

INTRODUCTION

Defendants' Motion, for a 90-day extension to answer Plaintiffs' written discovery, and a 120-day extension to produce documents, effectively **seeks the very stay of discovery previously denied by the Court** (Order, Doc. 61.) "Because discovery will most likely need to be conducted at some point in this litigation, it is unclear how waiting months or years to begin obtaining evidence that is available now would benefit the parties or further orderly or expeditious disposition of this case." (Order, Doc. 61, at 7.) Defendants' Motion provides no coherent justification for a months-long delay in responding to Plaintiffs' reasonable and necessary discovery requests, and should be denied. Alternatively, any extension granted to Defendants should be limited such that the preliminary injunction hearing scheduled for October 10 may proceed, and such that Plaintiffs obtain the requested discovery prior to the hearing.

I. PLAINTIFFS' DISCOVERY REQUESTS ARE REASONABLE, FOCUSED, AND ANSWERABLE WITHIN 30 DAYS.

On August 9, 2018, Plaintiff Vazzo served his First Set of Requests for Admission, Interrogatories, and Requests for Production to Defendant City of Tampa, Florida (Doc. 106-1, Vazzo's "Discovery Requests"). Plaintiffs' Discovery Requests are focused on the issues critical to their preliminary injunction motion: complaints received by Tampa regarding sexual orientation change efforts (SOCE) counseling; studies conducted, commissioned, or reviewed by Tampa regarding SOCE counseling; Tampa's asserted interests in enacting the counseling ban Ordinance 2017-47; Tampa's efforts to narrowly tailor the Ordinance; Tampa's drafting, consideration, debate, voting, enactment, enforcement, interpretation, and application of the Ordinance; the extent to which Tampa regulates other clinical practice methods, health

professionals, or other professionals or professions; and the factual assertions in Defendants' preliminary injunction briefs and supporting materials. (Discovery Reqs., Doc. 106-1.)

All of the discovery sought by Plaintiffs concerns the legislative history of the Ordinance and Defendants' other legislative efforts to serve the purported government interests Defendants have asserted to justify the Ordinance. This Court has already determined that the Ordinance's legislative history is relevant to the constitutional analysis that will be front and center in considering Plaintiffs' preliminary injunction motion: "In applying intermediate scrutiny in *Craig*, the Supreme Court noted that legislative materials would have helped the Court determine the government objectives served by the challenged law in that case. Thus, legislative history is relevant in a case in which intermediate scrutiny may apply."¹ (Order, Doc. 51, at 5–6 (citation omitted).) Defendants' Motion itself highlights the critical relevance of "the legislative findings of City Council" to "the singular issue of whether the Ordinance . . . is valid." (Defs.' Mot., Doc. 106, at 7.) Plaintiffs' Discovery Requests are focused on the relevant issues.

Defendants' complaint that Plaintiffs' discovery requests are "voluminous" and "extraordinary in scope" (Defs.' Mot., Doc. 106, at 5–6) are untenable, and out of line with the responses of other municipalities in similar litigation. According to Defendants' Notice of Pendency of Related Action (Doc. 89), the case *Otto v. City of Boca Raton*, No. 9:18-cv-80771-RLR (S.D. Fla.), "is similar in nature to this case because it challenges the constitutionality of

¹ Plaintiffs do not concede that intermediate scrutiny applies to the Ordinance (*see, e.g.*, Pls.' Mot. Prelim. Inj., Doc. 85, at 11–19), but the Ordinance's legislative history and Defendants' efforts (if any) to tailor the Ordinance to their asserted government interest are likewise relevant under strict scrutiny.

