

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

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

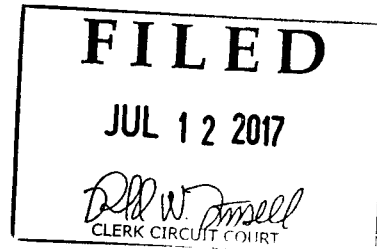
JOHN PARSONS, an individual,

Plaintiff,

vs.

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

Defendant.



**ORDER GRANTING DEFENDANT CITY OF JACKSONVILLE'S
AMENDED MOTION TO DISMISS WITHOUT PREJUDICE**

This cause came before this Court June 9, 2017, for a hearing on Defendant City of Jacksonville's Amended Motion to Dismiss ("Motion"), filed May 22, 2017, and this Court, having heard argument of counsel, having considered the Motion, the Complaint for Declaratory and Temporary and Permanent Injunctive Relief ("Complaint"), and relevant authority, and being otherwise fully advised, makes the following findings of fact and conclusions of law.

1. Plaintiff alleges that he is a natural person residing in Jacksonville. (Compl. ¶ 3.) He alleges that Jacksonville's so-called human rights ordinance ("HRO"), number 2017-15-E, suffers several defects. First, sections 2 and 3 of the HRO, in amending several sections of the Jacksonville Ordinance Code, do not quote those other sections, but only list them by number. Plaintiff alleges that constitutes a violation of section 166.041(2), Florida Statutes, which provides in part, "Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection." Second, Plaintiff alleges that section 4 of the HRO, "which purports to enact religious exemptions to the HRO which are different from or in

conflict with the existing religious exemption provisions of” several sections of the Ordinance Code, also violates section 166.041(2), Florida Statutes, by not quoting the affected sections. (Compl. ¶ 13.) Third, Plaintiff alleges that section 10 of the HRO, “to the extent it purports to repeal existing religious exemption provisions” of several sections of the Ordinance Code, conflicts with section 4 of the HRO and violates section 166.041(2), Florida Statutes, by not quoting the affected sections. (Compl. ¶ 14.) Fourth, Plaintiff alleges that the HRO violates section 3.105 of the Ordinance Code, which requires certain language be contained in an ordinance which amends existing ordinances. Fifth, Plaintiff alleges that the HRO violates Council Rule 3.102 regarding underlining and strikethrough to show proposed changes to existing ordinances.

2. Defendant argues that Plaintiff lacks standing because he does not allege that he has suffered a special injury different from the public at large. Defendant also argues that Plaintiff has not alleged facts to show that he “has a bona fide and direct interest in the result sought by the action, nor any present legal or practical need for obtaining either a declaratory judgment or an injunction.” (Mot. ¶ 5.)

A complaint seeking declaratory relief must allege ultimate facts showing a bona fide adverse interest between the parties concerning a power, privilege, immunity or right of the plaintiff; the plaintiff’s doubt about the existence or non-existence of his rights or privileges; that he is entitled to have the doubt removed. Also, the persons having an actual, present and adverse interest in the subject matter must be shown.

Floyd v. Guardian Life Ins. Co. of America, 415 So. 2d 103, 104 (Fla. 3d DCA 1982).

Plaintiff states the elements of a cause of action for declaratory relief at paragraphs 23-26 in conclusory fashion, but does not allege ultimate facts in support. Tellingly, Plaintiff alleges that he “will be irreparably injured if the HRO is codified and Plaintiff is subjected to the coercive and penal enforcement provisions of the HRO.” (Compl. ¶ 30 (emphasis added).) The conditional nature of that allegation belies the present existence of “a bona fide adverse interest between the parties” Floyd, 415 So. 2d at 104. Whether viewed as a failure to state a cause of action for

declaratory relief, or as an absence of standing, the lack of ultimate facts showing a bona fide, actual, present, adverse interest between the parties is fatal to Plaintiff's cause of action for declaratory relief as pled.

3. Injunctive relief requires a showing of: "(1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest." City of Jacksonville v. Naegele Outdoor Advertising Co., 634 So. 2d 750, 752 (Fla. 1st DCA 1994)(citation omitted). As noted above, Plaintiff's allegation of irreparable harm is conditional; based on the allegations of the Complaint, it cannot be said that Plaintiff is **likely** to suffer irreparable harm by the existence or enforcement of the HRO. Also, because of the lack of ultimate facts pled in support of Plaintiff's conclusory assertion of the existence of "a bona fide, actual, present, and practical need for a declaration of the validity of the HRO[.]" as noted above, Plaintiff has failed to show a substantial likelihood of success on the merits. (Compl. ¶ 23.) The Complaint does not address at all how the public interest would be served by an injunction prohibiting enforcement of the HRO. The Complaint fails to state a cause of action for temporary or permanent injunctive relief.

Therefore, it is

ORDERED AND ADJUDGED that Defendant City of Jacksonville's Amended Motion to Dismiss is hereby **GRANTED** without prejudice to Plaintiff's right to serve and file an Amended Complaint at any time before the expiration of 20 days after the date this Order is filed.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 7 day of July, 2017.


MICHAEL R. WEATHERBY
Senior Circuit Judge

Copies furnished to:

Counsel for Plaintiff

Roger K. Gannam, Esq.

Mathew D. Staver, Esq.

Horatio G. Mihet, Esq.

Liberty Counsel

P.O. Box 540774

Orlando, FL 32854

rgannam@lc.org

court@lc.org

hmihet@lc.org

Counsel for Defendant

Jason R. Teal, Esq., Deputy General Counsel

Craig D. Feiser, Esq., Assistant General Counsel

Gabriella C. Young, Esq., Assistant General Counsel

117 West Duval Street, Suite 480

Jacksonville, FL 32202

jteal@coj.net

cfeiser@coj.net

gcyoung@coj.net

Case No.: 16-2017-CA-1263