UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

NAPLES PRIDE, Plaintiff; v. CITY OF NAPLES, et al., Defendants.	Case No. 2:25-cv-291 Judge: Hon. John E. Steele Magistrate Judge: Hon. Kyle C. Dudek

TIME-SENSITIVE MOTION TO INTERVENE BY CHELSEA MELONE AND THEODORE & KIMBERLY COLLINS AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Fed. R. Civ. P. 24 and Local Rule 3.01, Chelsea Melone, Theodore ("Teddy") Collins and Kimberly Collins (collectively "Proposed Intervenors") hereby move this Court for an Order permitting Proposed Intervenors to intervene in this action immediately, accepting Proposed Intervenors' motion to dismiss the Complaint filed herewith, and affording Proposed Intervenors fourteen (14) days from the date of the Order, or such other time as the Court deems appropriate to file opposition to Plaintiff's Motion for Preliminary Injunction (dkt. 12) or, alternatively, converting Proposed Intervenors' *Amici* brief (dkt. 38) to opposition the motion to dismiss. This motion is **time sensitive** because Proposed Intervenors wish to be heard in opposition to Plaintiff's Motion for Preliminary Injunction (dkt. 12), which this Court has indicated it is likely to decide by the end of this week.

Proposed Intervenors, by and through their undersigned counsel, respectfully submit the following incorporated Memorandum of Law in Support of its Motion to Intervene as Defendants in this action. Proposed Intervenors respectfully request that this Court grant its motion to intervene as a matter of right under Fed. R. Civ. P. 24(a), or, in the alternative, grant it permissive intervention under Fed. R. Civ. P. 24(b).

ARGUMENT

Proposed Intervenors seek to intervene as Defendants in this action in order to defend the permit restrictions put in place by the City of Naples for the 2025 Naples Pridefest against Plaintiff's constitutional challenges. Proposed Intervenors easily satisfy the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a). Alternatively, Proposed Intervenors should be granted permission to intervene as Defendants pursuant to Federal Rule of Civil Procedure 24(b).

I. Proposed Intervenors Satisfy the Requirements to Intervene as of Right.

As the Eleventh Circuit has articulated:

> A party seeking to intervene as of right under Rule 24(a)(2) must show that: (1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit. If he establishes each of the four requirements, the district court must allow him to intervene.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (internal citation omitted).

A. Proposed Intervenors' Motion is Timely.

Proposed Intervenors easily satisfy Rule 24(a)'s requirement that the motion to intervene be timely. To evaluate the timeliness of motions to intervene, courts in this Circuit evaluate:

> [t]he length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene[;] 2. The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case[;] 3. The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied[;] and 4. The existence of unusual circumstances militating either for or against a determination that the application is timely.

Burke v. Ocwen Fin. Corp., 833 Fed. Appx. 288, 291 (11th Cir. 2020) (quoting *Salvors, Inc. v. Unidentified Wrecked & Abandoned Vessel*, 861 F.3d 1278, 1294 [11th Cir. 2017]).

Here, this litigation is in its infancy. Proposed Intervenors have already filed an *Amici* Brief in this action (dkt. 38), and one of Proposed Intervenors filed a Declaration with exhibits (dkt. 38, Ex. 1), and intended for that to be the extent of their involvement in this action. In other words, although Proposed Intervenors were aware of their interest in this action (to wit: their interest as parents whose young children utilize Cambier Park and its playground to shield their children from the Naples Pride drag show but not be deprived of use of the playground) from its outset, they hoped and believed that their interests would be adequately represented by the City of Naples in its defense of this action (see Declaration of Kimberly Collins filed herewith). Events

that followed have caused Proposed Intervenors and their counsel to recognize that intervention is necessary.

In response to the *Amici* Brief and Declaration filed by Proposed Intervenors, attorneys for Naples Pride filed a response asking the Court not to consider the evidence filed by *Amici*, calling such evidence and the Declaration of Kimberly Collins "irrelevant" and "immaterial." (Dkt. 48, 1.) Further, upon reading the brief filed by the City of Naples in opposition to Plaintiff's motion for a preliminary injunction (dkt. 39), compounded by their presentation at oral argument, and its Motion to Dismiss the Complaint filed last night (dkt. 57), it has become evident to Proposed Intervenors that seeking party status in the case is necessary to defend the interests of Proposed Intervenors and the many parents similarly situated. Proposed Intervenors make this motion at the earliest opportunity following that revelation. Indeed, Proposed Intervenors submit this motion a mere 3 business days following the arguments at which the need for their intervention and the inadequate representation of their interests became first apparent at the May 2nd hearing, and less than 24 hours after the City confirmed the need for intervention in its Motion to Dismiss. In other words, Proposed Intervenors motion is unquestionably timely because they are seeking to intervene "as soon as it became clear that [their] interests would no longer be protected by the parties in the case." *Cameron v. EMW Women's Surgical Ctr., PSC*, 595 U.S. 267, 279 (2022). *See also United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977) (same).

Additionally, because Proposed Intervenors are seeking to intervene at the infant stage of these proceedings, and before any discovery or significant events have

occurred, it is timely under binding law. "Although the point to which the suit has progressed is but one factors in the determination of timeliness," *NAACP v. New York*, 413 U.S. 345, 366 (1973), numerous courts, including this one, have held that seeking intervention before discovery has begun and before significant proceedings have occurred is timely. *E.g.*, *Chiles*, 865 F.2d at 1213 (holding that motion to intervene was timely when filed seven months *after* complaint was filed and three months *after* a motion to dismiss was filed because it was filed before discovery had commenced); *Retina-X Studios, LLC v. ADVAA, LLC*, 303 F.R.D. 642, 653 (M.D. Fla. 2014) (holding that motion to intervene was timely when submitted seventy-one days *after* complaint filed when it was submitted before discovery had commenced); *Nat'l Parks Conservation Ass'n v. U.S. Dep't of Interior*, 2012 WL 1432479, *2 (M.D. Fla. Apr. 25, 2012) ("A motion to intervene within seven months of the original complaint's filing is timely, especially since discovery had not begun."). *See also Georgia v. U.S. Army Corps of Eng'rs*, 303 F.3d 1242, 1259 (11th Cir. 2002) (holding that intervention was timely even after six months delay in seeking intervention for a party who knew about the litigation the entire time and at which point discovery had largely concluded). As a matter of binding law, Proposed Intervenors' motion is therefore timely.

Because Proposed Intervenors did in fact move to intervene as soon as their interest in the case (and the fact that their interest would not be represented by the City of Naples) came to light, *Cameron,* 595 U.S. at 279, the second condition is moot. However, if the Court were to examine this criteria, it should find that there is no prejudice to the existing parties to the litigation if Proposed Intervenors' motion to

intervene is granted because its responsive pleading is filed herewith, one day following the current Defendants' filing of its Motion to Dismiss. Although Proposed Intervenors request additional time to submit a more complete response to Plaintiff's Motion for Preliminary Injunction, it also offers the Court the alternative of converting Proposed Intervenors' *Amici* Brief and accompanying documents to opposition to the Plaintiff's motion. In any event, none of this is prejudicial to the existing parties in terms of timing because the action should be stayed for at least 60 days due to Plaintiff's failure to comply with the requirements of Fed. R. Civ. P. 5.1. *See, e.g.*, *Allen v. Jacksonville Univ.*, 2022 WL 911383, at *2 (M.D. Fla. Mar. 29, 2022) ("In light of the need to provide the Attorney General at least 60 days to determine whether she wishes to intervene in this action, the Court finds that a stay is justified.").

If Proposed Intervenors' motion is denied, the extent of prejudice to Proposed Intervenors is not entirely known because it is dependent on the weight the Court intends to afford to the brief filed by *Amici* Liberty Counsel, Chelsea Melone and Theodore & Kimberly Collins and the Declaration of Kimberly Collins with exhibits. Plaintiffs obviously feel it should be afforded no weight, as noted by their contention that it is irrelevant. (dkt. 48, 1.) Proposed Intervenors plainly disagree with that contention, but now seek intervention to ensure that they may be heard on all matters, including evidentiary materials that should guide the Court's decisions in this matter, both now and at the merits phase. If the Court would afford the arguments set forth in the *Amici* Brief and the exhibits presented by Kimberly Collins greater weight if Proposed Intervenors were in fact parties to this action, then denial of this motion to

intervene will prove highly prejudicial to Proposed Intervenors and their interests. Indeed, Proposed Intervenor's interest in the Court's upholding of Florida law and the City's permit conditions on the basis of protecting minor children from inappropriate sexual content will go unspoken and unaddressed by the City, and Proposed Intervenors will not be heard on merited and substantial evidence presented.

There are several unusual circumstances here that weigh in favor of granting Proposed Intervenors' motion to intervene. The first such circumstance is that Plaintiff is seeking a preliminary injunction to grant them what is also the ultimate relief they are seeking by this action. Thus, if Proposed Intervenors' motion is denied and their interests and arguments offered in support of these interests are not heard and considered by the Court now, and the interim relief sought by Plaintiff is granted, Proposed Intervenors will suffer irreparable harm. And the prevention of irreparable harm is ipso facto as sufficient basis to permit intervention under Rule 24(a). *E.g.*, *Jenkins by Agyei v. Missouri*, 967 F.2d 1245, 1248 (8th Cir. 1992) ("A party claiming an interest in the litigation does not have to wait until he has suffered irreparable harm before he has an interest permitting intervention under Rule 24(a).") Granting intervention at some later stage of the proceedings will be insufficient to reverse the potential harm that will be done by denying their request to intervene now because Proposed Intervenors "cannot breathe life into rights already foregone" by the City's failure to adequately represent their interests. *United States v. Union Elec. Co.*, 64 F.3d 1152, 1162 (8th Cir. 1995).

