UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NAPLES PRIDE, Plaintiff-Appellee, v. CITY OF NAPLES, et al., Defendants-Appellants.	Court of Appeals Docket No. 25-11756 District Court Case No. 2:25-cv-291-JES-KCD **Decision Requested No Later Than June 6, 2025**

PROPOSED INTERVENOR DEFENDANTS-APPELLANTS' EMERGENCY MOTION FOR LEAVE TO INTERVENE ON APPEAL AND FOR A STAY PENDING APPEAL

Proposed Intervenor-Defendants-Appellants Theodore ("Teddy") Collins, Kimberly Collins, and Chelsea Melone ("Proposed Intervenors") hereby move this Court pursuant to Fed. R. App. P. 27 and 11th Cir. Rule 27-1 for an Order granting the following relief: (1) immediately reversing the appealed-from orders[1] of the district court and retroactively granting Proposed Intervenors' motion to intervene pursuant to Fed. R. Civ. P. 24, or granting Proposed Intervenors leave to intervene

[1] After this appeal was filed by Appellants City of Naples, et al., Proposed Intervenors filed a separate Notice of Appeal with the district court (dkt. 88), appealing the partial denial of their motion to intervene and the denial of their request for expedited consideration of the balance of their motion. This subsequent and related appeal, filed on May 29, 2025, has not been docketed by the Clerk of this Court as of the filing of this motion. Upon docketing, Proposed Intervenors will promptly move the Court to consolidate the two appeals.

in this appeal pursuant to this Court's inherent authority; (2) staying the Preliminary Injunction entered by the district court on May 12, 2025 pursuant to Federal Rule of Appellate Procedure 8(a)(2); (3) deciding this motion on an emergency basis pursuant to 11th Cir. Rule 27-1(b)(1) for the reasons described herein; and, (4) providing such other and further relief as this Court may deem just and proper.

In support of this motion, the Proposed Intervenors submit the following incorporated Memorandum of Law.

PROCEDURAL HISTORY AND BASIS FOR EMERGENCY CONSIDERATION

On April 10, 2025, Appellee Naples Pride filed a Complaint in the United States District Court for the Middle District of Florida against Appellants City of Naples and its Mayor, Councilmembers, and Chief of Police, asserting facial and as-applied First Amendment challenges to the City's Ordinance and incorporated manual setting the parameters by which special event permits are issued. (Dkt. 1.) On April 12, 2025, Appellee filed a Motion for a Preliminary Injunction. (Dkt. 12.) Appellants filed their response to Appellee's motion on April 30, 2025. (Dkt. 39.) Also on April 30, 2025, Liberty Counsel, on its own behalf and on behalf of Proposed Intervenors, filed an *amicus* brief in opposition to Appellee's motion, together with a Declaration and accompanying photos and videos obtained by the declarant of the

last outdoor Naples Pride drag performance held in Cambier Park in 2022.[2] (Dkt. 38.) Appellee opposed the consideration of the evidence presented by *amici* and asked the court to ascribe minimal weight to *amici*'s arguments. (Dkt. 48.) Following oral argument on the preliminary injunction motion, held on May 2, 2025, it became evident to Proposed Intervenors that Appellants were not adequately representing the interests of parents and children, and that an increased level of involvement by Proposed Intervenors was necessary to oppose Appellee's requested injunction on all available grounds. Thus, on May 7, 2025, Proposed Intervenors filed a motion to intervene, seeking to intervene as of right pursuant to Fed. R. Civ. P. 24(a), or permissively pursuant to Fed. R. Civ. P. 24(b). (Dkt. 60; a copy of the motion and supporting materials is attached hereto as **Exhibit D**.) On May 12, 2025, the Court denied the motion to intervene as to the preliminary injunction proceedings, but took the balance of the motion "under advisement." (A copy of the Order is attached hereto as **Exhibit B**). Immediately thereafter, the Court granted Appellees' requested preliminary injunction as to the location and age requirements for the drag show

[2] After the 2022 unpermitted drag performance sparked community outrage, Naples Pride and the City of Naples agreed that subsequent drag performances would be held indoors with attendance limited to adults only. However, at the January 15, 2025 hearing on the permit application for its upcoming Pridefest, Naples Pride explained that it was no longer content with that agreement and was intent upon holding its drag show outdoors. The City nonetheless imposed the contested permit restrictions. Three months later, Naples Pride filed its suit and sought a preliminary injunction enjoining the permit restrictions and imposition of the event security costs estimated by the City.