a Palm Beach County ordinance and a City of Boca Raton ordinance addressing conversion therapy,” and, “The Plaintiffs’ counsel in that case are the same counsel representing the Plaintiffs in this case.” (Doc. 89 at 1–2.) Plaintiffs do not disagree, and in fact show the Court that the discovery requests Defendants complain of in this case are **essentially identical** to the discovery requests served by the plaintiffs in *Otto*, to which **Boca Raton and Palm Beach were required to respond – and did respond – within 30 to 35 days**. (The discovery requests directed to Boca Raton and Palm Beach, and the discovery scheduling order, are attached hereto as **Exhibits A, B, and C**, respectively.)² It is not Plaintiffs’ discovery requests, then, that are extraordinary, but rather Defendants’ insistence that they need 90–120 days to answer the discovery that Boca Raton and Palm Beach County answered in maximum 35 days. Defendants provide no justification whatsoever as to why they are so drastically differently situated.

Defendants’ complaints about the scope of Plaintiffs’ Discovery Requests are meritless also because, prior to Defendants’ Motion, Plaintiffs’ counsel spent significant time on telephone conferences with Defendants’ counsel in a good faith effort to narrow Plaintiffs’ Discovery Requests to accommodate Defendants’ concerns. These conversations, and Plaintiffs’ express narrowing of search terms and document custodians for Defendants’ searches, are memorialized in the e-mail string between Plaintiffs’ counsel Horatio Mihet and Defendants’ counsel Robert Williams, attached hereto as **Exhibit D**. For example, while

² The discovery in *Otto* was divided into two sets to each of the two defendants (combined within Exh. A to one defendant, and Exhibit B to the other defendant), while the discovery in this case was included all in one set. Other than relevant changes to names and other case-specific identifiers, the combined two-set discovery in *Otto* is **identical** in scope to the one-set discovery here.

Defendants' Motion laments Tampa's over **4,000 employees**, Plaintiffs voluntarily agreed to **limit the document custodians to be searched to just two dozen**. (Ex. D.) Furthermore, Plaintiffs agreed to search terms expected to yield less than 5,000 "hits" of ESI documents, where Defendants had agreed that 5,000 or fewer hits would be reasonable. (Ex. D.) Plaintiffs also agreed to further narrow the search terms, date ranges and document custodians, in the unlikely event that the number of hits would exceed what Plaintiffs and Defendants agreed would be reasonable (*i.e.*, 5,000).

Rather than further complain about this narrowed scope, or better yet identify how Plaintiffs' conceded limitations could be further refined, Defendants abruptly cut off the discussion and prematurely ran to this Court, **without disclosing any of these important facts**. (Ex. D.) Not only is this a violation of the requirement that parties work in good faith to resolve discovery issues, but it also demonstrates that Defendants are interested more in denying Plaintiffs the chance to develop an appropriate preliminary injunction record, rather than in narrowing Plaintiffs' supposedly broad discovery requests.

II. PLAINTIFFS' DISCOVERY IS NECESSARY FOR THE PRELIMINARY INJUNCTION HEARING.

As Plaintiffs advised the Court in the parties' Joint Notice Regarding Preliminary Injunction Hearing (Doc. 110), whether Plaintiffs will need to put on live evidence at the October 10 hearing depends in large part on Plaintiffs' ability to obtain, prior to the hearing, the critical discovery that Plaintiffs have requested from Defendants **two months in advance**. (Doc. 106-1.) Plaintiffs believe that conducting the preliminary injunction hearing on a record that includes Defendants' discovery responses and deposition testimony will very likely obviate the need for live witness testimony, and will limit the hearing to argument on the

record, thus making it much more efficient for the Court and the parties. Defendants, however, prefer to respond to Plaintiffs' Discovery Requests two months after the hearing, and produce documents three months after the hearing. (Doc. 106 at 15.) But Defendants fail to justify depriving the Court and Plaintiff of discovery that is critical to a thorough and efficient hearing.

Plaintiffs do not mean to suggest that making the October 10 hearing a full evidentiary hearing, with live witness testimony, would be an acceptable or reasonable substitute for the pre-hearing discovery they seek. Not only would it be inefficient for Plaintiffs to attempt to adduce relevant testimony from witnesses Plaintiffs have not questioned previously, but such an arrangement creates an opportunity for trial by ambush. Neither respects the Court's time or need to consider Plaintiffs' motion on a developed record.

