UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ROBERT L. VAZZO, LMFT, individually and on behalf of his patients, and DAVID H. PICKUP, LMFT, individually and on behalf of his patients, Plaintiffs, v. CITY OF TAMPA, FLORIDA, Defendant, v. EQUALITY FLORIDA, Intervenor-Defendant (Motion Pending)	No. 8:17-cv-02896-CEH-AAS

PROPOSED INTERVENOR-DEFENDANT EQUALITY FLORIDA'S AMENDED RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Proposed Intervenor-Defendant Equality Florida Institute, Inc., opposes Plaintiffs' Motion for Preliminary Injunction, filed concurrently with their Complaint. Plaintiffs did not file their lawsuit until eight months after Tampa, Fla., Ordinance No. 2017-47 (the "Ordinance") went into effect. Nevertheless, Plaintiffs claim that they will be irreparably harmed unless this Court immediately enjoins the Ordinance. They will not.

On the other hand, LGBTQ minors—a highly vulnerable part of Tampa's population—will be harmed if the Ordinance is enjoined and the dangerous therapeutic practices Plaintiffs seek to perform on minors are allowed to be used. Manifestly, the requisite weighing of harms tilts in favor of avoiding harms to minors.

It is well settled that "[t]he state's authority over children's activities is broader than over like actions of adults . . . A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944). Thus, the Supreme Court "ha[s] sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights." *New York v. Ferber*, 458 U.S. 747, 757 (1982). These controlling precedents are directly applicable here.

For the reasons that follow and those discussed in Equality Florida's Motion To Dismiss, Plaintiffs have not satisfied the standard for a preliminary injunction. This Court should deny Plaintiffs' motion.

ARGUMENT

A preliminary injunction is "an extraordinary and drastic remedy." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). A movant must prove: (1) it has a substantial likelihood of success on the merits; (2) it will suffer irreparable injury unless the injunction issues; (3) the threatened injury to the movant outweighs any potential damage to the opposing party; and (4) an injunction would not be adverse to the public interest. *Id.*

The Eleventh Circuit has urged particular caution against "preliminary injunctions of legislative enactments—because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits." *Ne. Fla. Chapter of the Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990). Such injunctions "must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts." *Id.*

Equality Florida's Motion To Dismiss demonstrates that Plaintiffs' claims are not viable as a matter of law; Plaintiffs certainly have no substantial likelihood of success on the merits. Indeed, both federal circuit courts to address the claims Plaintiffs raise here have rejected them. To avoid unnecessary duplication, Equality Florida's Motion To Dismiss is incorporated on this issue.

Plaintiffs have also failed to make the requisite showing of irreparable injury in the absence of preliminary relief. Moreover, any harm to Plaintiffs is far outweighed by the risk to Tampa's LGBTQ young people if the Ordinance is enjoined, and an injunction would be adverse to the public interest. We address each in turn.

I. PLAINTIFFS HAVE NOT SHOWN ANY THREAT OF IRREPARABLE INJURY

Irreparable injury is the "sine qua non of injunctive relief." *Siegel*, 234 F.3d at 1176 (quoting *City of Jacksonville*, 896 F.2d at 1285). The asserted injury "must be neither remote nor speculative, but actual and imminent" to justify injunctive relief. *Id.* (quoting *City of Jacksonville*, 896 F.2d at 1285).

Importantly, as Plaintiffs themselves note, the Ordinance has been in effect since April 10, 2017. Dkt. 1 at 6. Plaintiffs do not explain how the threat of irreparable injury has suddenly become imminent despite the fact that they waited nearly eight months even to file their lawsuit. *See Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) ("A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm.").

Plaintiffs boldly claim that First Amendment injuries always are irreparable. *See* Dkt. 3 at 23. But assertion of such an injury first requires Plaintiffs to demonstrate a reasonable likelihood that their First Amendment rights are being directly impaired. *See Scott v. Roberts*, 612 F.3d

1279, 1297 (11th Cir. 2010) (finding irreparable First Amendment injury after determining substantial likelihood on the merits); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26 (emphasizing importance of closely scrutinizing claims of irreparably injury at the preliminary injunction stage). But Plaintiffs have failed even to state viable First Amendment claims, much less to show a likelihood of success on them.

Plaintiffs' only other asserted injuries are purely economic, which, even if proved, are not irreparable. *See* Dkt. 3 at 6 (moving and leasing expenses, lost revenue). Not only are these alleged injuries purely speculative—Plaintiff Pickup is not even licensed to practice in Florida yet—they are also the classic type of injury that could be compensated via a damages award should Plaintiffs prevail at trial. *See City of Jacksonville*, 896 F.2d at 1286.

In reality, the only possible injury to Plaintiffs from the denial of a preliminary injunction is that they will be prevented from engaging in a single form of therapy (conversion therapy) with a single demographic (minors) until the claims in this case have been subjected to "the safeguards of the full legal process." *See id.* at 1285. But Plaintiffs have been abiding by the Ordinance since its enactment nearly one year ago. They will not be irreparably harmed by continuing to do so for the short time required to resolve this legal challenge to the Ordinance.

