No. 19-14387

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

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,
Plaintiffs-Appellees,

v.

CITY OF TAMPA, FLORIDA,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida
Case No. 8:17-cv-02896-WFJ-AAS
The Honorable William F. Jung

BRIEF OF AMICI CURIAE EQUALITY FLORIDA INSTITUTE INC., NATIONAL CENTER FOR LESBIAN RIGHTS AND SOUTHERN POVERTY LAW CENTER IN SUPPORT OF DEFENDANT-APPELLANT

Shannon P. Minter
Christopher F. Stoll
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: (415) 392-6257
Facsimile: (415) 392-8442

Sylvia H. Walbolt
Brian C. Porter
CARLTON FIELDS, P.A.
4221 W. Boy Scout Boulevard
Tampa, FL 33607-5780
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

Scott D. McCoy
J. Tyler Clemons
SOUTHERN POVERTY LAW CENTER
106 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 521-3042

Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, amici curiae hereby certify that the following persons have an interest in the outcome of this appeal:

Burr & Forman LLP, counsel for Defendant-Appellant

Carlton Fields, P.A., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

City of Tampa, Florida, Defendant-Appellant

Clemons, J. Tyler, counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

Equality Florida Institute, Inc., amicus curiae

Gannam, Roger K., counsel for Plaintiffs-Appellees

Harvey, David E., counsel for Defendant-Appellant

Jung, Hon. William F., U.S. District Judge

Liberty Counsel, Inc., counsel for Plaintiff-Appellee

McCoy, Scott D., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

Mihet, Horatio G., counsel for Plaintiff-Appellee

Minter, Shannon P., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

National Center for Lesbian Rights, amicus curiae

Porter, Brian C., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

Richardson, Ursula Danise, counsel for Defendant-Appellant

Robbins, Dana Lee, counsel for Defendant-Appellant

Sansone, Hon. Amanda Arnold, U.S. Magistrate Judge

Schmid, Daniel J., counsel for Plaintiff-Appellee

Soli Deo Gloria International, Inc. d/b/a New Hearts Outreach Tampa Bay, Plaintiff-Appellee

Southern Poverty Law Center, amicus curiae

Staver, Mathew D., counsel for Plaintiff-Appellee

Stoll, Christopher F., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

Walbolt, Sylvia H., counsel for amici curiae Equality Florida Institute, Inc., National Center for Lesbian Rights and Southern Poverty Law Center

Williams, Robert V., counsel for Defendant-Appellant

No publicly traded corporation has an interest in the outcome of the case or appeal.

Dated: December 27, 2019

/s/ Sylvia H. Walbolt
Sylvia H. Walbolt
Counsel for Amici Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE[1]

Equality Florida Institute, Inc., is 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. 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 all governmental levels. Its 302,000 members, including Hillsborough County residents, have a unique interest in the need to protect LGBTQ children at risk of being subjected to conversion therapy.

The National Center for Lesbian Rights ("NCLR") is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving statutory, constitutional, and civil rights.

---

[1] Counsel for all parties have consented to the filing of this brief. Counsel for the parties have not authored this brief in whole or in part. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the amici curiae and their counsel contributed money that was intended to fund preparing or submitting the brief.

In particular, NCLR has supported the enactment of narrowly tailored laws and regulations that protect minors from the practice of conversion therapy by licensed therapists. NCLR represented intervenor parties and amici curiae in Third and Ninth Circuit cases that have upheld these laws against constitutional challenges. *See Pickup v. Brown,* 740 F.3d 1208 (9th Cir. 2014), *cert. denied,* 573 U.S. 945 (2014), *and cert. denied sub nom.*; *Pickup v. Newsom,* No. 18-1244, 139 S.Ct. 2622 (2019); *Welch v. Brown,* 834 F.3d 1041 (9th Cir. 2016), *cert. denied,* 137 S. Ct. 2093 (2017); *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014), *cert. denied sub nom.*; *King v. Christie,* 135 S. Ct. 2048 (2015), *and cert. denied sub nom.*; *King v. Murphy,* 139 S. Ct. 1567 (2019); *Doe v. Governor of New Jersey,* 783 F.3d 150 (3d Cir. 2015), *cert. denied* sub nom.; *Doe v. Christie*, 136 S. Ct. 1155 (2016).

