally free speech claims under the Kentucky Constitution are treated interchangeably as free speech claims under the First Amendment to the Constitution of the United States. *See Kentucky Registry of Election Fin. v. Louisville Bar Ass'n*, 579 S.W.2d 622, 626 (Ky. App. 1979).

The First Amendment to the United States Constitution provides that "Congress shall make no law ... abridging the freedom of speech." U.S. Const. amend. I. This prohibition applies equally to state governments through the Fourteenth Amendment. *Edwards v. South Carolina*, 372 U.S. 229, 235, 83 S.Ct. 680 (1963).

Here, the Commission's Complaint against Scooter's violates Scooter's right to free speech under the First Amendment.

- A. The Compliant infringes upon free speech in this case, because it seeks to penalize Scooter's for making statements about its restroom policies, when those policies are in conformity with the law.**

As shown above, all of Scooter's policies regarding transgender restrooms were in conformity with the law. There is no legal requirement that it have transgender restrooms. LMCO § 92.05(C)(1) specifically allows for restrooms to be segregated on the basis of sex. Therefore, both the sign and Scooter's Facebook post were simply statements of fact regarding its policies, which were full compliance with the law.

It is a violation of the First Amendment for the Commission to claim that even though those were truthful statements of a lawful policy, that it would still violate the "Unwelcome Clause". In *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S. Ct. 1817 (1976), the Court found that a statutory ban preventing licensed pharmacists from advertising prescription drug prices violated the First Amendment. The Court held:

What is at issue is whether a State may completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients. Reserving other questions, we conclude that the answer to this one is in the negative.

(*Id.*, 96 S. Ct. 1817, 1831.) See also, *Bolger v. Youngs Drug Products Corp.*, 103 S.Ct. 2875 (1983) (truthful commercial speech entitled to First Amendment protection).

All of Scooter's communications that are listed in the Complaint were truthful communications about its lawful policies. As a matter of law, those communications are protected by the First Amendment. Thus, it would be a violation of Scooter's rights under the First Amendment for the Commission to find that those communications violated LMCO § 92.05(B).

B. Scooter's has a First Amendment right to makes its views known on the debate regarding transgender restrooms.

As shown in Section I above there is no federal, state or local requirement for transgender restrooms, and Scooter's is free to restrict access to restrooms based upon sex. However, the issue of access to restrooms by transgender individuals is a genuine, and contentious, issue of debate in today's society.³

Scooter's, and its owner, have an opinion in regard to that debate. Under the First Amendment they have a right to express that opinion, and to the extent the "Unwelcome Clause" seeks to prevent that expression, it is unconstitutional.

The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state

³ See, e.g., "The Transgender Bathroom Debate at the Intersection of Politics, Law, Ethics, and Science", Brian S. Barnett, Ariana E. Nesbit and Renée M. Sorrentino *Journal of the American Academy of Psychiatry and the Law Online* June 2018, 46 (2) 232-241, DOI: <https://doi.org/10.29158/JAAPL.003761-18>; "Everything You Need to Know About the Debate Over Transgender People and Bathrooms." *Time*, July 28, 2015, <https://time.com/3974186/transgender-bathroom-debate/>; "High school could have been hell for my transgender son. Don't make it hell for the next kid." *USA Today*, <https://www.usatoday.com/story/opinion/voices/2019/01/30/transgender-bathroom-debate-supreme-court-column/2708594002/>; "My high school's transgender bathroom policies violate the privacy of the rest of us." *USA Today*, <https://www.usatoday.com/story/opinion/voices/2018/11/29/transgender-bathroom-debate-privacy-school-lawsuit-column/2123946002/>.

interests.

Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 135 S. Ct. 2218, 2226 (2015).

"[S]peech on 'matters of public concern' ... is 'at the heart of the First Amendment's protection.'" *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–759, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985) (opinion of Powell, J.) (quoting *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 776, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978)). The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). That is because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74–75, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964). Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) (internal quotation marks omitted).

Snyder v. Phelps, 562 U.S. 443, 451–52, 131 S. Ct. 1207, 1215 (2011).

Speech deals with matters of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," *Connick, supra*, at 146, 103 S.Ct. 1684, or when it "is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public," *San Diego, supra*, at 83–84, 125 S.Ct. 521. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492–494, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); *Time, Inc. v. Hill*, 385 U.S. 374, 387–388, 87 S.Ct. 534, 17 L.Ed.2d 456 (1967). The arguably "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern." *Rankin v. McPherson*, 483 U.S. 378, 387, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987).

Snyder v. Phelps, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216 (2011).

Scooter's statements regarding transgender restrooms were the statement of its opinions on a matter of public concern. (That is underscored by the fact that its sign also makes reference

to other social issues and political correctness in general.) Such statements are at the core of protected First Amendment speech.

Being core First Amendment speech on issues of public concern, there is no basis for the Commission to penalize Scooter's for those communications.

The Supreme Court has "emphasized that 'it is the rare case' in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444, 135 S. Ct. 1656, 1665–66 (2015). Mere offense or injury to sensibilities is insufficient. *Texas v. Johnson*, 491 U.S. 397, 408–09, 109 S.Ct. 2533 (1989). For the government to prevent speech expressing ideas that offend strikes at the heart of the First Amendment. *Matal v. Tam*, 137 S. Ct. 1744, 1764 (2017). Only when the expression carries an immediate and palpable risk of cognizable harm can government intercede. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 927–28, 102 S.Ct. 3409 (1982).

Here, the worst that can be said about Scooter's expressing its opinions on the public debate about transgender restrooms is that it might offend those with a differing opinion. However, Jefferson County cannot restrict Scooter's ability to speak on a matter of public concern just because some people, or even the County's leaders themselves, have a differing point of view.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642, 63 S. Ct. 1178, 1187 (1943).

Scooter's communications about its views on transgender restrooms were protected under the First Amendment. Thus, the Commission cannot penalize Scooter's for having exercised its First Amendment right to express its views.

CONCLUSION

There is no basis for the Commission to find that Scooter's violated the "Unwelcome Clause".

The Complaint is fundamentally flawed at the outset, as there is no legal requirement that Scooter's have transgender restrooms. Further, Scooter's is allowed, by law, to segregate restroom usage on the basis of sex.

Scooter's communications could not violate the Ordinance because there were truthful statements of its lawful restroom policies. Scooter's cannot be found to "withhold, refuse or deny" access to restrooms because it states it does not have transgender restrooms (which it is not required to have). Scooter's cannot be found to "withhold, refuse or deny" access to restrooms because it states that restroom usage is segregated by sex, when the Louisville Ordinance at issue in this case expressly allows for that.

Third, the Complaint about Scooter's communications would violate Scooter's rights under the First Amendment. Scooter's, and its owner, has a First Amendment right to state the truthful information about its lawful policies on restroom usage. Scooter's also has a First Amendment right to state its opinions on the issue of transgender restrooms, which is a matter of public concern. Any attempt to penalize Scooter's for exercising that right would violate the First Amendment.

Therefore, for the foregoing reasons, Scooter's requests that the Complaint against it be denied.

Respectfully submitted:

Bruce A. Brightwell

BRUCE A. BRIGHTWELL

Sturm, Paletti & Peter, PLLC

713 E. Market Street, Suite 100 Louisville, KY 40202

(502) 589-9254 • Fax: (866) 221-1150

bbrightwell@sppllegal.com

May 21, 2020

Final Investigative Report

Case Name: LMHRC- Enforcement Board v. Scooter's Triple B's

Case Number: C20-PA6244 (LOCAL)

I. Jurisdiction

A complaint was filed by the Human Relations Commission- Enforcement Board on May 4, 2020 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: denying a public accommodation. It is alleged that the respondent(s)'s acts were based on Gender Identity. The most recent act is alleged to have occurred on February 9, 2020 and is continuing. The property known as Scooter's Triple B's, located at 3840 S. Hurstbourne Parkway, Louisville, Jefferson County, Kentucky.

Parties and Aggrieved Persons

A. Complainant(s)

Louisville Metro Human Relations Commission-Enforcement Board
745 W. Main Street, Suite 251
Louisville, KY 40202

Complainant Allegations

Complainant, Louisville Metro Human Relations Commission, saw a Facebook post from the Fairness Campaign, brought attention to the establishment known as Scooter's Triple B's, located at 3840 S. Hurstbourne Parkway, Louisville, Jefferson County, Kentucky, and defined as a public accommodation under Louisville/ Jefferson County Metro Government Code of Ordinances ("LMCO"), Chapter 92, that the restaurant has a sign posted stating "Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do No Like This, Get Your Politically Correct Ass Outta Here!"

In a follow up Facebook posting, Scooter's Triple B's also stated, "Yes our signs says we do not have transgender restrooms. They just need to use the one that goes with the gender they were born with." LMCO 92.05(B) ("Unwelcome Clause") states it is unlawful practice for a place of public accommodation to publish or circulate a communication or advertisement which indicates the availability of the public accommodation's facilities may be refused, withheld or denied based on an individual's

gender identity. LMCO §92.02 defines Gender Identity as “[m]anifesting an identity not traditionally associated with one’s biological maleness or femaleness.”

By Scooter’s Triple B’s publication of the aforementioned sign and Facebook comments, this Complaint alleges Scooter’s Triple B’s has violated the Unwelcome Clause, causing Patrons of a protected class to feel unwelcome in its place of public accommodation, all of which has been done in violation of Louisville/ Jefferson County Metro Government Code of Ordinances, Chapter 92.

B. Respondent(s)

Scooter’s Triple B’s
3840 S. Hurstbourne Pkwy.
Louisville, KY 40299

Respondent Defenses

Scooter’s Triple B’s responded states as follows for its Response to the Complaint and moves for the Complainant to be dismissed. Respondent stated the alleged violation of 92.02 (B) makes no sense and is impossible to respond to. The failure to identify an actual Ordinance that Scooter’s has allegedly violated, violates Scooter’s right to Due Process under the United States and Kentucky Constitutions.

C. Case Elements:

- 1) A public accommodation (technically a person within the public accommodation) – see 92.02 for the definition of public accommodation
- 2) Published a communication either oral or written (we have both due to the sign and the apology)
- 3) And the communication indicates that facilities within the public accommodation will be refused or withheld from an individual
- 4) Or that the individual’s patronage/presence is unwelcome
- 5) Due to the individual’s gender identity

D. Case Summary:

Complainant is a person(s) who are members of the LGBT community and because of a sign posted in a public restaurant, in addition to comments made on the restaurant's Facebook page. The Complainant felt discriminated against based on their gender identity. The sign stated, "Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do No Like This, Get Your Politically Correct Ass Outta Here!" After receiving backlash on Social Media, the restaurant known as Scooter's Triple B's stated in a comment, "Yes our sign says we do not have transgender restrooms. That does not mean they can not use our restrooms. They just need to use the one that goes with the gender they were born with." Comments such as these, is a representation of publicly denying one the right to comfortably utilize the facility.

E. Documents:

Nature of the Document: Picture of the sign posted in the restaurant

Who Provided: Complainant

Date: February 8, 2020

Nature of Document: Picture of Facebook Post- Scooter's Triple B's response to sign

Who Provided: Complainant

Date: February 8, 2020

LOUISVILLE METRO
HUMAN RELATIONS COMMISSION
745 W. MAIN STREET SUITE 251
LOUISVILLE, KENTUCKY 40202

In the Matter of Conciliation Between)	
The Louisville and Jefferson County)	
Human Relations Commission)	
)	CONCILIATION
Louisville Metro Human Relations)	
Commission - Enforcement Board,)	AGREEMENT
Charging Party)	
)	
v.)	
)	C20-PA6244 (LOCAL)
Scooter's Triple B's)	
Respondent)	

1. In exchange for the promises made by the Respondent in Paragraph (2) of this Agreement, Charging Party agrees not to institute a lawsuit based on the noted charges under Title VII of the Civil Rights Act of 1964 as amended, and Louisville Metro Ordinance No. 193, Series 2004, prohibiting discriminatory practices in connection with public accommodations, as amended, and requests the Louisville and Jefferson County Metro Human Relations Commission dismiss; Complaint No. **C20-PA6244(LOCAL)**
2. In exchange for the promises of the Charging Party, **Louisville Metro Human Relations Commission- Enforcement Board**, contained in paragraph (1) of this Agreement, Respondent agrees to remove the sign stating "Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do Not Like This, Get Your Politically Correct Ass Outta Here!" **This remedy is proposed by Louisville Metro Human Relations Commission- Enforcement Board.**
3. The Agreement constitutes the complete understanding between the Respondent, Charging Party, and the Louisville Metro Human Relations Commission. No other promises or Agreements shall be binding unless signed by these parties.
4. It is understood that this Agreement does not constitute an admission by the Respondent of any violation of Louisville Metro Am. Ordinance No. 193, Series 2004 as amended.
5. These parties agree that this Agreement may be used as evidence in a subsequent proceeding relative to this case in which any of the parties allege a breach of this Agreement.

6. The Louisville and Jefferson County Metro Human Relations Commission's participation in this Agreement does not reflect any judgment by the Commission as to the merits of the charge filed.

