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

EQUALITY FLORIDA'S AMENDED MOTION TO INTERVENE AS PARTY DEFENDANT AND MEMORANDUM OF LAW IN SUPPORT

Equality Florida Institute, Inc., the largest civil rights organization in the State of Florida that advocates on behalf of Florida's lesbian, gay, bisexual, transgender, and questioning (LGBTQ) residents, respectfully requests that this Court permit it to intervene as a party defendant pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. On December 4, 2017, Plaintiffs filed this lawsuit seeking to enjoin the City of Tampa from enforcing Ordinance 2017-47 ("the Ordinance"), which prohibits licensed mental health professionals from engaging in discredited and dangerous practices seeking to change a minor's sexual orientation or gender identity.

Equality Florida was one of the primary organizational sponsors of the Ordinance. Its 302,000 members include some of the very Tampa residents who are most in need of the protections the Ordinance provides, including LGBTQ children at risk of being subjected to conversion therapy and their parents.

The Court should permit Equality Florida to intervene. Equality Florida's timely intervention as a party in this action would not expand the issues before the Court, prejudice any party, or cause any delay in the existing case schedule. Instead, Equality Florida's unique position as a primary sponsor of the challenged law and its deep understanding of the scientific and medical consensus rejecting the prohibited and injurious practices would assist the Court in efficiently adjudicating the existing parties' rights.

Intervention is thus appropriate because Equality Florida will provide "a helpful, alternative viewpoint from the vantage of some persons who have undergone [conversion therapy] or are potential patients of treatment that will aid the court in resolving plaintiffs' claims fully and fairly." *King v. Christie*, 981 F. Supp. 2d 296, 310 (D.N.J. 2013) (quoting *Pickup v. Brown*, 2:12-cv-02497, 2012 WL 6024387, at *4 (E.D. Cal. Dec. 4, 2012) (internal quotation marks omitted)) (permitting intervention by statewide LGBTQ rights advocacy organization to defend conversion therapy ban), *aff'd*, 767 F.3d 216, 246 (3d Cir. 2014).

FACTUAL BACKGROUND

A. The Challenged Ordinance

The Ordinance prohibits "any person who is licensed by the State of Florida to provide professional counseling . . . including but not limited to, medical practitioners, osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors" from "practic[ing] conversion therapy efforts on any individual who is

a minor." Tampa, Fla. Code of Ordinances §§ 14-311, -312. The Ordinance defines "conversion therapy" as "any counseling, practice or treatment performed with the goal of changing an individual's sexual orientation or gender identity." *Id.*§ 14-311.

In enacting the Ordinance, the Tampa City Council found that "being lesbian, gay, bisexual, transgender, or questioning is not a mental disease, mental disorder, mental illness, deficiency, or shortcoming," a fact that has been "recognized by major professional associations of mental health practitioners and researchers in the United States and elsewhere for nearly 40 years." Tampa, Fla., Ordinance No. 2017-47, at 1, 4 (Apr. 6, 2017).

Moreover, the Council made specific legislative findings to explain the need for the Ordinance. These findings summarized the conclusions of no fewer than thirteen professional associations and governmental agencies that conversion therapy has not been shown to be effective and that it can pose critical health risks, particularly to minors.

In light of its legislative findings regarding this medical and professional consensus, the Council concluded that "Tampa has a compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender, and questioning youth, and in protecting its minors against exposure to serious harms caused by sexual orientation and gender identity change efforts." *Id.* at 4.

The City Council approved the Ordinance unanimously. Mayor Bob Buckhorn signed the Ordinance on April 10, 2017. It went into effect immediately.

B. Equality Florida Was Involved In The Enactment Of The Ordinance

As part of Equality Florida's mission of combatting harassment and discrimination against LGBTQ Floridians, Equality Florida has supported the enactment of LGBTQ civil rights laws at the state, county, and municipal levels. Declaration of Nadine Smith (Smith Decl.), filed

concurrently herewith ¶¶ 2–3. Equality Florida was actively involved in the enactment of the Ordinance.