II. THE HARM TO TAMPA'S LGBTQ YOUTH FAR OUTWEIGHS ANY HARM TO PLAINTIFFS

Even apart from Plaintiffs' failure to show the Ordinance causes them irreparable harm, the risk that minors could be exposed to a mental health therapy the City has deemed harmful based on the overwhelming national medical consensus is very real and very serious. Indeed, the reality and severity of these potential harms is precisely the reason the City exercised its police powers and enacted the Ordinance.

Plaintiffs have brought this lawsuit because they desire to practice conversion therapy in Tampa and assert that they are in contact with multiple minors in the City who purportedly are potential patients for conversion therapy. *See* Dkt. 3 at 6. There is thus every reason to believe that Plaintiffs would proceed to engage in conversion therapy with these minors if the Ordinance were enjoined.

Enjoining the Ordinance would therefore expose these minors—and other LGBTQ youth in Tampa—to a practice that the City legislatively determined to put youth at risk of

> confusion, depression, guilt, helplessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

Tampa, Fla., Ordinance No. 2017-47, at 1–2 (citing Am. Psychological Ass'n, *Appropriate Therapeutic Responses to Sexual Orientation* 42 (2009) (hereinafter "APA Report")). Equality Florida urges the Court to review the materials on which the City relied in enacting the Ordinance, as they leave no doubt of the harms the Ordinance addresses.

Even considering only the more limited evidence available in 2012, the Eastern District of California concluded that "no small quantum of information" supported the California Legislature's finding that conversion therapy is harmful to minors. *Pickup v. Brown*, 42 F. Supp. 3d 1347, 1376 (E.D. Cal. 2012). The 2009 American Psychological Association Report relied upon by both California and the City reported evidence that conversion therapy for adolescents is based upon inaccurate, unscientific views of sexual orientation and gender identity. APA Report, *supra*, at 74–75.

Moreover, such therapy is often coercive and based on fear. *Id.* Adolescents often "agree" to such practices out of fear of disapproval, loss of love, rejection, or outright abandonment by their family, community, and/or peer group. *Id.* at 75. Minors' lack of legal and economic independence renders them especially vulnerable to pressure to engage in conversion therapy. *Id.*

Reviewing similar evidence two years later in 2014, the Third Circuit noted that

> [i]t is not too far a leap in logic to conclude that a minor client might suffer psychological harm if repeatedly told by an authority figure that her sexual orientation—a fundamental aspect of her identity—is an undesirable condition. Further, if [conversion therapy] is ineffective—which, as we have explained, is supported by substantial evidence—it would not be unreasonable for a legislative body to conclude that a minor would blame herself if her counselor's efforts failed.

King v. Governor of New Jersey, 767 F.3d 216, 239 (3d Cir. 2014).

The evidence and consensus that conversion therapy harms minors continues to grow. In 2015, the Substance Abuse and Mental Health Services Administration (SAMHSA) released a report—also relied upon by the City—detailing the particular vulnerability of LGBTQ youth, who are at risk of higher rates of mental health problems due to high rates of family rejection, stigma, and discrimination. *See* Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 20 (2015) (hereinafter "SAMHSA Report"). As did the APA, SAMHSA concluded that "[i]nterventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatments." *Id.* at 11.

Finally, it bears emphasis that the Ordinance does not deprive minors of access to competent, ethical mental health care. As both the APA and SAMSHA reports explain, there are appropriate therapeutic interventions for individuals experiencing distress due to their sexual

orientation or gender identity. These effective, ethical approaches focus on providing accurate information about sexual orientation and gender identity, reducing internalized negative attitudes, and strengthening family and community ties. SAMHSA Report, *supra*, at 26–27; APA Report, *supra*, at 76–78.

III. ENJOINING THE ORDINANCE IS ADVERSE TO THE PUBLIC INTEREST

For similar reasons, enjoining the Ordinance would impair rather than advance the public interest. The City of Tampa enacted the Ordinance because it determined that the Ordinance was in the public interest. *See* Ordinance No. 2017-47, *supra*, at 4; *see also Pickup*, 42 F. Supp. 3d at 1362 (noting government's compelling interest in protecting physical and emotional well-being of youth), *aff'd*, 740 F.3d 1208 (9th Cir. 2014).

Permitting licensed therapists to engage in potentially harmful and unethical practices with respect to minors is contrary to that interest. Indeed, the precedents cited at the outset of this memorandum establish the legitimacy of the City's particular interest in protecting minors living in Tampa from these dangerous and harmful practices.

CONCLUSION

For these reasons, Equality Florida respectfully requests that the Court deny Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 12, 2018, the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system, which will also send a notice of electronic filing to all counsel of record.

/s/ Sylvia Walbolt
Attorney