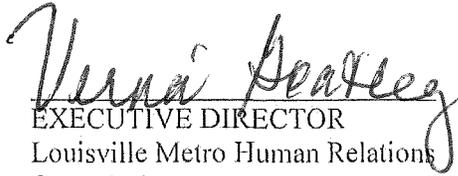

RESPONDENT
Scooter's Triple B's

Aug. 4, 2020
DATE

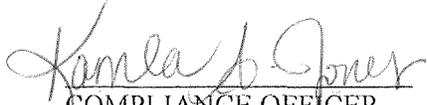

CHARGING PARTY
Louisville Metro Human Relations Commission-
Enforcement Board

8/11/2020
DATE

On Behalf of the Commission:


EXECUTIVE DIRECTOR
Louisville Metro Human Relations
Commission

08/11/2020
DATE


COMPLIANCE OFFICER
Louisville Metro Human Relations
Commission

8/5/2020
DATE



HUMAN RELATIONS COMMISSION
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

KENDALL BOYD
EXECUTIVE DIRECTOR

July 15, 2020

RE: LMHRC- Enforcement Board v. Scooter's Triple B's
Notice of Election to Proceed with Claims by Civil Action

To Whom It May Concern:

This letter serves as notice pursuant to LMCO 92.09(E)(3). The ordinance states if reasonable cause concerning allegations of discrimination under Chapter 92 is found, the complainant and respondent shall be advised in writing that either party may elect to have their claims decided by a civil action.

Reasonable cause was found to exist in this action on July 13, 2020.

The parties have twenty (20) days from the date of this letter to elect to have these claims proceed by civil action. Should the parties not elect to proceed by civil action, a notice for an administrative hearing will be issued by the Human Relations Commission and the Office of Attorney General, Hearings Division, within forty-five (45) days of the reasonable cause determination.

Thank you,

Kamla Jones
Investigator
Human Relations Commission



HUMAN RELATIONS COMMISSION
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

KENDALL BOYD
EXECUTIVE DIRECTOR

July 15, 2020

Mr. Bruce Brightwell
Attorney At Law
Strum, Paletti & Peter, PLCC
713 East Market Street, Suite 100
Louisville, KY 40202

Re: ***LMHRC- Enforcement Board v. Scooter's Triple B's***
Complaint No. C20-PA6244

Dear Mr. Brightwell:

In accordance with the Louisville/ Jefferson County Metro Government Code of Ordinances (LMCO) Chapter 92, as amended, the Louisville Metro Human Relations Commission- Enforcement Board (HRC) has determined that the restaurant Scooter's Triple B's has engaged in unlawful practices in violation of Louisville/ Jefferson County Metro Government Code of Ordinances. The HRC has determined that the Respondents have discriminated against the Complainant on the basis of gender identity.

Some of the investigative findings supporting this decision are set forth below:

FINDINGS

The Respondents are Owners/ Operators of the restaurant Scooter's Triple B's, a public accommodation within the definitions contained in Chapter 92 of the Louisville Metro Ordinance noted above and is prohibited from committing the unlawful practices detailed in Chapter 92. The restaurant posted a sign stating "Attention: We Are Politically Incorrect. There Are No Transgender Restrooms, We Support Our Troops, We Salute Our Flag, And We Believe We're One Nation Under God. If You Do Not Like This, Get Your Politically Correct Ass Outta Here!" In addition to the sign posted in the restaurant, the Respondent made a follow up comment in a Facebook posting, stating, "Yes our sign says we do not have

transgender restrooms. They just need to use the one that goes with the gender they were born with.”

- I. The Complainant, Louisville Metro Human Relations Commission- Enforcement Board brings this action on behalf of members of a protected class.
- II. The Complainant, Louisville Metro Human Relations Commission- Enforcement Board, has alleged unlawful discrimination by the Respondents. The Complainant alleges the sign posted in the restaurant referenced above makes members of the protected class feel uncomfortable and unwelcome.
- III. The Respondents deny any unlawful discrimination. The Respondents state there is nothing in federal, state, or local law requiring Scooter’s to have transgender restrooms and its sign merely states a policy that is in full compliance with the law. The Respondent states the sign cannot be penalized because it is truthful commercial speech entitled to First Amendment Protection and the “Unwelcome Clause” itself is an unconstitutional, content- based restriction of speech.
- IV. There is evidence that the Respondent’s sign was posted in a place of public accommodation. Pictures prove the sign is posted in the restaurant.
- V. There is evidence that the Respondent’s sign and Facebook posts target members of a protected class due to their gender identity. Both the sign and the Facebook posting make members of the LGBTQ+ and Trans communities feel unwelcome, in violation of the public accommodations provisions of the LMCO.
- VI. The Respondent’s sign and comments suggest members of the protected class are required to use certain restrooms. The Respondent’s sign and public comments publish or circulate a communication or advertisement which indicates the availability of the public accommodation’s facilities may be refused, withheld or denied based on an individual’s gender identity. The above referenced sign makes statements stating the Respondent does not offer transgender restroom to patrons. The Respondent left comments on a follow up Facebook post which violate the Unwelcome Clause, causing patrons of a protected class to feel unwelcome in its place of public accommodation.

CONCLUSION

1. The Complainant is a member of a protected class;
2. The Respondents are Owners of a place of public accommodation;
3. The Respondents discriminated against the Complainants whether directly or indirectly;
4. The discrimination occurred "because of" the sign posted in the Respondent's restaurant or in other words, that the post was a substantial factor causing discrimination; and
5. The Human Relations Commission's conclusion of reasonable cause is derived from a balanced consideration of the above stated findings and evaluation of Respondents' explanation of its actions. The Louisville/ Jefferson County Metro Government Ordinance (LMCO) 92.05, make it an unlawful practice to discriminate against any individual on the basis of gender identity.

Responses to this matter need to be submitted to Compliance Officer, Kamla Jones, please contact Kamla Jones within (10) days.

Sincerely,



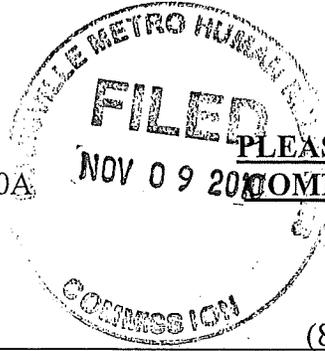
Kendall Boyd
Executive Director

Enclosure: Complainant Conciliation Proposal

COMPLAINT OF DISCRIMINATION

MAIL OR DELIVER TO:

Louisville Metro
 Human Relations Commission
 410 West Chestnut Street, Suite 300A
 Louisville, KY 40202



PLEASE RESPOND TO THIS COMPLAINT.

<u>Lexington Fair Housing Council, Inc</u>	<u>(859) 971-8067</u>
NAME	TELEPHONE NUMBER
207 E. Reynolds. Rd. Suite 130	Lexington KY 40517

STREET ADDRESS	CITY	STATE	ZIP CODE
----------------	------	-------	----------

WAS THE DISCRIMINATION IN ... (CHECK ONE)

- Employment Housing Public Accommodations
 Hate Crimes

BECAUSE OF ... (CHECK ONE)

- Race Age Gender
 Sex Handicap Sexual Orientation
 National Origin Familial Status Other,

Who discriminated against you? Give name and address of employer, labor organization, employment agency, apprenticeship committee, licensing agency, public accommodation, real estate broker or lender or apartment manager.

LIST ALL:

Teen Challenge of Kentucky, Inc.	(502) 561-2131
NAME	TELEPHONE

P.O. Box 14192	Louisville	KY	40214
STREET ADDRESS	CITY	STATE	ZIP CODE

AND (OTHER PARTIES, IF ANY)

THE ACTUAL DATE OF THE MOST RECENT
 DATE OF ALLEGED DISCRIMINATION:

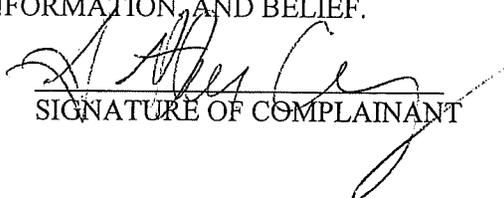
11 09 2010
 MONTH DAY YEAR

**LOUISVILLE METRO
HUMAN RELATIONS COMMISSION
COMPLAINT OF DISCRMINATION**

EXPLANATION OF YOUR COMPLAINT

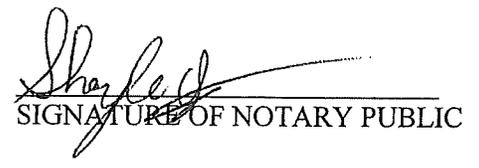
- I. The Complainant, Lexington Fair Housing Council, Inc., alleges unlawful discrimination by the Respondent, Teen Challenge of Kentucky, Inc.
- II. The Complainant alleges that Teen Challenge of Kentucky, Inc. provides housing in Louisville, Kentucky, for women in recovery from substance abuse.
- III. The Complainant alleges that the Respondent does not discriminate on the basis of religion and is open to members of the general public.
- III. The Complainant alleges that the Respondent has stated a preference for individuals who are not gay. The Respondent also teaches against homosexuality.
- IV. The Complainant has been harmed through a frustration of mission and diversion of resources due to this unlawful discrimination based on sexual orientation, in violation of Louisville Metro Amended Ordinance No. 193, Series 2004.

I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE OF ALLEGED DISCRIMINATION AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.


SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9th DAY OF November, 2010.

MY COMMISSION EXPIRES ON July 20, 2011.


SIGNATURE OF NOTARY PUBLIC

INVESTIGATIVE PLAN

I. Case Identification Data:

Case number: C11-PA5481

Complainant: Lexington Fair Housing Council, Inc.
207 East Reynolds Road
Suite 130
Lexington, KY 40517
Telephone: 1-866-438-8617

Respondent: Teen Challenge of Kentucky, Inc.
P.O. Box 14192
Louisville, KY 40214

II. Allegation:

- I. The Complainant, the Lexington Fair Housing Council, Inc., alleged unlawful discrimination by the Respondent, Teen Challenge of Kentucky, Inc.
- II. Specifically, the Complainant alleged that the Respondent operated a place which supplied services to the general public stating a preference for persons who were not gay and taught against homosexuality.
- III. The Complainant alleged unlawful discrimination by the Respondent based on sexual orientation in violation of Louisville Metro Amended Ordinance Number 193, Series 2004.

Theory: Unlawful discrimination in public accommodations

Issue: Did the Respondent express preferences for residents that were not gay/homosexual in its housing program?

Basis: Sexual Orientation (gay/homosexual)

Case elements in *Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.*:

- I. Did the Respondent directly or indirectly publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral or visual communication, notice, or advertisement which indicated that Respondent services, facilities, privileges, advantages, or accommodations would be refused, withheld, or denied an individual on account of sexual orientation?

II. Did the Respondent state that patronage of, or presence at, a Respondent place of public accommodation of an individual on account of sexual orientation was objectionable, unwelcome, unacceptable, or undesirable?

Whom to Interview

Documents to Collect

Complainant

Rental applications, tester statements

Respondent

Rental applications identified by sexual orientation, rejected applications identified by sexual orientation, property/program rules and regulations, current resident identification by sexual orientation



HUMAN RELATIONS COMMISSION
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

CAROLYN MILLER-COOPER
EXECUTIVE DIRECTOR

March 14, 2011

Mr. Joshua S. Harp
Attorney at Law
Harp Law PLLC
415 West Main Street
Frankfort, KY 40601

Re: *Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.*
Complaint No. C00-HO213

Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.
Complaint No. C11-PA5481

Dear Mr. Harp:

As part of the ongoing investigation in the above matter, we wish to conduct a site-visit of the Respondent business office, or office where business records are kept. A site-visit is requested for most housing discrimination complaint investigations.

We wish to conduct the site-visit on **Monday, April 11, 2011 at 9:00 a.m.**
During this visit, we wish to review the following information:

- Complete Complainant rental/tenant/residency file;
- Respondent subject property/program rules and regulations;
- Respondent subject property/program tenant/resident list identified by sexual orientation;
- Respondent subject property federal subsidy regulations, if any; and,
- Any other information you believe helpful for the investigation.

Also during this visit, we wish to conduct interviews with any Respondent staff or other persons that may have pertinent knowledge pertaining to the Complainant's allegations. The site-visit duration should last for no more than an hour and a half.

Mr. Joshua S. Harp

Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.

Complaint No. C00-HO213

Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.

Complaint No. C11-PA5481

March 14, 2011

Page Two

Please confirm this request within seven business days of the date of this correspondence, and please not hesitate to call me at 502-574-2391 if I may answer any questions. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Valenzuela', with a long horizontal flourish extending to the right.

Nick Valenzuela
Compliance Officer



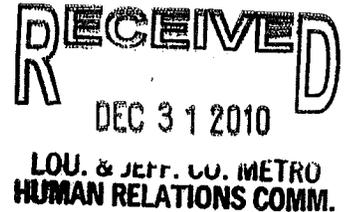
415 WEST MAIN STREET
FRANKFORT, KY 40601

JOSHUA S. HARP
ATTORNEY AT LAW

PH: 502-352-2935
FX: 502-352-2936

December 30, 2010

Human Relations Commission
410 West Chestnut Street
Suite 300A
Louisville, KY 40202



Re: Lexington Fair Housing Council, Inc. vs. Teen Challenge of Kentucky, Inc.
Complaint Nos.: **C11-PA5481**
C00-HO213

Commission:

Please take notice that my office has been retained by the Respondent in the above-referenced matters. This letter is provided in reply to the above-referenced complaints (hereinafter referred to collectively as the "Complaint") and the allegations therein.

The Respondent, Teen Challenge of Kentucky, Inc., summarily denies the Complainant's accusations of discrimination. Respondent will herein address the allegations in the Complaint according to the numbered paragraphs in the Complaint.

