EXHIBIT
1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, etc., et al., Plaintiffs, v. CITY OF TAMPA, FLORIDA, Defendant.	)	Case No. 8:17-cv-2896-T-02AAS

PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND NONTAXABLE EXPENSES AND SUPPORTING MEMORANDUM OF LAW

Plaintiffs ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, and SOLI DEO GLORIA INTERNATIONAL, INC. d/b/a NEW HEARTS OUTREACH TAMPA BAY, individually and on behalf of its members, constituents, and clients, pursuant to 42 U.S.C. § 1988 and M.D. Fla. L.R. 4.18, and for the reasons set forth in their memorandum of law incorporated below, move the Court for an order awarding Plaintiffs $569,592.50 as and for reasonable attorney's fees and $18,235.85 in nontaxable expenses.[1]

[1] Contemporaneously herewith Plaintiffs file their Bill of Costs seeking $10,389.33 in taxable costs.

MEMORANDUM OF LAW

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INTRODUCTION

By virtue of the Court's Order (D.213, "MSJ Order") and Judgment (D.215) entered October 4, 2019, Plaintiffs prevailed in their challenge to the validity of the City of Tampa's Ordinance 2017-47 enacted on April 6, 2017, ostensibly banning so-called "conversion therapy" in Tampa. As prevailing parties, Plaintiffs are entitled to recover their costs, attorney's fees, and nontaxable expenses from the City under 42 U.S.C. § 1988.

Plaintiffs filed their Verified Complaint challenging the ordinance (D.1) on December 4, 2017, and filed their First Amended Verified Complaint (D.78, "FAVC") on June 12, 2018. In both complaints, each count arose out of and was based on the same operative fact—Tampa's enactment of the ordinance—and their prayer for relief in both pleadings comprised (a) a declaration that the ordinance is invalid, and (b) preliminary and permanent injunctive relief enjoining the City from enforcing the ordinance.

After briefing and a hearing on Plaintiffs' motion for preliminary injunction, the Magistrate issued a report and recommendation (D.149) concluding that Plaintiffs should prevail on the merits of their constitutional claims and that a preliminary injunction against the City's enforcement of the ordinance should issue. The parties subsequently submitted cross-motions for summary judgment (D.189, D.194). After briefing and a hearing on the summary judgment motions, the Court entered its MSJ Order and Judgment on October 4, 2019. In the MSJ Order, the Court granted Plaintiffs the relief they were seeking by striking the ordinance under the doctrine of implied preemption and permanently enjoining its enforcement. (MSJ Order 41.)

ARGUMENT

I. PLAINTIFFS ARE PREVAILING PARTIES ENTITLED TO ATTORNEYS' FEES FOR WORK ON ALL THEIR CLAIMS.

A. Plaintiffs Are Prevailing Parties Because They Obtained the Precise and Complete Relief They Sought and Fundamentally Altered the Legal Relationship Between the City and Themselves.

Under 42 U.S.C. § 1988, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b). While the language of the statute is discretionary, "[a] prevailing party should recover attorney's fees unless special circumstances render such an award unjust." *Riddell v. Nat'l Democratic Party*, 624 F.2d 539, 543 (5th Cir. 1980). A plaintiff may be considered a prevailing party if he obtains a "court-ordered 'change in the legal relationship between the plaintiff and the defendant.'" *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (quoting *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989)). "Plaintiffs may be considered prevailing parties for attorney's fee purposes if they succeed on **any significant issue** in litigation which achieves **some** of the benefit the party sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (emphasis added); *see also Farrar v. Hobby*, 506 U.S. 103, 111 (1992). The Supreme Court has defined a prevailing party as one "in whose favor judgment is rendered, regardless of the amount of damages awarded." *Buckhannon*, 532 U.S. at 603 (quoting *Black's Law Dictionary* 1145 (7th ed. 1999)). "An enforceable judgment establishes a plaintiff as a prevailing party because the plaintiff has received at least some relief based upon the merits of a claim." *Utility Automation 2000, Inc. v. Choctawhatchee Elec. Co-op., Inc.*, 298 F.3d 1238, 1248 (11th Cir. 2002) (citing *Buckhannon*, 532 U.S. at 604).

Here, it is beyond cavil that the Court entered summary judgment for Plaintiffs such that they received all the relief they sought. Plaintiffs prayed for a judgment that (a) declared Tampa's ordinance invalid, and (b) permanently enjoined the City from enforcing it. (FAVC 51.) This is precisely the relief the Court granted to Plaintiffs by its MSJ Order and Judgment. There can be no dispute that this is a material change in the legal relationship between the parties, *Buckhannon*, 532 U.S. at 604, and that an enforceable judgment establishes Plaintiffs as prevailing parties having "received at least some relief based upon the merits of a claim." *Utility Automation*, 298 F.3d at 1248. To be sure, a permanent injunction against enforcement of the ordinance is more than just "some relief;" it is complete relief, and forever alters the City's ability to enforce the ordinance against Plaintiffs. Plaintiffs are thus unquestionably prevailing parties under § 1988.

B. Plaintiffs Are Entitled to an Award of Fees for Work on All Their Claims Because Their Success on their Pendent State Claims Arose from the Same Nucleus of Operative Facts as Their Constitutional Claims, and the Court Passed on the Constitutional Questions.

1. A Party Prevailing on Its Pendent Claims in a § 1983 Action Is Still Entitled to Fees When the Court Declines to Address the Constitutional Claims.

The legislative history of § 1988 reveals that Congress intended a plaintiff prevailing on pendent claims to still receive an award of attorney's fees. Indeed,

> To the extent a plaintiff joins a claim under one of the statutes enumerated in [§ 1988] with a claim that does not allow attorney fees, that plaintiff, if it prevails on the non-fee claim, is entitled to a determination on the other claim for the purpose of awarding counsel fees. In some instances, however, the claim with fees may involve a constitutional question which the courts are reluctant to resolve if the non-constitutional claim is dispositive. In such cases, if the claim for which fees may be awarded meets the "substantiality" test, attorney's fees may be allowed even though the court declines to enter judgment for the plaintiff on that claim, **so long as the plaintiff prevails on the non-fee claim arising out of a "common nucleus of operative fact."**

H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 4 n.7 (1976) (emphasis added) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)) (other citations omitted).

Binding precedent cements that Plaintiffs here are prevailing parties entitled to attorney's fees because they prevailed on a dispositive pendent claim granting them the complete relief they sought. *See, e.g.*, *Maher v. Gagne*, 448 U.S. 122, 132 (1980) ("[C]learly Congress was not limited to awarding fees only when a constitutional or civil rights claim is actually decided. **We agree with the courts below that Congress was acting within its enforcement power in allowing the award of fees in a case in which the plaintiff prevails on a wholly statutory, non-civil-rights claim pendent to a substantial constitutional claim** . . . ." (emphasis added)); *Church of Scientology of Cal. v. Cazares*, 638 F.2d 1272, 1290 (5th Cir. 1981) ("[W]here a civil rights claim is made, a successful claimant may also collect fees concerning legal actions or counts which come from or arise out of the same 'nucleus of facts.'"); *id.* at 1291 ("Congress intended fees to be awarded where a pendent constitutional claim is involved, even if the statutory claim on which the plaintiff prevailed is one for which fees cannot be awarded under the Act." (quoting *Maher*, 448 U.S. at 132)).[2]

Numerous other circuits and courts have reached the same conclusion. *See, e.g., Reel v. Arkansas Dep't of Correction*, 672 F.2d 693, 697 (8th Cir. 1982) ("Courts have found that a person was a prevailing party in some instances in which the person was successful on a pendent nonconstitutional claim brought with a substantial constitutional claim. In order for recovery of attorney's fees to be permitted [on the nonconstitutional pendent claims] **the two claims must arise from the same nucleus of operative fact**." (emphasis added)); *Lund v. Affleck*, 587 F.2d 75,

[2] Decisions of the Fifth Circuit prior to October 1, 1981 are binding in the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

77 (1st Cir. 1978) (rejecting assertion that plaintiff was not entitled to recover fees under § 1988 having prevailed only on state law claims because "the s 1983 claim was substantial and the successful pendent claim arose from the same nucleus of facts"); *id.* ("Indeed, since courts often by-pass constitutional issues when a case can be disposed of on statutory grounds, it could well be unfair to attach controlling weight to the particular claim upon which relief is granted."); *Seals v. Quarterly Cnty. Court of Madison Cnty.*, 562 F.2d 390, (6th Cir. 1977) (holding plaintiff is entitled to fees when he prevails on pendent claim and court passes on constitutional claim); *Huffman v. Hart*, 576 F. Supp. 1234 (N.D. Ga. 1983) (recognizing distinction between plaintiff who prevails on pendent claim where the court passes on constitutional claim, where fees are permitted, and plaintiff who loses the constitutional claim and prevails on a pendent claim, where fees are not permitted).

2. Plaintiffs' Pendent Claims Arose out of the Same Nucleus of Operative Facts as Their Constitutional Claims.

Though Plaintiffs asserted multiple alternative theories of relief, "all roads lead to Rome." *Pillsbury Co., Inc. v. West Carrollton Parchment Co., Inc.*, 287 F. App'x 824, 828 (11th Cir. 2008). Though this Court's judgment "could have resulted from several variations in reasoning," *id.*, the ultimate destination and judgment Plaintiffs sought and received was invalidation and a permanent bar on enforcement of Tampa's ordinance. Plaintiffs' grounds for invalidation and permanent injunction were, alternatively, that the ordinance was unconstitutional under the United States and Florida Constitutions. Aside from specific pleading requirements, the essential operative fact was the City's enactment of the ordinance—i.e., the legal relationship between the City and Plaintiffs effected by the ordinance. Each count in Plaintiff's FAVC arose solely out of this common nucleus of fact. (*See* FAVC ¶¶ 179–195 (alleging the ordinance unconstitutional on its face and as-applied), ¶¶ 201–204) (same), ¶¶ 211–222 (same) ¶¶ 226–241 (same), ¶¶ 249–259 (same), ¶¶ 263–274

(alleging City had no authority to adopt and enforce the ordinance), ¶¶ 293–303 (alleging the ordinance violated various provisions of Florida statutory law).)

Indeed, Plaintiffs' primary challenge to the ordinance, among all counts, amounted to a facial challenge in which "the primary focus [*i.e.*, operative fact] by definition must be the text." *Adler v. Duval Cnty. Sch. Bd.*, 250 F.3d 1330, 1339 n.2 (11th Cir. 2001); *see also Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 501 (6th Cir. 2012) ("Statutory challenges will certainly all contain at least one common operative fact—the passage of the challenged law."). Here, the **only** salient and operative fact concerning Plaintiffs' claims was the City's enactment of the ordinance. Thus, there can be no doubt that all Plaintiffs' claims, including Plaintiffs' federal constitutional claims and pendent state law claims, arose out of the same common nucleus of operative fact, and that nucleus was the enactment of an illegal ordinance.

3. Plaintiffs Obtained Substantial and Complete Relief Through the Court's Permanent Injunction Against Enforcement of the Ordinance, and the Court Explicitly Passed on the Constitutional Questions Under the Doctrine of Constitutional Avoidance.

Plaintiffs sought judgment from this Court (a) declaring the ordinance invalid and (b) permanently enjoining its enforcement (FAVC at 51), and that is precisely the relief the Court ordered: "[T]he Court grants Plaintiffs' motion for summary judgment, Dkt. 194, on Count VI. **Tampa Ordinance 2017-37 is stricken under the doctrine of implied preemption. The Defendant is permanently enjoined from enforcing it**. **The Clerk is instructed to enter judgment for Plaintiffs.**" (MSJ Order 41 (emphasis added).)

That Plaintiffs received their complete relief through the vehicle of state law claims pendent to their federal constitutional claims does not alter their status as prevailing parties entitled to attorney's fees under § 1988 because the Court unequivocally stated it passed on Plaintiffs' constitutional claims under the doctrine of constitutional avoidance. (MSJ Order 2, 8.) This is a

dispositive fact because "Congress intended fees to be awarded where a pendent constitutional claim is involved, even if the . . . claim on which the plaintiff prevailed is one for which fees cannot be awarded under the Act." *Church of Scientology*, 638 F.2d at 1291 (quoting *Maher*, 448 U.S. at 132).; *see also Kimbrough v. Arkansas Activities Ass'n*, 574 F.2d 423, 427 (8th Cir. 1978) (holding where plaintiff prevails on pendent claim but court passes on constitutional claim, award of attorney's fees under Section 1988 is justified and consistent with Congressional intent); *Club Madonna, Inc. v. City of Miami Beach*, No. 13-23762-CIV-LEONARD/GOODMAN, 2015 WL 5559894, *6–8 (S.D. Fla. Sept. 22, 2015) (holding that party prevailing on pendent claim where constitutional claim not adjudicated entitled to prevailing party status and fees). Indeed, because this Court expressly and unequivocally passed on the constitutional claims under the doctrine of constitutional avoidance, binding precedent dictates that Plaintiffs are entitled to attorney's fees for prevailing on their pendent claim.

Moreover, because all of Plaintiffs' claims arise from the same nucleus of operative fact, Plaintiffs are entitled to fees for their work on all their claims. *See, e.g.*, *Church of Scientology*, 638 F.2d at 1291 (recognizing difficulty of apportioning fees where claims arise out of same nucleus of operative fact and holding that award of fees for entire litigation was appropriate); *see also Zabkowicz v. West Bend Co.*, 789 F.2d 540, 550 (7th Cir. 1986) (holding where claims arise out of same nucleus of operative fact, prevailing plaintiff is entitled to fees on entire complaint, even if some claims were unsuccessful); *Club Madonna*, 2015 WL 5559894, at *7 (same). As the Supreme Court observed,

> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in

> the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.

Hensley v. Eckerhart, 461 U.S. 424, 435 (1983) (citation and footnote omitted).

II. THE HOURS WORKED, HOURLY RATES, AND EXPENSES INCURRED ARE REASONABLE.

A. Plaintiffs' Attorney's Fees are Calculated Using the Lodestar Method and are Therefore Presumed Reasonable.

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley*, 461 U.S. at 433. The product of this multiplication constitutes the "lodestar" amount. *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 563 (1985). "A 'strong presumption' exists that the lodestar figure represents a 'reasonable fee.'" *Id.* at 351 (quoting *Delaware Valley Citizens*, 478 U.S. at 351); *see also City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) ("**We have established a strong presumption that the lodestar represents the 'reasonable' fee.**'" (emphasis added)). *See also Resolution Trust Corp. v. Hallmark Builders, Inc.*, 996 F.3d 1144, 1150 (11th Cir. 1993) ("A lodestar figure that is based upon a reasonable number of hours spent on a case multiplied by a reasonable hourly rate is itself strongly presumed to be reasonable."); *Goldames v. N&D Inv. Corp.*, 432 F. App'x 801, 806 (11th Cir. 2011) (same). Here, Plaintiffs have based their requested attorney's fees on the lodestar method, and they are therefore presumed reasonable as calculated.