(Order attached as **Exhibit E**) and entered a Preliminary Injunction (copy attached as **Exhibit F**). Appellants secured new/additional counsel and filed their Notice of Appeal on May 22, 2025 (dkt. 76), together with a motion to stay the Preliminary Injunction pending appeal. (Dkt. 77.) Upon reviewing the stay motion, it was again evident to Proposed Intervenors that their interests were not being adequately represented by Appellants. Thus, on May 23, 2025, Proposed Intervenors filed an emergency motion asking the district court to determine the balance of their intervention motion so that Proposed Intervenors could timely participate in this appeal. (Dkt. 80.) The court denied Proposed Intervenors' motion (Order attached hereto as **Exhibit C**), thereby effectively depriving Proposed Intervenors of the ability to participate in this appeal. Proposed Intervenors timely filed a Notice of Appeal (**Exhibit A**).

This motion meets the criteria for consideration on an emergency basis because the requested stay will be moot if not issued within seven (7) days of the date of this motion,[3] and because this motion is made within seven (7) days of the most recent order appealed by Proposed Intervenors, and of the district court order denying the stay requested by Appellants. Proposed Intervenors did not move for this relief sooner because a determination on Proposed Intervenors' request to intervene for purposes of appeal was held in abeyance, and was denied just

[3] The date of the Pridefest and included drag performance is June 7, 2025.

yesterday. Because Proposed Intervenors presently are without party status, Proposed Intervenors lacked standing to first seek a stay from the district court. For this reason, and due to the time constraints imposed by the rapidly approaching event date, Proposed Intervenors did not first seek a stay from the district court, and include their motion for a stay herein for consideration by this Court. Moreover, the district court's denial of Appellants' motion to stay (dkt. 85) indicates that even if there had been sufficient time to seek a stay from the district court first, and even if the district court would have considered such a motion from a non-party, filing a motion to stay with the district court first would have been futile.

ARGUMENT

I. The District Court Erred in Denying Intervenor Status to Interested Parents, and Proposed Intervenors Should be Granted Intervenor Status Retroactively or for Purposes of Appeal.

Proposed Intervenors moved in the District Court to intervene as of right or, alternatively, permissively pursuant to Fed. R. Civ. P. 24. (Exhibit D). The District Court first denied Proposed Intervenors' motion as to the preliminary injunction, (Exhibit B). Proposed Intervenors sought to oppose the preliminary injunction themselves because Appellants declined to oppose the preliminary injunction on the grounds that limited, if any, First Amendment protection is to be afforded to

children's exposure to adult entertainment.[4] Proposed Intervenors then moved the district court for expedited determination of their motion to intervene as to the balance of the litigation, including for purposes of appeal.[5] The court denied this relief, too (Exhibit C). This effectively denied Proposed Intervenors their right to participate in this action and be heard with respect to their interest in their children being able to play in a popular community playground without being exposed to adult live entertainment. Proposed Intervenors now ask this Court to either immediately reverse the district court's orders and retroactively grant intervenor status to Proposed Intervenors for the proceedings below and on appeal, or, alternatively, pursuant to this Court's inherent authority, grant Proposed Intervenors intervenor status for purposes of this appeal.

[4] As discussed in great detail *infra*, though Appellee touts its drag show as 'family friendly' and the district court adopted this narrative, this description is misleading. The drag performers are men wearing form-fitting clothing in many cases exposing the form of their male genitalia. Many of the men dance in a sexually suggestive manner, which would be inappropriate for children whether the performers are men in drag or women dressed in body suits and fishnet stockings or other similar costuming. As depicted in the photos and videos submitted to the district court by Proposed Intervenor Kimberly Collins, the drag performers seek out children in the crowd and engage them in the performance, even accepting "tips" from them as occurs in a strip club. The photos referenced are included with Exhibit H.