- I. Respondent denies any unlawful discrimination or discriminatory practices.
- II. Respondent provides residential recovery services in the Louisville area to women who are recovering from substance abuse issues. Respondent denies that said recovery services qualify as "housing" or "public accommodations" under the applicable Louisville Metro Ordinances.
- III. Respondent admits that it is open to members of the general public (subject to application and admission to the program), and that admission is not restricted to those applicants who subscribe to Respondent's doctrinal views. However, while it does not discriminate based on religious affiliation, Respondent is a religious organization and adheres to the religious doctrines of the Assemblies of God denomination. Applicants to Respondent are made aware of Respondent's religious views prior to their admission to the program.
- IV. Respondent summarily denies the allegations contained in Paragraph IV of the Complaint. Respondent has not stated a preference for individuals who are not gay. Instead, Respondent routinely and frequently admits gay applicants to its program. Furthermore, since Respondent is a substance abuse recovery program, homosexuality issues are not a part of its curriculum. Even if Respondent did routinely teach a religious position on homosexuality (which is not admitted), such

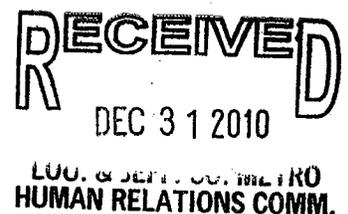
speech cannot be considered discrimination when it is not meant to intimidate or harass the audience and the audience has, in fact, consented to the message. More to the point, Respondent's policy or rule concerning homosexual applicants is as follows: Respondent does not discriminate based on sexual orientation.

- V. Respondent also summarily denies the allegations contained in Paragraph V. Respondent asserts that no discrimination has occurred, that the Complainant has not been harmed in any way, and that Complainant does not have standing to bring its Complaint.

In addition to the foregoing, Respondent also asserts the following in response to the Complaint:

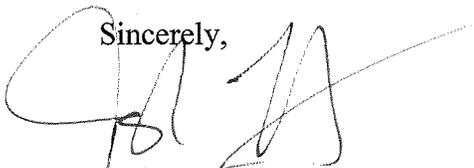
- VI. Pursuant to Louisville Metro Amended Ordinance No. 193-2004 § 92.09, a complaint must be filed within 180 days of an alleged unlawful discriminatory practice has occurred. The Complainant has not alleged any specific discrimination, but has merely asserted arbitrary dates on which it claims discrimination has occurred. Because Complainant has not demonstrated when—if ever—any discrimination occurred, the Complaint cannot be considered timely.
- VII. Even if Respondent did discriminate based on sexual orientation (which it does not), it qualifies as a religious organization under Louisville Metro Amended Ordinance 193-2004 § 92.04 and KRS 344.130 and is therefore exempt from the provisions of those sections.
- VIII. The Complainant has provided nothing more than bare, unsubstantiated, and incorrect allegations for its Complaint. The Complainant has previously written directly to Respondent with similar allegations, and Respondent has promptly, professionally, and adequately addressed the Complainant's allegations in writing. However, prior to even receiving Respondent's reply correspondence, Complainant filed its first complaint (C00-HO213) against Respondent. The text of that correspondence is attached hereto. Respondent has at all times attempted to correct misinterpretations or misunderstandings of its policies by providing correct and relevant information. Despite Respondent's efforts to correct Complainant's mistaken belief that Respondent discriminates based on sexual orientation, Complainant has filed the present Complaint. Complainant's initiation of this baseless Complaint constitutes nothing more than harassment and an attempt to strong-arm the Respondent despite Respondent's demonstrable compliance with applicable law.
- IX. Complainant has provided no information that can be construed as probable cause that any violation has occurred, and the HRC should accordingly dismiss the Complaint.

For all of the foregoing reasons, Respondent respectfully requests that the Complaint be DISMISSED.



Should I be of any more assistance in resolving this matter, please do not hesitate to contact me at 502-352-2935.

Sincerely,



Joshua S. Harp

Attorney for Teen Challenge of Kentucky, Inc.

RECEIVED
DEC 31 2010
LOU. & JEFF. CO. METRO
HUMAN RELATIONS COMM.

INFORMATION REPORTED BY RESPONDENT

COMPLAINANT: Lexington Fair Housing Council, Inc.

Type: Public Accommodation/
Sexual Orientation

RESPONDENT: Teen Challenge of Kentucky, Inc.

Case No. C11-PA5481

COMPLIANCE OFFICER: Nicolas Valenzuela

Date: 12/30/2010

**NAME OF PERSON-
REPORTING:** V. Clayton Arp

POSITION AND TITLE:
Executive Director

EMAIL CONTACT: teenchallengeky@juno.com

INFORMATION:

**IS YOUR PLACE OF BUSINESS WITHIN THE LOUISVILLE/ JEFFERSON COUNTY METRO
AREA?** Yes. _____

If the name of the Respondent listed above is not the correct legal name of the Respondent, please state the correct legal name. Receipt of the correct information will be considered an amendment to the complaint.

Respondent denies Complainant's allegations of discrimination contained in its Complaint.

Respondent's policy or rule relative to the determination of this matter is as follows:

RESPONDENT DOES NOT DISCRIMINATE BASED ON SEXUAL ORIENTATION.

Respondent attaches and incorporates by reference the attached reply from its legal counsel, the Hon. Joshua S. Harp, and makes same a part of its reply to the Complaint.

USE BACK OF FORM AND ADDITIONAL SHEETS IF NECESSARY

PLEASE GIVE NAME, ADDRESS AND PHONE NUMBER OF PERSONS TO BE INTERVIEWED.

Rebecca Henslee
Women's Ministries Director
PO Box 14192
Louisville, KY 40214
(859) 533-3480

Julie Duvall
State Administrator
PO Box 14192
Louisville, KY 40214
(502) 544-3288

V. Clayton Arp
Executive Director
PO Box 14192
Louisville, KY 40214
(502) 541-9478

October 19, 2010

Arthur Crosby, Esq.
Lexington Fair Housing Council
207 East Reynolds Rd, Suite 130
Lexington, KY 40517

Dear Mr. Crosby:

I apologize for not responding sooner to your letter dated September 30, 2010. I trust the following responses will clear up any remaining questions regarding *Priscilla's Place* and *Hannah's House*.

Though our programs are "faith-based," we accept applicants from all denominations and even no affiliation. They do, however, understand that we have a faith-based philosophy of recovery.

We do encourage and require abstinence while individuals are in our residential care programs. This policy is consistent with the majority of recovery programs, both secular and faith-based. As to addressing the issues of sexuality, we only address concerns that individual residents bring to us. We do not purposely focus on or pursue issues involving sexuality unless it is directly connected to their addiction issues (e.g. prostitution).

Please let me know if I can be of further assistance.

Sincerely,

V. Clayton Arp
Executive Director

CASE FINDINGS MEMORANDUM

Lexington Fair Housing Council, Inc.

Complainant

v.

Teen Challenge of Kentucky, Inc.

Respondent

Case Number: C00-HO213
Investigator: Nicolas A. Valenzuela
Basis: Sexual Orientation (non-heterosexual)
Action: Terms, conditions, or privileges of rental; Harassment, intimidation, or coercion
Recommendation: No Probable Cause

COMPLAINANT'S POSITION

Latest date of discrimination: 05/14/2010
Action filed: 10/19/2010

- I. The Complainant, the Lexington Fair Housing Council, Inc., alleged unlawful discrimination by the Respondent, Teen Challenge of Kentucky, Inc.
- II. Specifically, the Complainant alleged that the Respondent operated a residential living program which stated a preference for persons who were not gay and taught against homosexuality.
- III. The Complainant alleged unlawful discrimination by the Respondent based on sexual orientation in violation of Louisville Metro Amended Ordinance Number 193, Series 2004.

RESPONDENT'S POSITION

Respondent representative V. Clayton Arp stated that the Respondent voluntarily provided the Complainant information to clear up the accusations the Complainant made since first contacting the Respondent in 07/2010. Mr. Arp stated that in a letter from the Respondent to the Complainant dated 08/12/2010, the Respondent informed the Complainant that, according to Louisville Metro Ordinance § 92.04 [sic], the Respondent was exempt from the provisions regarding housing discrimination because it was a non-profit organization operated by a religious organization. Mr. Arp stated that although the Respondent was exempt from Louisville Metro Ordinance's provision, it did not discriminate against or prefer any sexual orientation over another in theory or in practice.

Respondent representative Joshua S. Harp stated that the Respondent denied the Complainant's accusations of discrimination. Mr. Harp stated that the Respondent denied any unlawful discrimination or discriminatory practices. Mr. Harp stated that the

Respondent provided residential recovery services in the Louisville area to women who were recovering from substance abuse issues. Mr. Harp stated that the Respondent denied that said recovery services qualified as “housing” or “public accommodations” under applicable Louisville Metro Ordinances. Mr. Harp stated that the Respondent admitted that it was open to members of the general public, subject to application and admission to the program, and that admission to the program was not restricted to those applicants who subscribed to the Respondent’s doctrinal views. Mr. Harp stated that while the Respondent did not discriminate based on religious affiliation, the Respondent was a religious organization and adhered to the religious doctrines of the Assemblies of God denomination. Mr. Harp stated that applicants to the Respondent were made aware of the Respondent’s religious views prior to their admission to the program. Mr. Harp stated that the Respondent denied that the Complainant had been harmed through a frustration of mission and diversion of resources due to discrimination based on sexual orientation in violation of Louisville Metro Amended Ordinance Number 193, Series 2004. Mr. Harp stated that the Respondent had not stated a preference for individuals who were not gay. Mr. Harp stated that the Respondent routinely and frequently admitted gay applicants to its program. Mr. Harp stated that since the Respondent was a substance abuse recovery program, homosexuality issues were not part of its curriculum. Mr. Harp stated that even if the Respondent did routinely teach a religious position on homosexuality, which was not admitted, such speech could not be considered discrimination when it was not meant to intimidate or harass the audience and the audience had, in fact, consented to the message. Mr. Harp stated that the Respondent’s policy or rule concerning homosexual applicants was that it did not discriminate based on sexual orientation. Mr. Harp stated that, pursuant to Louisville Metro Amended Ordinance Number 193, Series 2004, a complaint had to be filed within 180 days of an alleged unlawful discriminatory practice having occurred. Mr. Harp stated that the Complainant had not alleged any specific discrimination, merely asserting arbitrary dates on which it claimed discrimination had occurred. Mr. Harp stated that because the Complainant had not demonstrated when, if ever, any discrimination occurred, the complaint could not be considered timely. Mr. Harp stated that even if the Respondent did discriminate based on sexual orientation, which it did not, it qualified as a religious organization under Louisville Metro Amended Ordinance Number 193, Series 2004 and was therefore exempt from the provisions of sections addressing discriminatory practices. Mr. Harp stated that the Complainant had provided nothing more than bare, unsubstantiated, and incorrect allegations for its complaint. Mr. Harp stated that the Complainant had previously written directly to the Respondent with similar allegations, with the Respondent promptly, professionally, and adequately addressing the Complainant’s allegations in writing. Mr. Harp stated that, prior to receiving the Respondent’s reply correspondence, the Complainant filed the housing discrimination complaint against the Respondent. Mr. Harp stated that the Respondent had, at all times, attempted to correct misinterpretations or misunderstandings of its policies by providing correct and relevant information. Mr. Harp stated that, despite the Respondent’s efforts to correct the Complainant’s mistaken belief that the Respondent discriminated based on sexual orientation, the Complainant filed the present complaint. Mr. Harp stated that the Complainant’s initiation of the baseless complaint constituted harassment and an attempt to strong-arm the Respondent despite the Respondent’s demonstrable compliance with

applicable law. Mr. Harp stated that the Complainant had provided no information that could be construed as Probable Cause that any violation had occurred and that the complaint should be dismissed.

PRIMA FACIE CASE ELEMENTS

Terms, conditions, or privileges of rental

- I. Did the Complainant belong to a class of persons whom Louisville Metro Amended Ordinance Number 193, Series 2004 protects from unlawful discrimination because of sexual orientation?
- II. Did the Complainant intend to continue to occupy the unit consistent with the terms and conditions for continued occupancy that were offered by the Respondent?
 - A. If yes, specify and describe the Respondent's terms and conditions, and the Complainant's efforts and offers to meet or comply with the Respondent's terms and conditions.
 - B. If no, describe the Respondent's terms and conditions, and the Complainant's refusal, failure, or inability to meet or comply with the applicable terms and conditions in comparison to persons who successfully met or complied with the terms and conditions.
- III. Was the Complainant qualified, ready, willing, and able to rent consistent with terms and conditions offered by the Respondent?
 - A. If yes, describe the Complainant's qualifications related to Respondent's terms and conditions.
 - B. If no, describe those qualifications that the Complainant lacked in comparison to persons who possessed those qualifications.
- IV. Did the Respondent willfully fail or refuse to offer the same terms and conditions for continued occupancy to the Complainant as were offered to other persons? In comparison to the terms and conditions that the Respondent offered to the Complainant with respect to the continued occupancy, did the Respondent offer similar or seemingly more favorable terms and conditions for the continued occupancy to one or more persons from a comparable class of persons?
 - A. If yes, describe the Respondent's actions that amounted to a refusal or a willful failure to offer the Complainant the same terms and conditions that were offered to other persons, and provide names of persons who were offered or received more favorable terms and conditions than the Complainant.
 - B. If no, describe how the Respondent offered the Complainant the same terms and conditions that were offered to other persons, and provide names of

persons who were offered or received similar terms and conditions to the Complainant.