Another highly unusual circumstance is that the City of Naples is defending their permit conditions against Plaintiff's constitutional challenge to the exclusion of sound – and arguably more compelling – legal defenses and arguments available to it. The prejudice that befalls Proposed Intervenors speaks for itself here because the City is not presenting the Court with the full range of options for it to uphold the permit conditions. The City has not raised the defense that Florida law expressly prohibits the Naples City Council from issuing a permit for a public drag show to be held in view of minors. *See* Fla. Stat. Ann. § 255.71. That is a dispositive argument itself sufficient to deny injunctive relief here. Moreover, the City has not raised Plaintiff's failure to provide notice to the Florida Attorney General pursuant to Fed. R. Civ. P. 5.1. Plaintiff's request for a permit to hold a drag show in violation of Sections 255.71 and 827.11, Florida Statutes necessarily amounts to a challenge to the constitutionality of that law, even if not expressly challenged in Plaintiff's pleading. This apparent challenge is sufficient to trigger Plaintiff's and the Court's respective obligations under Rule 5.1. *See, e.g., Williams v. Foremost Prop. & Cas. Ins. Co.*, 2022 WL 1665449, *1 (M.D. Fla. May 25, 2022) ("Plaintiff filed a brief which appears to challenge the constitutionality of the retroactive application of section 627.70152 of the Florida Statutes…Upon review of the docket, Plaintiff does not appear to have complied with th[e notice] requirement [imposed by Rule 5.1]. Nevertheless, Rule 5.1 also imposes an obligation on the Court to 'certify to the appropriate attorney general that a statute has been questioned.' *See* Rule 5.1(b); *see also* 28 U.S.C. 2403(b).").

The City of Naples is solely defending its rationale for assessing increased security costs to Naples Pride, to the exclusion of arguing why it is necessary and constitutionally sound to restrict the drag performance component of the Pridefest event to indoors and adults only. Despite binding Supreme Court precedent indicating the contrary, the City has not argued it has a compelling interest in protecting minors from viewing sexually inappropriate and a further compelling interest in complying with Florida statutory law. *E.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 193 (207) (compliance with statutory law is a compelling government interest); *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) ("We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors" and "extends to shielding minors from" obscenity). These arguments plainly advance the City's interest in imposing the permit conditions, but are left unaddressed by the City. That silence is deafening. If Proposed Intervenors are not allowed to intervene, the most compelling arguments in support of City's restrictions may not be given due consideration by the Court in determining whether a preliminary injunction shall issue in this case and whether Plaintiff's Complaint should survive dismissal.

B. Proposed Intervenors Have an Interest in the Subject Matter of the Suit.

"Before a party can intervene as a matter of right, it must timely move to intervene [and]…show that it has an interest in the subject matter of the suit…" *Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1250 (11th Cir. 2002). Proposed Intervenors have an interest in the subject matter of the suit in that each of them are

parents with young children who frequently make use of the playground at Cambier Park, and will be deprived of their peaceful enjoyment of the park should this Court grant Plaintiff its requested relief. (*See* Declarations of Kimberly Collins, Teddy Collins, and Chelsea Melone filed herewith.)

While Rule 24(a) does not specify the precise nature of the interest necessary to intervene as of right in pending litigation, the Supreme Court has recognized that "[w]hat is obviously meant . . . is a significantly protectable interest" in the subject matter of the litigation. *Donaldson v. U.S.*, 400 U.S. 517, 542 (1971); *Chiles*, 865 F.2d at 1213 (same). *See also* Fed. R. Civ. P. 24 advisory committee notes ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene."). To be sure:

> [A]lthough an asserted interest must be 'legally protectable,' it need not be legally *enforceable.* In other words, an interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim.

Texas v. United States, 805 F.3d 653, 659 (5th Cir. 2015). In the context of statutory schemes being alleged as unconstitutionally applied, those who are subject to the effects of the application of the scheme have sufficient interest to intervene. *See Chiles*, 865 F.2d at 1214 ("in cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention (quoting 7C C. Wright, A. Miller, & M. Kane, *Fed. Prac. & Proc.* §1908, at 285 (2d ed. 1986)).

It cannot be disputed that Proposed Intervenors and their children will be substantially affected in a practical sense if this Court grants Plaintiff's requested injunction, thereby allowing a drag performance to occur in open air in full view of a busy children's playground. Children – and their parents, by extension – have a legally protectible interest in safe parks and playgrounds. *See, e.g.*, *United States v. Shultz*, 733 F.3d 616, 621 (6th Cir. 2013) (upholding restrictions on convicted sex offenders from loitering in or around parks of playgrounds). Parents also have an undeniable interest in the material their children are exposed to. *See, e.g., Penguin Random House LLC v. Gibson*, 2025 WL 902041, at *4 (M.D. Fla. Feb. 28, 2025) ("[P]arents have an interest in challenging the prohibition of school library books they and their children desire to read."). The State of Florida recognizes the importance that children be protected from exposure to drag and other sexualized live performances so much so that in 2023 it enacted into law HB 1423, entitled "Protection of Children" which, among other things, outlaws the admission of children to adult live performances including drag shows.[1] Especially because the State has not been given proper notice of this action and afforded a meaningful opportunity to intervene, Proposed Intervenors are in the best position currently to vindicate "the State's interest in protecting the well-being of its youth and in aiding parents' right to rear their children" *Am. Booksellers Ass'n, Inc. v. McAuliffe*, 533 F. Supp. 50, 56 (N.D. Ga. 1981) since the City has demonstrated a confounding reluctance to do so in this litigation. *See also Brumfield v. Dodd*, 749 F.3d

[1] *See* CS/HB 1423, *Protection of Children*, The Florida Senate (2023), *available at* https://www.flsenate.gov/Session/Bill/2023/1423 (last visited May 7, 2025).

339, 344 (5th Cir. 2014) (granting parents' right to intervene in an action challenging their children's potential access to school vouchers finding that they are "within the zone of interest of the legislation enacting the Scholarship Program; indeed, these parents and their children were its primary intended beneficiaries.").

C. Proposed Intervenors Are So Situated That Disposition of the Action, as a Practical Matter, May Impede or Impair Their Ability to Protect That Interest.

If this matter is decided in Plaintiff's favor, whether on an interim basis by granting the requested preliminary injunction or in the ultimate disposition of this matter, Proposed Intervenors will be impaired from protecting their interests in use of the children's playground at Cambier Park while shielding their children from material inappropriate for consumption by children. Proposed Intervenors described in great detail in their respective Declarations filed herewith their interest in the use of the Cambier Park playground and simultaneous interest in protecting their children from exposure to a drag performance, and that both of those interests cannot be preserved if Naples Pride is permitted to hold its drag show outdoors in conjunction with its Pridefest event. Again, Proposed Intervenors "cannot breathe life into rights already foregone" by the City's failure to protect Proposed Intervenor's interest, *United States v. Union Elec. Co.*, 64 F.3d 1152, 1162 (8th Cir. 1995), or to raise constitutionally sufficient bases to preclude Plaintiffs from violating Florida law in a manner that exposes their minor children to grossly inappropriate conduct. The Court's resolution of this matter without Proposed Intervenor's participation stands to significantly (and

perhaps permanently) impact their ability to shield the innocence of their children and preventing a violation of the law.

D. Proposed Intervenors' Interests are Inadequately Represented by the Existing Parties.

It is plainly evident to Proposed Intervenors that their interests in shielding their minor children from the proposed drag performance Naples Pride wishes to host in the bandshell at Cambier Park are not only inadequately represented by the parties to this action, but are altogether disregarded. Plaintiff has touted its proposed event as "family friendly," and Defendants have avoided confronting that false statement head on or even challenging their veracity. In fact, the City of Naples has demonstrated an aversion to broaching the issue of obscenity, lewdness, or harm to minors posed by the proposed drag performance in view of children altogether. Again, the City's silence on these critical issues is deafening to Proposed Intervenors' interests. As was true in *Chiles*, the government "has decide[d] not to emphasize the plight of the [Proposed Intervenors and their minor children]," and has instead focused on more nuanced approaches to defeating Plaintiff's claims. 865 F.2d at 1215. The fact that the City is attempting to prevent a preliminary injunction does not mean that it is adequately representing Proposed Intervenor's interest because "[t]he fact that the interests are similar does not mean that approaches to litigation will be the same." *Id.* Here, it is abundantly clear that the approaches are vastly different, and the City's approach leaves Proposed Intervenors' seminal interest unspoken.

The City's refusal to fully elucidate for this Court the rationale behind the restrictions it imposed on the 2025 Naples Pridefest is undeniable. The City offers only one defense to Plaintiff's quest for injunctive relief—namely that Cambier Park is a limited public forum in which it may impose reasonable and viewpoint neutral criteria on permit applicants. That may be true, but it leaves appreciable and significant arguments on the table that not only permit—but demand—that this Court deny Plaintiff's requested injunction. For some inexplicable reason, the City has refused to even suggest, much less forcefully defend itself on the constitutional grounds that Plaintiff's grossly inappropriate sexualized performances are only afforded limited (if any) protection under the First Amendment, and whatever protection may exist is eviscerated when considered in the context of exposure to children. The City has also refused to defend its permit conditions on the grounds that it is prohibited by state law from issuing the requested permit.

Even if this Court does not agree that the City's posture in this case is woefully inadequate to protect Proposed Intervenors' interests (not to mention Defendants' own interests), the "inadequate representation" requirement of Rule 24(a)(2) is generally "satisfied if the applicant shows that representation of his interest '*may* be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (emphasis added). *See also Chiles*, 865 F.2d at 1214-15 (same).