[5] Proposed Intervenors expressed in their motion to intervene that part of the basis for seeking intervenor status was to preserve their right to appeal. Exhibit D, pp. 14-15.

As the Supreme Court recently explained:

> No statute or rule provides a general standard to apply in deciding whether intervention on appeal should be allowed…Without any rule that governs appellate intervention, we have looked elsewhere for guidance. Thus we have considered the "policies underlying intervention" in the district courts…including the legal "interest" that a party seeks to "protect" through intervention on appeal. Fed. Rule Civ. Proc. 24(a)(2).

Cameron v. EMW Women's Surgical Ctr., P.S.C., 595 U.S. 267, 276–77 (2022) (internal citations omitted). This Court has also noted that it "review[s] the grant of a motion for permissive intervention for abuse of discretion[;] the grant of a motion to intervene as of right de novo[;] subsidiary factual findings for clear error[; and,] a court's determination of timeliness for intervention for abuse of discretion." *Comm'r, Alabama Dep't of Corr. v. Advance Local Media, LLC*, 918 F.3d 1161, 1170 (11th Cir. 2019) (internal citations omitted).

Proposed Intervenors have appealed the erroneous denial and delay in deciding their motion to intervene, and intend to fully brief those matters in due course. Due to space limitations and the importance of presenting to this Court the meritorious arguments in support of a stay of the preliminary injunction, Proposed Intervenors respectfully refer to their motion to intervene annexed hereto as Exhibit D for a full recitation of the reasons why Proposed Intervenors were erroneously denied their right to intervenor status in this litigation, or, alternatively, unjustly denied permission to intervene to protect their interests. Notably, the district court

did not hold that Proposed Intervenors fail to meet the substantive criteria for intervention. Rather, the Court denied Proposed Intervenors' motion on the basis of untimeliness. This was an abuse of discretion by the District Court. The motion to intervene was made at the earliest stage of the litigation and, importantly, Proposed Intervenors had already presented their arguments and evidence to the district court in the form of an *amicus* brief, and even offered the court the option of converting that brief into Proposed Intervenors' opposition to the motion for preliminary injunction, so that no party would be prejudiced by additional briefing time. Being aware of the speed with which it intended to decide the preliminary injunction motion, the district court could and should have handled Proposed Intervenor's motion to intervene on an expedited basis, whether Proposed Intervenors requested expedited briefing or not. Proposed Intervenors now ask this Court to reverse the District Court's erroneous ruling and retroactively grant Proposed Intervenors' motion to intervene or, alternatively, to allow Proposed Intervenors to intervene now for purposes of appeal, pursuant to this Court's inherent authority, so that all relevant arguments and evidence can be considered in connection with the appeal and motions before this Court.

II. A Stay of the Preliminary Injunction Pending Appeal is Warranted Because Appellants and/or Proposed Intervenors Are Likely to Prevail on Appeal, the Community will Suffer Irreparable Harm in the Absence of a Stay, and the Public Interest Strongly Supports a Stay.

It is well-settled that "when the balance of equities weighs heavily in favor of granting the stay the stay may be granted upon a lesser showing of a substantial case on the merits." *League of Women Voters of Florida, Inc. v. Florida Sec'y of State*, 32 F.4th 1363, 1370 (11th Cir. 2022) (cleaned up). Apart from that, the traditional four factor test applies: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* Although here the application of the lesser standard is appropriate, the heightened standard is also easily met. The preliminary injunction should be stayed because, if the arguments and evidence presented by Proposed Intervenors are given due consideration, they and/or Appellants are likely to prevail. Only limited First Amendment protection, if any, is to be afforded to obscenity, lesser still as it pertains to the purveyor's desire to present such content to minors. In view of this, the only harm to be suffered in the absence of the stay will be to Proposed Intervenors and Appellants; there can be no constitutional harm to Appellee in being restricted from doing something it has no constitutional right to do in the first place. Finally, the

public has an undeniable interest in protecting children from exposure to obscenity, and in confining sexualized adult entertainment to safe and regulated public spaces.