Southern Poverty Law Center ("SPLC") is a non-profit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Since its founding in 1971, the SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless, and the forgotten. In particular, SPLC was counsel in *Ferguson, et al. v. JONAH, et al.*, No. L-5473-12 (N.J. Super. Ct. 2015) (permanently enjoining the marketing, sale, and provision of conversion therapy after unanimous jury verdict that conversion therapy constitutes an unconscionable commercial practice and is a violation of the New Jersey Consumer Fraud Act).

INTRODUCTION

In addition to the arguments set forth by the City of Tampa, the District Court's holding that City of Tampa Ordinance 2017-47 ("the Ordinance") is preempted by state law is erroneous for two reasons.

First, the District Court improperly substituted its own views for the detailed legislative findings supporting the Ordinance. Contrary to the District Court's assertion that Tampa simply relied on its own "lay judgment" about conversion therapy, in fact Tampa relied on the consensus of our nation's leading medical and mental health organizations that conversion therapy is harmful, ineffective, and should never be performed on minors.

Second, the District Court erroneously concluded that Florida's laws protecting privacy rights, patients' rights, and parental rights showed that local governments are preempted from enacting laws to protect minor patients from ineffective but harmful medical treatments. In fact, both the text of those provisions and the case law interpreting them show otherwise. The statutes themselves extend protection only to treatments that are "effective" and consistent with medical standards of care, which excludes conversion therapy. Similarly, the case law on privacy and parental rights consistently holds that patients do not have a right to medical treatments that the government has reasonably deemed unsafe or

ineffective, and that parents similarly do not have a right to subject their children to dangerous and ineffective medical treatments.

ARGUMENT

I. THE DISTRICT COURT IMPROPERLY DISREGARDED THE LEGISLATIVE FINDINGS BASED ON THE MEDICAL CONSENSUS THAT CONVERSION THERAPY IS HARMFUL AND SHOULD NEVER BE PERFORMED ON MINORS

While the District Court did not expressly rule that Tampa had no sufficient evidentiary basis for protecting children from conversion therapy, it improperly disagreed with the Ordinance's detailed findings that conversion therapy is unsafe for minors. *Vazzo*, 2019 WL 4919302, at *14 (describing the Ordinance as a "lay attempt at psychotherapy regulation" in a "complex, evolving area").

Contrary to the District Court's opinion, the City Council's findings rest on a strong and longstanding medical consensus that therapy with the preordained goal of changing a young person's sexual orientation or gender identity—as conversion therapy has—confers no therapeutic benefits and puts minors at risk of serious harms, including suicide.

That consensus is reflected in the policy statements of the nation's leading medical and mental health professional organizations, which are cited in the Ordinance's findings. As those legislative findings make clear, there is significant evidence that conversion therapy is not an effective treatment for minors and that it

causes serious harms. As a result, these organizations all oppose its use on minors under any circumstances. *See* Doc. 24-1.

In 2015, the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services published a report and recommendations based on "careful review of existing research, professional health association reports and summaries, and expert clinical guidance." ("SAMHSA Report"). The SAMHSA Report found "none of the existing research supports the premise that mental or behavioral health interventions can alter gender identity or sexual orientation." *Id*. It concluded: "Interventions 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 treatment." *Id*.

In 2018, the American Academy of Child & Adolescent Psychiatry ("AACAP") similarly found that "'conversion therapies' (or other interventions imposed with the intent of promoting a particular sexual orientation and/or gender as a preferred outcome) lack scientific credibility and clinical utility. Additionally, there is evidence that such interventions are harmful."[2] It concluded that

[2] https://www.aacap.org/aacap/policy_statements/2018/Conversion_Therapy.aspx

"'conversion therapies' should not be part of any behavioral health treatment of children and adolescents."