More specifically, Equality Florida drafted the Ordinance. *Id.* ¶ 5. Equality Florida's Development Director and other members testified in person before the City Council in favor of the Ordinance. *Id.*

C. Plaintiffs' Challenge to the Ordinance

Plaintiffs include one Florida licensed marriage and family therapist (LMFT) and one individual whose Florida LMFT application is still pending, both of whom wish to practice conversion therapy with minors. Dkt. 1 at ¶¶ 14–15. Plaintiffs' Complaint alleges that the Ordinance violates their constitutional rights as well as those of their minor clients and their clients' parents. *Id.* at ¶¶ 4–10. Plaintiffs therefore seek to enjoin Tampa from enforcing the Ordinance permanently; they also seek a declaratory judgment that the Ordinance is unconstitutional under both the United States and Florida constitutions; and they seek actual and nominal damages. *Id.* at 34–37.

Plaintiffs filed a motion for a preliminary injunction concurrently with the filing of their Complaint. Dkt. 3. On December 18, 2017, the Court granted the City an extension to file its responses to the Complaint and Motion for Preliminary Injunction, which are now due on January 12, 2018. Dkt. 19. In keeping with this schedule, proposed Intervenor-Defendant Equality Florida is filing its proposed Motion To Dismiss and its proposed Opposition to Plaintiffs' Motion for Preliminary Injunction concurrently with this motion.

ARGUMENT

As explained below, Equality Florida satisfies the threshold requirements for permissive intervention. Rule 24(b) of the Federal Rules of Civil Procedure permits intervention by any

party so long as (1) its motion is timely; (2) it has a claim or defense that shares a common question of law or fact with the main action; and (3) its intervention will not cause undue delay or prejudice the rights of the original parties. Fed. R. Civ. P. 24(b); *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989).

Because these conditions are met, this Court has broad discretion to permit intervention. *Chiles*, 865 F.2d at 1213 (citing *Sellers v. United States*, 709 F.2d 1469, 1471 (11th Cir. 1983)). As also explained below, there are compelling reasons for the Court to permit Equality Florida to intervene.

I. EQUALITY FLORIDA SATISFIES THE THRESHOLD REQUIREMENTS FOR PERMISSIVE INTERVENTION

As a threshold matter, Equality Florida's motion for intervention is timely, addresses the same issues raised in the underlying action, and will not cause delay or prejudice the rights of Plaintiffs or the City.

a. Equality Florida's Motion Is Timely

The Eleventh Circuit has articulated four factors to evaluate the timeliness of a motion to intervene: (1) the length of time the putative intervenor knew (or should have known) of the interest in the case; (2) the prejudice to the existing parties due to the intervenor's failure to move for intervention immediately; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances that militate for or against a timeliness determination. *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1259 (11th Cir. 2002) (citing *Chiles*, 865 F.2d at 1213).

Equality Florida learned of this case the day it commenced. This motion comes barely more than a month later (including two intervening federal holidays). *See Chiles*, 720 F.2d at 1213 (ruling that a motion to intervene was timely when it was filed seven months after filing of

complaint and three months after filing of motion to dismiss); *Georgia*, 302 F.3d at 1259 (permitting intervention six months after filing of complaint).

Moreover, the only significant action in the case thus far is Plaintiffs' filing of the litigation itself. This motion is filed concurrently with the City's first response to the Complaint. *See Georgia*, 302 F.3d at 1259 (noting that timeliness is not an issue before court takes significant action in a case).

Finally, as discussed further below, denying Equality Florida's motion to intervene could result in significant prejudice to its interests and those of its members. Equality Florida's motion is therefore timely, and the first element of permissive intervention is satisfied.

b. Equality Florida's Defense Of The Ordinance Raises Common Questions Of Law And Fact With the Main Action

Equality Florida's motion also meets the requirement that a putative intervenor have a claim or defense that shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1)(B); *Chiles*, 865 F.2d at 1213. Although Equality Florida would possess independent Article III standing to intervene in this case, the Eleventh Circuit does not require putative intervenors to do so. *Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1336 (11th Cir. 2007) (quoting *Chiles*, 865 F.2d at 1213).