In support of their requested fees, Plaintiffs have provided detailed time entries, personally and contemporaneously recorded by their attorneys and legal staff, which detail the specific tasks performed by each timekeeper. That detailed record (the "Time Report") is attached as Exhibit A to the Declaration of Horatio G. Mihet in Support of Plaintiffs' Motion for Attorney's Fees and

Nontaxable Expenses ("Mihet Declaration"), filed contemporaneously herewith. Plaintiffs' requested lodestar fees can be summarized as follows:

ATTORNEY		HOURS	RATE	AMOUNT
Daniel J. Schmid	DJS	578.00	$300.00	$173,400.00
Mary E. McAlister	MEM	60.70	$375.00	$22,762.50
Roger K. Gannam	RKG	537.10	$425.00	$228,267.50
Horatio G. Mihet	HGM	312.50	$425.00	$132,812.50
Mathew D. Staver	MDS	23.20	$500.00	$11,600.00
Paralegal	LGA	7.50	$100.00	$750.00
TOTALS:		**1,519.00**		**$569,592.50**

(Mihet Decl. ¶ 26.)

B. The Hourly Rates Requested Are Reasonable in The Relevant Market.

"Reasonable hourly rates are determined by comparing attorney's requested rates with the 'prevailing market rates in the relevant community.'" *Galdames v. N & D Inc. Corp.*, 432 F. App'x 801, 807 (11th Cir. 2011) (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)); *see also Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir. 1996) (evidence to establish the reasonableness of the requested rate may be based on declarations from attorneys with knowledge of the relevant community); *Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11tth Cir. 1988) (same). "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Norman*, 836 F.2d at 1299.

As shown in the Mihet Declaration, most of Plaintiffs' attorneys in this case live and work in the Middle District of Florida. (Mihet Decl. ¶¶ 18, 20.) Courts in this district, however, have recognized that where experienced and specialized practitioners are involved, the relevant legal community is defined by the skill and experience of the attorneys, wherever they are located. *See,*

e.g., Fields v. Corizon Health, Inc., No. 2:09-cv-529-FtM-29DNF, 2012 WL 162121, at *3 (M.D. Fla. Jan. 19, 2012) (awarding fees for experienced, out-of-town civil rights counsel at requested rates based on scarcity of experienced local counsel and testimony that reasonable hourly rates for comparable counsel ranged (almost eight years ago) from $250 to $800); *American Atheists, Inc. v. City of Starke*, 509 F. Supp. 2d 1221, 1226 (M.D. Fla. 2007) (awarding (over twelve years ago) fees for experienced South Florida civil rights counsel at hourly rates ranging from $250 to $350); *see also Lehman Bros. Holdings. v. Key Fin. Corp.*, No. 8:09-CV-623-T-17EAJ, 2011 WL 3879499, *4(M.D. Fla. Aug.12, 2011) (awarding (over eight years ago) fees at hourly rates ranging from $269.10 to $639.00 for attorneys from Tampa, Denver, and New York City). The adjacent Northern District of Florida has recognized the same principle. *See, e.g., B-K Cypress Log Homes Inc. v. Auto-Owners Ins. Co.*, No. 1:09cv211-MP-GRJ, 2011 WL 6151507 (N.D. Fla. Nov. 1, 2011) (Gainesville Division) (report and recommendation awarding (eight years ago) fees including $450 and $475 per hour for experienced, specialized Miami-based attorney), *adopted by* 2011 WL 6152082 (N.D. Fla. Dec. 12, 2011).

This principle is further reinforced by Plaintiffs' declarant Daniel Woodring, an experienced constitutional attorney, who testifies, "The relevant market for competent and experienced counsel to handle such cases extends beyond the Middle District of Florida and includes counsel from other federal districts within Florida and counsel with national practices, often affiliated with national public interest law firms." (Declaration of Daniel Woodring in Support of Plaintiffs' Motion for Attorney's Fees and Nontaxable Expenses ("Woodring Declaration") ¶ 12.)

Based on his extensive experience in complex constitutional litigation, Mr. Woodring also testifies,

> I have reviewed the experience of the attorneys and paralegal involved in this case, as represented in the declaration of Horatio G. Mihet, covering the experience of Mathew D. Staver, Horatio G. Mihet, Roger K. Gannam, Mary E. McAlister, Daniel Schmid, and Jill Schmid. An hourly rate of $500 for Mr. Staver, $425 for Mr. Mihet, $375 for Mrs. McAlister, and $300 for Mr. Schmid, in the Middle District of Florida market, is reasonable for attorneys of comparable experience. An hourly rate of $100 for paralegal assistance in the Middle District of Florida legal market is reasonable for paralegals of comparable experience.

(Woodring Decl. ¶ 15.) Mr. Woodring further testifies,

> [In] the Middle District of Florida . . . attorneys of my experience will bill in excess of $500 per hour to litigate a complex First Amendment case. . . .
>
> From 2014-2107, in the case of *McCall v. Scott*, a case raising significant constitutional issues, I led an attorney litigation team including attorneys from Kirkland & Ellis, White & Case and Holland & Knight. The actual rates billed in that case for attorneys on my team ranged from my hourly rate of $365, to over $1000 for a Kirkland & Ellis partner.

(Woodring Decl. ¶¶ 13–14.)

Mr. Mihet's Declaration also establishes the reasonableness of the hourly rates requested, based on the skill and experience of Plaintiffs' legal team, and also on the undesirability of taking on contingency fee litigation on behalf of political and cultural dissenters. (Mihet Decl. ¶¶ 20–25.) Thus, both of Plaintiffs' declarants, and this Court's decisions, establish that Plaintiffs' requested rates are reasonable in the relevant market.

C. The Time Expended by Plaintiffs' Counsel Was Reasonable and Reflects the Exercise of Considerable Billing Judgment.

"Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice is ethically obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434; *see also Resolution Trust Corp. v. Hallmark Builders, Inc.*, 996 F.2d d1144, 1149 (11th

Cir. 1993) (noting that attorneys seeking fees should exercise billing judgment prior to submitting their request). But, "where a [l]itigant has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass **all hours reasonably expended on the litigation**." *Hensley*, 461 U.S. at 434 (emphasis added). Recovery for all hours is particularly appropriate where, as here, a party has obtained an excellent result concerning the relief he sought. *See, e.g., id.* at 436 ("the most critical factor . . . is the degree of success obtained"); *Farrar v. Hobby*, 506 U.S. 103, 114 (1992) (same); *Albright v. Good Shepherd Hosp.*, 901 F.2d 438, 440 (5th Cir. 1990) ("Plaintiffs obtaining excellent results are entitled to recover full compensation, even if they do not prevail on every contention.").

Here, the time expended by Plaintiffs' counsel is reasonable and reflects the exercise of considerable billing judgment. As explained in the Mihet Declaration, this case was actively and vigorously litigated, but Plaintiffs' counsel nonetheless took care to keep fees and costs down. (Mihet Decl. ¶¶ 10–12.) Furthermore, Plaintiffs' requested fees reflect the exercise of considerable billing judgment, resulting in the exclusion of **144.40 hours of attorney time**, **66.00 hours of paralegal time**, and **60.00 hours of law clerk time**, for a total of **275.20 hours** of work actually performed, at a value of **$60,910.00**, but NOT included in Plaintiffs' request for reimbursement. Mihet Decl. ¶¶ 16, 17.) Given the excellent results achieved by Plaintiffs and the quality of advocacy performed by Plaintiffs' counsel, the amount of time invested by Plaintiffs' counsel was reasonable and necessary, and is fully compensable. (Mihet Decl. ¶ 15.)

D. The Nontaxable Expenses Incurred Are Reasonable.

Section 1988 allows the recovery of all reasonable litigation expenses except routine overhead. *See Dowdell v. City of* Apopka, 698 F.2d 1181, 1192 (11th Cir. 1983). And the standard for reasonableness "is to be given a liberal interpretation." *Id.* As shown in the Mihet Declaration, all expenses incurred by Plaintiffs are reasonable under this standard. (Mihet Decl. ¶ 28.)

CONCLUSION

For all of the foregoing reasons, the Court should grant Plaintiffs' motion and award Plaintiffs $569,592.50 for attorney's fees and $18,235.85 in nontaxable expenses, together with $10,389.33 in taxable costs as separately submitted to the Court in Plaintiffs' Bill of Costs.

Respectfully submitted,

/s/ Roger K. Gannam
Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this November 1, 2019, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

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

EXHIBIT
2

Subject: RE: Otto Litigation

From: Horatio Mihet <hmihet@lc.org>
Sent: Wednesday, August 17, 2022 6:30 PM
To: Marianna Sarkisyan R. <MSarkisyan@pbcgov.org>; Daniel L. Abbott <DAbbott@wsh-law.com>; Helene Hvizd <HHvizd@pbcgov.org>; Jamie Alan Cole <JCole@wsh-law.com>; Anne Flanigan <Aflanigan@wsh-law.com>; Edward G. Guedes <EGuedes@wsh-law.com>; David Ottey <DOttey@pbcgov.org>
Cc: Roger Gannam <rgannam@lc.org>; Jill M. Schmid <jill@lc.org>; Daniel Schmid <daniel@lc.org>
Subject: RE: Otto Litigation

CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT TO FRE 408

Dan and Helene:

Plaintiffs' settlement demand is hereby adjusted to **$2,942,193.53**. The upward adjustment includes the additional fees that the City and County required us to invest in this case, to bring them and the district court in compliance with the Eleventh Circuit's clear mandate. (A 2.0x multiplier is included in the fees).

The upward adjustment also includes an additional $60,000 in damages for Plaintiffs. For settlement purposes, your clients can think of this amount thusly:

$10,000 "stubbornness" or "we told you so" or "you made us work on the weekend" premium; and
$10,000 "you just don't get it" premium for each of the five times your clients have called our clients "conversion therapists" in the last week.

All other terms of our settlement demand remain the same, for now. Any and all additional substantive work from here out (other than work on settlement negotiations) will have to be separately accounted for and compensated. Any additional references to our clients as "conversion therapists" (whether in court filings or in county meetings or resolutions) will have to be separately atoned for and compensated.

Given the events of this week, we will likely be slightly less flexible in considering any response. We remain eager to continue the litigation—in whatever form—until the City and the County see the Light.

Regards,

Horatio G. Mihet, Esq.*
Vice President of Legal Affairs and
Chief Litigation Counsel
Liberty Counsel
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EXHIBIT

3

OBJECTION – EXCESSIVE TIME SPENT DRAFTING COMPLAINT

DATE	DESCRIPTION	HOURS	TIMEKEEPER
02/12/18	Initial drafting of Verified Complaint Further review of ordinance provisions for drafting of Complaint	3.50 1.20	MEM MEM
02/13/18	Continued drafting of Verified Complaint, with focus on Florida Constitution and statutory references	3.50	MEM
02/14/18	Initial drafting of Motion and Memorandum in Support of Preliminary Injunction Continued drafting of Verified Complaint	2.70 2.80	MEM MEM
02/19/18	Revise Complaint and Motion for Preliminary injunction	1.75*[1]	MEM
02/20/18	Further drafting and revision of Complaint	0.50	MEM
04/12/18	Review and shepardize caselaw in 11th Circuit for constitutional challenge	5.30	DJS
04/18/18	Continue review and revision of complaint	5.10	DJS
05/01/18	Review and update complaint	5.50	DJS
05/31/18	Attention to revising complaint re new allegations and issues	2.10	DJS
06/06/18	Further drafting of complaint; attention to adding new allegations re vagueness, SOCE practice, and misc other issues	5.90	DJS
06/08/18	Review, edit, proofread and finalize complaint, exhibits	2.05*	DJS
06/11/08	Revise factual section of complaint per Hamilton and Otto requests	0.90	DJS
06/12/18	Cases in complaint and PI motion, and discussion same with HGM; review HGM edits and revisions to pleadings; prepare initial pleadings for filing Review and revise Complaint	3.55* 3.30	DJS HGM
06/13/18	Prepare final versions of all pleadings and exhibits Discuss and revise same with LC team; finalize and file same	2.20 4.05*	DJS HGM
	TOTAL HOURS:	**55.9**	

[1] Asterisk refers to a block entry where Plaintiffs combined billing for drafting the Complaint with drafting the Temporary Injunction Motion. For purposes of this spreadsheet, these entries were split in half.

EXHIBIT 4

OBJECTION – EXCESSIVE TIME SPENT DRAFTING MOTION FOR PRELIMINARY INJUNCTION

DATE	DESCRIPTION	HOURS	TIMEKEEPER
2/14/18	Initial drafting of Motion and Memorandum in Support of Preliminary Injunction	2.70	MEM
02/15/18	Continued drafting of Motion and Memorandum in support of Preliminary Injunction; review local court rules related to same to ensure compliance	5.50	MEM
02/19/18	Review memorandum from Dr. Hamilton regarding background facts	1.75*[1]	MEM
04/19/18	Review and revise motion for preliminary injunction	4.40	DJS
04/20/18	Continue review and revision of motion for preliminary injunction	2.90	DJS
05/08/18	Further review of caselaw cited in motion for preliminary injunction; shepardize same; review and update memo in support of preliminary injunction	7.20	DJS
06/06/18	Continued drafting of motion for preliminary injunction	3.10	DJS
06/07/18	Final drafting of motion for preliminary injunction	3.30	DJS
06/08/18	Review, edit, proofread and finalize motion for preliminary injunction; email same to HGM for review.	2.05*	DJS
06/11/18	Revise motion for preliminary injunction re same	0.70	DJS
06/12/18	Attention to finalizing pleadings re complaint and PI motion, including attention to HGM questions regarding factual claims and cited cases review and revise Motion for Preliminary Injunction and Memorandum in Support	3.55* 3.50	DJS HGM
06/13/18	Review final version of PI memo; email correspondence to HGM re providing finalized pleadings for review Final preparation of PI memo for filing, including preparation of table of contents and table of authorities and exhibits Final review and revision of initial pleadings	3.10 1.10 4.05*	DJS DJS HGM
6/14/18	Finalize and file Motion for Preliminary Injunction; attention to service of process issues.	.60	HGM
	TOTAL HOURS:	**49.5**	

[1] Asterisk refers to a block entry where Plaintiffs combined billing for drafting the Complaint with drafting the Temporary Injunction Motion. For purposes of this spreadsheet, these entries were split in half.