Defendants argue that Plaintiffs took a different position on the need for discovery prior to the previously scheduled preliminary injunction hearing on Plaintiffs' first preliminary injunction motion (Defs.' Mot., Doc. 106, at 11), but this argument has no merit. Early in this case, prior to the amendment of Plaintiffs' complaint, the parties agreed to seek a stay of discovery and all pretrial deadlines during the pendency of Plaintiffs' preliminary injunction motion and any related appeals. (Joint Mot., Doc. 49 (Feb. 20, 2018).) The Court **denied** the parties' joint motion on April 11, 2018. (Order, Doc. 61.) The telephonic hearing discussion cited by Defendants occurred on April 2, 2018 (Defs.' Mot., Doc. 106, at 11), **prior** to the Court's Order denying the stay of discovery and all pretrial deadlines. Thus, the telephone discussion was in the context of the stay of all pretrial matters the parties were then-seeking. Since that discussion, however, not only did the Court deny the parties' joint motion for stay, but Plaintiffs also amended their complaint to add a new Plaintiff, and filed a new motion for

preliminary injunction, which made any proceedings concerning the original motion irrelevant (indeed, the Court denied the original motion on June 18, 2018 because it was tied to the original complaint and not the amended complaint (Endorsed Order, Doc. 80)). Also since then, the related and similar *Otto* litigation was filed. All of these developments necessarily require new considerations regarding the efficacy of discovery.

In their recently filed preliminary injunction response, Defendants raise a host of factual defenses to Plaintiffs' motion for preliminary injunction, including their supposedly innocent intent in enacting the Ordinance, their supposedly important need to pass the Ordinance to stop ongoing harms to citizens in their City, their supposedly innocent interpretation and application of the Ordinance, and the supposed fact that they routinely and unremarkably regulate professionals and professional conduct at the local, city level. (*See generally*, Defendants' Response in Opp. to Preliminary Injunction, doc. 99). Plaintiffs are entitled, and should be permitted, to probe these factual claims so that the Court can properly adjudge them.

Defendants also make the nonsensical argument that they should not have to respond timely to Plaintiffs' Discovery Requests because they already complied with their initial disclosure obligations. (Defs.' Mot., Doc. 106, at 12.) Nothing in the Federal Rules even suggests that a party should be precluded from discovery expressly authorized by Rules 33, 34, and 36 because an opponent makes initial disclosures required by Rule 26. Defendants' head-spinning argument distills to this: Defendants' act of identifying persons with discoverable information should prevent Plaintiffs from discovering that information, and Defendants' act of producing documents that help Defendants should prevent Plaintiffs'

discovery of documents that help Plaintiffs. The Court should not countenance such an argument.

III. DEFENDANTS ARE ALREADY REQUIRED TO PREPARE THEIR RULE 30(b)(6) DESIGNEE(S) ON THE SAME MATTERS SOUGHT IN PLAINTIFFS' WRITTEN DISCOVERY REQUESTS.

In addition to their written discovery requests, Plaintiffs have requested Defendants to provide the availability of Defendant Ruggiero and Defendant Tampa's Rule 30(b)(6) designee(s) for deposition in late September, prior to the preliminary injunction hearing. (Ex. D.)³ Furthermore, Plaintiffs communicated to Defendants that the Rule 30(b)(6) matters for examination would generally track the matters described in Plaintiffs' written discovery requests. (Ex. D.) Defendants' Motion **does not request any delay of these depositions**, nor have Defendants otherwise sought a protective order to avoid them. Thus, Defendants will have to prepare their witnesses for the depositions, which means Defendants will be collecting and reviewing the information sought in Plaintiffs' written discovery requests anyway. Defendants do not explain why they would need several additional months **after** their depositions to provide the information they'll need to review **for** their depositions.