In the event either of the parties argue in response to this motion that Proposed Intervenors' status as *amici* in this action is sufficient to have their interests considered

by this Court, it should be noted that "Participation by the intervenors as amicus curiae is not sufficient to protect against" practical impairments since "[a]micus participants are not able to make motions or to appeal the final judgment in the case." *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986). *See also Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders Ass'n*, 646 F.2d 117, 120 (4th Cir. 1981) (amicus is insufficient alternative to intervention because "lacking party status [Proposed Intervenors] had no right to seek review by appeal of any decision affecting its identified substantive interests"). The same would be true here.

II. Proposed Intervenors Satisfy the Standard for Permissive Intervention.

Alternatively, if this Court finds that Proposed Intervenors do not satisfy the standard for intervention as of right pursuant to Rule 24(a), which they do, it should nevertheless grant Proposed Intervenors permissive intervention under Rule 24(b).

> A party seeking to intervene under Rule 24(b)(2) must show that: (1) his application to intervene is timely; and (2) his claim or defense and the main action have a question of law or fact in common. The district court has the discretion to deny intervention even if both of those requirements are met, and its decision is reviewed for an abuse of discretion.

Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing *Sellers v. United States,* 709 F.2d 1469, 1471 (11th Cir.1983)). Additionally, permissive intervention must not "unduly prejudice or delay the adjudication of the rights of the original parties." *Georgia v. U.S. Army Corps of Engr'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). When an issue involved in the litigation is of critical importance to a proposed intervenor, their participation in the litigation should not be discouraged. *See Arizona v. California*, 460 U.S. 605, 614 (1983).

A. Proposed Intervenors' Motion is Timely.

Proposed Intervenor's permissive intervention is timely for the same reasons discussed *supra* Section I. A.

B. Proposed Intervenor's Defense in the Litigation Shares a Common Question of Law and Fact with the Underlying Claims.

As discussed at length hereinabove, the question of law common to all parties to this litigation and Proposed Intervenors is whether the First Amendment bars the City of Naples from limiting the proposed Naples Pride drag show to an indoor venue and adult-only viewing audience. Naples Pride brings this action challenging those conditions placed upon the permit issued to it by the City of Naples for its 2025 Pridefest. The City of Naples is purportedly defending the constitutionality of the contours of the permit it issued, although it has focused on the public safety basis for the restrictions. Proposed Intervenors wish to offer the Court a fuller defense of the permit conditions in the interests of their children and their uninterrupted use of the Cambier Park playground without the forced viewing of men in drag dancing in a sexually suggestive manner.

Plaintiffs, Defendants, and Proposed Intervenors all share the interest in determining the constitutionality of the parameters of the City's approval of Plaintiff's special event permit. Defendants and Proposed Intervenors have related interests in defending the City's permitting scheme and the conditions placed upon the specific permit granted to Naples Pride for its 2025 event against constitutional scrutiny, and Proposed Intervenors have additional private interests in this Court upholding the

current permit restrictions. It therefore cannot be gainsaid that Proposed Intervenors have a claim or defense that shares a common question of law with the underlying litigation.

C. Proposed Intervenor's Participation Will Not Unduly Prejudice Any Party or Delay the Proceedings.

There is no prejudice by permitting Proposed Intervenors to advance constitutional arguments of significant relevance to the Court's adjudication of this case. One consideration in determining whether a grant of permissive intervention would unduly prejudice either party is whether the intervention would require parties to expend significant additional resources. *See In re Baycol Prods. Litig.*, 214 F.R.D. 542, 544 (D. Minn. 2003). Increased briefing, however, is not considered to be prejudicial to the parties when no new issues are being presented by the proposed intervenor. *See Planned Parenthood of Minn., N.D., S.D. v. Rounds*, 2005 WL 2338863, *5 (D.S.D. Sept. 23, 2006). As the Eleventh Circuit has made clear, "[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action." *Fed. Savings & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993). Here, granting Proposed Intervenors' motion will permit the Court to adjudicate Plaintiff's claims with a full understanding and presentation of the constitutional issues at stake.

Proposed Intervenors are not seeking to delay or introduce additional issues into the litigation, only to ensure the Court is provided with a comprehensive framework

to adjudicate Plaintiff's requested injunctive relief. And, since Proposed Intervenors have largely submitted their materials to the Court already in advance of its consideration of Plaintiff's motion, there will be no delay whatsoever. *E.g.*, *Greene v. Raffensberger*, 2022 WL 1045967 (N.D. Ga. Apr. 7, 2022) (granting permissive intervention because "Proposed Intervenors have already submitted relevant briefs, such that the Court can consider them in advance" of its decision, and "[c]onsequently, allowing Proposed Intervenors to join the case will not cause any undue delay or prejudice to the existing parties."); *New Georgia Project v. Raffensberger*, 2021 WL 2450647, *2 (N.D. Ga. June 4, 2021) (same).

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully request that this Court grant their motion to intervene as a matter of right, or in the alternative, to grant Proposed Intervenors' motion for permissive intervention, together with the other requested ancillary relief and any other relief this Court may deem just and proper.

Dated: May 7, 2025

Respectfully submitted,

/s/ Kristina S. Heuser

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LOCAL RULE 3.01(g) CERTIFICATION

I hereby certify that I conferred with counsel for both parties, seeking consent to file the proposed amicus brief. Defendants take no position with respect to this motion, whereas Plaintiff indicated by email that it opposes the relief sought herein.

/s/ Kristina S. Heuer
Kristina S. Heuser

Attorney for Amici and Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2025, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for Amici and Proposed Intervenors

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

NAPLES PRIDE, Plaintiff, v. CITY OF NAPLES, et al., Defendants.	Case No. 2:25-cv-291 Judge: Hon. John E. Steele Magistrate Judge: Hon. Kyle C. Dudek

DECLARATION OF KIMBERLY COLLINS IN SUPPORT OF MOTION TO INTERVENE BY CHELSEA MELONE, AND THEODORE & KIMBERLY COLLINS

I, Kimberly Collins, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am over eighteen years of age, am competent to testify to the matters stated herein, and, unless otherwise indicated, have personal knowledge of the facts set forth in this Declaration. This Declaration is submitted in support of my request to intervene in this action to defend the permit conditions put in place by the City of Naples and oppose the preliminary injunction requested by the Plaintiff.

2. I previously filed a Declaration in connection with this case to authenticate certain photographic and video evidence of what occurred at the Naples Pridefest in Cambier Park in June 2022, which was the last time Naples Pride held its drag show outdoors in conjunction with that event.

3. To increase the likelihood that the Court will consider the evidence I have provided and afford it the great weight it deserves in determining the appropriateness and constitutionality of the City's permit conditions, I am seeking to intervene in this lawsuit so that there is no question as to my right to present relevant and competent evidence relevant to the issues before the Court.

4. In addition to my strong desire that my evidence be given due consideration by this Court regarding the true nature of Plaintiff's event, I am also seeking to intervene as a party to the action at this time because of what occurred at oral argument on Plaintiff's motion for a preliminary injunction.

5. I was unable to attend the court proceedings this past Friday because I was caring for my children, was concerned it might be disruptive to the proceedings to bring them to court, and because of my concern that expressive activities outside the courthouse might be inappropriate for my children—a concern that proved well-founded[1].I was very disappointed and disheartened to learn from people in attendance that the attorney representing the City of Naples did not directly address my concerns regarding the proposed event and did not adequately represent the interests that I and other members of the community have in protecting minor children from inappropriate material. I believed and hoped that the City of Naples to convey to the

[1] *See* Kaitlin Knapp, *FACE TO FACE, Protestors rally outside First Amendment hearing for Naples Pride*, FOX4 (May 2, 2025), *available at* https://www.fox4now.com/downtown-fort-myers/face-to-face-protestors-rally-outside-first-amendment-hearing-for-naples-pride (last visited May 6, 2025); *Jolena Esperto*, *Naples courthouse protest sees GOP and Pride supporters face off*, WINK News (May 2, 2025), *available at* https://www.winknews.com/news/collier/naples-courthouse-protest-sees-gop-and-pride-supporters-face-off/article_648a57fe-dda1-4568-87bb-a8f3a619fdb9.html

Court, in defending the permit conditions it imposed, that the location and age restrictions imposed on the drag show are necessary to protect the minor children of the community from being exposed to inappropriate adult "entertainment." But, the City of Naples did not offer this rationale to the Court. I am also concerned that the City of Naples did not adequately represent my interest by failing to address the fact that Florida law currently prohibits the type of public displays Naples Pride seeks to thrust upon the community and its minor children in a public park. I am seeking to intervene in this case so that I, together with my husband, can present these concerns to the Court as an additional basis to deny Plaintiff's motion.

6. I am seeking to intervene in this action because I will be injured if this Court grants the requested injunction and forces the City of Naples to permit the drag show to occur outdoors in Cambier Park in full view of minor children in the community. As mentioned in my prior Declaration, I am a resident of Collier County, Florida, and the parent of 4 minor children, ages 5, 7, 9, and 14. I frequently take my children to Cambier Park, including to the playground.

7. My husband and I are small business owners. We are not wealthy people. We rely on the public parks to provide free or low cost recreation and entertainment for our young children, particularly in the summer months when school is not in session. I think any family with young children like ours can attest to the great need for outdoor space for children to run and play to expend the vast amounts of energy they have. Being cooped up in the house, even for a day, is not really a viable plan.

8. Although there are other parks in Collier County, Cambier Park is unique

in that it is in the heart of downtown Naples. Because of this, we are able to play in the park and take breaks to walk to neighboring shops and restaurants to get a drink, a snack, a meal, or just to get out of the heat and sun for a bit. There really isn't any other park in the vicinity of my home that offers these same features. Also, Cambier Park has an exceptional playground. The play apparatus there are unique and large, so the kids do not get bored playing there. It is also adjacent to a large field so if they want to run around or kick a ball, they can do that, too, without us having to travel to a different park. Cambier Park is also on the route I travel between my home and business, so it is a convenient stop for me to make with the kids when I have them in tow.