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLORIDA
Tampa Division

ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, DAVID H. PICKUP, LMFT, individually and on behalf of his patients,	)	Civil Action No.:_____
Plaintiffs,	)	**INJUNCTIVE RELIEF SOUGHT**
v.	)	
CITY OF TAMPA, FLORIDA,	)	
Defendant	)	

VERIFIED COMPLAINT FOR DECLARATORY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND DAMAGES

For their VERIFIED COMPLAINT against Defendant CITY OF TAMPA, FLORIDA ("City" or "Defendant"), ROBERT L. VAZZO, LMFT ("Vazzo"), and DAVID H. PICKUP, LMFT ("Pickup") (collectively "Plaintiffs"), by and through the undersigned counsel, allege and aver as follows:

INTRODUCTION

1. Since time immemorial, the relationship between clients and their licensed mental health professionals has represented a sacred trust. In this vital relationship, mental health professionals are tasked with providing essential care to their clients and forming critical therapeutic alliances that represent the unique relationship between professional and client. This therapeutic alliance is designed to facilitate the foundational principle of all mental health counseling: the client's fundamental right to self-determination. Throughout the history of this learned profession, clients have provided mental health professionals with their goals, desires, and objectives that conform to their sincerely held desires and concept of self, and mental health

professionals have provided counseling that aligns with the clients' right to self-determination. That unique relationship has, until now, been protected, revered, and respected as sacrosanct and inviolable. Now, the City of Tampa has seen fit to storm the office doors of mental health professionals, thrust itself into the therapeutic alliance, violate the sacred trust between client and counselor, and run roughshod over the fundamental right of client self-determination and the counselor's cherished First Amendment liberties. The City's purported justification for such unconscionable actions: it does not like the goals, objectives, or desires of certain clients when it comes to one type of counseling. The First Amendment demands more, and the City's actions have caused, are causing, and will continue to cause irreparable injury to Plaintiffs' fundamental and cherished liberties.

2. Plaintiffs bring this civil action to challenge the constitutionality of Tampa City Ordinance 2017-47, "An Ordinance Of The City Of Tampa, Florida, Relating To Conversion Therapy On Patients Who Are Minors," ("Ordinance" or "Ordinance 2017-47") and to prevent the Ordinance from violating their respective federal and state constitutional guarantees of Freedom of Speech, Free Exercise of Religion, and the corresponding rights of their minor patients. This law came into full effect immediately upon being approved by Mayor Bob Buckhorn on April 10, 2017, and thus time is of the essence to obtain judicial relief because Plaintiffs and their clients have suffered, are currently suffering, and will continue to suffer immediate and irreparable injury to their most cherished constitutional liberties.

3. Plaintiffs engage in licensed, ethical, and professional counseling that honors their clients' autonomy and right to self-determination, that permits clients to prioritize their religious and moral values above unwanted same-sex sexual attractions, behaviors, or identities, and that enables clients to align their values with a licensed counselor who can address these values.

Plaintiffs have First Amendment and state constitutional rights as licensed counselors to engage in and provide counseling consistent with their and their clients' sincerely held religious beliefs, and their clients have First Amendment and state constitutional rights to receive such counseling free from the viewpoint-based intrusion of the City into the sacrosanct therapeutic alliance.

4. By preventing minors from seeking counseling to address the conflict about or questions concerning their unwanted same-sex sexual attractions, behaviors, and identities and from seeking to reduce or eliminate their unwanted same-sex sexual attractions, behaviors, or identities through counseling, such as sexual orientation change efforts ("SOCE counseling"), the Ordinance denies or severely impairs Plaintiffs' clients and all minors their right to self-determination, their right to prioritize their religious and moral values, and their right to receive effective counseling consistent with those values.

5. By denying Plaintiffs' clients and all minors access to counseling from licensed counselors that can help minors who desire to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, the Ordinance infringes on the fundamental rights of Plaintiffs' clients, and the rights of the parents of Plaintiffs' clients to direct the upbringing and education of their children, which includes the right to meet each child's individual counseling, developmental, and spiritual needs.

6. By prohibiting them from engaging in any efforts that seek to eliminate or reduce unwanted same-sex attractions, behaviors, or identity, even when the client, the parents, and the licensed mental health professional all consent to such counseling, the Ordinance also violates the Plaintiffs' constitutional rights.

7. Despite the value and benefit that Plaintiffs have provided by offering SOCE counseling, the Ordinance prohibits SOCE counseling to minors by licensed professionals, which is causing immediate and irreparable harm to Plaintiffs and Plaintiffs' clients.

8. The Ordinance harms licensed counselors and their clients by prohibiting minors and their parents from obtaining the counseling services they choose, after receiving full disclosure and providing informed consent, to resolve, reduce, or eliminate unwanted same-sex sexual attractions, behaviors, or identity and harms counselors by placing them in a Catch-22 in which they will be forced to choose between violating ethical codes by complying with the Ordinance or violating the law by failing to comply with the Ordinance.

9. By denying minors the opportunity to pursue a particular course of action that can most effectively help them address the conflicts between their sincerely held religious beliefs and goals to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity, the Ordinance is causing those minors confusion and anxiety over same-sex sexual attractions, behaviors, and identity, and it is infringing on their free speech and religious liberty rights.

10. Plaintiffs seek preliminary and permanent injunctive relief against the City, its agents, servants, departments, divisions, employees, and those acting in concert and with actual notice, enjoining the enforcement of the Ordinance because it violates: (1) the rights of Plaintiffs and their clients to freedom of speech and free exercise of religion, guaranteed by the First and Fourteenth Amendments to the United States Constitution, (2) the rights of Plaintiffs to liberty of speech and free exercise and enjoyment of religion, guaranteed by Article I, §§3, 4 of the Florida Constitution, and (3) the Florida Patient's Bill of Rights and Responsibilities, Fla. Stat. Ann. § 381.026.

11. Plaintiffs also seek preliminary and permanent injunctive relief enjoining the City from enforcing the Ordinance because the Ordinance is void *ab initio* as an *ultra vires* act in excess of the City's authority under Article VIII, Section 2(b) of the Florida Constitution.

12. Plaintiffs also pray for declaratory relief from this Court declaring that the Ordinance, both on its face and as-applied, is an unconstitutional violation of the First and Fourteenth Amendments to the United States Constitution and is void *ab initio* as an *ultra vires* act in excess of the City's authority under Article VIII, Section 2(b) of the Florida Constitution.

13. An actual controversy exists between the parties involving substantial constitutional issues, in that the Ordinance, both facially and as-applied by the City, violates Plaintiffs and their clients' rights to free speech and free exercise under the First Amendment.

PARTIES

14. Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio.

15. Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California and Texas, and is currently undergoing the necessary requirements to obtain his license in Florida.

16. Defendant, City of Tampa, is a municipal corporation and political subdivision of the State of Florida, with authority to sue and be sued.

JURISDICTION AND VENUE

17. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. This action also arises under Article I, §§ 3, 4 of the Florida Constitution.

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

19. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the City is situated in this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

20. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201-02, implemented through Rule 57 of the Federal Rules of Civil Procedure, and is authorized to grant injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

21. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. ORDINANCE 2017-46

22. On April 6, 2017, the City Council enacted Ordinance 2017-47. A copy of the Ordinance is attached hereto as EXHIBIT A and incorporated herein.

23. On April 10, 2017, Mayor Bob Buckhorn signed and approved the Ordinance.

24. The Ordinance immediately went into effect upon its adoption and approval. (*See* Exhibit A at 7, § 11) ("this Ordinance shall take effect immediately upon its adoption").

25. Section 5 of the Ordinance states that "[i]t shall be unlawful for any Provider to practice conversion therapy efforts on any individual who is a minor regardless of whether the Provider receives monetary compensation in exchange for such services." (Ex. A at 6, § 5).

26. Section 4 of the Ordinance defines "conversion therapy efforts" ("SOCE counseling") as:

> any counseling, practice, or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

(Ex. A at 5, § 4(a)).

27. Section 4 of the Ordinance defines "Provider" as:

> any person who is licensed by the State of Florida to provide professional counseling, or who performs counseling as part of his or her professional training . . . including but not limited to medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors.

(Ex. A at 6, § 4(c)).

28. The Ordinance states that all purported violations of this Ordinance constitute a separate offense, that the fine for the first offense is $1,000.00 and for each and every subsequent violation the fine is $2,000.00.

B. RESEARCH ON SOCE COUNSELING

29. The Ordinance cites the Report of the 2009 American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Report") for the proposition that SOCE counseling is harmful. (Ex. A at 1).

30. The City intentionally misrepresents the findings of the APA Report and ignores the substantial limitations the APA Report noted extensively throughout its findings. A copy of the APA Report is attached hereto as EXHIBIT B and incorporated herein.

31. Despite the City's claims that SOCE counseling was found to be harmful to minors, the APA Report specifically noted that "sexual orientation issues in children are **virtually unexamined**." (Ex. B at 91) (emphasis added).

32. The APA Report stated that "[t]here is a lack of published research on SOCE among children." (*Id.* at 72).

33. The APA Report also noted that it could make no conclusions about SOCE counseling for those adolescents who request such counseling. (*Id.* at 73) ("We found no empirical research on adolescents who request SOCE."); (*id.* at 76) (noting that its conclusions are not based on specific studies from individuals, including minors, who request SOCE counseling and stating that its conclusions were thus necessarily limited).

34. The APA Report also concluded that "there is a dearth of scientifically sound research on the safety of SOCE. **Early and recent research studies provide no clear indication of the prevalence of harmful outcomes**." (*Id.* at 42) (emphasis added).

35. But, from the research the APA Report examined, it found evidence of benefits achieved from SOCE counseling, while noting that there was "some" evidence of certain harm for others. (*Id.* at 91).

36. Because it noted that there was evidence of benefits for some, the APA Report concluded that "it is still unclear which techniques or methods may or may not be harmful." (*Id.*).

37. The APA Report also specifically noted that "for some, sexual orientation identity [is] fluid or has an indefinite outcome." (*Id.* at 2).

38. In fact, the APA Report found among its studies that "[s]ome individuals report that they went on to lead outwardly heterosexual lives, developing a sexual relationship with an other-sex partner, and adopting a heterosexual identity." (*Id.* at 3).

39. The APA Report therefore does not support the City's purported premise for adopting the Ordinance.

40. Dr. Nicolas Cummings, former president of the American Psychological Association, has also noted that SOCE counseling can provide enormous benefits. A copy of Dr. Cummings article discussing SOCE counseling is attached hereto as EXHIBIT C and incorporated herein.

41. Dr. Cummings noted that the City's premise for adopting the Ordinance is damaging and incorrect. (*See* Ex. C. at 1) ("The sweeping allegation that [SOCE counseling] must be a fraud because homosexual orientation can't be changed is damaging.").

42. Dr. Cummings personally counseled countless individuals in his years of mental health practice, and he reported that hundreds of those individuals seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity were successful. (*Id.*) ("Of the patients I oversaw who sought to change their orientation, **hundreds were successful**." (emphasis added)).

43. Dr. Cummings said that the assertion that same-sex sexual attractions, behaviors, or identity is one identical inherited characteristic is unsupported by scientific evidence and that "**contending that all same-sex attraction is immutable is a distortion of reality**." (*Id.* at 2) (emphasis added).

44. Dr. Cummings went on to criticize efforts to prohibit SOCE counseling as violative of the client's right to self-determination and therapeutic choice. (*Id.*) ("Attempting to characterize all sexual reorientation therapy as unethical violates patient choice and gives an outside party a veto over patients' goals for their own treatment.").

45. Dr. Cummings concluded that "[a] political agenda shouldn't prevent gays and lesbians who desire to change from making their own decisions." (*Id.*).

46. Dr. Cummings concluded by condemning political efforts to prohibit SOCE counseling as harmful to clients and counselors. (*Id.*) ("Whatever the situation at an individual clinic, accusing professionals from across the country who provide treatment to fully informed persons seeking to change their sexual orientation of perpetrating a fraud **serves only to stigmatize the professional and shame the patient**." (emphasis added)).

47. The American College of Pediatricians has noted that the political position statements of numerous mental health organizations, including many relied upon by the City here, have "no firm basis" in evidentiary support. A copy of the American College of Pediatricians statement on SOCE counseling is attached hereto as EXHIBIT D and incorporated herein.

48. The American College of Pediatricians noted that, "[t]he scientific literature, however, is clear: **Same-sex attractions are more fluid than fixed, especially for adolescents—many of whom can and do change**." (Ex. D) (emphasis added).

49. The American College of Pediatricians also noted that "there is a body of literature demonstrating a variety of positive outcomes from SOCE." (*Id.*).

50. Like Dr. Cummings, the American College of Pediatricians concluded that SOCE counseling is beneficial and that laws, such as the Ordinance here, that prohibits such counseling serve only to impose harm on minors who seek it. (*Id.*) ("Banning change therapy or SOCE will threaten the health and well-being of children wanting therapy.").

C. CURRENT ETHICAL OBLIGATIONS PROTECTING MINOR CLIENTS IN MENTAL HEALTH COUNSELING.

51. The Ordinance falsely asserts that there no other effective means, including state statutes, to protect minors from the purported harms of SOCE counseling. (Ex. A at 4).

52. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from engaging in false, deceptive, or misleading advertisements relating to their practice of marriage and family therapy. Fla. Stat. Ann. § 491.009(1)(d).

53. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited from "[m]aking misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified" by Florida's Marriage and Family Therapy Board. Fla. Stat. Ann. § 491.009(1)(l).

54. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from engaging in any practice that is harmful to clients or patients, such as "[f]ailing to meet minimum standards of performance in professional activities when measured against generally prevailing peer performance." Fla. Stat. Ann. 491.009(1)(r).

55. Licensed marriage and family therapists, such as Vazzo and Pickup, are already prohibited by law from violating other ethical regulations governing the practice of marriage and family therapy. Fla. Stat. Ann. § 491.001(1)(t).

56. Failure of licensed marriage and family therapists, such as Vazzo and Pickup, to abide by the legal requirements imposed upon them by Florida law or other ethical regulations subjects them to significant fines, suspension of licensing, and permanent revocation of licensing depending on the nature and extent of the violation. Fla. Admin. Code § 64B4-5.001.