Instead, when the putative intervenor asserts identical or substantively similar positions and shares a common objective with one of the original parties, the requirement is easily satisfied. *See In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1247 (11th Cir. 2006) (noting that requirement is satisfied when putative intervenor shows "how common questions of fact or law place[] it in the same stead as" one of the original parties). Equality Florida fully shares with the City the objective of defending the Ordinance as a valid, enforceable exercise of the City's power to protect its LGBTQ youth.

Courts regularly permit public interest organizations to intervene as defendants in challenges to governmental actions the organizations supported. *See, e.g.*, *Ga. Aquarium, Inc. v. Pritzker*, 309 F.R.D. 680, 690–91 (N.D. Ga. 2014) (permitting animal welfare organizations to intervene in challenge to agency action denying permit to import marine mammals because organizations lobbied for permit denial). In such cases, the public interest organization and the governmental defendant share a common objective—the defense of the challenged law—and their claims are likely to overlap significantly. *Id.*

This same logic undergirded the courts' decisions to permit intervention by Equality Florida's sister organizations in previous conversion therapy ban challenges. *See King*, 981 F. Supp. 2d at 309 (permitting intervention by Garden State Equality); *Pickup*, 2012 WL 6024387, at *4 (permitting intervention by Equality California). The second Rule 24(b) element is satisfied.

c. Equality Florida's Intervention Will Not Cause Undue Delay Or Prejudice The Rights Of The Original Parties

Equality Florida's motion is timely, and granting permissive intervention will cause no undue delay. *See* Fed. R. Civ. P. 24(b)(3).

The underlying litigation involves only two Plaintiffs and a single governmental Defendant, and Equality Florida is a single putative intervenor. Moreover, the Court has not yet taken any significant action in the case. The third Rule 24(b) element is therefore satisfied.

II. EQUALITY FLORIDA'S INTERVENTION WILL ASSIST THE COURT IN PROPERLY ADJUDICATING THE PARTIES' CLAIMS

Because Equality Florida satisfies the threshold requirements for permissive intervention, Rule 24(b) authorizes the Court, in its discretion, to permit intervention. *Chiles*, 865 F.2d at 1213. Doing so would aid the Court's adjudication of this case for at least three reasons.

First, the nature and extent of Equality Florida's interest supports intervention. Equality Florida has a direct interest in this litigation as the largest LGBTQ civil rights organization in Florida. Its mission includes efforts to enact laws that protect LGBTQ youth from harmful and discriminatory treatment. As a primary organizational sponsor of the challenged Ordinance, it was heavily involved throughout the process that led to its enactment.

Equality Florida therefore has a substantial and unique interest in the enforcement of the Ordinance that distinguishes it from the general public. *See Pritzker*, 680 F.R.D. at 690–91; *see also Pickup*, 2012 WL 6024387, at *1–2 (noting that a ruling that conversion therapy ban was unconstitutional "would undercut [organization's] mission of protecting LGBT youth from harmful therapies.").

Second, Equality Florida will significantly contribute to the development of the record in this case and aid in the fair, efficient adjudication of the issues before the Court. *See King*, 981 F. Supp. at 310 (quoting *Pickup*, 2012 WL 6024387, at *4) (noting that New Jersey LGBTQ advocacy organization's information about harms of conversion therapy would "provide a helpful, alternative viewpoint" to Plaintiffs' view that they are effective and safe).

Finally, Equality Florida's counsel includes the National Center for Lesbian Rights, which represented the LGBTQ advocacy organizations that intervened to defend the conversion therapy bans in New Jersey and California. In both cases, the LGBTQ advocacy organizations submitted briefs on the merits, as well as testimony from experts demonstrating the risk of severe harm to minors caused by conversion therapy.

CONCLUSION

For these reasons, Equality Florida respectfully requests that the Court permit it to intervene as a party defendant under Rule 24(b).

RULE 3.01(g) CERTIFICATION

In accordance with Local Rule 3.01(g), Counsel for Intervenor-Defendant Equality Florida certifies that on January 11, 2018, the undersigned conferred with Counsel for Plaintiffs and Counsel for Defendant concerning this Motion to Intervene. Counsel for Plaintiffs represents that Plaintiffs oppose the motion. Counsel for Defendant represents that Defendant does not oppose the motion.

Respectfully submitted,

/s/ *Sylvia Walbolt*

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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