9. If Naples Pride holds its drag show in Cambier Park as it did in June 2022, my children and I will be unable to utilize the playground and other facilities at Cambier Park on the date of the event. Unfortunately for many other neighborhood parents who frequent the park and playground, they will only learn of the event upon arriving at the park to take their children to play. As a result, many children will be inadvertently exposed to the lewd performance hosted by Naples Pride.

10. As I mentioned in the Declaration I previously submitted to this Court, the bandshell where the drag performance would be held if the preliminary injunction is granted is an elevated stage nearby and in view of the children's playground. Also, if history is any indicator, the drag show will not be confined to the bandshell. Without the existing conditions on the event permit, the drag performers will feel free to mill about the event and hold impromptu performances, such as the one depicted in photos

and video already submitted to this Court in which the performer was spinning around on the ground with his legs spread in a mulchy area right next to the children's playground! There is absolutely no way to use the Cambier Park playground and simultaneously shield children from this inappropriate display if it is held outside.

11. For all of these reasons, I respectfully request that the Court grant me status as an Intervenor-Defendant in this action.

I declare under penalty of perjury under the laws of the United States of America and the State of Florida that the foregoing is true and correct to the best of my knowledge.

Executed on May 6, 2025,
at Naples, Florida

/s/ Kimberly Collins

Kimberly Collins

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2025, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for Amici and Proposed Intervenors

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

NAPLES PRIDE, Plaintiff, v. CITY OF NAPLES, et al., Defendants.	Case No. 2:25-cv-291 Judge: Hon. John E. Steele Magistrate Judge: Hon. Kyle C. Dudek

DECLARATION OF THEODORE COLLINS IN SUPPORT OF MOTION TO INTERVENE BY CHELSEA MELONE AND THEODORE & KIMBERLY COLLINS

I, Theodore ("Teddy") Collins, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am over eighteen years of age, am competent to testify to the matters stated herein, and, unless otherwise indicated, have personal knowledge of the facts set forth in this Declaration. This Declaration is submitted in support of my request to intervene in this action to defend the permit conditions put in place by the City of Naples and oppose the preliminary injunction requested by the Plaintiff.

2. My wife, Kimberly Collins, previously filed a Declaration in connection with this case to authenticate certain photographic and video evidence of what occurred at the Naples Pridefest in Cambier Park in June 2022, which was the last time Naples Pride held its drag show outdoors in conjunction with that event.

3. I know that Naples Pride wants to hold its drag show outdoors and in view of children this year, in contravention of its previous agreement with the Naples City Council, and has asked this Court to grant it an injunction forcing the City of Naples to issue a permit allowing this. I also know that in an attempt to persuade this Court to grant its requested relief, Naples Pride depicts its drag show as a "family friendly" performance. I think the photos and videos my wife submitted to the Court demonstrate that this event is anything but family friendly. Rather, it is a sexually charged performance that promotes gender confusion and specifically targets children. This is why I think it is of the utmost importance that the photos and videos presented be viewed by the Court and factored into its decision on the preliminary injunction application. My wife and I want to intervene as parties to this action to present this evidence to the Court, and to ask the Court to consider this relevant evidence in determining the appropriateness and constitutionality of the City's permit conditions.

4. Another reason that my wife and I seek to intervene in this action is because we prioritize the well-being of our children, which includes protecting and preserving their youthful innocence for as long as possible. We do not want our children to be exposed to sexual content or obscenity, nor to ideology that promotes or supports gender dysphoria, which is a prevalent epidemic among this generation.

5. While I think these boundaries are important for all children, two of our children are particularly sensitive to such things. We adopted two of our children out of the foster care system. I do not want to divulge in detail the traumatic childhood experiences they endured that led to them being in the foster care system, but suffice it

to say that that I have grave concern for protecting their innocence in particular and not allowing them to be exposed to anything that may trigger dormant memories. There are many children out there in similar circumstances who would be equally harmed by unwitting exposure to grossly inappropriate adult behavior.

6. I am seeking to intervene in this action because I will be injured if this Court grants the requested injunction and forces the City of Naples to permit the drag show to occur outdoors in Cambier Park. I am a resident of Collier County, Florida, and the parent of 4 minor children, ages 5, 7, 9, and 14. My wife and I frequently take our children to Cambier Park, including to the playground.

7. My wife and I are small business owners. We are not wealthy people. We rely on the public parks to provide free or low cost recreation and entertainment for our young children.

8. I am very active in my community and often attend City Council meetings. I regularly take my youngest son with me because he is not yet in school and my wife is working. When I do, sometimes he needs a break from the meeting, so we walk from the meeting directly across the street to the Cambier Park playground. On the weekends, my wife and I often choose to take our children to the playground at Cambier Park because it is a vibrant park with many children and is located right in the heart of downtown, which offers our family a plethora of things to do. It is also walking distance to the beach. I also operate a food truck, which is a newer business of mine. On one occasion I brought my food truck to an event at Cambier Park. It worked out perfectly because I had my youngest son with me so I could shut down the

truck for a bit to take him to play in the Cambier Park playground. This is something I would like to do again. During the summer months, I could have all my children with me while working, which would allow me to conduct business and spend quality time with my children in an environment that is safe and fun for them. I could not do this at another location because no other park in Collier County is as busy as Cambier Park due to its downtown location.

9. If Naples Pride holds its drag show in Cambier Park as it did in June 2022, my children and I will be unable to utilize the playground and other facilities at Cambier Park on the date of the event. Unfortunately for many other neighborhood parents who frequent the park and playground, they will only learn of the event upon arriving at the park to take their children to play. As a result, many children will be inadvertently exposed to the lewd performance hosted by Naples Pride.

10. The bandshell where the drag performance would be held if the preliminary injunction is granted is an elevated stage nearby and in view of the children's playground. Also, if history is any indicator, the drag show will not be confined to the bandshell. Without the existing conditions on the event permit, the drag performers will feel free to mill about the event and hold impromptu performances, such as the one depicted in photos and video already submitted to this Court in which the performer was spinning around on the ground with his legs spread in a mulchy area right next to the children's playground. There is absolutely no way to use the Cambier Park playground and simultaneously shield children from this inappropriate display if it is held outside.

11. I had hoped that the attorney for the City of Naples would have conveyed all of this to the Court in defense of the restrictions they placed on the permit, and I was disappointed to learn that did not happen. This is why I feel compelled to have my voice heard in this action at this time.

12. For all of these reasons, I respectfully request that the Court grant me status as an Intervenor-Defendant in this action.

I declare under penalty of perjury under the laws of the United States of America and the State of Florida that the foregoing is true and correct to the best of my knowledge.

Executed on May 7, 2025,
at Naples, Florida

/s/ Theodore Collins

Theodore Collins

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2025, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for Amici and Proposed Intervenors

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

NAPLES PRIDE, Plaintiff, v. CITY OF NAPLES, et al., Defendants.	Case No. 2:25-cv-291 Judge: Hon. John E. Steele Magistrate Judge: Hon. Kyle C. Dudek

DECLARATION OF CHELSEA MELONE IN SUPPORT OF MOTION TO INTERVENE BY CHELSEA MELONE, AND THEODORE & KIMBERLY COLLINS

I, Chelsea Melone, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am over eighteen years of age, competent to testify to the matters stated herein, and, unless otherwise indicated, have personal knowledge of the facts set forth in this Declaration. This Declaration is submitted in support of my request to intervene in this action to defend the permit conditions put in place by the City of Naples and oppose the preliminary injunction requested by the Plaintiff.
2. I am a resident of the City of Naples and live in walking distance of Cambier Park. I have three children, ages 2, 5 and 6. I take my children to the playground at Cambier Park an average of two to three times per week.

There are weeks when we go to the park every day. We always go to Cambier Park on Saturday, because that is my day off from work.

3. I object and am opposed to the use of Cambier Park by Naples Pride for its drag show. I was relieved when the City and Naples Pride reached an agreement in 2023 that the drag show would be held indoors, outside of the presence of children. I was dismayed to learn this year that Naples Pride was insisting on holding the drag performance outdoors at Cambier Park in conjunction with its annual Pridefest and refusing to honor its prior agreement with the City.
4. I have discussed this with many parents I encounter at Cambier Park and there is universal agreement among the parents that it is inappropriate for a drag performance to be held in such close proximity to a busy children's playground. It is difficult to understand why Naples Pride is so insistent on children being exposed to their event. The drag performance is undeniably a hyper-sexualized event. I have seen the photos and videos of the 2022 event and the performers were flamboyant and had their bodies on full display.
5. Another thing that concerns me about exposing my children to a drag performance is introducing them to gender confusion. It is well known that gender confusion is very prevalent among today's youth, so as a parent I feel it is my right and moral obligation to protect my children from outside influences that may lead them astray from who God has created each of them to be.

6. Although every parent I have discussed the matter with agrees that the drag performance is inappropriate in Cambier Park and they do not want it there, many are afraid to speak out and be labeled and denigrated as hateful or bigoted. This is what happens to anyone who goes to the City Council meetings and speaks in opposition to this event. I want to be clear that I have several gay friends and have no issue with people exercising their sexual preferences in private. What I take issue with is exposing children to lewd acts that they cannot understand and that makes an irreversible and damaging impression on their young minds. Sexual conduct should not be on display in front of children – whether gay, straight, trans, or otherwise. Even my gay friends agree on this point.
7. I was grateful to have the opportunity to be represented by Liberty Counsel and be included in the amicus brief they filed to represent the interests of parents and children. However, I was incredibly disappointed that, at oral argument, the City of Naples failed to represent our interests altogether. I attended oral argument and was eager to hear the City counter the ridiculous notion advanced by Naples Pride's that their event is "family friendly" and that there is no risk of harm to children or anyone else posed by a drag performance in Cambier Park. I was horrified that the City of Naples did not rebut these points, and refused to even explain the obscene nature of the event when directly asked by the Judge to do so.
8. It is mind-boggling that in court, the City of Naples refuses to call the drag

show what it is. It is especially confusing because the City clearly placed restrictions on the drag show for that very reason. I know the City Council is comprised of seven members, each with distinct rationales for why the drag show should not be held outdoors at Cambier Park and accessible only by persons over the age of 18, but several of those members unequivocally stated that the reason for the restrictions is for the protection of children. So why didn't the City of Naples articulate that to the Court?