Harassment, intimidation, or coercion

- I. Did the Complainant belong to a class of persons whom Louisville Metro Amended Ordinance Number 193, Series 2004 protects from unlawful discrimination because of sexual orientation?
- II. Did the Respondent know, or should the Respondent have known, that the Complainant was a member of a class of persons protected from unlawful discrimination?
 - A. If yes, specifically describe those facts and circumstances, including any statement and documents, which verify that the Respondent knew that the Complainant belonged to the protected class alleged in the complaint prior to the filing of the complaint.
 - B. If no, identify those persons who possess the Complainant's qualifications and characteristics, and whom the Respondent had treated in the same manner as the Complainant.
- III. After presenting sufficient facts and circumstances to prove or infer the Respondent's knowledge, first, describe each of the incidents of conduct, actions, or statements of the Respondent that, individually or in aggregate, amounts to harassment, intimidation, or coercion of the Complainant; second, recite those facts and circumstances that support the conclusion that the Respondent's actions were taken with the intent to harass, intimidate, or coerce the Complainant.

PRIMA FACIE CASE ELEMENTS MET?

Terms, conditions, or privileges of rental

- I. Yes There was evidence that Complainant had standing to represent a class of persons whom Louisville Metro Amended Ordinance Number 193, Series 2004 protects from unlawful discrimination because of sexual orientation.
- II. No There was no evidence that the Complainant had standing to represent persons who intended to occupy a unit consistent with the terms and conditions for occupancy that were offered by the Respondent.
- III. No There was no evidence that the Complainant had standing to represent persons who were qualified, ready, willing, and able to continue occupancy consistent with terms and conditions offered by the Respondent.
- IV. No There was no evidence that the Respondent willfully failed or refused to offer the same terms and conditions for continued occupancy to persons who

would be represented by the Complainant as were offered to other persons. There was no evidence that the Respondent offered similar or seemingly more favorable terms and conditions for the continued occupancy to one or more persons from a comparable class of persons.

Harassment, intimidation, or coercion

- I. Yes There was evidence that the Complainant had standing to represent a class of persons whom Louisville Metro Amended Ordinance Number 193, Series 2004 protects from unlawful discrimination because of sexual orientation.
- II. Yes There was evidence that the Respondent knew, or reasonably should have known, that the Complainant had standing to represent a class of persons whom Louisville Metro Amended Ordinance Number 193, Series 2004 protects from unlawful discrimination because of sexual orientation.
- III. No There was no evidence of incidents of conduct, actions, or statements of the Respondent that, individually or in aggregate, amounted to harassment, intimidation, or coercion of the class of persons whom the Complainant represented.

ONSITE VISIT INFORMATION

Onsite conducted: Yes
Date onsite conducted: 05/03/2011

In a telephonic interview on 03/28/2011, Complainant representative Arthur T. Crosby said that the Complainant did not allege that the Respondent refused to accept gay persons into its programs, but that persons of non-heterosexual sexual orientation would be told by Respondent staff that their sexual orientation was wrong and should not be that way. Mr. Crosby stated that the Respondent had preference for heterosexual residents in its programs as a result, seeking to change non-heterosexual residents' sexual orientation. Mr. Crosby said that Respondent staff had made comments in news reports indicating a preference for heterosexuals and that homosexual sexual orientation would not be deemed an acceptable way of living. Mr. Crosby said that quoted statements made by Respondent associates Rebecca Hensley and V. Clayton Arp in a *LEO Weekly* 05/19/2010 news article included statements against homosexuality, including a Respondent mission to convert homosexuals into heterosexuals and discouraging homosexuals from enrolling in Respondent programs. Mr. Crosby said that the Complainant found out about Respondent sexual orientation policies in news reports in the *LEO Weekly* and the *Louisville Courier-Journal* newspapers on approximately 06/17/2010 when Complainant staff read about the Respondent's programs. Mr. Crosby said that the Complainant first contacted the Respondent in a letter dated 07/26/2010, bringing up sexual orientation as an issue in its programs and asking it to change its practices. Mr. Crosby said that on 08/12/2010, the Respondent responded to the

Complainant's 07/26/2010 letter. Mr. Crosby said that the Complainant then sent the Respondent a second letter on 09/30/2010 inquiring about Respondent programs and subsequently mailed a housing discrimination complaint on 10/18/2010 to the Louisville Metro Human Relations Commission. Mr. Crosby said that the Respondent sent a reply to the second Complainant letter on 10/19/2010. Mr. Crosby said that Complainant staff did not have any contact with Respondent staff via telephone. Mr. Crosby said that the Complainant filed a similar complaint with the Lexington-Fayette Urban County Human Rights Commission, a sexual orientation discrimination complaint currently under investigation for a different Respondent location than the Louisville complaint. Mr. Crosby said that the Respondent was not a church and opened its programs to the general public, not just to a denomination of church membership, as verified by the Respondent itself. Mr. Crosby said that the Complainant had no problem with sexual abstinence in its programs, only that the Respondent preached to its tenants that one sexual orientation was better than another. Mr. Crosby said that the Complainant was not a bona fide person subjected to unlawful discrimination by the Respondent, but that it was incorporated in good standing with the Kentucky Secretary of State to file the discrimination complaint since it was damaged by a frustration of its mission and a diversion of its resources. Mr. Crosby said that Complainant staff had not conducted any housing/residency testing of Respondent programs.

In an in-person interview on 05/03/2011, Respondent representative Harp said that the Complainant provided false information for the discrimination complaint. Mr. Harp said that the Complainant had no standing to obtain remedy from the complaint. Mr. Harp said that the language of Louisville Metro ordinance was broad enough to exempt the Respondent from the discrimination complaint, with the Complainant making a similar allegation in Lexington, Kentucky. Mr. Harp said that the Complainant made no allegation that a particular person, or the Complainant itself, suffered from discrimination based on sexual orientation. Mr. Harp said that there was no specific instance alleged by the Complainant to trigger the statute of limitations to file the discrimination complaint, so no applicable statute of limitations could be made. Mr. Harp said that clients who participated in the Respondent recovery program did not sign any statement based on religion, though clients were familiar with the Respondent's faith-based mission prior to participation. Mr. Harp said that the Respondent was a non-profit agency incorporated with the Kentucky Secretary of State and had no individual person as an owner. Mr. Harp said that the location of the Respondent incorporated entity was the subject property and, therefore, might be another reason to exempt the Respondent from local ordinance as an owner-occupied dwelling since the Respondent had the same rights as an individual person under such in many cases. Mr. Harp said that the Respondent did not advertise its programs as housing, as residency was incidental to the program and did not fall into the definition of a housing dwelling. Mr. Harp said that the Respondent was not a housing provider, nor was the Respondent a hotel or a place of public accommodations soliciting for profit. Mr. Harp said that the primary intent of the Respondent program was not housing and that local ordinance was not intended to apply to such a facility not open to the general public. Mr. Harp said that the Respondent was a tax-exempt organization. Mr. Harp said that the Complainant sent the Respondent a letter about the Respondent's Lexington facility but did not file a discrimination complaint for the Lexington location.

Mr. Harp said that the Respondent had never been subjected to a discrimination complaint prior to the Complainant's complaints for any basis. Mr. Harp said that the Respondent program was not a homosexual conversion program. Mr. Harp said that Respondent staff told clients who brought up issues of sexuality that biblical scripture covered such matters and how to respond. Mr. Harp said that sexual abstinence was part of the Respondent program, regardless of a client's gender. Mr. Harp said that the Respondent also had a non-indoctrination policy for peers of the program absence of gender or sexual orientation to prevent such among clients. Mr. Harp said that homosexuals in its program had said that they felt more welcomed in the Respondent facility than in other facilities. Mr. Harp said that no student had ever been expelled from the Respondent program or denied entry into the program because the student was non-heterosexual, as sexual orientation was not part of the Respondent curriculum. Mr. Harp said that students in the Respondent program lived with one another and Respondent policies protected clients among each other. Mr. Harp said that current Respondent staff had no conversations via telephone or in person with Complainant staff at any time, with Mr. V. Clayton Arp no longer with the Respondent; Mr. Harp said that Mr. Arp was the Respondent program director and likely had not had any conversations with Complainant staff.

In an in-person interview on 05/03/2011, Respondent Executive Director of Women's Ministries Rebecca A. Henslee said that the Respondent program was connected to a national organization. Ms. Henslee said that the Respondent program was a faith-based recovery program in Louisville for women age eighteen years and older with addiction struggles, most of which involved drugs and alcohol. Ms. Henslee said that the Respondent program was considered conservative with a faith-based Christian basis. Ms. Henslee said that clients were referred to the Respondent program from several sources. Ms. Henslee said that the Respondent program was a six-month program with an on-site living component, class attendance, and volunteerism. Ms. Henslee said that the Respondent was a paraministry sanctioned by the Assemblies of God denomination. Ms. Henslee said that Respondent program clients lived on-site at the Respondent office, ten women at a time, all willing participants in the program with no religious requirement. Ms. Henslee said that Respondent staff also conducted a telephone interview with prospective clients prior to admission. Ms. Henslee said that the Respondent received referrals from the community via word-of-mouth and from staff going to churches to explain the program, with families then referring clients. Ms. Henslee said that the Respondent had never been subjected to a discrimination complaint prior to the Complainant's complaints for any basis. Ms. Henslee said that the Respondent had a verbal policy with staff to not tell clients what to believe, only to cite the Bible as the standard interpretation of God's word. Ms. Henslee said that Respondent staff asked clients to believe their own individual interpretation of the Bible and to ask God to reveal such to the client. Ms. Henslee said that Respondent staff did not pass judgment on clients and to not force staff beliefs on clients, despite what staff may personally believe. Ms. Henslee said that Respondent staff did not teach clients that homosexuality was a sin. Ms. Henslee said that clients were not permitted to act out sexually while a resident in the program, as sexual abstinence was a part of the program. Ms. Henslee said that the Bible could answer any questions of sexuality from any client's inquiry. Ms. Henslee said that

in her two-and-a-half years' employment with the Respondent, she knew of no complaints by clients based on sexual orientation. Ms. Henslee said that all current applicants to the Respondent program had reported that they were heterosexual, but that Respondent staff had found in the past that many times a client misrepresented significant things about herself and would reveal that she was non-heterosexual. Ms. Henslee said that if sexual orientation was not listed on an application by a client, the client was not prevented from entering the program. Ms. Henslee said that the primary goal of the Respondent program was healing and restoration to individuals, not the harm that discrimination would be for those who entered the program.

In an in-person interview on 05/03/2011, Respondent Chief Executive Officer/Chief Financial Officer Julie M. Duvall said that U.S. Missions was the umbrella organization for the Respondent. Ms. Duvall said that the housing and residency component of the Respondent program was similar to dormitory living, with the facility comprised of three bedrooms and a kitchen area. Ms. Duvall said that the majority of the Respondent's income came from churches and individual donations, with no Respondent receipt of Louisville Metro, Commonwealth of Kentucky, or federal funding. Ms. Duvall said that the Respondent was also not developed with any low-income housing tax credits. Ms. Duvall said that Respondent staff had no conversations with Complainant staff other than letters between the parties. Ms. Duvall said that the Respondent had never been subjected to a discrimination complaint prior to the Complainant's complaints for any basis. Ms. Duvall said that issues of sexuality were not discussed by Respondent staff and clients unless a client brought a matter to staff. Ms. Duvall said that sexual abstinence was part of the Respondent program.

In an in-person interview on 05/18/2011, Fairness Campaign Director Chris Hartman said that in approximately 05/2010, Fairness associates received notice of a public meeting on a building in the Clifton area of Louisville Metro, 1701 Payne Street [Louisville, Jefferson County, Kentucky 40206] in an e-mail from associate Mike O'Leary. Mr. Hartman said that an original Respondent questionnaire stated an opposition to lesbian sexual orientation as part of a Respondent application to its program on the Respondent's website. Mr. Hartman said that Respondent staff later said that the questionnaire was outdated and removed approximately one month later. Mr. Hartman said that he and other Fairness Campaign staff subsequently had ongoing conversations with Respondent staff, though likely not before the public meeting. Mr. Hartman said that he and other Fairness Campaign staff went to a special use permit hearing for the Respondent's prospective purchase of the Payne Street property. Mr. Hartman said that Respondent associates V. Clayton Arp and a female, likely Ms. Rebecca Hensley, seemed to be the only two persons speaking at the meeting. Mr. Hartman said that he asked the Respondent associates at the meeting about the Respondent questionnaire and the Respondent's seemingly-discriminatory stance based on sexual orientation, with other non-Fairness Campaign community members echoing similar concerns in a more aggressive manner. Mr. Hartman said that Mr. Arp and the female made statements that homosexuals and non-heterosexuals would be converted or counseled against their sexual orientation based on a sinful act. Mr. Hartman said that he likely gave Mr. Arp his business card during the hearing and identified to him who he was. Mr. Hartman said

that Mr. Arp and Ms. Hensley made statements in the press about the Respondent's programmatic intent but that they went further in the hearing in going against sexual orientations other than heterosexuality. Mr. Hartman said that Mr. Arp said that the Respondent would accept anyone of any sexual orientation into its program, with the caveat that the person would be taught the teachings of the Bible and to avoid homosexual behavior. Mr. Hartman said that an article in the *LEO [Weekly]* about the Respondent program was published either before or after the hearing. Mr. Hartman said that the Fairness Campaign then sent the Respondent a letter stating that the Respondent was discriminating based on sexual orientation and to change its program from trying to convert women's sexuality that was not heterosexual. Mr. Hartman said that the Fairness Campaign's letter did not state that it sought to prohibit the Respondent from moving into the Payne Street location. Mr. Hartman said that Mr. Arp subsequently called him to discuss the situation and told him that he would then seek to move the Respondent to a different location. Mr. Hartman said that the Fairness Campaign then received no additional response from the Respondent. Mr. Hartman said that an article on the Respondent subsequently was published in the *Louisville Courier-Journal* on 06/16/2010. Mr. Hartman said that the Fairness Campaign took no subsequent action until the Respondent sought a conditional use permit at the end of 2010 for the Payne Street location at a planning and zoning meeting with Louisville Metro. Mr. Hartman said that the intent of the meeting was to cover the building's use and that he was present, having no interaction with Respondent associates Arp and a female, likely again Ms. Henslee. Mr. Hartman said that Fairness Campaign staff had talks with Complainant representative Crosby approximately once every two-and-a-half months during the time period after Mr. Crosby contacted them to discuss the Complainant filing a housing discrimination complaint against the Respondent. Mr. Hartman said that the Complainant had sent letters to the Respondent requesting a response to unfair treatment in housing based on sexual orientation. Mr. Hartman said that there was a long gap in time before the Respondent responded to the Complainant's letter, with a few letters sent back and forth between the parties about the matter. Mr. Hartman said that no Respondent associates ever disclosed a specific Respondent religious denomination, citing only that it was a faith-based or Christian-based program. Mr. Hartman said that no one had approached Fairness Campaign associates about having participated in the Respondent's program and that he did not witness any persons who participated in the program speaking at the public meetings. Mr. Hartman said that Fairness Campaign staff had limited discussion of a similar Respondent program in Lexington, Kentucky. Mr. Hartman said that the Fairness Campaign received no funding from Louisville Metro and had no financial relationship to either of the parties in the discrimination complaint.