IV. ANY EXTENSION GRANTED SHOULD BE LIMITED AND SHOULD ENSURE RESPONSES PRIOR TO THE OCTOBER 10 PRELIMINARY INJUNCTION HEARING.

Although no extension of time is necessary or justified, if the Court is inclined to grant any extension it should be limited such that Plaintiffs will receive the responses with sufficient

³ Rather than unilaterally noticing the depositions sought, Plaintiffs adhered to the Middle District's Civil Discovery Handbook, section II.A.1, which provides, "An attorney is expected to accommodate the schedules of opposing counsel. In doing so, the attorney should normally pre-arrange a deposition with opposing counsel before serving the notice."

time to review them and prepare for depositions **the week of September 24**, and the October 10 hearing. An extension to September 18, for both Defendants' written responses and document production, would suffice in this respect. Such an extension would give Defendants here almost **six weeks** to respond, and in any event **more** than the time available to the *Otto* defendants for identical discovery.

If this Court is inclined to give Defendants an extension beyond September 24, say for example up to 30 additional days on top of the initial 30 days – to and including October 8, 2018, that would essentially **double** the response time for these Defendants as compared to the *Otto* defendants. In that event, Plaintiffs should then be allowed to take Defendants' depositions in late October, and the Preliminary Injunction hearing should be postponed to mid-November. Plaintiffs do not want nor prefer this approach, and they are loathe to further delay the Preliminary Injunction hearing. Defendants have not justified such an extension. Plaintiffs mention this possibility only as a last resort, to enable them to obtain the discovery they critically need prior to the preliminary injunction hearing, in the face of Defendants' attempted unreasonable delay.

No extension longer than 30 days should be considered. Defendants have said nothing to justify such a delay.

Lastly, in any event, the Court should not consider an extension anywhere close to the 90 and 120 day extensions requested, and should not conduct the preliminary injunction hearing without allowing Plaintiffs to receive and meaningfully review Defendants' responses, and to take Defendants' two depositions, beforehand.

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: rgannam@LC.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this August 27, 2018, 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 this Court's ECF/electronic service system.

/s/ Horatio G. Mihet

Horatio G. Mihet
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: rgannam@LC.org

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)	
individually and on behalf of his patients,)	
JULIE H. HAMILTON, PH.D., LMFT,)	
individually and on behalf of her patients,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
and COUNTY OF PALM BEACH,)	
FLORIDA,)	
)	
Defendants.)	

**PLAINTIFF ROBERT W. OTTO’S FIRST SET OF
REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS
FOR PRODUCTION TO DEFENDANT CITY OF BOCA RATON, FLORIDA**

Pursuant to Fed. R. Civ. P. 26, 33, 34 and 36, S.D. Fla. L.R. 26.1, and the Court’s Joint Discovery Plan for Preliminary Injunction Motion (“Joint Discovery Plan”) (dkt. 25), Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following First Set of Requests for Admission (“RFA”), Interrogatories, and Requests for Production (“RFP”), (collectively “Discovery Requests”), to Defendant City of Boca Raton, Florida (“Defendant” or the “City”). Defendant is directed to serve verified and completed responses, and its document production, in conformance with the above-cited rules and the Joint Discovery Plan, via electronic means, on or before August 10, 2018.

Defendant is further instructed to respond pursuant to the following Definitions and Instructions:

DEFINITIONS

Throughout these Discovery Requests, whether capitalized or not, the following terms shall have the following definitions:

EXHIBIT A

1. “**All**” shall be construed as all, each, any, and every.
2. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Discovery Requests all information that might otherwise be construed to be outside of their scope.
3. “**Communication**” means any meeting, interview, conference, conversation, discussion, correspondence, message, or other occurrence whereby thoughts, opinions, facts, or data are transmitted or otherwise exchanged between two or more persons by any means including but not limited to electronic, written, telephonic, or in person.
4. “**Complaint**” means any formal or informal, written or verbal, notice, report, statement, description, information, account, or narrative, from any source.
5. “**Concerning**” means in any way, directly or indirectly, referring to, describing, evidencing, constituting, relating to, alluding to, amending, assisting with, cancelling, commenting on, comprising, confirming, considering, contradicting, discussing, endorsing, identifying, incorporating, mentioning, modifying, negating, pertaining to, qualifying, reflecting, regarding, relevant to, representing, revoking, showing, suggesting, supplementing, supporting, terminating, underlying, or otherwise involving the stated subject matter.
6. “**Defendant,**” “**City,**” “**You,**” and “**Your**” mean the City of Boca Raton, Florida, its subsidiaries and affiliates, its Mayor and City Council members, and all other principals, officers, employees, agents, consultants, attorneys, and/or others acting on their behalf.
7. “**Document(s)**” has the broadest possible meaning permissible under the Federal Rules of Civil Procedure and/or applicable precedent, including, without limitation, any handwritten, typewritten, printed, recorded, electronic, or electronically stored information, or graphic matter however produced or reproduced, whether or not in the possession, custody, or control of the defendant(s) or the plaintiff(s), and whether or not claimed to be privileged against discovery on any ground, including but not limited to: all contracts, reports, records, lists, memoranda, correspondence, telegrams, telexes, telefaxes, emails, appointment calendars, diaries, schedules, films, videos, photographs, sound recordings, signed or unsigned documents, as well

as sent or unsent drafts of documents. A draft or non-identical copy is a separate Document within the meaning of this term.

8. **“Identify”** means to state, when used in reference to –

(a) **a natural person**, his or her: (i) full name; (ii) present or last known home address (including street name and number, city or town, state and zip code), and telephone number; (iii) present or last known business address (including street name and number, city or town, state and zip code), and telephone number; (iv) present or last known occupation, position, business affiliation, and job description; and (v) occupation, position, business affiliation, and job description at the time relevant to the particular Discovery Request being answered;

(b) **a company, corporation, association, partnership, or legal entity other than a natural person**: (i) its full name; (ii) a description of the type of organization or entity; (iii) the full address of its principal place of business; (iv) the jurisdiction of incorporation or organization; and (v) the date of its incorporation or organization;

(c) **a document**: (i) its description (for example, letter, memorandum, report, etc.); (ii) its title; (iii) its date; (iv) the number of pages thereof; (v) its subject matter; (vi) the identity of its author(s), signatory or signatories, and any person who participated in its preparation; (vii) the identity of its addressee(s) or recipient(s); (viii) the identity of each person to whom copies were sent and each person by whom copies were received; (ix) its present location; and (x) the identity of its present custodian(s) (if any such document was but is no longer, in your possession or subject to your control, state what disposition was made of it and when);

(d) **an oral communication or statement**: (i) the date and time it occurred; (ii) the place it occurred; (iii) the complete substance of the communication; (iv) the identity of each person to whom such communication was made, by whom such communication was made, and who was present when such communication was made; (v) if by telephone, the identity of each person who made the telephone call, who received the telephone call, and who otherwise participated in the call; and (vi) the identity of all documents recording, memorializing, or concerning the subject of the communication.

9. “**Including**” is used to illustrate only and should not be construed as limiting in any way.

10. “**Minor**” means any Person less than 18 years of age.

11. “**Ordinance 5407**” and “**Ordinance**” mean the City of Boca Raton, Florida Ordinance 5407 passed by the City Council on October 10, 2017.

12. “**Person**” means and includes all natural persons, entities, governmental units, partnerships, firms, corporations, companies, associations, joint ventures, any other form of business organization or arrangement, and any form of public, private, or legal entity.

13. “**Sexual orientation change efforts,**” “**SOCE counseling,**” and “**SOCE**” mean any counseling, practice, or treatment that assists an individual to change his or her sexual orientation or gender identity, including efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex.