The American Academy of Pediatrics has had a similar policy since 1993.[3] Its most recent policy, updated in 2019, concluded: "Referral for 'conversion' or 'reparative therapy' is *never indicated*."[4]

In a 2009 report, the American Psychological Association likewise "found no empirical evidence that providing any type of therapy in childhood can alter adult same-sex sexual orientation," and warns that attempts to do so "can produce harm." It has found that patients who have undergone conversion therapy "reported negative social and emotional consequences," including "self-reports of anger, anxiety, confusion, depression, grief, guilt, hopelessness, deteriorated relationships with family, loss of social support, loss of faith, poor self-image, social isolation, intimacy difficulties, intrusive imagery, suicidal ideation, self-hatred, and sexual dysfunction."

As a result, it has concluded that therapists should not perform conversion therapy on minors under any circumstances, including for "children and adolescents who present a desire to change their sexual orientation."

---

[3] https://pediatrics.aappublications.org/content/pediatrics/92/4/631.full.pdf

[4] https://pediatrics.aappublications.org/content/132/1/198.full?sid=baab3d90-dd2d-4618-8b7d-b3091d6eb732 (emphasis added).

Subsequent research has strengthened these conclusions. A 2018 peer-reviewed study found that more than *60 percent* of young adults who had been subjected to conversion therapy as minors reported attempting suicide. *See* Caitlin Ryan et al., *Parent-Initiated Sexual Orientation Change Efforts with LGB Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 J. Homosexuality 159 (2020), *available at* https://doi.org/10.1080/00918369.2018.1538407.

A 2019 study of conversion therapy published in the Journal of the American Medical Association documented an even higher risk of suicidality for transgender youth exposed to conversion therapy. Based on a cross-section of 27,715 transgender adults, the study found that "recalled exposure to gender identity conversion efforts was significantly associated with increased odds of severe psychological distress during the previous month and lifetime suicide attempts compared with transgender adults who had discussed gender identity with a professional but who were not exposed to conversion efforts." Jack L. Turban et al., *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, JAMA Psychiatry (Sept. 11, 2019), *available at* https://doi.org/10.1001/jamapsychiatry.2019.2285. Importantly, transgender adults

reporting identity conversion efforts before the age of 10 were *four times more likely to experience suicide attempts* than other transgender individuals. *See id.*

The City Council was entitled to rely on this strong medical consensus to protect children in Tampa from potentially life-threatening harms, just as the legislatures of eighteen states, the District of Columbia, and more than 60 other localities across the country have done.

In addition to usurping the City Council's legislative role, the District Court's criticism of the research rests on three misconceptions. First, the District Court conflated (1) the complexity of evolving research on the best treatment protocols for children with gender dysphoria with (2) the clarity of the strong medical consensus that attempts to change a child's gender identity or gender expression by therapy with a single preordained goal are never appropriate or safe. The Court notes that gender identity may be fluid, that the protocols for how to treat transgender children are still evolving, and that gender dysphoria in childhood does not necessarily persist into adulthood. *Vazzo*, 2019 WL 4919302, at *13-14.

But none of those facts avoid the dangers of a therapy that proceeds with a single preordained goal of changing a child's identity to conform to a traditional norm as the only legitimate outcome of the therapy. The mere existence of gender fluidity does not mean that gender-fluid minors can be safely subjected to conversion therapy, or that such therapy is effective. To the contrary, attempts to impose a

predetermined outcome on minor patients, whatever their gender identity may be, are contrary to clearly established medical standards of care, as the federal government concluded in its 2015 SAMHSA Report and as the professional organizations have also made plain.