The lesser standard of review is applicable here because a balancing of the equities weighs heavily in favor of granting the stay. On the one hand, there is the interest of Naples Pride in holding a drag performance on stage in a public park in view of spectators of all ages, including children. On the other end of the scale are the interests of Appellants, a municipality and its elected officials who are unanimously in support of restricting the drag show to an indoor venue and adult-only viewing, for various reasons including public safety and ensuring that the parks are utilized in a manner consistent with community standards and applicable state and local laws. On that same end of the scale are the interests of Proposed Intervenors, three parents with young children who regularly play at the park where Appellee intends to exhibit men in drag dancing provocatively. Proposed Intervenors' interests in shielding their children from obscenity and public celebration of gender dysphoria, and in ensuring uninterrupted use of the public park and children's playground for their children, outweigh any feigned "right" for men in drag to gyrate in a public park in front of children.

Proposed Intervenors have put forth a substantial case on the merits. In denying Appellants' request for a stay pending appeal, the district court noted Appellants "did not dispute that the proposed drag performance would be 'family

friendly' or that the First Amendment applies to the drag performance." (**Exhibit G**, p. 2). But, Proposed Intervenors did. (**Exhibit H**). The district court was careful to note that the reduced First Amendment protection afforded to lewd and lascivious conduct was not part of its calculus – neither in awarding Appellee its requested Preliminary Injunction, nor in denying Appellants' motion for a stay pending appeal. Had the district court considered the arguments raised by the Proposed Intervenors, both motions necessarily would have been decided differently. If, on appeal, all relevant facts and law are taken into account, rather than the narrow scope review undertaken by the district court, Appellants and Proposed Intervenors will prevail. In view of this, this Court should be persuaded that a stay of the district court's Preliminary Injunction pending determination of the appeal is appropriate.

The district court found that Appellants' special event permitting scheme likely passes constitutional muster on its face (**Exhibit D**, pp. 44-45), but likely ran afoul of the First Amendment as applied to Appellee's Pridefest permit application (**Exhibit D**, p. 47). Because Appellants granted a permit to Appellee to host its annual Pridefest in Naples' Cambier Park (over much public consternation), the only issue before this Court is whether the permit restrictions requiring the drag show component of Pridefest to be held indoors and for an adult only audience constitute impermissible viewpoint discrimination violative of the First Amendment. They do

not. Rather, the permit restrictions are permissible time, place, and manner restrictions consistent with decades of Supreme Court precedent and Florida law.

Appellee's as-applied First Amendment challenge against Appellant'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). "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.)). "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. 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; they may even be fun to some. But neither Appellee nor the district court can cite to 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"). 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); *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).

To the extent that the City's now-enjoined permit restrictions regulate expressive conduct, the restrictions are content-*neutral* time, place, and manner restrictions that serve a compelling governmental interest in protecting children from being exposed to obscenely sexualized performances one hundred feet away from a public playground.[6] "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

[6] In the proceedings below, there was some grappling with the applicability of the injunction placed upon the law enacted by the Florida Legislature and signed into law by Governor DeSantis in 2023 referred to in the courts as SB 1438. Notwithstanding the temporary injunction of enforcement of that law due to vagueness, as this Court very recently noted upon its review of the injunction, "other Florida law already covers much of the material the Act prohibits. Florida Statutes, Section 847.013(3)(a), for example, makes it a misdemeanor to 'knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.'" *HM Florida-ORL, LLC v. Governor of Florida*, No. 23-12160, 2025 WL 1375363, at *27 (11th Cir. May 13, 2025). And, "[n]or does anything we say touch on Florida's many other laws protecting children from harmful content. *See, e.g.*, Fla. Stat. §§ 847.012; 847.0125; 847.0133; 847.0134; 847.0138; 847.01385; 847.0141." *Id.* at 29.