14. The singular form of any noun or pronoun includes the plural, and vice versa.

15. Terms in the present tense include terms in the past tense, and terms in the past tense include terms in the present tense.

INSTRUCTIONS

1. **Duty to Supplement.** These Discovery Requests shall be deemed continuing in nature so as to require timely supplemental responses when necessary to reflect events occurring and information becoming available subsequent to the serving of Your initial response.

2. **Scope of Knowledge.** Answers to these Discovery Requests are to be based upon all knowledge or information available to the City, including, but not limited to, all information or knowledge derivable from government or other records, and all knowledge or information possessed by any Person, including but not limited to any employee, agent, attorney, expert witness, consultant, representative, or other advisor, subject to the instruction, direction, or control of the City.

3. **Lack of Knowledge**. With respect to any Discovery Request that the City may allege that it is unable to answer due to insufficient knowledge, the City must specify the nature of all inquiries made in an attempt to fully answer the Discovery Request.

4. **Form of Responses**. Each Discovery Request is to be answered separately and fully. If responding on a different document, for the convenience of the Court and the parties please restate each Discovery Request prior to the City's written response.

5. **OBJECTIONS**. You should answer each Discovery Request fully, unless it is objected to, in which event the City shall answer each part to which it does not object and specifically and separately specify the grounds for any objection. **Pursuant to the Standing Discovery Order in this case (dkt. 12), the City:**

- (a) "shall not make nonspecific, boilerplate objections";
- (b) "shall not make General Objections that are not tied to a particular discovery request";
- (c) "shall not recite a formulaic objection followed by an answer to [any] request," and shall not "object to a discovery request, and then state that 'notwithstanding the above,' the [City] will respond to the discovery request, subject to or without waiving such objection";
- (d) shall not make any "vague, overly broad, or unduly burdensome" objections without "explain[ing] the specific and particular way in which a request is vague, overly broad, or unduly burdensome";
- (e) shall not make any "undue burden" objections unless "supported by a statement (generally an affidavit) with specific information demonstrating how the request is overly burdensome";
- (f) shall not make any "vagueness" objections without an "attempt to obtain clarification from opposing counsel **prior** to objecting on vagueness grounds" (emphasis added); and

(g) shall not make any “overbroad or unduly burdensome” objections without “confer[ing] in good faith with opposing counsel to narrow the scope of the request **before** asserting these objections” (emphasis added).

6. **Signatures.** The answers are to be signed by an authorized representative of the City and objections, if any, are to be signed by the attorney making them.

7. **Oath.** Pursuant to Fed. R. Civ. P. 33(b)(3), the answers to Interrogatories shall be provided under oath.

8. **PRIVILEGE ASSERTIONS.** If the City refuses to answer any portion of any Discovery Request on the ground of any privilege, the City shall: (a) identify the privilege claimed; (b) provide a privilege log simultaneously with its responses containing, at a minimum, all of the information required by S.D. Fla. L.R. 26.1(e)(2)(B) and (C); and (c) answer fully the remaining portion of the Discovery Request.

9. **Business Records.** If the City elects to respond to any Interrogatory by reference to business records pursuant to Fed. R. Civ. P. 33(d), the City shall strictly comply with all requirements of S.D. Fla. L.R. 26.1(e)(3)(A)–(C), including the 14-day production deadline.

10. **Bates Labeling.** All documents produced by the City shall be sequentially Bates stamped in a manner that does not cover or obstruct any other content.

11. **Responsive Document Identification.** For each Discovery Request as to which the City is producing documents, the City shall identify in its written response to that Discovery Request the Bates ranges of documents produced which are responsive to that request.

12. **Production of Entire Document.** If any part of a document is responsive to any request herein, produce the entire document.

13. **Date Range.** Unless otherwise specifically noted, the relevant date range for these Discovery Requests is **January 1, 2008** to the present, and extending through the end of this litigation, including all appeals.