Similarly, while it is true that mental health professionals continue to research and develop best practices and standards of care for dealing with transgender children and adolescents, that in no way detracts from the clearly established consensus that attempts to change a child's gender identity or gender expression are harmful. As the American Academy of Child and Adolescent Psychiatry has explained: while 'conversion therapies' should not be part of any behavioral health treatment of children and adolescents," "this is no way detracts from the standard of care which requires that clinicians facilitate the developmentally appropriate, open exploration of sexual orientation, gender identity, and/or gender expression, without any pre-determined outcome." In sum, contrary to the District Court's implication, the continued evolution of research and clinical practice relating to transgender minors does not justify the use of conversion therapies or undermine the clear medical consensus that such therapies are harmful and should never be performed on any child.

Second, the District Court similarly conflates (1) the scientific standard for finding that a treatment may be harmful and should be discontinued with (2) the

different standard required to prove efficacy. For example, the District Court notes the alleged absence of rigorous scientific studies *proving* that conversion therapy causes harm or *quantifying* the precise amount of increased risk of harm from conversion therapy. *Vazzo*, 2019 WL 4919302, at *13-14.

But while rigorous evidence is required to prove that a treatment works, *any* significant evidence of serious or unexpected harm—which indisputably is present here—must be given great weight and can justify discontinuing further study once a treatment has been shown to put patients' safety at risk. *See Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 698 (D.C. Cir. 2007) ("At any time during the clinical trials, a drug sponsor is required to notify the FDA of "[a]ny adverse experience associated with the use of the drug that is both serious and unexpected," id. §312.32(c)(1)(A), and the FDA may order a "clinical hold" halting the trials if it determines that safety concerns so warrant, id. § 312.42.").

For just this reason, the American Psychological Association has explained that responsible professionals stopped conducting double-blind studies on conversion therapy after initial studies documented serious negative effects. *See* APA Report at 24. Conducting such research on minors would be particularly unethical, and no responsible researcher would do so. As the District Court in *Otto* correctly noted, "legislative bodies do not need to wait for further evidence of the

negative and, in some cases, fatal consequences of [conversion therapy] before acting to protect their community's minors." *Otto v. City of Boca Raton*, 365 F. Supp. 3d 1237, 1262 (S.D. Fla. 2019) (citing *Fox Television Stations*, 556 U.S. at 519).[5]

The District Court's suggestion that legislators must await more research on harm to minors disregards this well-established scientific and legal framework. As the City Council correctly found, there is substantial evidence that conversion therapy puts minors at risk of serious harms and that the professional medical organizations are unanimous in unequivocally urging its discontinuance on minors.

Finally, the District Court's criticism of the legislative findings also overlooks the baseline scientific principle that a treatment "is unsafe if its potential for inflicting death or physical injury is not offset by the possibility of therapeutic benefit." *U.S. v. Rutherford*, 442 US 542, 556 (1979). That principle underlies the medical consensus that conversion therapy should play no role in the treatment of minors. As the federal government has explained, "[n]o research has been published in the peer-reviewed literature that demonstrates the efficacy of conversion therapy efforts with gender minority youth, nor any benefits of such interventions to children and their families." (SAMSHA Report, Doc. 24-5, p. 568).

---

[5] Notably, the APA filed an amici brief in the *Otto* action in support of a similar ordinance banning conversion therapy.

To be clear, the American Psychological Association has expressly found that while some individuals report some positive benefits from conversion therapy, "such as experiencing empathy and a supportive environment to discuss problems and share similar values," none of those benefits overcomes the defining characteristic of such therapy—which is the goal of changing a person's sexual orientation or gender identity to conform to a predetermined outcome deemed acceptable. (APA report 68). To the contrary, "the benefits reported by participants in SOCE may be achieved through treatment approaches that do not attempt to change sexual orientation." *Id.*

In sum, while conversion therapy provides no unique benefits, it is associated with serious, potentially life-threatening harms. That is why the medical community has issued such strong and urgent warnings against its use on minors. Those warnings are supported by medical science, and the City Council was entitled to rely on that strong medical consensus in passing the Ordinance.