9. It became evident to me after oral argument that I had to do more to protect my children. That is why I am now seeking to intervene as a Defendant in this action. It is important that the Court hear and consider my views and interests in determining whether it should grant Naples Pride the injunction it seeks.

10. For all of these reasons, I respectfully request that the Court grant me status as an Intervenor-Defendant in this action.

I declare under penalty of perjury under the laws of the United States of America and the State of Florida that the foregoing is true and correct to the best of my knowledge.

Executed on May 6, 2025,
at Naples, Florida

/s/ Chelsea Melone

Chelsea Melone

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2025, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for Amici and Proposed Intervenors

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

NAPLES PRIDE, Plaintiff; v. CITY OF NAPLES, et al., Defendants, and THEODORE & KIMBERLY COLLINS and CHELSEA MELONE, Intervenor-Defendants.	Case No. 2:25-cv-291 Judge: Hon. John E. Steele Magistrate Judge: Hon. Kyle C. Dudek

INTERVENOR-DEFENDANTS CHELSEA MELONE AND THEODORE & KIMBERLY COLLINS'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND SUPPORTING MEMORANDUM OF LAW

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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24(c),[1] Intervenor-Defendants Theodore ("Teddy") & Kimberly Collins and Chelsea Melone move to dismiss Plaintiff Naples Pride's Complaint under Rule 12(b)(6) and for judgment on the pleadings under Rule 12(c). Naples Pride has failed to state a claim for which relief may be granted because the allegations stated in its Complaint have not established, and cannot establish, a denial or infringement of any rights guaranteed under the First Amendment. As argued below, Defendants' (collectively, "the City") requirement that Naples Pride's drag show be held indoors and for adults only is a valid time, manner, and place regulation; and its permitting scheme, facially and as applied, comports with the First Amendment. Given that Naples Pride cannot establish a constitutional violation, the Court should adjudicate its claims as a matter of law and grant a final judgment for Defendants and Intervenor-Defendants on the pleadings pursuant to Rule 12(c).

Naple Pride's claims must be examined in light of the true nature of its alleged constitutional deprivation. Despite its blatantly false characterization of its drag show as "family-friendly" (Compl. ¶ 3, ECF No. 1), Naples Pride wants to carry out a grossly

[1] Rule 24 provides that a motion to intervene "[must] be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). A motion to dismiss is an appropriate vehicle to satisfy Rule 24(c). *E.g.*, *Danner Const. Co. v. Hillsborough Cnty.*, 2009 WL 2525486, at *2 (M.D. Fla. Aug. 17, 2009) (finding that intervenors' motion to dismiss satisfied Rule 24(c) because it gave plaintiffs "notice of the position, claim, and relief sought" and did not prejudice the plaintiffs "since the motions clearly spell out the intervenors' position in this case" (cleaned up)); *accord Doe ex rel. Doe v. Sch. Bd. for Santa Rosa Cnty., Fla.*, 2009 WL 3683576, at *2 (N.D. Fla. Oct. 30, 2009) (citing Danner with approval and finding that intervenor-defendant's 'Responsive Pleading' provides adequate notice of the nature and basis of the intervenor's claims").

inappropriate sexualized performance in Cambier Park—within eyesight of the most popular playground in Collier County. Back in 2022, the last time Naples Pride carried out its drag show, scantily clad grown men—adorned in garish makeup and women's wigs—performed overtly sexualized dances, during which they invited small children from the crowd to stuff dollar bills into their rhinestone-studded thongs while they shook their overstuffed brassieres and "twerked" in their fishnet-covered hosiery. One man dropped to the ground and opened his legs "spread eagle" to expose his crotch to the whistling crowd. Naturally, local parents, including Intervenor-Defendants, were aghast that such activities were being held within arm's throw of the playground, and they complained to the City. Responsive to their citizens' complaints, and in keeping with their commitment to ensure city grounds are safe and welcoming for families, the City Council allowed Naples Pride to host its Pridefest in Cambier Park but required that its drag show be held indoors and for adults only.

When Naples Pride's allegations are stripped of its rhetorical flourishes and false characterizations, it is crystal clear that the City's indoors-and-adults-only requirement for the drag show is a valid time, place, and manner regulation that is reasonably tailored to further its compelling interest in shielding children from obscenity—while *still* allowing Naples Pride to hold its drag show. Further, the City could not issue the permit without violating Florida law that prohibits municipalities from issuing permits to allow parties to hold obscene adult live performances in front of children, *see* Fla. Stat. § 255.70, which is a crime, *see* Fla. Stat. § 827.11(1)(a). Instead of complying with the City's wholly valid time, place, and manner regulation, Naples

Pride is suing to force its drag show back near the playground, where they can entice more young children to stuff dollar bills into the drag queens' oversized fake breasts and undersized thongs. But Naples Pride's attempt runs into a headlong problem: Decades of Supreme Court precedent holds that the First Amendment does not license licentious acts in front of children in public places. Indeed, even if Naples Pride's "spread eagle" drag shows are protected expression, the City has a compelling government interest in protecting children from being exposed to obscenely sexual performances.

In short, the Complaint has failed to state a claim for which relief can be granted under the First Amendment. The City's permitting scheme and indoors-and-adults-only requirement do not deny Naples Pride the right to hold its drag show—it merely requires that it hold the event away from innocent children. The Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6), and judgment granted for Defendants and Intervenor-Defendants on the pleadings pursuant to Fed. R. Civ. P. 12(c).

BACKGROUND

Naples Pride's lawsuit presents only legal issues: whether the City of Naples' permitting scheme, indoor-and-adults-only requirement, and assessed security fees for Pridefest, violates their First Amendment right to freedom of speech. Because the questions are purely legal and their resolution depends upon applying the law to the City's policy and the City Council's legislative actions, the pertinent facts set forth in Plaintiff's Complaint need only be summarized as follows: Naples Pride asks this Court to order the City of Naples to modify the existing permit granted to Naples Pride

to hold its annual Pridefest at Cambier Park, which is located in the heart of downtown Naples. (Compl. at 30, ECF No. 1.) In adherence to state law and in recognition of the Naples Pride's First Amendment rights while balancing the public interests at stake, the City granted Plaintiff its requested permit with the caveat that one portion of the event—a drag performance—be held indoors and accessible by adults only. (Compl. ¶ 88.) The permits issued in 2023 and 2024 for this same event had the same conditions—to which Naples Pride assented. (*Id.* ¶¶ 67–69.) Now, however, with the backing of the ACLU and its legion of lawyers, Naples Pride seeks a judicial order allowing them to hold a lewd drag show within eyesight of a public playground.

LEGAL STANDARD

A court may dismiss a complaint for failure to state a claim on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). "When reviewing a motion to dismiss, courts must limit their consideration to the well-pleaded allegations, documents central to or referred to in the complaint, and matters judicially noticed." *Turner v. PHH Mortg. Corp.*, 467 F. Supp. 3d 1244, 1246 (M.D. Fla. 2020) (citing *La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)). Although courts must accept all factual allegations as true and view the facts in a light most favorable to the plaintiff, *see Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007), "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal," *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). Critically, "legal conclusions" are "not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). "To survive a motion to dismiss, a complaint must

instead contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Turner*, 467 F. Supp. 3d at 1246 (quoting *Iqbal*, 556 U.S. at 678). "This plausibility standard is met when the plaintiff pleads enough factual content to allow the court 'to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* at 1246–47 (quoting *Iqbal*, 556 U.S. at 678).

A party may move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay the trial." Fed. R. Civ. P. 12(c). Judgment pursuant to Rule 12(c) is appropriate "when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings." *Horsley v. Rivera*, 292 F.3d 695, 700 (11th Cir. 2002). "A motion for judgment on the pleadings is subject to the same standard as a Rule 12(b)(6) motion to dismiss." *Roma Outdoor Creations, Inc. v. City of Cumming*, 558 F. Supp. 2d 1283, 1284 (N.D. Ga. 2008). Accordingly, when reviewing a motion for judgment on the pleadings, the court accepts factual allegations in the complaint as true and construes all reasonable factual inferences in the plaintiff's favor. *See Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d 1269, 1273 (11th Cir. 2008). Even so, "the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint." *Long v. Fulton Cnty. Sch. Dist.*, 807 F. Supp. 2d 1274, 1282 (N.D. Ga. 2011) (quoting *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)). "Nor must the court accept legal conclusions cast in the form of factual allegations." *Ibid*. "To survive a motion for judgment on the pleadings, a complaint must convey factual allegations

that amount to 'more than labels and conclusions' and 'raise a right to relief above the speculative level.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

ARGUMENT

A. Plaintiff has failed to plausibly allege that the City's indoors-and-adults-only drag show requirement violates the First Amendment.

1. Plaintiff cannot identify a legally sufficient basis for a free speech violation because drag shows are not expressive conduct protected by the First Amendment.