DISCOVERY REQUESTS

REQUEST FOR ADMISSION 1:

Admit that the City has not received any Complaint that any Minor was harmed by any SOCE counseling provided within the City.

RESPONSE:

INTERROGATORY 1:

[If your response to RFA 1 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 1 is anything other than an unqualified admission, then for each Complaint received by the City that a Minor was harmed by any SOCE counseling provided within the City, Identify (per Definition # 8): the Person(s) making the Complaint, the date of the Complaint, the nature of the conduct and harm alleged in the Complaint, the Person(s) receiving the Complaint, the Person(s) allegedly providing the SOCE counseling, the location(s) of the SOCE counseling, the date(s) of the SOCE counseling, the nature of the SOCE counseling, and the Person(s) allegedly harmed.

RESPONSE:

REQUEST FOR PRODUCTION 1:

[If your response to RFA 1 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 1 is anything other than an unqualified admission, then for each Complaint received by the City that a Minor was harmed by any SOCE counseling provided within the City, produce:

- (a) all Documents Concerning that Complaint;
- (b) all Documents Concerning how that Complaint was processed, handled, investigated, prosecuted, and/or resolved by the City;
- (c) all Documents Concerning any interview, investigation, or report conducted by the City in connection with that Complaint;

- (d) all internal Communications of City personnel regarding that Complaint; and
- (e) all Communications of City personnel with any Person(s) not employed by the City regarding that Complaint.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 1:

REQUEST FOR ADMISSION 2:

Admit that the City has not received any Complaint that any Minor was subjected to SOCE counseling within the City against that Minor's wishes or without that Minor's consent.

RESPONSE:

INTERROGATORY 2:

[If your response to RFA 2 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 2 is anything other than an unqualified admission, then for each Complaint received by the City that a Minor was subjected to SOCE counseling within the City against that Minor's wishes or without that Minor's consent, Identify (per Definition # 8): the Person(s) making the Complaint, the date of the Complaint, the nature of the conduct and harm alleged in the Complaint, the Person(s) receiving the Complaint, the Person(s) allegedly providing the SOCE counseling, the location(s) of the SOCE counseling, the date(s) of the SOCE counseling, the nature of the SOCE counseling, and the Person(s) allegedly subjected involuntarily to SOCE counseling.

RESPONSE:

REQUEST FOR PRODUCTION 2:

[If your response to RFA 2 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 2 is anything other than an unqualified admission, then for each Complaint received by the City that a Minor was subjected to SOCE counseling within the City against that Minor's wishes or without that Minor's consent, produce:

- (a) all Documents Concerning that Complaint;
- (b) all Documents Concerning how that Complaint was processed, handled, investigated, prosecuted, and/or resolved by the City;
- (c) all Documents Concerning any interview, investigation, or report conducted by the City in connection with that Complaint;
- (d) all internal Communications of City personnel regarding that Complaint; and
- (e) all Communications of City personnel with any Person(s) not employed by the City regarding that Complaint.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 2:

REQUEST FOR ADMISSION 3:

Admit that, prior to enacting Ordinance 5407, the City did not conduct or commission any of its own empirical studies, research, or investigation to determine whether any Minor within the City had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

INTERROGATORY 3:

[If your response to RFA 3 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 3 is anything other than an unqualified admission, then for each study, research, or investigation conducted or commissioned by the City prior to enacting Ordinance 5407 to determine whether any Minor within the City had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent, Identify (per Definition # 8): the Person(s) who conducted the study, research, or investigation; the date(s) when the study, research, or investigation was conducted; the nature of that study, research, or investigation; the results of that study, research, or investigation; and any Person(s) allegedly found to have been harmed by, or involuntarily subjected to, SOCE counseling.