II. FLORIDA LAWS CONCERNING PRIVACY RIGHTS, PARENTAL RIGHTS, AND PATIENTS' RIGHTS DO NOT PREEMPT LOCAL GOVERNMENTS' AUTHORITY TO PROTECT MINORS FROM INEFFECTIVE AND DANGEROUS MEDICAL TREATMENTS

As the City correctly argues, Florida's statutes governing the licensing and discipline of health care professionals do not preempt local governments' authority to protect minors from the potentially life-threatening harm of conversion therapy. Indeed, the District Court acknowledged that Florida's licensing statutes expressly

contemplate that local ordinances may protect public health and safety from harm caused by the conduct of health care professionals. *See Vazzo v. City of Tampa,* __ F. Supp. 3d __, 2019 WL 4919302, at *11 (M.D. Fla. Oct. 4, 2019) (citing Fla. Stat. § 456.003(2)(b)). That is what the Ordinance does, based on the medical consensus that conversion therapy is ineffective and extremely dangerous for vulnerable minors.

Florida's protections of privacy and parental rights similarly do not support the District Court's holding. A consistent body of case law holds, contrary to the District Court's novel ruling, that parents do not have a right to obtain specific medical treatments for their minor children that the government has concluded, based on a broad medical consensus, are dangerous and ineffective for children.

A. The Right to Privacy Does Not Bar Local Governments from Regulating Harmful Medical Treatments.

In holding that Tampa lacked authority to enact the Ordinance, the District Court relied on Florida's state constitutional right to privacy. *See* Fla. Const. art. I, § 23. Notably, the court did not hold that the Ordinance *violates* this provision, but only that the "privacy amendment suggests that government should stay out of the therapy room." *Vazzo,* 2019 WL 4919302, at *9. But nothing in the text of the privacy provision or the case law construing it demonstrates that it was intended to preempt all governmental regulation of mental health treatments for minors.

As a state constitutional provision, the privacy provision constrains the authority of the Florida Legislature as much as it does local officials. Under the District Court's reasoning, the entire legislative scheme regulating medical treatment and practice would be unconstitutional as violative of Florida citizen's right to select their own doctors and treatments. There is no textual basis to conclude that this general right to privacy imposes a different or additional restriction on local governments that precludes them from legislating on issues of health and safety of their minor citizens with respect to dangerous and discredited medical treatments.

There also is no principled basis to conclude that enforcement of the Ordinance would violate the Florida Constitution's privacy provision in any way, and the Plaintiffs did not rely upon it in challenging the Ordinance. Nor did the District Court cite any case law to support its conclusion that the privacy amendment "suggests that government should stay out of the therapy room." *See Vazzo*, 2019 WL 4919302, at *20. If that were so, then no regulation of mental health treatment would be possible, which would require a sea change in the current law. *See id.* at *8 ("There seems nothing more regulated and addressed by the Florida legislative and administrative body than healthcare, and a material part of this is mental health related.").

Federal courts have uniformly rejected similar claims that the right to privacy guaranteed by the Due Process Clause entitles patients—even those facing terminal

illness—to obtain medical treatments that the government reasonably has concluded are harmful or ineffective. As the D.C. Circuit has noted, "[n]o circuit court has acceded to an affirmative access claim." *Abigail Alliance for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 710 n.8 (D.C. Cir. 2007) (holding that terminally ill patients have no fundamental right to access treatments whose safety has not yet been tested).

Other federal circuits have held to the same effect: *Nat'l Ass'n for the Advancement of Psychoanalysis v. Ca. Bd. Of Psychology,* 228 F.3d 1043, 1050 (9th Cir. 2000) ("[S]ubstantive due process rights do not extend to the choice of type of treatment or of a particular health care provider."); *Mitchell v. Clayton*, 995 F.2d 772, 775 (7th Cir. 1993) ("[A] patient does not have a constitutional right to obtain a particular type of treatment or to obtain treatment from a particular provider if the government has reasonably prohibited that type of treatment or provider."); *Rutherford v. United States*, 616 F.2d 455, 457 (10th Cir. 1980) (holding that terminally ill cancer patients had no fundamental right to obtain non-FDA approved drugs).