57. Other ethical regulations imposed upon marriage and family therapists, such as the American Association of Marriage and Family Therapists Code of Ethics ("AAMFT Code"), prohibit licensed marriage and family therapists from engaging in practices that harm clients or patients, and also prohibit them from refusing to recognize their clients' right to self-determination and informed consent.

58. Standard 1 of the AAMFT Code requires that licensed marriage and family therapists, such as Vazzo and Pickup, "advance the welfare of families and individuals and make reasonable efforts to find the appropriate balance between conflicting goals."

59. Standard 1.1 of the AAMFT Code prohibits licensed marriage and family therapists, such as Vazzo and Pickup, from discriminating against clients based on their sexual orientation or gender identity.

60. Standard 1.2 of the AAMFT Code mandates that licensed marriage and family therapists, such as Vazzo and Pickup, obtain "appropriate informed consent to therapy or related procedures" and that they inform the clients regarding all information necessary for the client to make such a decision.

61. Standard 1.8 of the AAMFT Code requires licensed marriage and family therapists, such as Vazzo and Pickup, to "respect the rights of clients to make decisions and help them understand the consequences of these decisions."

62. Standard 1.9 of the AAMFT Code prohibits licensed marriage and family therapists, such as Vazzo and Pickup, from continuing any therapeutic relationship if it becomes reasonably clear that the clients are not benefitting from the relationship.

63. Thus, under existing Florida law regulating licensed mental health counselors and the other ethical obligations imposed upon such counselors, the City's stated rationale for adopting the Ordinance is demonstrably fallacious and unsupported by any government interest.

D. PLAINTIFF ROBERT L. VAZZO, LMFT

64. Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio. Vazzo is also a Licensed Professional Counselor in California.

65. Vazzo received his Master of Marriage and Family Therapy from the University of Southern California in 2004. He is a member of the American Association of Marriage & Family Therapists, the California Association of Marriage and Family Therapists, the Alliance for Therapeutic Choice, and the National Task Force for Therapeutic Equality.

66. In his current practice, Vazzo specializes in SOCE counseling, including the areas of unwanted same-sex attractions, pedophilia, hebephilia, ephebophilia, and transvestic fetishism. His practice includes approximately 17-25 clients each week and ten percent of those clients are minors seeking SOCE counseling.

67. Prior to engaging in SOCE counseling with any client, Vazzo provides them with an extensive informed consent form and requires them to review and sign it prior to commencing SOCE counseling. This informed consent form outlines the nature of SOCE counseling, explains the controversial nature of SOCE counseling, including the fact that some therapists do not believe sexual orientation can or should be changed, and informs the client of the potential benefits and risks associated with SOCE counseling.

68. Many of Vazzo's clients who desire SOCE counseling profess to be Christians with a sincerely held religious belief that homosexuality is harmful and destructive and therefore seek SOCE counseling in order to live a lifestyle that is in congruence with their faith and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs.

69. Vazzo has never received any complaint or report of harm from any of his clients seeking and receiving SOCE counseling, including the many minors that he has counseled. In fact, all of Vazzo's clients who have engaged in SOCE counseling for at least one year have experienced some degree of positive change with respect to their unwanted same-sex attractions, behaviors, or identity.

70. Vazzo does not coerce his clients into engaging in SOCE counseling, but respects the clients' right of self-determination and treats each client with unconditional positive respect regardless of the client's concept of self or feelings of unwanted same-sex attractions, behaviors, or identity.

71. Vazzo has had many clients who decided that their same-sex attractions were not unwanted. Even though they knew his personal views about the effectiveness of SOCE counseling for unwanted same-sex attractions, behaviors, or identity, they chose to remain in counseling with him because of the fact that his counseling has helped them in dealing with other issues and has been an extremely positive experience and helpful for their concept of self.

72. Vazzo has had numerous clients in Florida, provides counseling to clients in Florida, and constantly receives inquiries from all over the State concerning SOCE counseling.

73. Vazzo has been contacted by individuals in the City who desire to discuss and engage in SOCE counseling with Vazzo.

74. Vazzo currently has a minor client who is fifteen years old and desires SOCE counseling from Vazzo in the City. Vazzo's client desires to receive SOCE counseling from a licensed professional counselor with expertise in this particular area.

75. Vazzo's client struggles with unwanted same-sex attractions, behaviors, and identity and desires to engage in SOCE counseling with Vazzo to assist is helping to reduce or eliminate those unwanted same-sex attractions, behaviors, and identity.

76. Vazzo is prohibited from engaging SOCE counseling with his minor client because of the Ordinance, and his client is currently prohibited from receiving such counseling from a licensed professional.

E. PLAINTIFF DAVID H. PICKUP, LMFT

77. Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to provide mental health counseling in California and Texas. Pickup is also currently seeking licensure in Florida and is currently engaged in the process required for licensure as a marriage and family therapist in Florida.

78. Pickup has a Master of Arts degree in Counseling Psychology. He is a member of the National Association of Research and Therapy of Homosexuality ("NARTH"), where he served as the Chairman of the NARTH Clients Rights Committee; a member of the California Association of Marriage and Family Therapists; an associate member of the American Psychological Association; the Co-founder of the National Task Force for Therapy Equality; and a member of the American Association of Christian Counselors.

79. In his professional practice, Pickup specializes in providing heterosexual minors and adults with authentic Reparative Therapy, which includes the psychological industry standards of Psychodynamic, Cognitive-Behavioral and EMDR methods to help them reduce or eliminate unwanted same-sex attractions, behaviors, or identity due to emotional and/or sexual abuse during childhood and beyond. The specific therapy that Pickup specializes in would fall under the category of SOCE counseling prohibited by the Ordinance.

80. Pickup has particular expertise and experience in the area of SOCE counseling and received and benefitted from counseling that would fall under the City's definition of SOCE counseling.

81. Pickup's practice arises from personal experience and success with reparative therapy for unwanted same-sex attractions, behavior, or identity. When he was 5 years old, he was sexually molested by a 16-year-old high school boy. As a child, he also suffered severe emotional

abuse at the hands of other children. When he reached puberty and for many years after it, he was sexually attracted to men. For all of those years, he carried a feeling of immense and crushing shame for his same-sex attractions.

82. For 20 years following puberty, Pickup became clinically depressed twice, dealt with tremendous anxiety, experienced obsessive compulsive disorder, and knew that he was very confused about his sexual orientation and gender identity. In the latter years of that 20-year period, Pickup found a course of counseling that was tremendously helpful to his mental health issues. Pickup engaged in authentic Reparative Therapy with the late Dr. Joseph Nicolosi, which is a form of counseling that would be considered SOCE counseling under the City's Ordinance.

83. Pickup participated in Dr. Nicolosi's counseling for many years and credits it with saving his life. This counseling, a form of SOCE counseling, helped him get rid of the shame that he had for experiencing same-sex attractions and led to the dissipation of his same-sex attraction. Dr. Nicolosi's counseling helped Pickup solidify his gender identity, which resulted in a profound increase in his self-confidence as a man and in his self-esteem.

84. Dr. Nicolosi's counseling allowed Pickup to understand the nature and source of his same-sex attractions and allowed him to do the deep emotional work that he needed to do to understand those unwanted feelings. As part of the counseling, Pickup learned the importance of healthy male relationships and his sexual attractions to women increased.

85. Pickup saw a real and profound change in his sexuality that resulted from Dr. Nicolosi's counseling, and he pursued training to offer others the chance to achieve the profound and live-saving assistance he found in such counseling.

86. Many of Pickup's clients who desire SOCE counseling profess to be Christians with a sincerely held religious belief that homosexuality is harmful and destructive. They seek

SOCE counseling in order to live a lifestyle that is in congruence with their faith, and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs.

F. IRREPARABLE HARM TO VAZZO, PICKUP AND THEIR CLIENTS.

87. Vazzo and Pickup have incurred monetary expense to lease office space in the City to offer and provide SOCE counseling to clients in the City, including minors.

88. Consistent with his First Amendment rights, Vazzo desires to advertise his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to advertise his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

89. Consistent with his First Amendment rights, Vazzo desires to offer his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to offer his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

90. Consistent with his First Amendment rights, Vazzo desires to provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. When he finishes his licensing requirements, Pickup desires to provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors.

91. Consistent with their First Amendment rights, Vazzo and Pickup would like to be able to inform religious leaders, organizations, and ministries that there is help from licensed mental health professionals with expertise in this area and that it is available to individuals desiring assistance in the area of unwanted same-sex attractions, behaviors, and identity.

92. Both Vazzo and Pickup have received inquiries from various potential clients in the City, including minors, who desire to receive SOCE counseling.

93. Because of the Ordinance, Vazzo and Pickup are prohibited from advertising SOCE counseling to clients and potential clients, including minors, in the City.

94. Because of the Ordinance, Vazzo and Pickup are prohibited from offering SOCE counseling to clients and potential clients, including minors, in the City.

95. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in SOCE counseling with clients and potential clients, including minors, in the City.

96. Because of the Ordinance, Vazzo and Pickup have been unable to take advantage of the office space they lease in the City.

97. Because of the Ordinance, Vazzo and Pickup are restricted from engaging in constitutionally protected speech, including advertising their SOCE counseling to clients and potential clients in the City.

98. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including offering their SOCE counseling to clients and potential clients in the City.

99. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including providing their SOCE counseling to clients and potential clients in the City.

100. Because of the Ordinance, Vazzo and Pickup have been chilled in their constitutionally protected expression.

101. Because of the Ordinance, Vazzo and Pickup are prohibited from engaging in constitutionally protected speech, including providing their SOCE counseling to clients and potential clients in the City in violation of their clients and potential clients' First Amendment right to receive information.

102. Because of the Ordinance, Vazzo and Pickup have been and will be forced to deny SOCE counseling to their clients and potential clients in violation of their and their clients' sincerely held religious beliefs.

103. Because of the Ordinance, Vazzo and Pickup have been and will be forced to deny SOCE counseling to their clients and potential clients in violation of the clients' fundamental rights to self-determination.

104. Because of the Ordinance, Vazzo is currently prohibited from providing SOCE counseling to his minor client, who is fifteen years old and desires to obtain SOCE counseling from a licensed professional with knowledge and expertise in this area.

105. Because of the Ordinance, Vazzo and Pickup have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to freedom of speech.

106. Because of the Ordinance, Vazzo and Pickup have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to free exercise of religion.

107. Because of the Ordinance, Vazzo and Pickup's clients have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to receive information.

108. Because of the Ordinance, Vazzo's current minor client, who if fifteen years old, is currently prohibited from receiving the SOCE counseling that the client desires to obtain from a licensed professional with expertise in this area.

109. Vazzo's minor client has thus suffered, is suffering, and will continue to suffer ongoing, immediate, and irreparable injury to the client's cherished First Amendment rights to receive information.

110. Because of the Ordinance, Vazzo and Pickup's clients have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their cherished First Amendment rights to free exercise of religion.

111. Vazzo, Pickup, and their clients and potential clients have no adequate remedy at law to protect the ongoing, immediate, and irreparable injury to their cherished First Amendment liberties.

COUNT I – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT.

112. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

113. The Free Speech Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendant from abridging Plaintiffs' freedom of speech.

114. Ordinance 2017-47, on its face and as applied, is an unconstitutional prior restraint on Plaintiffs' speech.

115. Ordinance 2017-47, on its face and as applied, unconstitutionally discriminates on the basis of viewpoint.

116. Ordinance 2017-47, on its face and as applied, authorizes only one viewpoint on SOCE counseling and unwanted same-sex sexual attractions, behaviors, and identity by forcing Plaintiffs to present only one viewpoint on the otherwise permissible subject matter of same-sex attractions, behaviors, or identity. The Ordinance also forces Plaintiffs' clients and their parents to receive only one viewpoint on this otherwise permissible subject matter.

117. Ordinance 2017-47, on its face and as applied, discriminates against Plaintiffs' speech on the basis of the content of the message they offer and that Plaintiffs' clients seek to receive.

118. Defendant lacks a compelling, legitimate, significant, or even rational governmental interest to justify Ordinance 2017-47's infringement of the right to free speech.

119. Ordinance 2017-47, on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose sought to be served by the law.

120. Informed consent provisions outlining the required disclosure prior to engaging in SOCE counseling with a minor would have been far less restrictive of Plaintiff's speech, and mental health counseling organizations have written letters in the past with similar legislation urging that the legislature adopt informed consent provisions. A copy of the California mental health organizations letter to the California legislature concerning legislation virtually identical to Ordinance 2017-47 is attached as EXHIBIT E and incorporated herein.

121. Ordinance 2017-47 does not leave open ample alternative channels of communication for Plaintiffs.

122. Ordinance 2017-47, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected speech.

123. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs to freely communicate information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

124. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs' clients to freely receive information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

125. Ordinance 2017-47's prohibition on licensed mental health counselors offering SOCE counseling that could change, reduce, or otherwise address a minor client's unwanted same-sex attractions, behaviors, or identity, which would include a referral to someone who offers SOCE counseling, on its face and as applied, abridges Plaintiffs' right to offer and Plaintiffs' clients right to receive information.

126. Ordinance 2017-47 vests unbridled discretion in government officials, including Defendant, to apply or not apply the Ordinance in a manner to restrict free speech, and subjects Plaintiffs to ethical code violations.

127. Ordinance 2017-47, on its face and as applied, is impermissibly vague as it requires licensed professionals subject to its dictates and government officials tasked with enforcing it to guess at its meaning and differ as to its application.

128. Ordinance 2017-47, on its face and as applied, is under-inclusive by limiting the prohibition on using SOCE counseling to minors.

129. Ordinance 2017-47, on its face and as applied, is unconstitutionally overbroad as it chills and abridges the free speech rights of all licensed mental health providers in the City of Tampa who use counseling techniques to provide assistance to a minor seeking to reduce or eliminate his or her unwanted same-sex attractions, behaviors, or identity and does not leave open alternative methods of communication.

130. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' rights of free speech has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

131. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT II – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' CLIENTS' FIRST AMENDMENT RIGHT TO RECEIVE INFORMATION

132. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

133. The First Amendment, as applied to the states by the Fourteenth Amendment, protects an individual's freedom of speech, and the corollary to that right, the right to receive information.

134. To withstand constitutional scrutiny, restrictions on the fundamental right of Plaintiffs' clients to receive information must be supported by a compelling government interest and must be narrowly tailored to meet that end.