In a Respondent Priscilla's Place student handbook dated 01/20/2009, updated version, the handbook stated that the Respondent program was a residential program that took an average of six months to complete. The handbook stated that the Respondent taught that a personal relationship with God would change the student's life through His forgiveness, healing, and transformation. The handbook stated that the Respondent program was for women who wanted to change by dealing with their life-controlling problems. The handbook stated that the student was to agree that the Respondent was a women's recovery and Christian discipleship program, and to agree that the student would be

subject to Biblical teaching and Christian forms of behavior. The handbook stated that the student agreed not to push her opinions or ideas on anyone. The handbook stated that the student agreed not to hold hands, not to give massages, not to wrestle or engage in horseplay, not to kiss, and not to give extended hugs. The handbook stated that the student agreed that any sexual behavior or sexual overtures toward anyone would result in immediate dismissal from the program. The handbook stated that flirting was not an option at any time with anyone while in the program, including winking, verbal suggestions, physical touching, and hand signs. The handbook stated that a student and a Respondent staff person were to sign and date that the terms were understood.

In an article in the *LEO Weekly* dated 05/19/2010, Mr. Phillip M. Bailey reported the following:

“Guess who’s coming to Clifton?

A faith-based rehab group’s anti-gay message worries residents, activists

When Michael O’Leary learned a faith-based drug and alcohol recovery group was looking to move its rehabilitation center for women into his Clifton neighborhood, he welcomed the idea. The 52-year-old grew up in the South End, but he and his partner moved into the diverse community more than a decade ago because it was so inclusive. Upon reviewing the group’s literature, however, O’Leary found, among other things, a questionnaire that raised the issue of sexual orientation. The material asked interested participants if they were willing to recognize that being homosexual is sinful, end any lesbian relationships, and abandon being gay altogether. The 10-page admission form also asks the women who enter the program if they masturbate, and if so, how often, and if they’re willing to stop. ‘I don’t know enough about the program to say what it’s all about, but having read their materials it looks like a ‘gay no more’ organization that’s disguising itself as supposedly rehab for alcohol and drug abuse,’ says O’Leary. ‘And what’s with the fixation on female masturbation?’ Since 1997, Teen Challenge of Kentucky has been providing teens, adults and families with faith-based solutions to substance abuse. With a growing waiting list of more than a dozen young women, the group’s Louisville chapter is looking for bigger digs and hoping to purchase the former Salvation Army building in Clifton. But the possible relocation has raised a red flag with residents and gay rights activists who worry about the group’s alleged ‘deprogramming’ underpinnings and are concerned that the evangelical organization is bringing its anti-gay message into one of the city’s more progressive neighborhoods. Last Friday, during a preliminary public meeting required by city zoning laws, dozens of residents assembled to confront the group’s leaders about their intentions. And though many welcome a residential rehab center in their neighborhood, some found the message in the brochure unsettling. ‘We’re a conservative, faith-based program, and this is not going to be for everybody,’ the Rev. Clayton Arp, state director of the organization, told the crowd. ‘And as a conservative, faith-based program, we certainly have our preferences, so that’s why that’s a part of the admission form.’ The local chapter, called Priscilla’s Place, houses 10 women who live together in

a cramped house along East Broadway. Besides drug and alcohol counseling, the group's staff help the women overcome eating disorders, gambling addictions and the emotional wounds caused by domestic violence. Despite falling under the umbrella name of Teen Challenge, the Louisville chapter caters to adult women. Priscilla's Place encourages clients to commit to at least five months of treatment, with the recommendation that they then complete an additional 10 months at one of their long-term programs offered in several nearby states. Priscilla's Place works with women entering the program voluntarily as well as those referred by the state court system as an alternative to incarceration, usually the result of drug or alcohol abuse. In a telephone interview, Arp says the group does not deny entry based on sexual orientation and is dedicated to counseling women with addictions and other behaviors that 'master a person's life.' Asked if the group considers homosexuality one of those addictive behaviors, Arp says yes, adding that personally, he believes a person can be converted back to heterosexuality. But he insists the primary focus at Priscilla's Place remains treating substance abuse. 'If a young lady has some lesbian tendencies, that's her choice, and we may not be the type of program for her because it's group living,' he says. 'We'll cross that bridge when we get there. Right now, it has been a non-issue for our group.' Founded in 1958 by David Wilkerson — an Assemblies of God pastor who once said he received a vision from God regarding the country's future — Teen Challenge is an evangelical recovery organization with more than 200 chapters nationwide. While many faith-based social-service agencies do not proselytize, Teen Challenge regularly cites Jesus among the reasons for recovery and aggressively delivers a religious message to participants. Local gay rights activists say the organization's admission form suggests they believe gays and lesbians can be deprogrammed. 'The only challenge, really, is to see how long people can be coerced into lying about themselves and their identity,' says Chris Hartman, director of the Fairness Campaign, a Louisville nonprofit dedicated to promoting gay rights. 'It definitely smells of the 'ex-gay movement' programs that were running rampant in the '70s with the notion that someone could be turned.' But Rebecca Henslee, head of women's ministry at Priscilla's Place, says two women in the local chapter are lesbians, and they have not been discriminated against or pressured to turn straight. 'From the time they come in the program, we are very clear that from a biblical standpoint, we do teach against homosexuality. At the same time, we are not trying to indoctrinate anyone,' she says. 'If you don't believe the (Bible) says that (homosexuality is wrong), then we're not going to force you. You're welcome to come and stay here, but you need to understand that you're going to hear this teaching.' Despite their opposition to the recovery group's message, the Fairness Campaign and concerned Clifton residents have not declared any action — yet. Meanwhile, Teen Challenge's application for a permit to operate at the former Salvation Army property is moving forward to the Board of Zoning Adjustment for review. Given the community's reaction thus far, however, the group's leaders are considering looking for another location, saying they are not interested in engaging in a fight where they're not welcome. According to Sharon Duncan, a member of Southeast Christian Church and volunteer with the recovery group, it's disappointing that

the organization's mission is being entangled in this debate. 'The people in this program are here by choice, and if they're going to be offended by (the group's teachings on homosexuality), then they don't have to be there,' she says. 'I think any place that helps women you should support. It doesn't matter if they're gay or straight. They can be what they want to be when they leave.'"

In a Respondent press release statement dated 05/20/2010, the Respondent stated the following:

"Teen Challenge of Kentucky (TCKY) is deeply disappointed by the mischaracterization it has received today on leoweekly.com and at the May 14 public neighborhood meeting in Clifton. Teen Challenge is a faith-based program which exists to help men and women of all ages overcome life-controlling drug and alcohol addictions. TCKY operates residential men's and women's facilities throughout Kentucky. Priscilla's Place is a residential women's facility in Louisville, where it has helped women overcome drug and alcohol addictions since its opening in July 2003. Since that time, more than 400 women have participated in the program at Priscilla's Place. Contrary to recent allegations, TCKY is not a 'deprogramming' movement, 'ex-gay movement,' 'antigay,' or anything similar. TCKY does not discriminate against applicants on the basis of sexual orientation. TCKY is a faith-based organization, and its teachings are consistent with its interpretation of the Bible. Furthermore, TCKY is a completely voluntary program. Applicants are made aware of TCKY's curriculum at the time of their application and are free to withdraw from the program at any time. If participants do not agree with the curriculum, they are still treated with the highest respect. In addition, Priscilla's Place regularly accepts lesbian and bisexual applicants, and never discriminates against them on the basis of sexual orientation. TCKY is not in the business of indoctrination; it is in the business of helping men and women overcome drug and alcohol addictions, and has been very successful. Sexual orientation is not even addressed by TCKY's curriculum. The recent allegations that TCKY discriminates based on sexual orientation are based upon questions which were included in an application form which was abandoned by TCKY two years ago. Unfortunately, due to an oversight, the sample application found on the TCKY website was never updated. The recent allegations against TCKY are not only baseless, but unfortunate and saddening. These allegations are aimed to prevent TCKY from purchasing property which will increase its capacity to help the women of Kentucky and the surrounding region overcome drug and alcohol addictions. TCKY and Priscilla's Place have already demonstrated their dedication to drug and alcohol treatment for people of all ages and from all walks of life, and have been hugely successful. The purchase of real estate in Clifton will simply enable TCKY and Priscilla's Place to continue doing what they have already been doing with excellence for seven years: helping women overcome drug and alcohol addictions. In summary, TCKY does not discriminate against its applicants based on sexual orientation, and is deeply disturbed that these recent accusations are aimed at preventing

TCKY from continuing much-needed drug and alcohol treatment in the city of Louisville.”

In a letter from Fairness Campaign Director Chris Hartman to Respondent associate Arp, the Respondent, and the Respondent program dated 06/07/2010, Mr. Hartman stated the following:

“The Fairness Campaign’s Coordinating Committee was made aware last month of Teen Challenge Kentucky and Priscilla’s Place’s desire to expand its operations in Louisville by moving into the former Salvation Army building located in the Clifton neighborhood, less than one mile from the headquarters of the Fairness Campaign. Your organization’s desired move was brought to our attention by several of our constituents who had, on their own accord, researched Teen Challenge Kentucky’s website and reviewed your program’s application and other materials. Our constituents were justifiably alarmed and concerned with the “ex-gay ministry” tone taken by the materials. Despite Teen Challenge Kentucky’s recent statement that it “is not in the business of indoctrination; it is in the business of helping men and women overcome drug and alcohol addictions ... Sexual orientation is not even addressed by TCKY’s curriculum,” and the application form in question was “abandoned by TCKY two years ago,” we maintain our great concerns with the organization’s mission and expansion based on statements made that suggest homosexuality is an addictive behavior, one that can be quelled and and/or abandoned entirely by an individual. The Fairness Campaign is a grassroots social justice organization, and as such, our focus and our actions are based largely on the focus and concerns of our constituents. Given the initial engagement and response of our constituents to your organization’s mission and potential expansion, and the fact that their engagement and interest has not waned in the past weeks, the Fairness Campaign’s Coordinating Committee will continue to be keenly interested in and aware of Teen Challenge Kentucky and Priscilla’s Place’s actions. We will have further response to your organization, its mission and actions as time ensues. We hope your organization will review its beliefs and policies around lesbian, gay, bisexual and transgender individuals.”

In an article in the Louisville *Courier-Journal* dated 06/16/2010, Ms. Martha Elson reported the following:

“Recovery program seeks OK for new site: Zoning request raises concerns

An agency that operates a faith-based, women's substance-abuse residential recovery program out of a three-story Victorian home on East Broadway in Phoenix Hill is applying for a permit to move the program to a larger site on Payne Street in Clifton, where it has already sparked a controversy.

Teen Challenge of Kentucky is 'going to cautiously proceed,' Clayton Arp, the agency's state director, said last week. Teen Challenge serves women 18 and older at Priscilla's Place, 1151 E. Broadway.

The agency offended some gays and lesbians in Clifton because it requires applicants to declare on an application if they have engaged in homosexual or lesbian activities.

A former application also asked these questions: 'Are you willing to recognize this behavior/lifestyle as sinful and in opposition to biblical teaching?' and, 'Are you willing to completely abandon it?'

That application form was dropped two years ago but was still posted on the agency's website until recently as the result of an oversight, Arp said.

'We don't want to go to war with the gay community,' Arp said. 'We're not moving into the neighborhood to change the neighborhood.'

Clifton resident Mike O'Leary said he was trying to keep an open mind after seeing the questions on the former admission form but that they raised 'red flags' about the program's intent.

Chris Hartman, director of the Fairness Campaign, which has headquarters in Clifton and advocates for gay rights, said his group's constituency has been 'very actively engaged in being outspoken against' Teen Challenge's aims. His group is opposed to the program's expansion in Clifton or anywhere, he said.

'It still smacks of the ex-gay movement that was running rampant in the 1970s,' he said.

Arp said Teen Challenge does not discriminate against gays and lesbians and that two participants in the program fall into that category. However, 'We are a conservative, faith-based organization. We're not going to allow sexual activity in a residential program.'

The agency asks applicants about past homosexual activity because it hopes to influence people to change such behavior, Arp said. It also asks about religious beliefs, drug and alcohol use, if applicants have been on parole or probation and other matters.