In the context of laws prohibiting licensed therapists from performing conversion therapy on minors, the Third and Ninth Circuits have specifically

rejected the claim that such laws violate therapists' or patients' right to privacy. [6] *Pickup*, 740 F.3d 1208, 1235–36 (9th Cir. 2014); *Doe v. Governor of New Jersey*, 783 F.3d 150, 156 (3d Cir. 2015). There is no reason to conclude that the Florida Supreme Court would interpret Florida's privacy provision differently to provide an affirmative right to obtain dangerous medical treatments that the government has prohibited in order to protect the health and safety of minors. *Cf. Maisler v. State,* 425 So. 2d 107, 108 (Fla. App. 1982) (rejecting claim that Florida statute prohibiting private possession of cannabis violated Florida Constitution's right to privacy).

B. Parental Rights Do Not Include A Right to Preclude the Government from Prohibiting Licensed Medical Professionals from Subjecting Minors to Harmful Medical Treatments.

For similar reasons, the District Court mistakenly relied on Florida's protection of parental rights to bolster its invalidation of the Ordinance. It is true that parents ordinarily are responsible for making health care decisions for their children. *See* Fla. Stat. § 743.07. But nothing in Florida law indicates that this right confers on them authority to subject their children to dangerous treatments that the government has reasonably concluded are ineffective and cannot safely be

---

[6] Nothing in *Nat'l Institute of Family and Life Advocates v. Becerra,* 138 S. Ct. 2361 (2018) ("*NIFLA*") casts doubt on these conclusions. To the contrary, *NIFLA* expressly affirmed *Casey*'s holding that governments may regulate the practice of medicine to protect patient health and safety even when such regulations incidentally restrict some speech that is part of the practice of medicine. *NIFLA*, 138 S. Ct. at *2371.

performed. Nor is there any indication that these laws were intended to preempt local regulations protecting minors' health and safety.

As the Ninth Circuit explained, "it would be odd if parents had a substantive due process right to choose specific treatments for their children—treatments that reasonably have been deemed harmful by the state—but not for themselves. It would be all the more anomalous because the Supreme Court has recognized that the state has greater power over children than over adults." *Pickup,* 740 F.3d at 1246 (citing *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944)). Similarly, the Third Circuit held that "the case law does not support the extension of [parental rights] to a right of parents to demand that the State make available a particular form of treatment." *Doe,* 783 F.3d at 156.

It is well established that parents' rights to direct the upbringing and instruction of their children are not unlimited. As the United States Supreme Court emphasized long ago, "a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham v. J.R.*, 442 U.S. 584, 603, 99 S. Ct. 2493, 61 L.Ed.2d 101 (1979). In short, parental rights do "not include liberty to expose . . . the child . . . to ill health or death." *Prince*, 321 U.S. at 166-67. Instead, government may restrict, or even compel, certain parental decisions when the health or safety of the child is at issue.

C. Laws Concerning Patients' Rights and Informed Consent Do Not Bar Local Governments from Regulating Harmful Medical Treatments.

The District Court also relied on the Florida Patient's Bill of Rights and Responsibilities, Fla. Stat. § 381.026; Florida's statute concerning complementary or alternative health care treatments, Fla. Stat. § 456.41; and the Florida Medical Consent Law, Fla Stat. § 766.103. Again, the court did not conclude that the Ordinance violates these laws, but only said they demonstrate that the Legislature, by implication, intended to preempt local governments from enacting regulations of mental health care professionals such as the Ordinance. Nothing in these laws demonstrates such an intent.

To the contrary, the Florida Patient's Bill of Rights expressly provides that it "shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law." Fla. Stat. § 381.026. The Legislature made clear by this provision its intent that the Patient's Bill of Rights should *not* be held by the court to preempt any other state or local regulation.

In addition, the Patient's Bill of Rights by its express terms, does not apply to mental health care practitioners such as Plaintiffs, but only to "a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a

podiatric physician licensed under chapter 461." Fla. Stat. § 381.026(2). Marriage and family therapists such as Plaintiff Vazzo are not covered.