135. Plaintiffs' clients have sincerely held religious beliefs that shape their desire to receive SOCE counseling and the information that Plaintiffs can provide on reducing or eliminating unwanted same-sex attractions, behaviors, and identity.

136. Ordinance 2017-47 prevents Plaintiffs' clients from receiving SOCE counseling and deprives them of the opportunity to even obtain the information about SOCE counseling from a licensed mental health professional in the City.

137. Ordinance 2017-47 is not supported by a compelling government interest.

138. Even if Ordinance 2017-47 were supported by a compelling government interest, it is not narrowly tailored to achieve that purpose and therefore violates the fundamental rights of Plaintiffs' clients to receive information.

139. Ordinance 2017-47's violation of the fundamental rights of Plaintiffs' clients has caused, is causing, and will continue to cause undue and actual hardship and irreparably injury.

140. Plaintiffs' clients have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT III – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHT TO FREE EXERCISE OF RELIGION

141. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

142. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendant from abridging Plaintiffs' right to free exercise of religion.

143. Many of Plaintiffs' clients have sincerely held religious beliefs that same-sex sexual attractions, behaviors, or identity are wrong, and they seek to resolve these conflicts between their religious beliefs and their attractions in favor of their religious beliefs.

144. Plaintiffs also have sincerely held religious beliefs to provide spiritual counsel and assistance to their clients who seek such counsel. Plaintiffs hold sincerely held religious beliefs that they should counsel clients on the subject matter of same-sex attractions, behaviors, or identity from a religious viewpoint that aligns with their religious beliefs and those of their clients.

145. Ordinance 2017-47, on its face and as applied, targets Plaintiffs' and their clients' beliefs regarding human nature, gender, ethics, morality, and SOCE counseling, which are informed by the Bible and constitute central components of their sincerely held religious beliefs. Ordinance 2017-47 causes them a direct and immediate conflict with their religious beliefs by prohibiting them from offering, referring, and receiving counseling that is consistent with their religious beliefs.

146. Ordinance 2017-47, on its face and as applied, has impermissibly burdened Plaintiffs' and their clients' sincerely held religious beliefs and compels them to both change those religious beliefs and to act in contradiction to them.

147. Ordinance 2017-47, on its face and as applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily targets the religious speech, beliefs, and viewpoint of those individuals who believe change is possible, and thus expressly on its face and as applied constitutes a substantial burden on sincerely held religious beliefs that are contrary to the City-approved viewpoint on same-sex attractions, behavior, or identity.

148. The City's alleged interest in protecting minors from the so-called harm of SOCE counseling is unsubstantiated and does not constitute a compelling government interest.

149. No compelling government interest justifies the burdens Defendant imposes upon Plaintiffs and their clients' rights to the free exercise of religion.

150. Even if Ordinance 2017-47's provisions were supported by a compelling government interest, they are not the least restrictive means to accomplish any permissible government purpose which Ordinance 2017-47 seeks to serve.

151. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' and their clients' rights to free exercise of religion has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

152. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT IV – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHTS TO LIBERTY OF SPEECH UNDER ARTICLE 1, SECTION 4 OF THE FLORIDA CONSTITUTION

153. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

154. Article I, §4 of the Constitution of the State of Florida states, "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

155. Ordinance 2017-47, on its face and as applied, is an unconstitutional prior restraint on Plaintiffs' speech.

156. Ordinance 2017-47, on its face and as applied, unconstitutionally discriminates on the basis of viewpoint.

157. Ordinance 2017-47, on its face and as applied, authorizes only one viewpoint on SOCE counseling and unwanted same-sex sexual attractions, behaviors, and identity by forcing Plaintiffs to present only one viewpoint on the otherwise permissible subject matter of same-sex attractions, behaviors, or identity.The Ordinance also forces Plaintiffs' clients to receive only one viewpoint on this otherwise permissible subject matter.

158. Ordinance 2017-47, on its face and as applied, discriminates against Plaintiffs' speech on the basis of the content of the message they offer or that Plaintiffs' clients seek to receive.

159. Defendant lacks a compelling, legitimate, significant, or even rational governmental interest to justify Ordinance 2017-47's infringement of the right to free speech.

160. Ordinance 2017-47, on its face and as applied, is not the least restrictive means to accomplish any permissible government purpose sought to be served by the law.

161. Informed consent provisions outlining the required disclosure prior to engaging in SOCE counseling with a minor would have been far less restrictive of Plaintiff's speech, and

mental health counseling organizations have written letters in the past with similar legislation urging that the legislature adopt informed consent provisions. (*See* Ex. E).

162. Ordinance 2017-47 does not leave open ample alternative channels of communication for Plaintiffs.

163. Ordinance 2017-47, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected speech.

164. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs to freely communicate information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

165. Ordinance 2017-47, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiffs' clients to freely receive information pertaining to unwanted same-sex sexual attractions, behaviors, or identity.

166. Ordinance 2017-47's prohibition on licensed mental health counselors offering SOCE counseling that could change, reduce, or otherwise address a minor client's unwanted same-sex attractions, behaviors, or identity, which would include a referral to someone who offers SOCE counseling, on its face and as applied, abridges Plaintiffs' right to offer and Plaintiffs' clients' right to receive information.

167. Ordinance 2017-47 vests unbridled discretion in government officials, including Defendant, to apply or not apply the Ordinance in a manner to restrict free speech, and subjects Plaintiffs to ethical code violations.

168. Ordinance 2017-47, on its face and as applied, is impermissibly vague as it requires licensed professionals subject to its dictates and government officials tasked with enforcing it to guess at its meaning and differ as to its application.

169. Ordinance 2017-47, on its face and as applied, is under-inclusive by limiting the prohibition on using SOCE counseling to minors.

170. Ordinance 2017-47, on its face and as applied, is unconstitutionally overbroad as it chills and abridges the free speech rights of all licensed mental health providers in the City of Tampa who use counseling techniques that have the potential help a minor reduce or eliminate his or her unwanted same-sex attractions, behaviors, or identity and does not leave open alternative methods of communication.

171. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' rights of free speech has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

172. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT V – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHT TO FREE EXERCISE AND ENJOYMENT OF RELIGION UNDER ARTICLE I, SECTION 3 OF THE FLORIDA CONSTITUTION

173. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

174. Article I, § 3 of the Florida Constitution states, "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."

175. Many of Plaintiffs' clients have sincerely held religious beliefs that same-sex sexual attractions, behaviors, or identity are wrong, and they seek to resolve these conflicts between their religious beliefs and their attractions in favor of their religious beliefs.

176. Plaintiffs also have sincerely held religious beliefs to provide spiritual counsel and assistance to their clients who seek such counsel. Plaintiffs hold sincerely held religious beliefs that they should counsel clients on the subject matter of same-sex attractions, behaviors, or identity from a religious viewpoint that aligns with their religious beliefs and those of their clients.

177. Ordinance 2017-47, on its face and as applied, targets Plaintiffs and their clients' beliefs regarding human nature, gender, ethics, morality, and SOCE counseling, which are informed by the Bible and constitute central components of their sincerely held religious beliefs. Ordinance 2017-47 will cause them a direct and immediate conflict with their religious beliefs by prohibiting them from offering, referring, and receiving counseling that is consistent with their religious beliefs.

178. Ordinance 2017-47, on its face and as applied, has impermissibly burdened Plaintiffs' and their clients' sincerely held religious beliefs and compels them to both change those religious beliefs and to act in contradiction to them.

179. Ordinance 2017-47, on its face and as-applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily targets the religious speech, beliefs, and viewpoint of those individuals who believe change is possible. The Ordinance,expressly on its face and as applied, constitutes a substantial burden on sincerely held religious beliefs that are contrary to the City-approved viewpoint on same-sex attractions, behavior, or identity.

180. The City's alleged interest in protecting minors from the so-called harm of SOCE counseling is unsubstantiated and does not constitute a compelling government interest.

181. No compelling government interest justifies the burdens Defendant imposes upon Plaintiffs' and their clients' rights to the free exercise of religion.

182. Even if Ordinance 2017-47's provisions were supported by a compelling government interest, they are not the least restrictive means to accomplish any permissible government purpose which Ordinance 2017-47 seeks to serve.

183. On its face and as applied, Ordinance 2017-47's violation of Plaintiffs' and their clients' rights to free exercise of religion has caused, is causing, and will continue to cause Plaintiffs and their clients to suffer undue and actual hardship and irreparable injury.

184. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT VI – THE CITY HAD NO AUTHORITY TO ENACT ORDINANCE 2017-47 AND ITS ADOPTION IS THUS *ULTRA VIRES* UNDER ARTICLE VIII, SECTION 2(B) OF THE FLORIDA CONSTITUTION

185. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

186. Article VIII, §2(b) of the Florida Constitution provides that "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."

187. Fla. Stat. Ann. § 166.021(1) provides: "municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."

188. Fla. Stat. Ann. § 166.021(2) defines "municipal purpose" as "any activity or power which may be exercised by the state or its political subdivisions."

189. Fla. Stat. Ann. § 166.021(3)(c) states that the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except "[a]ny subject expressly preempted to state or county government by the constitution or by general law."

190. As a municipality in the State of Florida, the City is limited to enacting ordinances for "municipal purposes" as provided in Fla. Stat. Ann. § 166.021(2), but only to the extent that said purposes do not seek to impose regulations on any subject that has been preempted by the State of Florida.

191. The Legislature of the State of Florida has pre-empted the field of regulation of mental health professionals, through enactment of Florida Statutes, Title XXXII, Chapter 491.

192. More particularly, the Legislature of the State of Florida has pre-empted the field of disciplinary actions for licensed mental health professionals in Fla. Stat. Ann. § §491.009 and the regulations promulgated thereunder, Fla. Admin. Code Ann. r. 64B-5001.

193. Fla. Admin. Code Ann. r. 64B-5001 sets forth procedures for determining whether a licensed mental health professional in the State of Florida has engaged in conduct that is subject to discipline, and establishes schedules of fees and penalties for said conduct.

194. The Legislature of the State of Florida has not prohibited the use of so-called "conversion therapy" or SOCE counseling or otherwise included the use of such counseling in the list of conduct that can subject a licensed mental health professional to disciplinary action under Fla. Stat. Ann. §491.009 or Fla. Admin. Code Ann. r. 64B-5001.

195. In fact, in its capacity as the sole regulator of mental health professionals in the State of Florida, the Legislature has specifically declined to adopt such restrictions on SOCE counseling. Indeed, H.B. 137, 2016 Leg. (Fla. 2016) and S.B. 258 2016 Leg. (Fla. 2016), which

were both proposals to prohibit SOCE counseling, were defeated in committee and thus not adopted by the sole regulator of mental health professionals in Florida.

196. Ordinance 2017-47 prohibits licensed mental health professionals from practicing a type of mental health counseling that is not prohibited by the state and that the state specifically chose not prohibit when it had the opportunity.

197. The City had no authority to adopt any ordinance or provision that exceeded state law in a preempted field, and its action is void *ab initio* as an *ultra vires* act in violation of the Constitution of the State of Florida.

198. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

COUNT VII – ORDINANCE 2017-47 VIOLATES PLAINTIFFS' RIGHTS UNDER THE FLORIDA PATIENT'S BILL OF RIGHTS AND RESPONSIBILITIES

199. Plaintiffs hereby reiterate and adopt each and every allegation in paragraphs 1-111.

200. Plaintiffs' clients have the "right to impartial access to medical treatment or accommodations, regardless of . . . religion." Fla. Stat. Ann. § 381.026(4)(d)(1).

201. Plaintiffs' clients have the "right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of § 456.41." Fla. Stat. Ann. § 381.026(4)(d)(3).

202. Plaintiffs Vazzo and Pickup are "health care practitioners" under the Florida Patient's Bill of Rights and Responsibilities because they are health care practitioners under Fla. Stat. Ann. § 456.41. *See* Fla. Stat. Ann. §456.41(2)(b) (defining "health care practitioner" as that

terms is defined in Fla. Stat. Ann. § 456.001(4), which includes marriage and family therapist licensed under Fla. Stat. Ann. § 491.003(5)).

203. Fla. Stat. Ann. § 456.41 states that "[i]t is the intent of the Legislature that citizens be able to choose from all health care options, including the prevailing or conventional treatment methods as well as other treatments designed to complement or substitute for the prevailing or conventional treatment methods." Fla. Stat. Ann. § 456.41(1).

204. Fla. Stat. Ann. § 456.41 states that "[i]t is the intent of the Legislature that health care practitioners be able to offer complementary or alternative health care treatments." *Id.*

205. "Complementary or alternative health care treatment means **any treatment** that is designed to provide patients with an effective option to the prevailing or conventional treatments methods." Fla. Stat. Ann. § 456.41(2)(a) (emphasis added).

206. If SOCE counseling is considered "complementary or alternative health care treatment," Plaintiff have a right to offer and their clients have a right to receive such counseling under Florida law.

207. Plaintiffs Vazzo and Pickup desire to offer SOCE counseling in the City to those minor clients who desire such counseling and are seeking their expertise in engaging in such counseling.

208. Plaintiffs Vazzo and Pickup comply with all requirements of Fla. Stat. Ann. § 456.41(3) by providing all required information to their clients prior to engaging in SOCE counseling and obtaining informed consent from the client.

209. In Plaintiffs Vazzo and Pickup's informed and best judgment SOCE counseling is in the best interest of those clients experiencing unwanted same-sex attractions, behaviors, or identity.

210. In Plaintiffs' clients' informed and best judgment, SOCE counseling is in their best interest.

211. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs Vazzo and Pickup's right to offer SOCE counseling in compliance with Fla. Stat. Ann. § 381.026(d)(2) and Fla. Stat. Ann. § 456.41.

212. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs' clients' right to receive SOCE counseling under Fla. Stat. Ann. § 381.026(d)(3).

213. Plaintiffs' clients have sincerely held religious beliefs that they should seek counseling to aid them in reducing or eliminating their unwanted same-sex attractions, behaviors, and identity, and Plaintiffs Vazzo and Pickup have sincerely held religious beliefs that they should offer such counseling to those clients who seek such counseling to conform their attractions, behaviors, and identity to their sincerely held religious beliefs.

214. By prohibiting SOCE counseling, the Ordinance violates Plaintiffs' clients' right to impartial access of medical treatment and accommodations based on their religious beliefs under Fla. Stat. Ann. § 381.026(d)(1).