The agency, which is affiliated with a 52-year-old national Teen Challenge organization, held a neighborhood meeting last month about the plan. It needs a conditional use permit from the Metro Board of Zoning Adjustment to operate the program, Arp said.

The agency has a contract to buy a former Salvation Army worship and community center at 1701 Payne St. for the program, but the sale is contingent upon obtaining the permit. The building has been for sale for \$487,000 and Teen Challenge has made a somewhat lower offer, Arp said.

The one-level building is more spacious and has a gym. Teen Challenge now serves 10 women on East Broadway but would like to increase the number to 18 in Clifton, Arp said.

At the neighborhood meeting, people questioned whether the agency discriminates against gays and lesbians, O'Leary said, adding that residents 'want that building utilized.'

If the program does move there, O'Leary said, he hopes any conflicts can be resolved through mutual involvement in a Clifton community garden on Payne Street.

Aaron Givhan, a Salvation Army board member and real-estate agent for the building, said a Salvation Army representative attended the neighborhood meeting. But his organization has simply viewed the situation as one nonprofit agency selling to another. The new use seemed like a logical progression,' he said. 'We're not questioning the doctrine.'

Reporter Martha Elson can be reached at (502) 582-7061."

Respondent representatives Arp and Harp provided a copy of a letter from Complainant representative Crosby to Respondent subject property Priscilla's Place dated 07/26/2010. Mr. Crosby stated that the Complainant was a private, non-profit organization whose mission was to eradicate housing discrimination throughout the commonwealth of Kentucky. Mr. Crosby stated that the Complainant carried out its mission through education and outreach, public advocacy, intake of housing discrimination complaints, and the representation of victims of housing discrimination. Mr. Crosby stated that according to articles in the *Louisville Courier-Journal* and *LEO Weekly*, Priscilla's Place provided long-term residential housing in Louisville, Kentucky for individuals who were undergoing recovery from substance abuse. Mr. Crosby stated that Priscilla's Place housing was open to members of all religions and that individuals of all sexual orientations were allowed to live in the housing, though no sexual activity was permitted to occur in the program. Mr. Crosby stated that the Complainant's concern was that Priscilla's Place associates stated a preference for housing individuals who were not gay or bisexual. Mr. Crosby stated that a gay or bisexual individual living in Priscilla's Place would be told that they were sinners and that they would suffer negative consequences based on their sexual orientation. Mr. Crosby stated that individuals who were gay or bisexual might feel that Priscilla's Place was not welcoming to them because of their sexual orientation. Mr. Crosby stated that individuals who were vulnerable and in desperate need of housing might be forced to live in housing where they felt degraded because of their sexual orientation. Mr. Crosby stated that Complainant staff had spoken

with representatives of the Metropolitan Housing Coalition and that they expressed similar concerns. Mr. Crosby stated that the type of housing described in the articles would seem to be in direct conflict with the fair housing protections provided under Louisville Ordinance § 92.03(f) [sic], which prohibited housing providers from making statements which indicated, directly or indirectly, any discrimination or intent to discriminate. Mr. Crosby stated that Louisville Ordinance § 92.03(q) [sic] prohibited housing providers from harassing any person in the exercise or enjoyment of his/her fair housing rights. Mr. Crosby stated that the type of housing would not be any more acceptable than housing that allowed African-Americans, Christians, or women to live there while making statements to those tenants that they were an inferior race, religion, or gender. Mr. Crosby asked that Priscilla's Place staff review its current policies and practices and to let him know if he had made incorrect assumptions about the program based on the articles he had read. Mr. Crosby asked that if his assumptions were correct, to let him know if Priscilla's Place was willing to change its policies or if it planned to continue with the same course of action as before.

Respondent representatives Arp and Harp provided a copy of a letter Mr. Arp sent to Complainant representative Crosby dated 08/12/2010. Mr. Arp stated that the Respondent had recently received the Complainant's letter regarding Priscilla's Place in Louisville [Kentucky] and Hannah's House in Lexington [Kentucky]. Mr. Arp stated that he appreciated the Complainant's dedication to eradicating housing discrimination and valued the Complainant's efforts to ensure fair housing practices around the commonwealth [of Kentucky]. Mr. Arp stated that Mr. Crosby was correct that the Respondent allowed individuals of all sexual orientations and religions into its programs. Mr. Arp stated that each individual was highly valued and welcomed equally regardless of her sexual orientation or religious preference. Mr. Crosby stated that making any of the Respondent's residents feel inferior was against everything the Respondent worked towards. Mr. Arp stated that the Respondent's goal was to empower women in its programs to live alcohol and drug-free lives. Mr. Arp stated that the Respondent was able to do so because it actively sought to show individuals the value in themselves, not devalue them for their choices or history. Mr. Arp stated that both Priscilla's Place and Hannah's House were exempt from the stated housing discrimination ordinances in both Louisville and Lexington, respectively. Mr. Arp stated that the Complainant believed that the Respondent's programs were not part of a specific religious organization but was, in fact, under the headship of Teen Challenge USA, an official ministry of the Assemblies of God U.S. Missions Department headquartered in Springfield, Missouri. Mr. Arp stated that, regarding Priscilla's Place, Louisville Ordinance § 92.04 [sic] stated the following:

“HOUSING EXCEPTIONS.

(A) The provisions of this chapter, which prohibit discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply:

(3) *To a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society . . .*” [sic].

[The cited ordinance language in (3) also contains the following: “. . . *which limits the sale, lease, rental, occupancy, assignment, or sublease of housing accommodation which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preference to those persons, unless membership in the religion is restricted on account of race, color, or national origin.*”]

Mr. Arp stated that, regarding Hannah’s House, Lexington Ordinance Section 2-33 [sic] stated the following:

“Discrimination due to sexual orientation or gender identity

(7) *The provisions of this section shall not apply to a religious institution or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association or society . . .*” [sic.]

Mr. Arp stated that although the Respondent was exempt from the fair housing ordinances, its policies were non-discriminatory. Mr. Arp stated that both Priscilla’s Place and Hannah’s House provided services to women seeking freedom from drug or alcohol addiction regardless of their religion, sexual orientation, background, financial resources, or any other factor. Mr. Arp stated that the Respondent was a compassionate ministry to women who were hurting and the Respondent would not cause more hurt to the women by discriminating against them in any way.

Respondent representatives Arp and Harp provided a copy of a letter Mr. Arp received from Complainant representative Crosby dated 09/30/2010. Mr. Crosby stated that he had two additional questions to ask in order to complete the Complainant’s fair housing analysis of the Respondent’s programs. Mr. Crosby asked if the Respondent’s housing was restricted to members of a certain religion and asked if the Respondent told individuals its housing that homosexuality was wrong and should be avoided.

Respondent representatives Arp and Harp provided a copy of a letter Mr. Arp sent to Complainant representative Crosby dated 10/19/2010. Mr. Arp stated that though the Respondent’s programs were faith-based, it accepted applicants from all denominations and those with no affiliation. Mr. Arp stated that applicants understood, however, that the Respondent had a faith-based philosophy of recovery. Mr. Arp stated that the Respondent encouraged and required abstinence while individuals were in its residential care programs. Mr. Arp stated that the policy was consistent with the majority of recovery programs, both secular and faith-based. Mr. Arp stated that the Respondent only addressed concerns that individual residents brought to the Respondent when it came to issues of sexuality. Mr. Arp stated that the Respondent did not purposely focus

on or pursue issues involving sexuality unless it was directly connected to an individual's addiction issues, such as prostitution.

In a printout of the Respondent's website on 11/09/2010, the Respondent stated the following:

"At Teen Challenge of Kentucky, we believe that there is hope for every person trapped in addiction. Drug and alcohol use leads to feelings of guilt and despair, while the pain inside seems to be endless. At Teen Challenge, we offer a message of hope and freedom through a relationship with Jesus Christ. It is not just freedom from drugs or alcohol, but freedom from everything that would keep us from the destiny for which we were created. If you or a loved one needs help overcoming a life-controlling problem, we are here to help. With residential and non-residential programs available across Kentucky, wherever you are, whatever your situation, freedom is waiting . . ."

In an article in the Louisville *Courier-Journal* dated 11/10/2010, an unidentified reporter wrote the following:

"Clifton: Permit granted for women's recovery program

Teen Challenge of Kentucky has been granted a permit to house a faith-based, women's substance-abuse residential recovery program in a former Salvation Army building at 1701 Payne St. in Clifton.

However, the agency is still deliberating whether to buy the building and move the program there, Clayton Arp, the agency's state director said last week.

The program, which serves women 18 and older, is currently in a three-story Victorian building at 1151 E. Broadway in Phoenix Hill.

'It's a big decision for us,' Arp said. 'A wrong move there could hurt us.'

The agency has proposed expanding the program in Clifton.

The Fairness Campaign, which advocates for gay rights, opposes the program's expansion in Clifton or anywhere because wording on the program's application form offended some gays and lesbians in Clifton. The form asks applicants if they have engaged in homosexual or lesbian activities. A previous application said such activities are "sinful," but that reference has been dropped.

Arp said the agency does not discriminate against gays and lesbians.

The Louisville Metro Board of Zoning Adjustment granted the conditional use permit, with 14 conditions, on Oct. 18.

The Clifton Community Council had input into the conditions of the permit approval. A day program could not be added without 60 days notice to the council, plus its review and approval.

The council also would be notified of any other proposed changes to the permit. A statement was included in the conditions saying that the council 'supports the efforts of any organization to determine if the Teen Challenge program violates any provisions of the Metro Fairness Ordinance.'"

In a printout from the Kentucky Secretary of State on 03/30/2011, the Complainant was an active non-profit incorporated entity in good standing.

In a printout from the Kentucky Secretary of State on 05/04/2011, the Respondent was an active non-profit incorporated entity in good standing.

Respondent representative Harp provided a copy of a blank Respondent student contract that was undated. The contract stated that the Respondent program was a six-month recovery program. The contract stated that the client understood that the client had read, understood, and signed the Respondent program rules and policies. The contract stated that if the client were to commit infractions of the rules and policies, the client might be dismissed from the program immediately. The contract stated that the client entered the contract of her own free will, without force or coercion.

Respondent representative Harp provided a copy of a Respondent mission statement that was undated. The mission statement stated the following:

"The mission of Teen Challenge is to provide youth, adults and families with an effective and comprehensive Christian faith-based solution to life-controlling drug and alcohol problems in order to become productive members of society. By applying biblical principles, Teen Challenge endeavors to help people become mentally sound, emotionally balanced, socially adjusted, physically well, and spiritually alive."

RECOMMENDATION

I recommend a finding of No Probable Cause for the Respondent in the case.

November 10, 2010 - Courier-Journal

Teen Challenge of Kentucky has been granted a permit to house a faith-based, women's substance-abuse residential recovery program in a former Salvation Army building at 1701 Payne St. in Clifton.

However, the agency is still deliberating whether to buy the building and move the program there, Clayton Arp, the agency's state director said last week.

The program, which serves women 18 and older, is currently in a three-story Victorian building at 1151 E. Broadway in Phoenix Hill.

"It's a big decision for us," Arp said. "A wrong move there could hurt us."

The agency has proposed expanding the program in Clifton.

The Fairness Campaign, which advocates for gay rights, opposes the program's expansion in Clifton or anywhere because wording on the program's application form offended some gays and lesbians in Clifton. The form asks applicants if they have engaged in homosexual or lesbian activities. A previous application said such activities are "sinful," but that reference has been dropped.

Arp said the agency does not discriminate against gays and lesbians.

The Louisville Metro Board of Zoning Adjustment granted the conditional use permit, with 14 conditions, on Oct. 18.

The Clifton Community Council had input into the conditions of the permit approval. A day program could not be added without 60 days notice to the council, plus its review and approval.

The council also would be notified of any other proposed changes to the permit. A statement was included in the conditions saying that the council "supports the efforts of any organization to determine if the Teen Challenge program violates any provisions of the Metro Fairness Ordinance."

June 16, 2010 - Courier-Journal

Zoning request raises concerns

by Martha Elson

An agency that operates a faith-based, women's substance-abuse residential recovery program out of a three-story Victorian home on East Broadway in Phoenix Hill is applying for a permit to move the program to a larger site on Payne Street in Clifton, where it has already sparked a controversy.

Teen Challenge of Kentucky is "going to cautiously proceed," Clayton Arp, the agency's state director, said last week. Teen Challenge serves women 18 and older at Priscilla's Place, 1151 E. Broadway.

The agency offended some gays and lesbians in Clifton because it requires applicants to declare on an application if they have engaged in homosexual or lesbian activities.

A former application also asked these questions: "Are you willing to recognize this behavior/lifestyle as sinful and in opposition to biblical teaching?" and, "Are you willing to completely abandon it?"

That application form was dropped two years ago but was still posted on the agency's website until recently as the result of an oversight, Arp said.

"We don't want to go to war with the gay community," Arp said. "We're not moving into the neighborhood to change the neighborhood."

Clifton resident Mike O'Leary said he was trying to keep an open mind after seeing the questions on the former admission form but that they raised "red flags" about the program's intent.

Chris Hartman, director of the Fairness Campaign, which has headquarters in Clifton and advocates for gay rights, said his group's constituency has been "very actively engaged in being outspoken against" Teen Challenge's aims. His group is opposed to the program's expansion in Clifton or anywhere, he said.

"It still smacks of the ex-gay movement that was running rampant in the 1970s," he said.

Arp said Teen Challenge does not discriminate against gays and lesbians and that two participants in the program fall into that category. However, "We are a conservative, faith-based organization. We're not going to allow sexual activity in a residential program."