Naples Pride's as-applied First Amendment challenge against the City's indoors-and-adults-only requirement fails for the simple reason that drag performances are not protected expressive conduct under the First Amendment. "In determining whether the government has violated free speech rights, the initial inquiry is whether the speech or conduct affected by the government action comes within the ambit of the First Amendment." *One World One Fam. Now v. City of Miami Beach*, 175 F.3d 1282, 1285 (11th Cir. 1999). The First Amendment guarantees "all people [ ] the right to engage not only in 'pure speech,' but 'expressive conduct' as well." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (citing *United States v. O'Brien*, 391 U.S. 367, 376–77 (1968)). "In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play," a court must ascertain whether "[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

Courts have "considered the context in which it occurred," and whether "[t]he expressive, overtly political nature of th[e] conduct was both intentional and overwhelmingly apparent." *Johnson*, 491 U.S. at 405–06. Although "[i]t is possible to find some kernel of expression in almost every activity a person undertakes ... such a kernel is not sufficient to bring the activity within the protection of the First Amendment." *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). As such, "a party must advance more than a mere 'plausible contention' that its conduct is expressive." *Spectrum WT v. Wendler*, 693 F. Supp. 3d 689, 702 (N.D. Tex. 2023) (quoting *Church of Am. Knights of the KKK v. Kerik*, 356 F.3d 197, 205 (2d Cir. 2004)). "This limiting principle is necessary lest 'an apparently limitless variety of conduct be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.'" *Tagami v. City of Chicago*, 875 F.3d 375, 378 (7th Cir. 2017) (quoting *O'Brien*, 391 U.S. at 376).

Naples Pride's First Amendment claim fails at the outset because drag shows are not expressive conduct. Naples Pride claims that drag is "a type of performance art in which the performers … challenge gender stereotypes by adopting dress or mannerisms stereotypical of a different gender." (Compl. ¶ 4.) "Though apparel and attire 'are certainly a way in which people express themselves, clothing as such is not—not normally at any rate—constitutionally protected expression." *Spectrum*, 693 F. Supp. 3d at 702 (quoting *Brandt v. Bd. of Educ.*, 480 F.3d 460, 465 (7th Cir. 2007)

(Posner, J.)).[2] "Instead, courts have applied Free Speech protection to manners of dress only when and where the context 'establish[es] that an unmistakable communication is being made.'" *Id.* (quoting *Edge v. City of Everett*, 929 F.3d 657, 668 (9th Cir. 2019)); *cf. Edge*, 929 F.3d at 668 ("Because wearing pasties and g-strings while working at Quick-Service Facilities is not 'expressive conduct' within the meaning of the First Amendment, the Dress Code Ordinance does not burden protected expression.").

A reasonable observer would not understand a drag show as conveying an unmistakable message of "challeng[ing] gender stereotypes." (Compl. ¶ 4.). Drag shows are meant to entertain. They are arguably a mockery of traditional feminine dress and behaviors, involving lip-syncing, dancing, and flamboyant costumes. Such performances may be creative; it may even be fun to some. But Naples Pride can cite no binding authority holding that drag shows are First Amendment-protected expressive conduct. *Compare Edge*, 291 F. Supp. 3d at 1204 (rejecting argument that scantily clad baristas conveyed a free speech-protected message of "fearless body acceptance and freedom from judgment"), *with S. Utah Drag Stars v. City of St. George*, 677 F. Supp. 3d 1252, 1286 (D. Utah 2023) (observing that "drag shows … are a medium of expression, containing political and social messages").

[2] *See also, e.g.*, *Zalewska v. Cnty. of Sullivan*, 316 F.3d 314, 320 (2d Cir. 2003) ("[A] person's choice of dress or appearance in an ordinary context does not possess the communicative elements necessary to be considered speech-like conduct entitled to First Amendment protection.")

In conclusory fashion, Naples Pride implies that drag shows "combat shame and social stigma, by challenging societal gender norms and expectations." (Compl. ¶ 39.) But "[t]he presence of additional explanatory speech is strong evidence that the conduct is not so inherently expressive that it warrants First Amendment." protection." *Tagami*, 875 F.3d at 378 (quoting *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 66 (2006)) (cleaned up). That principle applies with full force here. Although Naples Pride asserts that its drag performances are imbued with a political and social message (Compl. ¶¶ 39–40), the very need to explain what the performance is intended to convey cuts against the claim that the performance speaks for itself in the constitutional sense. If the message is not readily understood without additional context, then the conduct—however artistic—is not inherently expressive under the First Amendment. *See Tagami*, 875 F.3d at 378.

In any event, "an objective viewer observing biological men performing while dressed in attire stereotypically associated with women—without accompanying political speech or dialogue—would not necessarily discern an unmistakable or overwhelmingly apparent communication of LGBTQ+ rights." *Spectrum*, 693 F. Supp. 3d at 703–04 (cleaned up); *cf. id*. at 704 (concluding that "an observer may not discern that the performers' conduct communicates advocacy in favor of LGBTQ+ rights" (citation omitted)); *Tagami*, 875 F.3d at 378 (rejecting argument that a woman's public nudity during "GoTopless Day" communicated a message of political protest against gender-specific standards of public decency because such message was not "overwhelmingly apparent" to onlookers). Naples Pride's drag performances do not

cross the constitutional threshold required for First Amendment protection as expressive conduct. The performances involve music, costumes, and choreographed movement. But without a clear message—something that an ordinary observer would *immediately understand* as political or ideological—the conduct does not qualify for First Amendment protection.

2. Even if drag shows are First Amendment-protected expressive conduct, the City's indoors-and-adults-only requirement is a valid time, place, and manner restriction.

a. The City's requirement is a content-neutral regulation that aims to prevent the negative secondary effect of an obscene performance taking place near a public playground.

Naples Pride alleges that the City's requirements that the drag show be performed indoors and only to adults are content-based speech restrictions. (Compl. ¶ 109.) To the extent that the City's requirement regulates expressive conduct, it is a content-*neutral* time, place, and manner regulation that serves a compelling governmental interest in protecting children from being exposed to obscenely sexualized performances one hundred feet away from a public playground. "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citing *Clark v. Cmty. for Creative Non–Violence*, 468 U.S. 288, 295 (1984)). A regulation is content-neutral when it is "justified without reference to the content of the regulated speech...." *Clark*, 468 U.S. at 293. "The government's purpose is the controlling consideration. A regulation that serves

purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward*, 491 U.S. at 791 (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47–48 (1986)). The Supreme Court's discussion of *Renton* in *Boos v. Barry*, 485 U.S. 312, 320 (1988), is instructive:

> The regulation at issue in *Renton* described prohibited speech by reference to the type of movie theater involved, treating theaters that specialize in adult films differently from other kinds of theaters. But while the regulation in *Renton* applied only to a particular category of speech, its justification had nothing to do with that speech. The content of the films being shown inside the theaters was irrelevant and was not the target of the regulation. Instead, the ordinance was aimed at the secondary effects of such theaters in the surrounding community, effects that are almost unique to theaters featuring sexually explicit films, i.e., prevention of crime, maintenance of property values, and protection of residential neighborhoods. In short, the ordinance in *Renton* did not aim at the suppression of free expression.

Id. (cleaned up). Put simply, because the ordinance in *Renton* "did not aim at the suppression of free expression," it was deemed content neutral. *Id*. at 320–21.

In light of *Renton*, Naples Pride has failed to plausibly allege that the City's indoors and age requirements were aimed at suppressing its speech. Nor could it. Aside from ensuring the public's safety, the City's requirement justifiably curtails the negative secondary effects of having children—including children at the public playground just one hundred feet away from the bandshell—exposed to grossly inappropriate sexualized performances. Courts have long held that regulations targeting undesirable secondary effects of protected expression are deemed content-neutral, and thus such regulations are reviewed under intermediate scrutiny. *E.g.*,

Artistic Ent., Inc. v. City of Warner Robins, 223 F.3d 1306, 1308–09 (11th Cir. 2000).[3] Critically, the City's requirement *does not prohibit* drag performances itself. The show may, indeed, go on, indoors. The City merely prevents innocent children who are playing at Cambier Park from witnessing "spread eagle" men in lingerie dancing to the howls and whistles of adult attendees. "So long as the purpose of the statute is unrelated to the suppression of the expressive conduct, the statute is content-neutral." *Fly Fish, Inc. v. City of Cocoa Beach*, 337 F.3d 1301, 1305 (11th Cir. 2003) (citing *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 570–71 (1991)); *cf. Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266 (11th Cir. 2021) (holding that city's park rule precluding use of parks for business or social service purposes unless authorized by agreement with city was a content-neutral regulation of nonprofit organization's expressive conduct and thus subject to intermediate rather than strict scrutiny).

b. Even if the City's requirement is content based, the Court should treat it as content neutral because its purpose was not to

[3] *See, e.g.*, *Artistic Ent., Inc. v. City of Warner Robins*, 223 F.3d 1306, 1308–09 (11th Cir. 2000) (holding that the city council had an adequate evidentiary basis to find that the restriction on alcohol sales and consumptions at adult businesses would reduce negative secondary effects); *Zibtluda, LLC v. Gwinnett Cnty.*, 411 F.3d 1278, 1284 (11th Cir. 2005) ("The Supreme Court has made clear that when the purpose of an adult entertainment ordinance is to ameliorate the secondary effects of adult businesses, intermediate scrutiny applies."); *Ranch House, Inc. v. Amerson*, 238 F.3d 1273, 1283 (11th Cir. 2001) ("We do not conceive of this burden [to invoke the secondary effects doctrine] as a rigorous one."); *Wacko's Too, Inc. v. City of Jacksonville*, 658 F. Supp. 3d 1086, 1100 (M.D. Fla. 2023) (holding that city ordinance requiring performers at adult entertainment establishments to be at least 21-years-old was content-neutral, for purposes of First Amendment free speech challenge brought by adult entertainment establishments and performers because ordinance did not aim at suppression of free speech but instead aimed to curtail negative secondary effects of having vulnerable 18 to 21-old performers exposed to human and sex trafficking; and age restriction did not prohibit erotic dancing itself, but rather restricted age of those who could perform at adult entertainment establishments, for reason distinct from content of expression); *Discotheque, Inc. v. Augusta-Richmond Cnty.*, 2022 WL 5077263, *6–8 (11th Cir. Oct. 5, 2022) (finding intermediate scrutiny satisfied by ordinance aiming to combat negative secondary effects stemming from adult entertainment establishments).

ban the drag show but to regulate the location of its performance.