Similarly, Fla. Stat. § 456.41 defines the term "complementary or alternative health care treatment" to mean "any treatment that is designed to provide patients with an *effective* option to the prevailing or conventional treatment methods…." Fla. Stat. § 456.41(2)(a) (emphasis added.) In addition, the statute provides that it "does not modify or change the scope of practice of any licensees of the department, nor does it alter in any way the provisions of the individual practice acts for those licensees, which require licensees to practice *within their respective standards of care* and which prohibit fraud and exploitation of patients." *Id.* § 456.41(5) (emphasis added).

Thus, Plaintiffs are limited by state law to providing only "effective" alternatives consistent with their standards of care, which the Ordinance finds is not the case with respect to conversion therapy for minors. As the policy statements of virtually all major medical and mental health professional organizations cited in the legislative findings accompanying the Ordinance demonstrate, the evidence establishes that conversion therapy is not an effective treatment option for minors, and these organizations have all opposed its use as unsafe and inconsistent with the prevailing standard of care. *See* Doc. 24-1.

It is clear from the text of Florida's complementary and alternative medicine statute that it was not intended to authorize the use of dangerous and ineffective treatments such as conversion therapy, when the strong consensus of the relevant professions is that such treatments should not be used for minors.

Finally, Florida' informed consent statute also provides no support for the District Court's holding. The statute itself makes clear that any informed consent must be obtained "in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community." Fla. Stat. § 766.103(3)(a)(1).

As noted, the relevant medical community has determined that conversion therapy is *never* appropriate for minors. It certainly is contrary to the standard of care, as the reports relied on by the government make plain. Accordingly, obtaining informed consent for such treatment would not satisfy the Florida statute by its own terms.

Given these crucial limitations, the statute cannot reasonably be construed to impliedly prohibit all local regulation of mental health treatments enacted to protect the health and safety of minors by precluding treatments that contravene prevailing standards of care for minors.

In sum, none of the statutes cited by the District Court indicates that this power is beyond the reach of local governments.

CONCLUSION

For the foregoing reasons and those stated in Defendant-Appellant's brief, amici curiae respectfully request that the Court reverse the decision of the District Court.

DATED: December 27, 2019

Respectfully submitted,

/s/ Sylvia H. Walbolt

Sylvia H. Walbolt
Florida Bar Number: 33604
Brian C. Porter
Florida Bar Number: 0120282
Carlton Fields, P.A.
4221 W. Boy Scout Boulevard
Tampa, FL 33607-5780
Telephone: (813) 223-7000
Facsimile: (813) 229-4133
swalbolt@carltonfields.com
bporter@carltonfields.com
devans@carltonfields.com
jcostello@carltonfields.com
tpaecf@cfdom.net

Shannon P. Minter
Christopher F. Stoll
National Center for Lesbian Rights
870 Market Street, Suite 370
San Francisco, CA 94102
Telephone: (415) 392-6257
Facsimile: (415) 392-8442
sminter@nclrights.org
cstoll@nclrights.org

Scott D. McCoy
J. Tyler Clemons
Southern Poverty Law Center

106 East College Avenue
Tallahassee, FL 32301
Telephone: (850) 521-3042
scott.mccoy@splcenter.org
tyler.clemons@splcenter.org

Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation, as provided in Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), because, exclusive of the exempted portions of the brief, the brief contains 4,474 words.

2. This brief complies with the type-face requirements, as provided in Fed. R. App. P. 32(a)(5), and the type-style requirements, as provided in Fed. R. App. P. 32(a)(6), because the brief has been prepared in proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: December 27, 2019

/s/ Sylvia H. Walbolt
Sylvia H. Walbolt
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on December 27, 2019. Service on all counsel will be made through the CM/ECF system.

Dated: December 27, 2019

/s/ Sylvia H. Walbolt
Sylvia H. Walbolt
Counsel for Amici Curiae