The agency asks applicants about past homosexual activity because it hopes to influence people to change such behavior, Arp said. It also asks about religious beliefs, drug and alcohol use, if applicants have been on parole or probation and other matters.

The agency, which is affiliated with a 52-year-old national Teen Challenge organization, held a neighborhood meeting last month about the plan. It needs a conditional use permit from the Metro Board of Zoning Adjustment to operate the program, Arp said.

The agency has a contract to buy a former Salvation Army worship and community center at 1701 Payne St. for the program, but the sale is contingent upon obtaining the permit. The building has been for sale for \$487,000 and Teen Challenge has made a somewhat lower offer, Arp said.

The one-level building is more spacious and has a gym. Teen Challenge now serves 10 women on East Broadway but would like to increase the number to 18 in Clifton, Arp said.

At the neighborhood meeting, people questioned whether the agency discriminates against gays and lesbians, O'Leary said, adding that residents "want that building utilized."

If the program does move there, O'Leary said, he hopes any conflicts can be resolved through mutual

involvement in a Clifton community garden on Payne Street.

Aaron Givhan, a Salvation Army board member and real-estate agent for the building, said a Salvation Army representative attended the neighborhood meeting. But his organization has simply viewed the situation as one nonprofit agency selling to another. The new use "seemed like a logical progression," he said. "We're not questioning the doctrine."

Reporter Martha Elson can be reached at (502) 582-7061.

CLIFTON

Teen Challenge drops its plan to buy old Salvation Army center

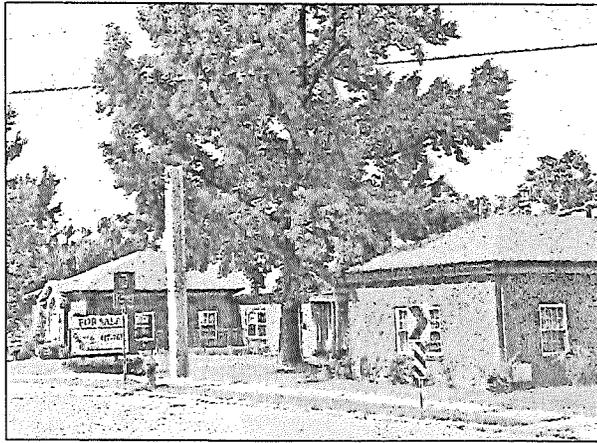
By Martha Elson
 melson@courier-journal.com
 The Courier-Journal

Teen Challenge of Kentucky has dropped a controversial plan to buy a former Salvation Army worship and community center in Clifton.

Teen Challenge, 1151 E. Broadway, had a contract last year to buy the building at 1701 Payne St., which had been for sale for \$487,000. It planned to use it as an expanded site for its six-month women's residential recovery program called Priscilla's Place.

But the organization decided that conversion of the building for residential use would be too difficult and costly, Clayton Arp, the organization's former state director, said last week. The building had a gym and chapel and would have required a sprinkler system.

Arp said he also was concerned about a fairness complaint against Teen Challenge filed with the Metro Human Relations Commission, as well as some neighborhood opposition to the operation. "It was a combination of everything," said Arp, who began a new job Feb. 1 as na-



By Martha Elson, The Courier-Journal

Teen Challenge of Kentucky decided that conversion of the Salvation Army building would be too difficult and costly.

tional director for a group called Lifeline Connection.

Julie Duvall, Teen Challenge's new chief operating officer, did not return calls seeking comment last week. Arp said she was recovering from surgery.

Priscilla's Place will remain on East Broadway at this point, but two other options for it are being considered, Arp said.

The Salvation Army board still has not decided how to resolve the contract issue but is looking at putting the building up for sale again, Maj. Keith Biggers, the agency's Louisville area

commander, said last week. "We were very disappointed," he said. "We have not yet received a justifiable explanation as to why" the group withdrew.

Aaron Givhan, the real estate agent for the Salvation Army property, has said Teen Challenge made a somewhat lower offer than the asking price for the building. The Louisville Metro Board of Zoning Adjustment had granted Teen Challenge a conditional use permit Oct. 18 to use the Salvation Army building for its program.

The complaint with the Human Relations Commission, also filed Oct. 18 by the Lexington Fair Housing Council, is still under investigation, and no action has been taken yet, Bill Patten, a spokesman for the Jefferson County Attorney's Office, said recently.

The Lexington council alleged that Teen Challenge discriminated on the basis of "sexual orientation." Teen Challenge also operates a five-week women's recovery program in Lexington called Hannah's House.

"We're certainly not bi-

ased," Arp said after the complaint was filed.

The complaint claims that Teen Challenge "has stated a preference for individuals who are not gay" and that "it teaches against homosexuality," in violation of the Louisville Metro Fairness Ordinance.

Teen Challenge, which has its headquarters in Louisville, held a meeting for neighbors last spring to explain its plans for the Clifton building, but a question on a program application asking about sexual orientation and wording in an earlier application had offended some gays and lesbians in Clifton.

John Beckman, co-chair of the Clifton Community Council's Land Use and Preservation Committee, said last week that he was notified in an email from Duvall that Teen Challenge was no longer interested in the building.

The Fairness Campaign in Louisville, which has opposed Teen Challenge's expansion in Clifton or anywhere, had considered filing a complaint against Teen Challenge but didn't pursue it after the Lexington group filed its complaint, said Chris Hartman, the campaign's director.

"I do think they're in violation of the Fairness Ordinance," Hartman said. Discrimination could be in the form of trying to persuade women to change their lives or harassing them "by preaching against it," he said.

Arp has said Teen Challenge is a conservative group, but "we don't want to go to war with the gay community. We respect them and honor them."

Reporter Martha Elson can be reached at (502) 582-7061.

MYPE

Your favorite ph

GOODBY!

Name: Sebastian
Age: 9 Years
Neighborhood: Jefferson
Owner: Christine Ridenour
In the owner's words: S my husky/malamute mix, pass Feb. 24 after an illness. He loved walks, playing in the snow and the sofa with his head on my lap such a great dog — very expressive and loving. And he was and to go for car rides (We call he's gone. I guess one day my another dog, and I suppose I'll be But until that day comes, I'll th years that I was lucky enough my heart.

Enter and possibly win a :

- ▶ Go to www.courier-journal.com
- ▶ Upload a photo of your dog, makes him or her so cute. Photo 200 DPI resolution, at least 6 in with good tonal range).
- ▶ Write a paragraph or two about
- ▶ Include your email address to

To vote

- ▶ Go to www.courier-journal.com select "Click to vote."
- ▶ Include your email address to

ADOPT A PA

Waffles, a 1-year-old pit bull will steal your heart. She is lively inquisitive, but when the fun is she'll be ready to relax by your has been spayed, vaccinated and chipped and is available for adoption at Society's Main Campus. Call 366 to view pictures and profiles of

Your Neighbor

Martha Elson
 Highlands/Crescent Hill Reporter
 (502) 582-7061
 melson@courier-journal.com

Stephanie Caudill
 Good Sports columnist
 (502) 582-4218
 scaudill@courier-journal.com

ADVERTISING: (502) 582-4711
CIRCULATION: (800) 866-2211 or www.courier-journal.com

Share your news, p
www.courier-journal.com

Emerald Ash Borer

LEWIS
 8150 Warwick Avenue Louisville, KY 40222
www.lewisashborer.com 502-423-6257

Save your Ash
 call our tree care specialists today!

CH-0003006468

courier-journal.com

Teen Challenge drops plan to buy center

Written by

Martha Elson

melson@courier-journal.com

2:35 PM, Apr. 12, 2011

Teen Challenge of Kentucky has dropped a controversial plan to buy a former Salvation Army worship and community center in Clifton.

Teen Challenge, 1151 E. Broadway, had a contract last year to buy the building, 1701 Payne St., which had been for sale for \$487,000. It planned to use it as an expanded site for its six-month women's residential recovery program called Priscilla's Place.

But the organization decided that conversion of the building for residential use would be too difficult and costly, Clayton Arp, the organization's former state director, said last week. The building had a gym and chapel and would have required a sprinkler system.

Arp said he also was concerned about a fairness complaint against Teen Challenge filed with the Metro Human Relations Commission, as well as some neighborhood opposition to the operation. "It was a combination of everything," said Arp, who

began a new job Feb. 1 as national director for a group called Lifeline Connection.

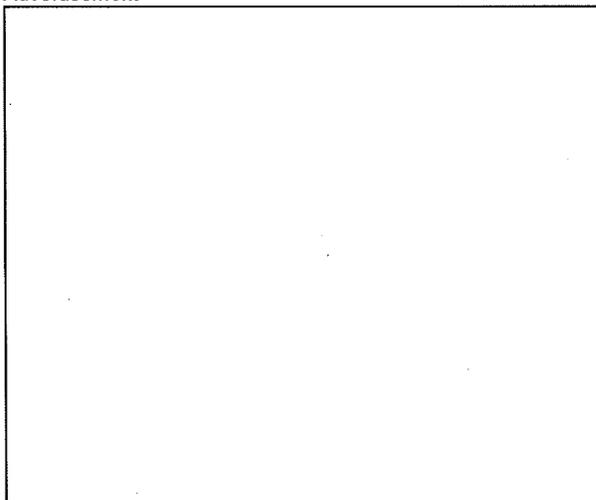
Julie Duvall, Teen Challenge's new chief operating officer, did not return calls seeking comment last week. Arp said she was recovering from surgery.

Priscilla's Place will remain on East Broadway at this point, but two other options for it are being considered, Arp said.

The Salvation Army board still has not decided how to resolve the contract issue but is looking at putting the building up for sale again, Maj. Keith Biggers, the agency's Louisville area commander, said last week. "We were very disappointed," he said. "We have not yet received a justifiable explanation as to why" the group withdrew.

Aaron Givhan, the real estate agent for the Salvation Army property, has said Teen Challenge made a somewhat lower offer than the asking price for the building. The

Advertisement



Print Powered By  FormatDynamics™

courier-journal.com

Louisville Metro Board of Zoning Adjustment had granted Teen Challenge a conditional use permit Oct. 18 to use the Salvation Army building for its program.

The complaint with the Human Relations Commission, also filed Oct. 18 by the Lexington Fair Housing Council, is still under investigation, and no action has been taken yet, Bill Patteson, a spokesman for the Jefferson County Attorney's Office, said recently.

The Lexington council alleged that Teen Challenge discriminated on the basis of "sexual orientation." Teen Challenge also operates a five-week women's recovery program in Lexington called Hannah's House.

"We're certainly not biased," Arp said after the complaint was filed.

The complaint claims that Teen Challenge "has stated a preference for individuals who are not gay" and that "it teaches against homosexuality," in violation of the Louisville Metro Fairness Ordinance.

Teen Challenge, which has its headquarters in Louisville, held a meeting for neighbors last spring to explain its plans for the Clifton building, but a question on a program application asking about sexual orientation and wording in a former application had offended some gays and lesbians in Clifton.

John Beckman, co-chair of the Clifton Community Council's Land Use and

Preservation Committee, said last week that he was notified in an email from Duvall that Teen Challenge was no longer interested in the building, in response to an inquiry.

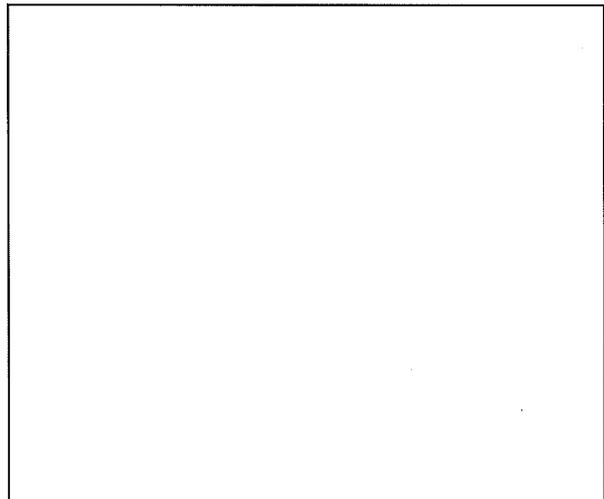
The Fairness Campaign in Louisville, which has opposed Teen Challenge's expansion in Clifton or anywhere, had considered filing a complaint against Teen Challenge but didn't pursue it after the Lexington group filed its complaint, said Chris Hartman, the campaign's director.

"I do think they're in violation of the Fairness Ordinance," Hartman said. Discrimination could be in the form of trying to persuade women to change their lives or harassing them "by preaching against it," he said.

Arp has said Teen Challenge is a conservative group, but "we don't want to go to war with the gay community. We respect them and honor them."

Reporter Martha Elson can be reached at

Advertisement



Print Powered By  FormatDynamics



May 19, 2010

Guess who's coming to Clifton?

A faith-based rehab group's anti-gay message worries residents, activists

BY PHILLIP M. BAILEY

When Michael O'Leary learned a faith-based drug and alcohol recovery group was looking to move its rehabilitation center for women into his Clifton neighborhood, he welcomed the idea. The 52-year-old grew up in the South End, but he and his partner moved into the diverse community more than a decade ago because it was so inclusive.

Upon reviewing the group's literature, however, O'Leary found, among other things, a questionnaire that raised the issue of sexual orientation. The material asked interested participants if they were willing to recognize that being homosexual is sinful, end any lesbian relationships, and abandon being gay altogether.

The 10-page admission form also asks the women who enter the program if they masturbate, and if so, how often, and if they're willing to stop.

"I don't know enough about the program to say what it's all about, but having read their materials it looks like a 'gay no more' organization that's disguising itself as supposedly rehab for alcohol and drug abuse," says O'Leary. "And what's with the fixation on female masturbation?"