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*, Appellee cannot prevail on its claim that the City’s location and age requirements are aimed at suppressing its speech. 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.[7] 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) (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).[8] Critically, the City's requirement *does not prohibit* drag performances themselves. The show may, indeed, go on, indoors. The presently enjoined restrictions merely

[7] This is something the Collier County Sheriff's Office is concerned about and making preparations for since the entry of the preliminary injunction by the district court. *See* Public Records obtained from the Collier County Sheriff's Office attached as **Exhibit I**.

[8] *See also*, *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).

prevent 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).

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 regulations 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 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 Proposed Intervenors' families. Put simply, the requirement merely regulates the *place* of the drag performances and is, therefore, 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.

Because the City's indoors-and-adults-only requirement is a content-neutral time, place, and manner regulation that indirectly reaches speech, it is subject only to intermediate scrutiny. *See Renton*, 475 U.S. at 41. A government action "survives this 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 will likely decide as a matter of law that the City's requirement withstands intermediate scrutiny.

In any event, 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 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").

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. 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 challenged restriction does not foreclose Appellee'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.

CONCLUSION

For the foregoing reasons, the motion should be granted, Proposed Intervenors should be permitted to intervene, and the Court should stay the preliminary injunction pending the outcome of this appeal.

Dated: May 30, 2025

Respectfully submitted,

/s/ Kristina S. Heuser

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CERTIFICATE OF COMPLIANCE

This motion and incorporated memorandum of law is typed in Times New Roman, 14 point font and consists of 5,197 words excluding the caption and signature block, and therefore complies with all applicable rules.

Respectfully submitted,

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorneys for
Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 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
Proposed Intervenors

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT (CIP)

The following trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations have an interest in the outcome of this case or appeal:

1. ACLU Foundation of Florida, Inc., *Counsel for Plaintiff-Appellee*

2. Barton, Berne, *Defendant-Appellant*

3. Christman, Raymond, *Defendant-Appellant*

4. City of Naples, *Defendant-Appellant*

5. Collins, Kimberly, *Proposed Intervenor Defendant-Appellant*

6. Collins, Theodore, *Proposed Intervenor Defendant-Appellant*

7. Cooper & Kirk, PLLC, *Counsel for Defendants-Appellants*

8. Dickman Law Firm, *Counsel for Defendants-Appellants*

9. Dickman, Andrew, *Counsel for Defendants-Appellants*

10. Flores-Dickman, Odelsa, *Counsel for Defendants-Appellants*

11. Foley, Elizabeth P., *Counsel for Defendants-Appellants*

12. Goldman, Joshua M., *Counsel for Plaintiff-Appellee*

13. Heitmann, Teresa, *Defendant-Appellant*

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15. Hutchison, Terry, *Defendant-Appellant*

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17. Kramer, Bill, *Defendant-Appellant*

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20. McConnell, Matthew, *Counsel for Defendants-Appellants*

21. Melone, Chelsea, *Proposed Intervenor Defendant-Appellant*

22. Mihet, Horatio, *Counsel for Proposed Intervenor Defendants-Appellants*

23. Naples Chief of Police, *Defendant-Appellant*

24. Naples City Council, *Defendant-Appellant*

25. Naples Police Department, *Defendant-Appellant*

26. Naples Pride, *Plaintiff-Appellee*

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30. Penniman, Linda, *Defendant-Appellant*

31. Petrunoff, Beth, *Defendant-Appellant*

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34. Staver, Mat, Counsel for *Proposed Intervenor Defendants-Appellants*

35. Steele, John E., *District Court Judge*

36. Thompson, David H., *Counsel for Defendants-Appellants*

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38. Weiss, Max, *Counsel for Plaintiff-Appellee*

39. Wong, Anthony J., *Counsel for Plaintiff-Appellee*

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

Dated: May 30, 2025

/s/ Kristina S. Heuser
Kristina S. Heuser

Attorney for
Proposed Intervenors