Even if the City's indoors-and-adults-only requirement is content based to the extent that it restricts a sexualized drag performance near a public playground, the Court should *treat* it as content neutral. Both the Eleventh Circuit and the Supreme Court have identified a category of regulation of expressive conduct that define the regulated conduct by its expressive content and, to this extent, are "content-based," but their purpose is not to ban the expressive conduct but merely to establish restrictions on the time, place, and manner of its presentation. *See Fly Fish*, 337 F.3d at 1306 (citing *Renton*, 475 U.S. at 46–47). "Under *Renton*, such a content-based, but treated as content-neutral, regulation of expressive conduct is entitled to an intermediate level of scrutiny," and "[i]t survives this scrutiny so long as it is designed to serve a substantial government interest and leaves available ample alternative avenues of communication." *Id.* at 1306 (citing *Renton*, 475 U.S. at 50).

Here, the City's the indoor-and-adults-only requirement is a *Renton*-type of time, place, and manner regulation. The requirement does not ban drag shows but prohibits them in Cambier Park, which has a public playground that is popular with families, including Intervenor-Defendants' families. Put simply, the requirement merely regulates the *place* of the drag performances. Contrary to Naples Pride's speculative and wholly conclusory assertion, the City is not "impos[ing] viewpoint-based restrictions on the Pridefest drag performance because of their … subjective disapproval of the viewpoints that drag expresses about traditional gender roles."

(Compl. ¶ 121.) Instead, the City only requires that Naples Pride engage in the performances indoors and *away from children* (*i.e.*, a specific place), on the dates and times requested in the permit (*i.e.*, time), and only in such a way that it is presented to adults (*i.e*, the manner). In short, the requirement is a textbook and valid time, place, and manner regulation that aims to regulate conduct that "generates undesirable secondary effects" near a public playground. *Fly Fish*, 337 F.3d at 1309. Under Supreme Court and Eleventh Circuit precedent, the City "is entitled to combat these effects, so long as it does not ban, but merely regulates the … message." *Id*. at 1308; *cf. id.* at 1309 ("The City has determined that totally nude dancing in adult entertainment establishments generates undesirable secondary effects. Under *Erie* and *Renton,* it is entitled to combat these effects, so long as it does not ban, but merely regulates the erotic message. Ordinance 1204 is such an ordinance, and the district court did not err by not applying a heightened level of scrutiny.").

3. Naples Pride's First Amendment challenge to the City's requirement cannot withstand intermediate scrutiny.

Because the City's indoors-and-adults-only requirement is a content-neutral time, place, and manner that indirectly regulates speech, it is subject only to intermediate scrutiny. *See Renton*, 475 U.S. at 41.[4] A government action "survives this

[4] Because Naples Pride challenges the City's requirement as a "compliance mechanism," *Renton*'s "time, place, and manner test is the better fit" than the *O'Brien* test. *Club Madonna Inc. v. City of Miami Beach*, 42 F.4th 1231, 1245 (11th Cir. 2022). Although "[a]s a practical matter, there is little difference between" the tests*, Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1297 (11th Cir. 2021), the Eleventh Circuit has observed that the tests "are not the same, and they may lead to different results," *Club Madonna*, 42 F.4th at 1244. Here, the *Renton* test is applicable because the City's requirement "relate[s] more to the 'where or when' of the expressive conduct" than "how performers may dance or what they must wear." *Id.*; *cf. id.* (holding that the time, place, and manner test was the

scrutiny so long as it is designed to serve a substantial government interest and leaves available ample alternative avenues of communication." *Fly Fish*, 337 F.3d at 1306 (citing *Renton*, 475 U.S. at 50). This Court may decide as a matter of law that the City's requirement withstands intermediate scrutiny.

a. The City has a substantial interest in preventing the negative secondary effects of children being exposed to lewd performances in a public park.

The City has not just a substantial but a *compelling* interest in protecting children from being exposed to obscene and lewd conduct in a public park. The Supreme Court "has acknowledged limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children." *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986). "The protections of the First Amendment have always adapted to the audience intended for the speech," thus "certain speech, while fully protected when directed to adults, may be restricted when directed towards minors." *James v. Meow Media, Inc.*, 300 F.3d 683, 696 (6th Cir. 2002). *See also Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) (States may "shield[ ] minors from the influence of [sexual expression] that is not obscene by adult standards."). As such, the government "may punish adults who provide unsuitable materials to children," so long as non-obscene speech is not "silenced completely in an attempt to shield children from it." *Ashcroft v. Free Speech*

appropriate test to evaluate a nude dance club's First Amendment free speech challenges to the compliance mechanism in a city ordinance requiring nude strip clubs to follow a record-keeping and identification-checking regime to ensure that each performer was at least 18 years old, given that the ordinance related more to the "where or when" of the expressive conduct than the "how").

Coal., 535 U.S. 234, 251–52 (2002). *Accord Friends of George's, Inc. v. Mulroy*, 108 F.4th 431, 438 (6th Cir. 2024) (reversing district court's issuance of injunction against Tennessee law making it offense to perform adult cabaret entertainment in public or in potential presence of minors violated First Amendment, noting that there is "no constitutional interest in exhibiting indecent material to minors").

Here, the City has a substantial interest in protecting children from the secondary negative effects of exposure to lewd conduct, and it acted well within its constitutional limits to require Naples Pride to hold the drag show indoors. Even though it (falsely) characterizes its drag shows as "family-friendly" (Compl. ¶ 3), Naples Pride nevertheless conceded that "drag *can* involve risqué elements" (*id.*), a fact that is conclusively proven by the documented video and photographic evidence of its past events. (*See generally* Decl. of Kimberly Collins Supp. Amicus Brief of Liberty Counsel et al., ECF No. 38-1.) Asked to approve a live sexualized performance within eyesight and earshot of public playground, and anticipating that minors will likely be present, the City imposed two modest, content-neutral limitations: that such performances take place indoors and that the audience be restricted to adults. "[C]onsideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved." *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 650–51 (1981). The indoor and adults-only requirements are reasonable conditions, tailored to protect children in a

public setting, and consistent with longstanding First Amendment doctrine. *See Bethel*, 478 U.S. at 684.

To be sure, "a city may not regulate speech because it causes offense or makes listeners uncomfortable, or because it might elicit a violent reaction or difficult-to-manage counterprotests." *Fort Lauderdale Food Not Bombs*, 11 F.4th at 1294 (cleaned up). But the Supreme Court has made clear that the government has a "compelling interest in protecting the physical and psychological well-being of minors," and that interest "extends to shielding minors" from material "that is not obscene by adult standards." *Sable*, 492 U.S. at 126. The City's policy here reflects that line. It does not ban drag performances. It does not single out any particular viewpoint about "gender." It allows Pridefest to proceed without restriction and even permits the drag show to occur however Naples Pride desires so long as it takes place indoors and before an adult audience. Those limitations serve a clear and legitimate governmental purpose: protecting children from exposure to content that Naples families have overwhelmingly deemed inappropriate for minor children to witness. *Accord Bethel*, 478 U.S. at 684 (recognizing that the Court's cases "recognize the obvious concern on the part of parents … to protect children—especially in a captive audience—from exposure to sexually explicit, indecent, or lewd speech").

b. The indoor-and-adults-only requirement provided a reasonable avenue for Naples Pride to hold its drag show.

The City's requirement is not substantially broader than necessary to achieve the City's interests and leaves open ample alternative channels for communication. *See*

Club Madonna, 42 F.4th at 1247. As discussed above, the City is not prohibiting drag performances or excluding Naples Pride from using Cambier Park. The City is permitting both to occur as Naples Pride requested, but merely required that one element of Pridefest occur indoors and be limited to adult audiences—conditions that are tailored to reflect the nature of the performances and the visibility of the stage in a family-friendly park. These reasonable requirements leave the drag show intact. They do not regulate the content of the performance, the identity of the speakers, or the alleged messages being expressed. They regulate only when, where, and to whom the performance is presented.

The City's provision of the Norris Center—which is just on the other side of Cambier Park—as the alternative location, combined with continued access to the Park for the rest of the Pridefest festival, further demonstrates that the requirement issue does not foreclose Naple Pride's expressive activities. The First Amendment does not require the City to provide its public spaces for every type of expressive conduct under every condition preferred by the speaker. *See Ward*, 491 U.S. at 791. In short, to the extent that the City's requirement implicates the First Amendment, it is narrowly tailored enough to satisfy intermediate scrutiny under *Renton*'s time, place, and manner test.

4. The City's permit fee structure is not content-based and reflects neutral, permissible considerations under the First Amendment.

The City's sliding-scale permit fee—based on the anticipated size and scope of the event—is a content-neutral mechanism tied to legitimate government interests such

as public safety and resource allocation. As the Eleventh Circuit has held, "fees based upon a sliding scale considering the anticipated attendance of the festival are not content-based but, instead, are reasonably related to the expenses of policing the activities in question." *Coal. for the Abolition of Marijuana Prohibition v. City of Atlanta* ("*CAMP I*"), 219 F.3d 1301, 1321 (11th Cir. 2000). Even if the City took into account anticipated counter-protest activity, street evangelists, or other attendees drawn to the event's public-facing perimeter—particularly at a Pride celebration—that consideration alone does not render the content based. *See CAMP Legal Defense Fund v. City of Atlanta* ("*CAMP II*"), 451 F.3d 1257, 1273–75 (11th Cir. 2006).

