

**IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA**

**CASE NO.: 16-2017-CA-1263
DIVISION: CV-E**

**JOHN PARSONS, LIBERTY AMBULANCE
SERVICE, INC., a Florida corporation, ROBERT
ASSAF, DIAMOND D. RANCH, INC., a Florida
corporation, and MICHAEL GRIFFIN,**

Plaintiffs,

vs.

**CITY OF JACKSONVILLE,
a municipal corporation and political
subdivision of the State of Florida,**

Defendant.

**ORDER GRANTING DEFENDANT CITY OF JACKSONVILLE'S
MOTION TO DISMISS WITH PREJUDICE AMENDED COMPLAINT FOR
DECLARATORY RELIEF**

This cause came before this Court November 3, 2017, for a hearing on Defendant City of Jacksonville's Motion to Dismiss With Prejudice Amended Complaint for Declaratory Relief ("Motion"), filed August 18, 2017, and this Court, having heard argument of counsel, having considered the Motion, the Amended Complaint for Declaratory Relief ("Amended Complaint"), and relevant authority, and being otherwise fully advised, makes the following findings of fact and conclusions of law.

1. The Amended Complaint was filed and served pursuant to this Court's Order Granting Defendant City of Jacksonville's Amended Motion to Dismiss Without Prejudice, filed July 12, 2017. The Amended Complaint drops the initial Complaint's prayer for injunctive relief and adds four Plaintiffs. The Amended Complaint alleges that Jacksonville Ordinance

2017-15-E, the so-called “Human Rights Ordinance” (“HRO”), suffers from infirmities relating to publication of sections of the Jacksonville Ordinance Code which the HRO purports to amend, similar to the allegations of the original Complaint. Plaintiffs allege injuries resulting from those alleged infirmities of the HRO.

2. Plaintiff Parsons alleges injuries to “personal bodily privacy, modesty, and dignity,” by requiring businesses and public accommodations to allow biological females to use men’s restrooms while Parsons is using those facilities and to allow biological males to use women’s restrooms while his wife and daughters are using those facilities.

3. Plaintiffs Assaf, an owner of Liberty Ambulance Service, and Griffin, an owner of Diamond D Ranch, allege injuries stemming from the HRO’s requirement that their businesses accommodate and affirm any gender identity or gender-related identity, appearance, or expression by an employee or customer, even if inconsistent with the employee’s or customer’s biological sex, in derogation of the religious conscience rights of Assaf, Griffin, and others of their employees.

4. Plaintiff Griffin also alleges, particularly, that his religious conscience rights and those of his employees are injured by the HRO’s requirement that Diamond D Ranch host and participate in same-sex wedding events. He also alleges the same kind of bathroom-use injury as does Plaintiff Parsons.

5. None of the Plaintiffs asserts that the alleged infirmities of the HRO misled or deceived him about the content, meaning or effect of the amendatory provisions of the HRO, or prevented him from participating, or caused him to decide not to participate, in the legislative process by which Defendant adopted the HRO.

6. Plaintiffs seek a declaration that the HRO is null and void, correctly asserting that their position is adverse to Defendant's position that the HRO is a validly enacted law. However, the present adversity is one of opinion only. Our Supreme Court instructed decades ago,

Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law

May v. Holley, 59 So. 2d 636, 639 (Fla. 1952). The speculative nature of Plaintiffs' asserted injuries belies any "bona fide, actual, present practical need for the declaration" Id. In another case, the Supreme Court held,

The right to utilize our declaratory decree statute does not depend upon the existence of an actual controversy but depends upon whether or not the movant shows that he is in doubt as to the existence or non-existence of some right, status, immunity, power or privilege, that he is entitled to have such doubt removed, and, if circumstances warrant it, obtain appropriate and necessary relief.

Rosenhouse v. 1950 Spring Term Grand Jury, In and For Dade County, 56 So. 2d 445, 447 (Fla. 1952). The appellant in Rosenhouse, as a taxpayer, had the right to bring an action challenging the constitutionality of a special law "because of his interest in the expenditure of public moneys." Id. at 448. In contrast, Plaintiffs here do not claim that the HRO authorizes the expenditure or raising of public moneys.

7. Plaintiffs allege no basis on which this Court could find the existence of "a bona fide, actual, present practical need for [a] declaration" on the validity of the HRO. Because of the speculative nature of their alleged injuries, including those of the newly-joined Plaintiffs, it appears that Plaintiffs are unable to allege any such basis in this action.

Therefore, it is

ORDERED AND ADJUDGED that Defendant City of Jacksonville's Motion to Dismiss With Prejudice Amended Complaint for Declaratory Relief is hereby **GRANTED** and Plaintiffs' Amended Complaint for Declaratory Relief is hereby **DISMISSED** with prejudice.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this

20 day of December, 2017.


MICHAEL R. WEATHERBY
Senior Circuit Judge

Copies furnished to:

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