Since 1997, Teen Challenge of Kentucky has been providing teens, adults and families with faith-based solutions to substance abuse. With a growing waiting list of more than a dozen young women, the group's Louisville chapter is looking for bigger digs and hoping to purchase the former Salvation Army building in Clifton.

But the possible relocation has raised a red flag with residents and gay rights activists who worry about the group's alleged "deprogramming" underpinnings and are concerned that the evangelical organization is bringing its anti-gay message into one of the city's more progressive neighborhoods.

Last Friday, during a preliminary public meeting required by city zoning laws, dozens of residents assembled to confront the group's leaders about their intentions.

And though many welcome a residential rehab center in their neighborhood, some found the message in the brochure unsettling.

“We’re a conservative, faith-based program, and this is not going to be for everybody,” the Rev. Clayton Arp, state director of the organization, told the crowd. “And as a conservative, faith-based program, we certainly have our preferences, so that’s why that’s a part of the admission form.”

The local chapter, called Priscilla’s Place, houses 10 women who live together in a cramped house along East Broadway. Besides drug and alcohol counseling, the group’s staff help the women overcome eating disorders, gambling addictions and the emotional wounds caused by domestic violence.

Despite falling under the umbrella name of Teen Challenge, the Louisville chapter caters to adult women. Priscilla’s Place encourages clients to commit to at least five months of treatment, with the recommendation that they then complete an additional 10 months at one of their long-term programs offered in several nearby states.

Priscilla’s Place works with women entering the program voluntarily as well as those referred by the state court system as an alternative to incarceration, usually the result of drug or alcohol abuse.

In a telephone interview, Arp says the group does not deny entry based on sexual orientation and is dedicated to counseling women with addictions and other behaviors that “master a person’s life.”

Asked if the group considers homosexuality one of those addictive behaviors, Arp says yes, adding that personally, he believes a person can be converted back to heterosexuality. But he insists the primary focus at Priscilla’s Place remains treating substance abuse.

“If a young lady has some lesbian tendencies, that’s her choice, and we may not be the type of program for her because it’s group living,” he says. “We’ll cross that bridge when we get there. Right now, it has been a non-issue for our group.”

Founded in 1958 by David Wilkerson — an Assemblies of God pastor who once said he received a vision from God regarding the country’s future — Teen Challenge is an evangelical recovery organization with more than 200 chapters nationwide.

While many faith-based social-service agencies do not proselytize, Teen Challenge regularly cites Jesus among the reasons for recovery and aggressively delivers a religious message to participants. Local gay rights activists say the organization’s admission form suggests they believe gays and lesbians can be deprogrammed.

"The only challenge, really, is to see how long people can be coerced into lying about themselves and their identity," says Chris Hartman, director of the Fairness Campaign, a Louisville nonprofit dedicated to promoting gay rights. "It definitely smells of the 'ex-gay movement' programs that were running rampant in the '70s with the notion that someone could be turned."

But Rebecca Henslee, head of women's ministry at Priscilla's Place, says two women in the local chapter are lesbians, and they have not been discriminated against or pressured to turn straight.

"From the time they come in the program, we are very clear that from a biblical standpoint, we do teach against homosexuality. At the same time, we are not trying to indoctrinate anyone," she says. "If you don't believe the (Bible) says that (homosexuality is wrong), then we're not going to force you. You're welcome to come and stay here, but you need to understand that you're going to hear this teaching."

Despite their opposition to the recovery group's message, the Fairness Campaign and concerned Clifton residents have not declared any action — yet. Meanwhile, Teen Challenge's application for a permit to operate at the former Salvation Army property is moving forward to the Board of Zoning Adjustment for review.

Given the community's reaction thus far, however, the group's leaders are considering looking for another location, saying they are not interested in engaging in a fight where they're not welcome.

According to Sharon Duncan, a member of Southeast Christian Church and volunteer with the recovery group, it's disappointing that the organization's mission is being entangled in this debate.

"The people in this program are here by choice, and if they're going to be offended by (the group's teachings on homosexuality), then they don't have to be there," she says. "I think any place that helps women you should support. It doesn't matter if they're gay or straight. They can be what they want to be when they leave."

Online posts to article:

Rehab program on E. Bdwy.

By G-townReader

Aside from their agenda -- Per article: "...Priscilla's Place, houses 10 women who live together in a cramped house along East Broadway. Besides drug and alcohol counseling, the group's staff help the women overcome eating disorders, gambling addictions and the emotional wounds caused by domestic violence." This location, at 1151 E. Bdwy., is mere DOORS across

the street from the former Mercy Academy building at 1172. Did Wayside Christian Mission KNOW that this facility ALREADY EXISTS in the very block of Broadway where they were told by Original Highlanders that THEY WERE NOT WELCOME to house homeless women & children?

Priscilla Place

By In621

Im goin to stay silent as to who i am but i think the truth needs to come out! I am an ex-student of Priscillas Place/Ky Teen Challenge. I was there a little over a year ago and have personally dealt with this issue with this program. Coming into the program as a lesbian, and being honest with them about my sexuality, i was immediatly pegged as "gay". I recieved special classes, books, and sessions about this issue. i was there for about 5 months, where then i was kicked out...asked to leave...because i was not willing to commit to the heterosexual life style. The part about the aritcle that says its a 5 month program...FALSE...its a program as long as they want you there. you dont graduate until THEY...no Pastor Rebecca Henslee...says you can. Not until she has "heard from God" about you leaving. do i agree they help ladies there? yes, but i also think that they are making their program sound a lot better than wht it really is. will i ever refer someone to them, NO. They say that they dont push their religion on to anyone...again...false! It is a recovery program, but its closer to a Bible Collee! They constantly throw the Bible down your throat and dont focus on what the real world is like. They dont help with real life issues in this day and time. I dont support Teen Challenge because i personally believe they are greedy, money hungry, and liars. They ask for donations after donations. People need to be cautions letting them into any neighborhood.

PRESS RELEASE STATEMENT

May 20, 2010

Teen Challenge of Kentucky (TCKY) is deeply disappointed by the mischaracterization it has received today on leoweekly.com and at the May 14 public neighborhood meeting in Clifton.

Teen Challenge is a faith-based program which exists to help men and women of all ages overcome life-controlling drug and alcohol addictions. TCKY operates residential men's and women's facilities throughout Kentucky. Priscilla's Place is a residential women's facility in Louisville, where it has helped women overcome drug and alcohol addictions since its opening in July 2003. Since that time, more than 400 women have participated in the program at Priscilla's Place.

Contrary to recent allegations, TCKY is not a "deprogramming" movement, "ex-gay movement," "anti-gay," or anything similar. TCKY does not discriminate against applicants on the basis of sexual orientation.

TCKY is a faith-based organization, and its teachings are consistent with its interpretation of the Bible. Furthermore, TCKY is a completely voluntary program. Applicants are made aware of TCKY's curriculum at the time of their application and are free to withdraw from the program at any time. If participants do not agree with the curriculum, they are still treated with the highest respect. In addition, Priscilla's Place regularly accepts lesbian and bi-sexual applicants, and never discriminates against them on the basis of sexual orientation. TCKY is not in the business of indoctrination; it is in the business of helping men and women overcome drug and alcohol addictions, and has been very successful. Sexual orientation is not even addressed by TCKY's curriculum.

The recent allegations that TCKY discriminates based on sexual orientation are based upon questions which were included in an application form which was abandoned by TCKY two years ago. Unfortunately, due to an oversight, the sample application found on the TCKY website was never updated.

The recent allegations against TCKY are not only baseless, but unfortunate and saddening. These allegations are aimed to prevent TCKY from purchasing property which will increase its capacity to help the women of Kentucky and the surrounding region overcome drug and alcohol addictions. TCKY and Priscilla's Place have already demonstrated their dedication to drug and alcohol treatment for people of all ages and from all walks of life, and have been hugely successful. The purchase of real estate in Clifton will simply enable TCKY and Priscilla's Place to continue doing what they have already been doing with excellence for seven years: helping women overcome drug and alcohol addictions.

In summary, TCKY does not discriminate against its applicants based on sexual orientation, and is deeply disturbed that these recent accusations are aimed at preventing TCKY from continuing much-needed drug and alcohol treatment in the city of Louisville.

Valenzuela, Nicolas

From: Joshua S. Harp [harp@harplawoffice.com]
Sent: Monday, May 09, 2011 4:53 PM
To: Valenzuela, Nicolas
Subject: Lexington Fair Housing Council v. Teen Challenge
Attachments: Letter to N. Valenzuela May 9, 2011.pdf

Nick:

See attached correspondence. Please confirm receipt.



Joshua S. Harp
Attorney at Law
Harp Law, PLLC
415 West Main Street
Frankfort, KY 40601
Ph: 502-352-2935
Fx: 502-352-2936

CONFIDENTIALITY NOTICE: This communication, including any attachments, is confidential, and may be protected by attorney-client privilege. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), you may not review, distribute, copy, or otherwise use any information in this communication in any manner. Such unauthorized use is strictly prohibited and may be punishable by law. If you are not the intended recipient(s), please notify the sender by calling 502-352-2935 or by reply email, and destroy this communication, including any attachments.



415 WEST MAIN STREET
FRANKFORT, KY 40601

JOSHUA S. HARP
ATTORNEY AT LAW

PH: 502-352-2935
FX: 502-352-2936

May 9, 2011

Mr. Nick Valenzuela
Compliance Officer
Human Relations Commission
410 West Chestnut St., Suite 300A
Louisville, KY 40202

Re: **Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.**
Complaint Numbers: C11-PA5481 and C00-HO213

Mr. Valenzuela:

Please accept this letter as a formal declination to enter a conciliation agreement under the terms proposed by the Lexington Fair Housing Council. As I expressed to you verbally during your site visit on May 3, I cannot advise Teen Challenge of Kentucky to enter into any kind of agreement that waives its rights to free speech and exercise of its religious goals. As I pointed out at that meeting, as well as in the past, these rights are expressly protected by local ordinance in Louisville. Moreover, these rights are rigorously protected by the First Amendment.

Again, I wish to reiterate that Teen Challenge denies that it engaged in any conduct that would be violative of Louisville's fair housing and public accommodation ordinances, even assuming that same would be applicable to a religious organization. I wish to make it abundantly clear that Teen Challenge's refusal to enter into a conciliation agreement under the terms proposed by the LFHC is not due to a desire to discriminate, harass, or otherwise malign individuals based on their sexual orientation. However, I cannot advise Teen Challenge to waive, via agreement, something that is expressly protected by a host of applicable law and statute.

As always, if you have any questions about this correspondence, or if I can be of any assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Harp', written over a horizontal line.

Joshua S. Harp

Attorney for Teen Challenge of Kentucky, Inc.

Valenzuela, Nicolas

From: "harp@harplawoffice.com via EMX" [emx@mxlogic.com]
Sent: Tuesday, March 29, 2011 4:03 PM
To: Valenzuela, Nicolas
Subject: Email Encryption to harp@harplawoffice.com has been collected

 McAfee Email Encryption Collected
This notification is to inform you the Email Encryption you sent harp@harplawoffice.com on March 29, 2011 1:55 PM MDT (Subject:[encrypt] LFHC v. Teen Challenge - C. conciliation proposal) has been collected.

Valenzuela, Nicolas

From: Valenzuela, Nicolas
Sent: Tuesday, March 29, 2011 3:55 PM
To: 'Joshua S. Harp'
Subject: [encrypt] LFHC v. Teen Challenge - C. conciliation proposal

Sensitivity: Confidential

Re: ***Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.***
Complaint No. C00-HO213

Lexington Fair Housing Council, Inc. v. Teen Challenge of Kentucky, Inc.
Complaint No. C11-PA5481

Dear Mr. Harp,

Please accept this e-mail as notice that our agency received a written conciliation proposal today from the Complainant in the above matter in an attempt to resolve the discrimination complaints. The conciliation/negotiated settlement process is voluntary and our agency is required by local ordinance to facilitate such attempts between the parties.

The Complainant stated that it was willing to resolve the discrimination complaints if the Respondent agreed to the following:

- To implement and to follow a policy whereby no discouraging remarks about homosexuality would be made to tenants or potential tenants to Respondent residential programs.

This is as proposed by the Complainant, with no input or advocacy by our agency.

The concurrent investigation is ongoing and will continue on to a determination on the merits of the allegation unless the parties have reached a written agreement to resolve the complaints, whereby they will be closed with a dismissal order embodying the terms of the agreement after review by our agency.

Should the Respondent wish to engage in the conciliation process and respond to the Complainant's proposal via our agency, please respond in writing.

Please let me know if you have any questions . . . thanks!

Nick Valenzuela

Compliance Officer
Louisville Metro Human Relations Commission
410 West Chestnut Street, Suite 300A
Louisville, Jefferson County, Kentucky 40202
Telephone: 502-574-2391
Facsimile: 502-574-3190
TDD: 502-574-4332
E-mail: nicolas.valenzuela@louisvilleky.gov
<http://www.louisvilleky.gov/HumanRelations/>



Valenzuela, Nicolas

From: Lexington Fair Housing Council [crosbylfhc@hotmail.com]
Sent: Tuesday, March 29, 2011 9:54 AM
To: Valenzuela, Nicolas
Subject: LFHC v. Teen Challenge

Nick,
We are willing to conciliate our case against Teen Challenge if they agree to implement and follow a policy where no disparaging remarks about homosexuality will be made to tenants or potential tenants.

Thanks,
Art

Arthur Crosby
Lexington Fair Housing Council
207 E. Reynolds Rd. Suite 130
Lexington, KY 40517
(859) 971-8067
Fax: (859) 971-1652