5. Plaintiff fails to state a claim for viewpoint discrimination because the City's permit conditions, by which Plaintiff previously abided, were neutrally applied.

Naples Pride's claim of viewpoint discrimination fails not just because the City acted neutrally and within its lawful authority, but for the more basic reason that Naples Pride rejected the very permit it now claims was unconstitutionally denied. After the controversy surrounding an undisclosed, sexualized drag performance at Pridefest 2022—witnessed by children and generating justifiable public outcry—the City imposed two narrow, neutral conditions on the 2023 and 2024 permits: that the drag show occur indoors and be limited to adults. Critically, despite falsely claiming that it was "forced to," Naples Pride *agreed* to those conditions in both years, and the events proceeded without issue. (Compl. ¶ 10.)

In 2025, the City Council again approved the permit with the same conditions, but Naples Pride *rejected* the City Council's decision. In other words, it was Naples

Pride—not the City—that declined the permit. A plaintiff who rejects a permit on ideological grounds cannot then claim the permit was withheld in violation of the First Amendment. *Cf. City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). ("Self-censorship is immune to an 'as applied' challenge, for it derives from the individual's own actions, not an abuse of government power."). Naples Pride cannot convert its own refusal to accept modest permit conditions into a constitutional injury. The City issued the permit. Naples Pride refused it. This is not viewpoint discrimination; it is viewpoint accommodation.

Nor can Naples Pride reasonably claim the permit criteria were discriminatorily applied. "As-applied" challenges are necessarily determined on a case-by-case basis. *See City of Lakewood*, 486 U.S. at 759. Here, the size and scope of Pridefest triggered City Council review under the Special Event Permit Manual. (Compl. ¶ 46.) Under those same guidelines and the City Code, the Council was authorized to impose reasonable conditions on the event to ensure public welfare. (*Id.* ¶ 47.) The conditions here—requiring a risqué performance to be indoors and restricted to adults—do not reflect hostility to Naples Pride's message; they reflect reasonable efforts to balance competing interests in a public forum shared by all.

* * *

In the final analysis, Naples Pride cannot plausibly state a First Amendment claim against the City's indoors-and-adults-only requirement. Drag performances—particularly of the sort documented in prior Naples Pride events—are not inherently expressive conduct and thus do not even qualify for constitutional protection. Even

granting the dubious premise that such performances fall within the First Amendment's ambit, the City's reasonable requirement that they be held indoors and limited to adult audiences is a paradigmatic time, place, and manner restriction: content-neutral in purpose, directly aimed at a substantial governmental interest, and narrowly tailored to achieve it without suppressing any message. The First Amendment does not entitle anyone to sexually charge the atmosphere of a public park shared with children, nor to compel the City to furnish its bandstand as a stage for obscene displays under the guise of free speech.

B. Plaintiff's facial challenge to the City's permitting scheme fails as a matter of law.

Naples Pride challenges the City's entire permitting scheme on its face, alleging that it grants city officials "unfettered discretion," (Compl. ¶ 119), which "poses an unacceptable risk of suppressing a particular point of view" (*id.* ¶ 122). Plaintiff's facial challenge is rife with threadbare recitations of law and conclusory allegations—and thus should be rejected. At the outset, "a plaintiff can only succeed in a facial challenge by 'establishing that no set of circumstances exists under which the Act would be valid,' *i.e.*, that the law is unconstitutional in all of its applications." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno,* 481 U.S. 739, 745 (1987)). Plaintiff has failed to plausibly allege that the City's permitting scheme "is unconstitutional in all of its applications." *Id.* The scheme does not vest city officials with a roving commission to suppress unpopular speech. It lays out specific, neutral, and commonsense factors for determining whether

a special event may go forward—public safety, traffic disruption, coordination with other scheduled events, and so forth. *See* Naples, Fla., Code of Ordinances § 46-39(c).

The City's permitting scheme tracks the ordinance upheld in *Thomas v. Chicago Park District*, 534 U.S. 316 (2002). There, the plaintiffs brought a facial challenge to a municipal park ordinance requiring individuals to obtain permit before conducting more-than-50-person events, contending that "the criteria set forth in the ordinance are insufficiently precise because they are described as grounds on which the Park District 'may' deny a permit, rather than grounds on which it *must* do so." 534 U.S. at 324. The Court rejected that argument noting that, "[o]n balance, … the permissive nature of the ordinance furthers, rather than constricts, free speech." *Id*. at 325.

The City's Special Event Permit Manual sets forth nearly identical criteria upheld in *Thomas*. The City provides a deadline for submitting completed applications, must clearly explain its reasons for any denial, and provides "narrowly drawn, reasonable and definite standards to guide the licensor's determination." 534 U.S. at 324. The City Council review and approval process also ensures a definite schedule for review[5] and provides for a public discussion and declaration of the basis for denial or conditions of approval. The City's process even provides an expedited review procedure precisely for those who claim a First Amendment violation. Naples, Fla., Code of Ordinances § 2-167, *et seq.* Far from muzzling free speech, the City built in a

[5] Special Events, City of Naples, Fla., https://www.naplesgov.com/parksrec/page/special-events (last accessed Apr. 30, 2025).

fast lane for potentially aggrieved speakers. Naples Pride chose not to avail itself of this process.

Just as the ordinance evaluated and upheld by the Eleventh Circuit in *CAMP I*, 219 F.3d at 1301, the City's ordinance and incorporated Special Event Permit Manual "applies equally to all festivals of any kind without regard to the content of any message the festival sponsor might convey. The [] Ordinance only distinguishes between various festivals or similar gatherings on the basis of physical attributes, not content." *Id.* at 1317–18. The Court found in that case that because the challenged ordinance "'serves purposes unrelated to the content of expression' and is '*justified* without reference to the content of the regulated speech,'…it is content-neutral." *Id.* (quoting *Ward,* 491 U.S. at 791). This Court should reach the same conclusion here. The City governs its public grounds with reasonable rules about when and how to host events—not with a censor's red pen. That is not "unfettered discretion." It is what any competent municipality does to manage competing uses of public space.

Moreover, Naples Pride received a permit for multiple years in a row, including years when their event featured drag performances. The very party crying "prior restraint" is the one with past (and current) permits in hand. A law is not facially unconstitutional because someone is unhappy with how it applied once or thinks it might be abused someday. Here, the Plaintiff has not come close to pleading a plausible facial challenge to the City's permitting scheme, and thus its claims should be dismissed.

C. Plaintiff has erroneously sidestepped Florida law, which prohibits the City from issuing a permit to allow the drag show to be performed in front of minors.

Finally, Naples Pride's request for a permit puts the City of Naples in an impossible position. Florida Statutes § 255.70(2)—on the books, duly enacted by the Legislature, and still operative—expressly forbids any governmental entity from "issu[ing] a permit or otherwise authorize a person to conduct a performance in violation of" section 827.11, which criminalizes lewd public performances in front of children. That includes the City of Naples. *See* Fla. Stat. § 255.70(1) (broadly defining "governmental entity" to include any "unit of government created or established by law").

Plaintiff cannot counter that the injunction issued in *HM Florida-ORL, LLC v. Griffin*, 679 F. Supp. 3d 1332 (M.D. Fla. 2023), applies to the City. On its face, that injunction enjoins only the Secretary of the Florida Department of Business and Professional Regulation. It is well-established that federal courts may enjoin enforcement by specific officials, not the statutes themselves. *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021). "Federal courts have no authority to erase a duly enacted law from the statute books." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020) (quoting Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018)). As such, "[w]hen a district court declares a statute unconstitutional or enjoins its enforcement, its decision binds *only the named defendants*, and it *has no precedential value in other court proceedings*." *Mitchell*, 104 Va. L. Rev. at 1001–02 (emphasis added); *accord* Howard M. Wasserman, *"Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate*, 22 Lewis & Clark L.

Rev. 335, 358–59 (2018) ("[E]nforcement requires a particular target. It follows that an injunction preventing enforcement against the target remedies the constitutional violation, even if it does not prohibit enforcement of the law against others."). Section 255.70 remains in force. It has not been repealed, and it has not been invalidated by final judgment. The injunction binds officials at one agency. "And those who violate the statute while the injunction is in effect can be subject to civil or criminal penalties if the injunction is vacated on appeal or by a future court." Mitchell, 104 Va. L. Rev. at 933.

So here is the upshot: The City of Naples cannot lawfully issue the requested permit without violating a still-valid state statute. Moreover, enforcing a misdemeanor under Florida law falls to State Attorneys, who are not parties to the injunction and are not bound by it. See Fla. Stat. §§ 16.01(5), 27.02(1); *Jacobson*, 974 F.3d at 1254 ("As nonparties, the [State Attorneys] are not obliged in any binding sense to honor an incidental legal determination the suit produces."). That being so, Plaintiff's grievance, if it has one, lies with the State of Florida, not with the City. But the State is not before this Court, and until it is, this case should not proceed. *Cf. Allen v. Jacksonville Univ.*, 2022 WL 911383, at *2 (M.D. Fla. Mar. 29, 2022) ("In light of the need to provide the Attorney general at least 60 days to determine whether she wishes to intervene in this action, the Court finds that a stay is justified.").

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim and grant final judgment in favor of

Defendants and Intervenor-Defendants on the pleadings pursuant to Fed. R. Civ. P. 12(c).

Dated: May 7, 2025

Respectfully submitted,

/s/ Kristina S. Heuser

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LOCAL RULE 3.01(g) CERTIFICATION

I have not yet conferred with counsel regarding Proposed-Intervenors Motion to Dismiss the Complaint since the filing of this motion is contingent upon the Court granting the Proposed Intervenor-Defendants' Motion to Intervene in this Action.

/s/ Kristina S. Heuser
Kristina S. Heuser
Attorney for Intervenor-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2025, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via the Court's ECF/electronic notification system.

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for Intervenor-Defendants