WHEREFORE, Plaintiffs respectfully pray for the relief against Defendant as hereinafter set forth in their prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. That this Court issue a Preliminary Injunction enjoining Defendant, Defendant's officers, agents, employees, attorneys, and all other persons acting in active concert or participation with it, from enforcing Ordinance 2017-47 so that:

i. Defendant will not use Ordinance 2017-47 in any manner to infringe Plaintiffs' constitutional and statutory rights in the counseling of their clients or from offering a viewpoint on an otherwise permissible subject matter;

ii. Defendant will not use Ordinance 2017-47 in any manner to prohibit Plaintiffs from engaging in SOCE counseling with those minor clients who seek such counseling;

iii. Defendant will not use Ordinance 2017-47 to prohibit Plaintiffs' clients from seeking or receiving SOCE counseling for unwanted same-sex sexual attractions, behaviors, or identity; and

iv. Defendant will not use Ordinance 2017-47 in any manner to punish Plaintiffs or their clients for engaging, referring to, seeking, or receiving SOCE counseling.

B. That this Court issue a Permanent Injunction enjoining Defendant, Defendant's officers, agents, employees, attorneys, and all other persons acting in active concert or participation with them, from enforcing Ordinance 2017-47 so that:

i. Defendant will not use Ordinance 2017-47 in any manner to infringe Plaintiffs' constitutional and statutory rights in the counseling of their clients or from offering a viewpoint on an otherwise permissible subject matter;

ii. Defendant will not use Ordinance 2017-47 in any manner to prohibit Plaintiffs from engaging in SOCE counseling with those minor clients who seek such counseling;

iii. Defendant will not use Ordinance 2017-47 to prohibit Plaintiffs' clients from seeking or receiving SOCE counseling for unwanted same-sex sexual attractions, behaviors, or identity; and

iv. Defendant will not use Ordinance 2017-47 in any manner to punish Plaintiffs or their clients for engaging, referring to, seeking, or receiving SOCE counseling.

C. That this Court render a Declaratory Judgment declaring Ordinance 2017-47 and Defendant's actions in applying Ordinance 2017-47 unconstitutional under the United States Constitution and Florida Constitution, and declaring that:

i. Defendant violated Plaintiffs' and their clients' right to freedom of speech by prohibiting them from providing, referring to, seeking, or receiving information concerning SOCE counseling;

ii. Defendant violated Plaintiffs' and their clients' right to free exercise of religion by prohibiting Plaintiffs from providing, referring to, seeking, or receiving information concerning SOCE counseling in accordance with their sincerely held religious beliefs;

iii. Defendant acted without authority under Article VIII, § 2(b) of the Florida Constitution, and that its *ultra vires* actions in adopting and approving Ordinance 2017-47 were thus void *ab initio* such that Ordinance 2017-47 is of no force and effect;

iv. Defendant violated Fla. Stat. Ann. § 381.026(d)(3) by infringing Plaintiffs' right to offer, and their clients' right to receive, available methods of treatment that Plaintiffs and their clients believe are in their best interest; and

v. Defendant violated Fla. Stat. Ann. § 381.026(d)(1) by infringing Plaintiffs' clients' right to receive medical treatment regardless of their religious beliefs.

D. That this Court award Plaintiffs nominal damages for the violation of Plaintiffs' constitutional rights.

E. That this Court award Plaintiffs actual damages in an amount to be determined at trial;

F. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy so that such declaration shall have the force and effect of final judgment;

G. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order;

H. That this Court award Plaintiffs the reasonable costs and expenses of this action, including a attorney's fee, in accordance with 42 U.S.C. § 1988.

I. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

Respectfully submitted,

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*Pro hac vice admission pending

VERIFICATION

I, Robert L. Vazzo, LFMT, am over the age of 18 and one of the Plaintiffs in this action. The statements and allegations about me or which I make in this VERIFIED COMPLAINT are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify as to their truthfulness, I would and could do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed this 30 day of November, 2017

Robert L. Vazzo, LMFT
Robert L. Vazzo

VERIFICATION

I, David H. Pickup, LFMT, am over the age of 18 and one of the Plaintiffs in this action. The statements and allegations about me or which I make in this VERIFIED COMPLAINT are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify as to their truthfulness, I would and could do so competently. I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed this 30th day of November, 2017

David H. Pickup

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF FLOIDA
Tampa Division

ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, DAVID H. PICKUP, LMFT, individually and on behalf of his patients,	)	Civil Action No.:_____
Plaintiffs,	)	**INJUNCTIVE RELIEF SOUGHT**
v.	)	
CITY OF TAMPA, FLORIDA,	)	
Defendant	)	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
WITH INCORPORATED MEMORANDUM OF LAW

Pursuant to Fed. R. Civ. P. 65 and M.D. Fla. L.R. 4.06, Plaintiffs, ROBERT L. VAZZO, LMFT, individually and on behalf of his clients ("Vazzo") and DAVID H. PICKUP, LMFT, individually and on behalf of his clients ("Pickup") (collectively "Plaintiffs"), by and through counsel, respectfully move this Court to enter a preliminary injunction enjoining Defendant, CITY OF TAMPA, FLORIDA ("City" or "Defendant"), together with its officers, agents, servants, employees, and others who are in active concert or participation with them, from enforcing CITY OF TAMPA ORDINANCE 2017-47 (the "Ordinance" or "Ordinance 2017-47") pending the outcome of this lawsuit.

MEMORANDUM OF LAW IN SUPPORT

Since time immemorial, the relationship between a client and licensed mental health professional has represented a sacred trust. In this vital relationship, mental health professionals are tasked with providing essential care to their clients and with forming critical therapeutic alliances. This therapeutic alliance is designed to facilitate the foundational principle of all mental

health counseling: the client's fundamental right to self-determination. Throughout the history of this learned profession, clients have provided mental health professionals with their goals, desires, and objectives that conform to their sincerely held religious beliefs, desires and concept of self, and mental health professionals have provided the counseling that aligns with the client's right to self-determination. That unique relationship has, until now, been protected, revered, and respected as sacrosanct and inviolable.

With Ordinance 2017-47, the City has now stormed the office doors of mental health professionals, thrust itself into the therapeutic alliance, violated the sacred trust between client and counselor, and run roughshod over the fundamental right of client self-determination and the counselor's cherished First Amendment liberties. The City's justification for such unconscionable actions: it does not like the goals, objectives, or desires of those clients who would seek to reduce their unwanted same-sex attractions, behaviors, or identity ("SSA"). The First Amendment demands more, and the City's actions have caused, are causing, and will continue to cause irreparable injury to Plaintiffs' fundamental and cherished liberties. A preliminary injunction should issue.

STATEMENT OF FACTS

A. ORDINANCE 2017-47.

On April 6, 2017, the City Council enacted Ordinance 2017-47, which was signed into law by Mayor Buckhorn on April 10, 2017, and took immediate effect upon the Mayor's signature. (Verified Complaint, "VC" ¶¶ 22-24). Section 5 of the Ordinance provides that "[i]t shall be unlawful for any Provider[1] to practice conversion therapy efforts on any individual who is a minor

[1] The Ordinance defines "Provider" as "any person who is licensed by the State of Florida to provide professional counseling," and includes licensed marriage and family therapists such Plaintiffs. (VC ¶ 27).

regardless of whether the Provider receives monetary compensation in exchange for such services." (*Id.* ¶ 25). Section 4 defines "conversion therapy efforts" ("SOCE counseling") as:

> any counseling, practice, or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including, but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

(*Id.* ¶ 26).

All purported violations of this Ordinance constitute a separate offense and carry a $1,000.00 fine for the first offense, and $2,000.00 for each and every subsequent violation. (*Id.* ¶ 28). The State of Florida, which is the government body vested with exclusive jurisdiction to regulate licensed mental health professionals, has refused to prohibit SOCE counseling despite numerous attempts of political officials ideologically opposed to such counseling. (*Id.* ¶¶ 191-195). Despite not being prohibited by the State, Plaintiffs now risk losing their professional license for engaging in SOCE counseling in the City. Fla. Stat. Ann. § 491.009(1)(c); Fla. Admin. Code r. 64B4-5.001(c).

B. PLAINTIFF ROBERT L. VAZZO, LMFT.

Plaintiff, Robert L. Vazzo, LMFT, is a licensed marriage and family therapist and is licensed to practice mental health counseling in California, Florida, Nevada, and Ohio. (VC ¶ 64). In his current practice, Vazzo specializes in SOCE counseling, including the areas of unwanted same-sex attractions, pedophilia, hebephilia, ephebophilia, and transvestic fetishism. (*Id.* ¶ 66). His practice includes approximately 17-25 clients each week and ten percent of those clients are minors seeking SOCE counseling. (*Id.*). Many of Vazzo's clients who desire SOCE counseling

profess to be Christians with a sincerely held religious belief that homosexuality is harmful and destructive, and therefore seek SOCE counseling to live a lifestyle in congruence with their faith and to conform their identity, attractions, and behaviors to their sincerely held religious beliefs. (*Id.* ¶ 68). Vazzo has never received any complaint or report of harm from any of his clients seeking and receiving SOCE counseling, including the many minors that he has counseled. (*Id.* ¶ 69). In fact, all of Vazzo's clients who have engaged in SOCE counseling for at least one year have experienced some degree of positive change with respect to their unwanted SSA. (*Id.*).

Vazzo has had numerous clients in Florida, provides counseling to clients in Florida, and constantly receives inquiries from all over the State concerning SOCE counseling. (*Id.* ¶ 72). Vazzo has been contacted by individuals in the City who desire to engage in SOCE counseling with Vazzo, including a fifteen-year-old minor client seeking SOCE counseling from Vazzo. (*Id.* ¶¶ 73-74). Vazzo's client desires to receive SOCE counseling from a licensed professional counselor with expertise in this particular area. (*Id.*). Vazzo's client struggles with unwanted SSA and desires to engage in SOCE counseling with Vazzo to reduce or eliminate the client's unwanted SSA. (*Id.* ¶ 75). Vazzo is prohibited from providing SOCE counseling because of the Ordinance, and his client is prohibited from receiving such counseling from a licensed professional. (*Id.* ¶ 76).

C. PLAINTIFF DAVID H. PICKUP, LMFT.

Plaintiff, David H. Pickup, LMFT, is a licensed marriage and family therapist and is licensed to provide mental health counseling in California and Texas. (VC ¶ 77). Pickup is currently engaged in the process required for licensure as a marriage and family therapist in Florida. (*Id.* ¶ 78). Pickup specializes in providing heterosexual minors and adults with authentic Reparative Therapy, which includes the psychological industry standards of Psychodynamic,

Cognitive-Behavioral and EMDR methods to help them reduce or eliminate unwanted SSA. (*Id.* ¶ 79).

Pickup has particular expertise in SOCE counseling because of his personal experience and success with reparative therapy for unwanted SSA. (*Id.* ¶¶ 80-81). When he was 5 years old, he was sexually molested by a 16-year-old boy. (*Id.* ¶ 81). When he reached puberty and for many years after, he was sexually attracted to men. (*Id.*). For all of those years, he carried a feeling of immense and crushing shame for his same-sex attractions. (*Id.*). For 20 years following puberty, Pickup became clinically depressed twice, dealt with immense anxiety, experienced obsessive compulsive disorder, and knew that he was very confused about his sexual orientation and gender identity. (*Id.* ¶ 82). Pickup eventually found a course of counseling that was tremendously helpful to his mental health issues. (*Id.* ¶ 83). Pickup engaged in authentic Reparative Therapy with the late Dr. Joseph Nicolosi and participated in Dr. Nicolosi's counseling for many years, which he credits for saving his life. (*Id.* ¶ 83).

This counseling, a form of SOCE counseling, helped Pickup get rid of the shame that he had for experiencing unwanted SSA, and led to the dissipation of his SSA. (*Id.*). SOCE counseling helped Pickup solidify his gender identity, which resulted in a profound increase in his self-confidence as a man and in his self-esteem. (*Id.*). SOCE counseling allowed Pickup to understand the nature and source of his same-sex attractions, and allowed him to do the deep emotional work that he needed to do to understand those unwanted feelings. (*Id.* ¶ 84). As part of the counseling, Pickup learned the importance of healthy male relationships and his sexual attractions to women increased. (*Id.*). Pickup saw a real and profound change in his sexuality that resulted from the SOCE counseling, and he pursued training to offer others the chance to achieve the profound and live-saving assistance he found in such counseling. (*Id.* ¶ 85).

D. IRREPARABLE INJURY TO PLAINTIFFS VAZZO, PICKUP, AND CLIENTS.

Vazzo and Pickup have incurred monetary expense to lease office space in the City to offer and provide SOCE counseling to clients in the City, including minors. (VC ¶ 87). Consistent with his First Amendment rights, Vazzo desires to advertise, offer, and provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. (*Id.* ¶¶ 88-90). When he finishes his licensing requirements, Pickup desires to advertise, offer, and provide his counseling, including SOCE counseling, to clients and potential clients in the City, including minors. (*Id.*). Vazzo and Pickup would like to be able to offer religious leaders, organizations, and ministries their expertise and experience in SOCE counseling. (*Id.* ¶ 91).

Both Vazzo and Pickup have received inquiries from various potential clients in the City, including minors, who desire to receive SOCE counseling. (*Id.* ¶ 92). Because of the Ordinance, Vazzo and Pickup are prohibited from advertising, offering, or providing SOCE counseling to clients and potential clients, including minors, in the City. (*Id.* ¶¶ 93-95). The Ordinance has thus violated Vazzo and Pickup's cherished First Amendment rights and significantly chilled their constitutionally protected expression. (*Id.* ¶¶ 97-100).

LEGAL ARGUMENT

Injunctive relief is appropriate where, as here, Plaintiffs show that (1) they have a substantial likelihood of success on the merits, (2) irreparable injury will result absent injunctive relief, (3) the balance of the equities tips in their favor, and (4) the injunction would serve the public interest. *See*, *e.g.*, *Siegel v. Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). Plaintiffs easily meet these requirements, and the preliminary injunction should issue.

I. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Ordinance Unconstitutionally Discriminates On The Basis Of Viewpoint.

A viewpoint-based restriction on private speech has never been upheld by the Supreme Court or any court. Indeed, a finding of viewpoint discrimination is dispositive. *See Sorrell v. IMS Health*, 131 S. Ct. 2653, 2667 (2011). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995); *Good News Club v. Milford Cent. Sch. Dist.*, 533 U.S. 98, 106 (2001) ("The restriction must not discriminate against speech on the basis of viewpoint."). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger*, 515 U.S. at 829. In fact, **viewpoint-based regulations are always unconstitutional**. *See, e.g.*, *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) ("'the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others'" (quoting *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984))); *McCullen v. Coakley*, 134 S. Ct. 2518, 2549 (2014) (Alito, J., concurring) ("if the law discriminates on the basis of viewpoint, it is unconstitutional"). *See also Searcy v. Harris*, 888 F.2d 1314, 1324 (11th Cir. 1989) (the government "may not discriminate between speakers who will speak on the topic merely because it disagrees with their views").

The Ordinance is a textbook example of viewpoint discrimination. On its face, the Ordinance purports to allow licensed therapists to discuss the subject of sexual orientation, but explicitly prohibits only one particular viewpoint on that subject, namely that unwanted SSA can be reduced or eliminated to the benefit of the client. The Ordinance defines "conversion therapy" in such a way that it is clear that Defendant is targeting only one viewpoint, *i.e.*, SOCE that seeks

to "eliminate or reduce sexual or romantic attractions or feelings **toward individuals of the same gender or sex**." (VC, Ex A at 5, §4 (emphasis added)). Similarly, the Ordinance permits a counselor to accept and facilitate SSA, even if the minor client is merely questioning such feelings, but prohibits a counselor from counseling a minor client to change unwanted SSA. (*Id.*). Under no circumstances may the counselor counsel a minor client to change unwanted SSA.

The plain text of the Ordinance demonstrates that it only prohibits SOCE counseling for minor clients who wish to reduce or eliminate behaviors, identity, or expressions that differ from their biological sex. That this is true cannot be questioned because the Ordinance specifically exempts counseling that "provides support and assistance to a person undergoing gender transition." (VC, Ex. A at 5, § 4). To undergo "gender transition," one has to be – at minimum – seeking to change from one gender to the other. To transition is to change. So, under the Ordinance, if a minor client wants to undergo radical surgery to alter their appearance or genitalia, the City has no problem with a counselor providing counseling to assist in that change. But, if a minor client merely wants to speak with a counselor about unwanted feelings concerning their gender identity or expression, the counselor is absolutely prohibited from engaging in such counseling if it aids the minor in reducing unwanted other-sex identity, behaviors, or expressions. If this is not viewpoint discrimination, it would be difficult to imagine what could ever qualify.

The Supreme Court and several other courts have invalidated regulations of professional speech as unconstitutional viewpoint discrimination. *See Sorrell*, 131 S. Ct. 2653 (2011); *Legal Servs. Corp. v. Valazquez*, 531 U.S. 533 (2001); *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002). In these cases, the courts recognized the axiomatic truth that the government is not permitted to impose its viewpoint on speakers, even professional speakers subject to licensing requirements and regulation.

In *Velazquez*, the Court addressed a federal limitation on the legal profession which operated in materially the same viewpoint-based manner as does the Ordinance and prevented legal aid attorneys from receiving federal funds if they challenged welfare laws. *Velazquez*, 531 U.S. at 537-38. The effect of this funding condition was to "prohibit advice or argumentation that existing welfare laws are unconstitutional or unlawful," and thereby exclude certain "vital theories and ideas" from the lawyers' representation. *Id.* at 547-48. The Court invalidated the regulation on its face. *Id*. at 549.

In *Conant*, several physicians and their patients brought a First Amendment challenge to a federal policy that punished physicians for communicating with their patients about the benefits or options of marijuana as a potential treatment. *Conant*, 309 F.3d at 633. The Ninth Circuit began its analysis by recognizing that the doctor-patient relationship is entitled to robust First Amendment protection.

> An integral component of the practice of medicine is the communication between a doctor and a patient. **Physicians must be able to speak frankly and openly to patients**. That need has been recognized by courts through the application of the common law doctor-patient privilege.

Id. at 636 (emphasis added). Far from being a First Amendment orphan, the court noted that such professional speech "may be entitled to the strongest protection our Constitution has to offer." *Conant*, 309 F.3d at 637 (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 634 (1995)).

The court held that the ban impermissibly regulated physician speech based on viewpoint:

> The government's policy in this case seeks to punish physicians on the basis of the content of doctor-patient communications. Only doctor-patient conversations that include discussions of the medical use of marijuana trigger the policy. Moreover, the **policy does not merely prohibit the discussion of marijuana; it condemns expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient**. Such condemnation of particular views is especially troubling in the First Amendment context.

Id. at 637-38 (emphasis added). The court rejected as inadequate the government's justification that the policy prevented clients from engaging in harmful behavior, and permanently enjoined enforcement of the policy. *Id.* at 638-39.

The Ordinance operates almost identically to the federal policy enjoined in *Conant*. Just as the policy in *Conant* prohibited physicians from speaking about the benefits of marijuana to a suffering patient, so the Ordinance prohibits counselors from speaking about the benefits of SOCE with a client distressed about his SSA, as that would be perceived as an effort to change a person's sexual orientation. Both policies expressed governmental preference and favor for the message it approved over the private message of the healthcare provider with which it disagreed. Both should suffer the same constitutional demise.

B. The Ordinance Unconstitutionally Discriminates Against Content.

"Content-based laws—those that target speech on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling government interests." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992) (same). "Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both distinctions are drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." *Reed*, 135 S. Ct. at 2227. Put simply, the Supreme Court handed down a firm rule: **laws that are content based on their face must satisfy strict scrutiny**. *Id.*; *see also id.* at 2233 ("As the Court holds, what we have termed 'content-based' laws must satisfy strict scrutiny.") (Alito, J., concurring).

Importantly, this firm rule mandating strict scrutiny of facially content-based restrictions applies regardless of the government's alleged purpose in enacting the law. *Id.* "On its face, the [law] is a content-based regulation of speech. We thus have no need to consider the government's justifications or purposes for enacting the [law] to determine whether it is subject to strict scrutiny." *Id.* In so holding, the High Court rejected the lower court's rationale that the alleged purpose behind enacting the content-based law can justify subjecting it to diminished constitutional protection. *Id.* "But this analysis skips the crucial first step . . . determining whether the law is content neutral on its face." *Id.* at 2228. The answer to that question, the Court said, is dispositive of the level of scrutiny applicable to the regulation of speech. *Id.*

Indeed, "**[a] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech**." *Id.* (emphasis added). Indeed, "an innocuous justification cannot transform a facially content-based law into one that is content neutral." *Id.* "Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech." *Id.* at 2229.

This rule also applies to content-based restrictions of the speech of licensed professionals.

> Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the regulation of professional conduct rendered the statute consistent with the First Amendment, observing that **it is no answer to say that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression**.

Id. (citing *NAACP v. Button*, 371 U.S. 415, 438-39 (1963)) (emphasis added). The en banc Eleventh Circuit, too, has unequivocally stated that the prohibition on content-based laws applies equally in the context of laws targeting the speech of licensed professionals. *Wollschlaeger v.*

Florida, 848 F.3d 1293, 1307 (11th Cir. 2017 (en banc) ("Speech is speech, and it must be analyzed as such for purposes of the First Amendment") (quoting *King v. Governor of New Jersey*, 767 F.3d 216, 229 (3d Cir. 2014)); *id.* at 1308 (rejecting Florida's contention that it can prohibit certain types of speech because it is merely a regulation of licensed professionals) ("Keeping in mind that no law abridging freedom of speech is ever promoted as a law abridging freedom of speech . . . we do not find the [state's] argument persuasive.").

Thus, content-based laws must satisfy strict scrutiny, even if targeted at licensed professionals. *Reed*, 135 S. Ct. at 2229. **There are no exceptions**. Indeed, the notion that a content-based restriction on speech is presumptively unconstitutional is "so engrained in our First Amendment jurisprudence that last term we found it so 'obvious' as to not require explanation." *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115-16 (1991). "Regulations that permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." *Id.* at 116 (quoting *Reagan v. Time, Inc.*, 468 U.S. 641, 648-49 (1984)). Furthermore, "[i]t is rare that a regulation restricting speech because of its content will ever be permissible." *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 818 (2000). The burden is on the City to prove it satisfies strict scrutiny, but it cannot meet that burden here. *Id.* at 813.

1. There is No Compelling Government Interest for the Ordinance.

a. Previous cases provide no compelling interest.

The City purports to assert a compelling government interest in the fact that two federal courts have upheld similar prohibitions enacted by other states. (VC, Ex. A at 4 & n.15) (citing *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2013); and *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014)). The City's reliance on such cases is utterly misplaced and cannot serve as a

basis to support the Ordinance. Indeed, the Eleventh Circuit has explicitly rejected the approach taken by those courts. *See Wollschlaeger*, 848 F.3d at 1309 ("**There are serious doubts about whether *Pickup* [*v. Brown*] was correctly decided**. As noted earlier, **characterizing speech as conduct is a dubious constitutional enterprise**." (emphasis added)). The Eleventh Circuit concluded that "we do not think it is appropriate to subject content-based restrictions on speech by those engaged in a certain profession to mere rational basis review," as the Ninth Circuit had done in *Pickup v. Brown*. *Id.* at 1311.

In *Wollschlaeger*, the en banc Eleventh Circuit invalidated portions of Florida's Firearm Owners' Privacy Act (FOPA), which prohibited physicians from "making a written inquiry or asking questions concerning the ownership of a firearm or ammunition by the patient or by a family member of the patient, or the presence of a firearm in a private home." *Id*. at 1302-03. The Court found that the provisions regulated speech on the basis of content by restricting (and providing disciplinary sanctions for) speech by medical professionals on the subject of firearm ownership. *Id*. Specifically, the court noted that because the restrictions "apply only to the speech of doctors and medical professionals, and only on the topic of firearm ownership," they were "speaker-focused and content-based restrictions." *Id.* at 1307. The Eleventh Circuit found that the provisions could not even satisfy intermediate scrutiny, let alone the strict scrutiny required for presumptively unconstitutional content-based regulations. *Id*. This binding holding from the en banc Eleventh Circuit eviscerates the City's purported interest or justification for the Ordinance.

b. The City's paternalism provides no compelling interest.

The City also asserts that it has a compelling interest in preventing minors from receiving SOCE counseling because it could potentially be harmful to them. This assertion is not only based on intentional misrepresentations of various studies, *see infra* Section I.B.1.c., but is also

insufficient as a matter of settled law to serve as a compelling interest. In *Wollschlaeger*, the en banc Eleventh Circuit noted that laws targeting the content of certain doctor-patient or counselor-client communications cannot be justified by the "paternalistic assertion that the policy was valid because patients might otherwise make bad decisions" if left to determine the best course of counseling for themselves. *Wollschlaeger*, 848 F.3d at 1310. Indeed, just because the City "may generally believe that doctors and medical professionals should not ask about, nor express views hostile to, [a certain topic or course of counseling], it 'may not burden the speech of others in order to tilt the public debate in a preferred direction.'" *Id.* at 1313-14 (quoting *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 578-79 (2011)). Where, as here, "[t]he record demonstrates that some patients do not object to questions and advice about [the prohibited content of speech], and some even express gratitude for their doctor's discussion of the topic," a law is unconstitutional if it "does not provide for such patients a means by which they can hear from their doctors on the topic." *Id.* at 1313.

Here, the City puts forward nothing more than paternalistic views that counselors should not engage in certain discussions with their clients on the subject of unwanted SSA, even when the minor client desires such counseling. (VC, Ex. A at 4-5 and 5, § 3) (asserting that the City's interest is in preventing minors from receiving the SOCE counseling the City finds inadvisable, even when the minor clients and their parents desire such counseling and have benefitted from it). While the City may prefer to tilt the debate in favor of those advocating against SOCE counseling, **it** "**does not have carte blanche to restrict the speech of doctors and medical professionals on a certain subject without satisfying the demands [of the First Amendment]**." *Wollschlaeger*, 848 F.3d at 1314 (emphasis added). The Ordinance is thus unconstitutional and unsupported by any compelling government interest.

c. The City's reliance on certain studies provides no compelling interest.

The City also relies on the 2009 American Psychological Association Task Force Report on Appropriate Therapeutic Response to Sexual Orientation ("APA Report") as justification for the Ordinance. (VC, Ex. A at 1-2). However, the APA Report does not support the City's conclusions. In fact, the APA Report specifically noted that the research is inadequate to draw **any** conclusions concerning SOCE counseling. Thus, despite the City's claims that SOCE counseling was found to be harmful to minors, the APA Report specifically noted that "sexual orientation issues in children are **virtually unexamined**." (VC at ¶ 31 and Ex. B at 91 (emphasis added)), and noted that "[t]here is a lack of published research on SOCE among children." (VC ¶ 32 and Ex. B at 72). The APA Report also concluded that "there is a dearth of scientifically sound research on the safety of SOCE. **Early and recent research studies provide no clear indication of the prevalence of harmful outcomes**." (*Id.* at 42) (emphasis added).

Because of the lack of scientifically valid research, the APA Report also noted that it could make no conclusions about SOCE counseling for those minors who request it. (VC ¶ 33 and Ex. B at 73) ("We found no empirical research on adolescents who request SOCE."). The APA Report also noted that its conclusions are not based on specific studies from individuals, including minors, who request SOCE counseling, and stated that its conclusions were thus necessarily limited. (VC ¶ 33 and Ex. B at 76). Moreover, contrary to the City's conclusions, **the APA Report noted that it found evidence of benefit to individuals seeking such counseling**. (VC ¶ 35). The APA Report specifically noted that "for some, sexual orientation identity [is] fluid or has an indefinite outcome" (*id.* ¶ 37), and that "[s]ome individuals report that they went on to lead outwardly heterosexual lives, developing a sexual relationship with an other-sex partner, and adopting a heterosexual identity." (*Id.* ¶ 38). The City's conclusions concerning harm are not supported.

2. The Ordinance is Not Narrowly Tailored.

Even if the City could articulate a compelling interest for the Ordinance's total prohibition on SOCE counseling, which it cannot, the Ordinance would still fail strict scrutiny because it is not narrowly tailored. "It is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). There must be a 'fit between the . . . ends and the means chosen to accomplish those ends.'" *Wollschlaeger*, 848 F.3d at 1312 (quoting *Sorrell*, 564 U.S. at 572). "[G]overnment may regulate the area of First Amendment freedoms only with narrow specificity." *Id.* at 1320 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989)).

Even if the State could ban an entire mode of therapy—such as SOCE counseling—it could not do so simply to suppress a particular idea. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 386 (1992) ("The government may not regulate a ['mode of speech'] based on hostility—or favoritism—towards the underlying message expressed."). As shown above, the Ordinance was based on a political preference to ban such counseling, not on scientific evidence of harm. There are other less restrictive and content-neutral alternatives. *See id.* at 395 ("The existence of adequate content-neutral alternatives thus 'undercut[s] significantly' any defense of such a statute, casting considerable doubt on the government's protestations that the 'asserted justification is in fact an accurate description of the purpose and effect of the law.'" (citations omitted)).

The Ordinance is not necessary to prevent harm because existing Florida law and all of the ethical codes of the professions engaging in this form of counseling already prohibit practices that actually harm patients. Licensed marriage and family therapists are already prohibited by law from "[m]aking misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed, registered, or certified" by Florida's Marriage and Family Therapy Board. *See*

Fla. Stat. Ann. § 491.009(1)(l). They are prohibited by law from engaging in any practice that is harmful to clients or patients, such as "[f]ailing to meet minimum standards of performance in professional activities when measured against generally prevailing peer performance." Fla. Stat. Ann. 491.009(1)(r).

Existing Florida law regulating professional counselors also imposes upon them a legal obligation to abide by the other ethical requirements of their profession. *See* Fla. Stat. Ann. § 491.001(1)(t). These ethical obligations include ethical codes promulgated by the American Association of Marriage and Family Therapists and its ethics code ("AAMFT Code"). Standard 1 of the AAMFT Code mandates that counselors not harm their clients or engage in practices that might do so. (VC ¶ 58). Standard 1.1 of the AAMFT Code prohibits licensed marriage and family therapists, such as Vazzo and Pickup, from discriminating against clients based on their sexual orientation or gender identity (*Id.* ¶ 59). If violated, these provisions come with legal sanction under existing Florida law. *See* Fla. Admin. Code § 64B5-5.001. Thus, the City's assertion that no other alternatives could prevent the alleged harm (VC Ex. A at 4), is demonstrably fallacious.

The Ordinance is not designed to protect minors from the alleged harms of SOCE counseling. It is a politically motivated attempt to harm one group of professionals who hold a particular viewpoint regarding counseling, particularly SOCE counseling, and an effort to prohibit those counselors from providing any information or counseling on the fact that SOCE can and does help people reduce or eliminate their unwanted SSA. The fact that children are already protected from harmful and dangerous therapies (*see* VC ¶¶ 51-63) reveals that the City's underlying goal is not about protecting minors. Minors are already protected by these ethical rules, so there is no need for unconstitutional suppression of viewpoint and content. Under *R.A.V.*, the

Ordinance is not narrowly tailored as a matter of settled law because the City had content-neutral alternative means of preventing the alleged harm. *R.A.V.*, 505 U.S. at 395.

Separate and apart from existing laws and ethical codes, informed consent would also be a less restrictive means to achieve the City's purported interest. When legislation virtually identical to the Ordinance was being debated in California, several mental health organizations recognized that this type of "legislation is attempting to undertake an unprecedented restriction on psychotherapy." (*See* VC Ex. E at 1). These mental health organizations proposed informed consent language that would have been much more narrowly tailored than the unprecedented intrusion into the relationship between counselor and client, but it was rejected. (*Id.*). A complete ban on SOCE counseling or a viewpoint regarding SSA is not the least restrictive means to achieve any governmental interest. Total prohibitions on constitutionally protected speech are "hardly an exercise of narrow tailoring." *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). Such extreme measures are invalid and should be enjoined.

C. The Ordinance Is Unconstitutionally Vague.

A law is unconstitutionally vague and overbroad if it "either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926). The State's policies "must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to take." *Id.* at 393. "Precision of regulation" is the touchstone of the First Amendment. *NAACP v. Button*, 371 U.S. 415, 435 (1963). "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). While all regulations must be reasonably clear, "laws which threaten to inhibit the exercise of constitutionally protected"

expression must satisfy "a more stringent vagueness test." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). Thus, a law must give "adequate warning of what activities it proscribes" and must "set out explicit standards for those who apply it." *See Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973) (citing *Grayned*, 408 U.S. at 108). The Ordinance fulfills neither requirement, and thus forces both those enforcing the Ordinance and mental health professionals to guess at its meaning and differ as to its application both when diagnosing and when engaging in a form of counseling with a minor client.

The Ordinance leaves licensed professionals without answers concerning numerous questions: Does a counselor violate the Ordinance when the counselor simply raises the existence of SOCE with a minor client distressed about his SSA? Does recommending a book that discusses change of SSA or provides stories of people who did change their SSA violate the law? Does referring minor clients to an unlicensed counselor for SOCE while maintaining oversight of the client violate the Ordinance? Do professional counselors unwilling to counsel in a manner affirming homosexual practices have to effectively close their mouths at the mere mention that a minor patient might have experienced some form of unwanted SSA? The Ordinance leaves licensed counselors uncertain whether a particular practice or even a particular statement with a minor client will cost them thousands of dollars in fines and loss of their license. The First Amendment demands more.

D. The Ordinance Is Unconstitutionally Overbroad.

The Ordinance is overbroad because it completely bans under any circumstances counsel to any minor that seeks to change or reduce SSA, even when the minor and the parents seek and consent to such counsel. Instead of using a scalpel, the State took a chain saw to the First Amendment. "Because First Amendment freedoms need breathing space to survive, government

may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963). Laws as broad as the Ordinance are constitutionally suspect, because the courts "cannot assume that, in its subsequent enforcement, ambiguities will be resolved in favor of adequate protection of First Amendment rights." *Id.* at 438. The Ordinance prohibits licensed counselors under any circumstances from engaging in "any efforts" to reduce or eliminate SSA in minors. The breadth of this prohibition is astounding, and renders the Ordinance unconstitutionally overbroad. Indeed,

> it is no answer to the constitutional claims asserted by petitioner to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression. **For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights**.

Id. at 438-39 (emphasis added). The Ordinance bans Plaintiffs from providing counsel to their clients who knowingly, with informed consent, seek counsel to change SSA. This ban is "an unprecedented restriction of psychotherapy." (VC Ex E at 1). It chills more speech than is permissible and is thus unconstitutionally overbroad.

E. The Ordinance Is An Unconstitutional Prior Restraint.

Prior restraints against constitutionally protected expression are highly suspect and disfavored. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). In fact, "any system of prior restraints comes to this Court bearing the heavy presumption against its constitutional validity." *Bantham Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

"[T]he Supreme Court and [the Eleventh Circuit] consistently have permitted facial challenges to prior restraints without requiring a plaintiff to show that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *United States v. Frandsen*, 212 F.3d 1231, 1236 (11th Cir. 2000). *See also, Horton v. City of St. Augustine*, 272 F.3d 1318, 1331-32 (11th Cir. 2001) ("the Supreme Court itself in

Salerno acknowledged [that prior restraints are the] exception to the 'unconstitutional-in-every-conceivable-application' rule") (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

Total prohibitions on speech are prior restraints. *See, e.g.*, *Howard v. City of Jacksonville*, 109 F. Supp. 2d 1360, 1364 (M.D. Fla. 2000) ("This Court also finds that . . . moratoria are governed by prior restraint analysis in the same manners as permitting schemes."); *D'Ambra v. City of Providence*, 21 F. Supp. 2d 106, 113-14 (D.R.I. 1998) (moratorium on protected expression that includes no indication of ending is a complete prohibition and invalid prior restraint); *ASF, Inc. v. City of Seattle*, 408 F. Supp. 2d 1102, 1108 (W.D. Wash. 2005) (total prohibitions on protected expression fail prior restraint analysis).

Here, as in *ASF*, the City "goes a step further in suppressing protected speech and prohibiting [SOCE counseling]." *Id.* The Ordinance states that SOCE counseling is prohibited in the City with regard to minors. There are no exceptions to such, and it forever forbids counselors from offering and minors from receiving such counseling. As this Court held in *Howard*, such bans are subject to prior restraint analysis. *Howard*, 109 F. Supp. 2d at 1364. The Ordinance cannot survive scrutiny.

F. The City's Adoption Of The Ordinance Was *Ultra Vires* And *Void Ab Initio.*

A local government enactment will be considered inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute." *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010). The Ordinance meets both criteria. The State has impliedly preempted the field of regulation of mental health professionals through enactment of a comprehensive licensing and disciplinary scheme in the Florida Statutes, Title XXXII, Chapter 491. Furthermore, the Ordinance

conflicts with Florida law by purporting to make illegal a form of counseling which the Florida legislature permits.

Preemption is implied when "the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme." *Sarasota*, 28 So.3d at 886. When determining if implied preemption applies, the court must look at the provisions of the policy as a whole, the nature of power exercised by the legislature, the object sought to be attained by the statute, and the character of the obligations imposed by the statute. *Classy Cycles, Inc. v. Bay Cnty.*, 201 So.3d 779, 784 (Fla. 2016). In *Classy Cycles*, an operator of a local motor vehicle business sought a declaratory judgement that local ordinances relating to insurance requirements for certain motor vehicles exceeded the scope of authority of local government. *Id.* at 781. The court held that the local ordinances were unconstitutional because the insurance requirements had been impliedly preempted by the State. *Id.* at 788-90. The court reasoned that the State had created a pervasive and extensive scheme of regulation and that the local ordinances were "attempt[s] to regulate in an area well-covered by existing statutes." *Id.* at 788. Where, as here, the State has not specifically granted any authority to local officials to be involved with certain regulation, the State's extensive law in that particular area demonstrates implied preemption. *Id.*

The same is true of the Ordinance here, as Florida has enacted a pervasive scheme for regulating mental health professionals. (VC ¶¶ 191-195). Moreover, the Florida legislature has specifically considered – **and rejected** – a proposed statewide ban on SOCE, leaving no doubt that Florida does not approve or authorize the ban imposed by the City. (VC ¶ 195). Further still, Florida law expressly authorizes medical practitioners to provide, and guarantees patients the right

to receive, "complementary or alternative health care treatments," meaning treatment that is alternative to "prevailing or conventional treatment methods." (VC ¶¶ 201-205).

The Ordinance therefore conflicts with Florida law, including Section 491.009 and Rule 64B4-5.001, in purporting to impose additional fees and penalties and, more importantly, attempting to expand upon conduct that would subject a provider to discipline. The Ordinance purports to make illegal in Tampa a form of therapy that is legal elsewhere in Florida. (VC ¶¶ 195-196). The Ordinance is void as an *ultra vires* act in violation of Defendant's authority under the Constitution of the State of Florida.

II. PLAINTIFFS HAVE SUFFERED, ARE SUFFERING, AND WILL CONTINUE TO SUFFER IRREPARABLE INJURY ABSENT INJUNCTIVE RELIEF.

Plaintiffs have suffered, are suffering, and will continue to suffer immediate and irreparable injury absent injunctive relief. Indeed, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1271-72 (11th Cir. 2006) (same); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983) (same). The Eleventh Circuit has held that ongoing First Amendment violations constitute irreparable harm:

> The only area of constitutional jurisprudence where we have said that an on-going violation constitutes irreparable injury is the area of [F]irst [A]mendment …. The rationale behind these decisions was that chilled free speech …, because of [its] intangible nature could not be compensated for by money damages; in other words, plaintiffs could not be made whole.

Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990) (citations omitted).

The Ordinance is prohibiting Plaintiffs from engaging in certain discussions with their clients, and it does so in a flagrantly unconstitutional manner. The Ordinance prohibits only one viewpoint on an otherwise permissible topic. The Ordinance silences licensed counselors who wish

to engage in a course of counseling with consenting minor clients which aligns with the clients' sincerely held religious beliefs. Such a prohibition constitutes a deprivation of First Amendment rights and imposes immediate and irreparable harm on Plaintiffs and their clients.

Plaintiffs are being denied the ability to speak to their minor clients about available counseling which can assist them in reducing or eliminating unwanted SSA. If they violate the Ordinance's prohibitions, then Plaintiffs are subject to fines and the loss of their professional licenses. (VC ¶ 56). If they follow the Ordinance's requirements, then Plaintiffs will be subject to sanctions for violating other provisions of their ethical codes mandating that the clients have the right to self-determination and that the counselor should not impose an ideology on the clients. (*Id.* ¶¶ 57-60). The imposition of punishment for discussing a course of counseling desired by the clients is certainly a deprivation of constitutional rights, and constitutes *a priori* irreparable harm.

III. THE BALANCE OF THE EQUITIES FAVORS INJUNCTIVE RELIEF.

An injunction will protect the very rights the Supreme Court has characterized as "lying at the foundation of a free government of free men." *Schneider v. New Jersey,* 308 U.S. 147, 151 (1939). The granting of a preliminary injunction that enjoins enforcement of the Ordinance will not impose any harm on the City. As noted above, "even a temporary infringement of First Amendment rights constitutes a serious and substantial injury." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 72 (11th Cir. 2006). Thus, there is no question that Plaintiffs and their clients will suffer intolerable and irreparable injury to their cherished constitutional liberties, an injury which can never be redressed. Conversely, "there can be no harm to [the government] when it is prevented from enforcing an unconstitutional statute." *Joelner v. Vill. of Washington Park,* 378 F.3d 613, 620 (7th Cir. 2004). That is because the government "has no legitimate interest in enforcing an unconstitutional [law]." *KH Outdoor,* 458 F.3d at 1272. As such, there can be no

comparison between the irreparable and unconscionable loss of First Amendment freedoms suffered by Plaintiffs and their clients absent injunctive relief and the non-existent interest the City has in enforcing unconstitutional ordinances. The balance of the equities tips decidedly in Plaintiffs' favor, and the preliminary injunction should issue.

IV. INJUNCTIVE RELIEF SERVES THE PUBLIC INTEREST.

The protection of First Amendment rights is of the highest public interest. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). This protection is *ipso facto* in the interest of the general public because "First Amendment rights are not private rights [but] rights of the general public [for] the benefit of all of us." *Machesky v. Bizzell*, 414 F.2d 283, 288-90 (5th Cir. 1969) (citing *Time, Inc. v. Hill*, 385 U.S. 374 (1967)). Indeed, "[i]njunctions protecting First Amendment freedoms are **always in the public interest**," *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (emphasis added), because "the public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional." *Id.* Indeed, because there is no interest in enforcing unconstitutional laws, "'it is always in the public interest to protect First Amendment liberties.'" *KH Outdoor*, 458 F.3d at 1272 (quoting *Joelner v. Vill. Of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004)).

CONCLUSION

For the foregoing reasons, the preliminary injunction should issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Preliminary Injunction and Memorandum in Support will be served on the Defendant City of Tampa via process server, along with the Complaint. An affidavit of service will be filed once service of process is effectuated.

Horatio G. Mihet
Attorney for Plaintiffs