[For the sake of clarity, this Interrogatory is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

REQUEST FOR PRODUCTION 3:

[If your response to RFA 3 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 3 is anything other than an unqualified admission, then for each study, research, or investigation conducted by the City prior to enacting Ordinance 5407 to determine whether any Minor within the City had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent, produce:

- (a) all Documents Concerning that study, research, or investigation;
- (b) all internal Communications of City personnel regarding that study, research, or investigation; and
- (c) all Communications of City personnel with any Person(s) not employed by the City regarding that study, research, or investigation.

[For the sake of clarity, this RFP is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 3:

REQUEST FOR ADMISSION 4:

Admit that, prior to enacting Ordinance 5407, the City did not conduct or commission any of its own empirical studies, research, or investigations to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

INTERROGATORY 4:

[If your response to RFA 4 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 4 is anything other than an unqualified admission, then for each study, research, or investigation conducted or commissioned by the City prior to enacting Ordinance 5407 to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor, Identify (per Definition # 8): the Person(s) who conducted the study, research, or investigation; the date(s) when the study, research, or investigation was conducted; the nature of that study, research, or investigation; the results of that study, research, or investigation; and any Person(s) allegedly found to have been harmed by any voluntary SOCE counseling.

[For the sake of clarity, this Interrogatory is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

REQUEST FOR PRODUCTION 4:

[If your response to RFA 4 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 4 is anything other than an unqualified admission, then for each study, research, or investigation conducted by the City prior to enacting Ordinance 5407 to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor, produce:

- (a) all Documents Concerning that study, research, or investigation;
- (b) all internal Communications of City personnel regarding that study, research, or investigation; and
- (c) all Communications of City personnel with any Person(s) not employed by the City regarding that study, research, or investigation.

[For the sake of clarity, this RFP is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 4:

REQUEST FOR ADMISSION 5:

Admit that none of the third party empirical studies, research, investigations, resolutions, or position papers which the City reviewed prior to enacting Ordinance 5407 concluded that voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

RESPONSE:

INTERROGATORY 5:

[If your response to RFA 5 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 5 is anything other than an unqualified admission, then for each third party study, research, investigation, resolution, or position paper reviewed by the City prior to enacting Ordinance 5407, Identify: the specific conclusion which you contend to have been made therein regarding voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive; the specific page number(s) where you contend that conclusion to exist; and the specific portion of any meeting wherein the City considered that specific conclusion.

RESPONSE:

REQUEST FOR PRODUCTION 5:

[If your response to RFA 5 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 5 is anything other than an unqualified admission, then produce each third party empirical study, research, investigation, resolution, or position paper which the City reviewed prior to enacting Ordinance 5407, and which you contend to have concluded that voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 5:

REQUEST FOR ADMISSION 6:

Admit that, prior to enacting Ordinance 5407, the City did not review any empirical studies, research, investigations, resolutions, or position papers examining the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

INTERROGATORY 6:

[If your response to RFA 6 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 6 is anything other than an unqualified admission, then Identify: each study, research, investigation, resolution, or position paper reviewed by the City prior to enacting Ordinance 5407 which You contend to have examined the ability or inability of Minors to consent to SOCE counseling; the specific page number(s) where you contend that discussion to exist; and the specific portion of any meeting wherein the City considered that specific discussion.

RESPONSE:

REQUEST FOR PRODUCTION 6:

[If your response to RFA 6 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 6 is anything other than an unqualified admission, then produce each study, research, investigation, resolution, or position paper which the City reviewed prior to enacting Ordinance 5407, and which you contend to have examined the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 6:

REQUEST FOR ADMISSION 7:

Admit that, prior to enacting Ordinance 5407, the City did not consider or discuss any alternative means of meeting its asserted interests which would have been less restrictive on speech than the Ordinance as enacted.

RESPONSE:

INTERROGATORY 7:

[If your response to RFA 7 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 7 is anything other than an unqualified admission, then for each less restrictive alternative to Ordinance 5407 considered or discussed by the City, Identify: the alternative measure considered or discussed by the City; all efforts conducted by the City to determine the feasibility or efficacy of that alternative measure; all reasons for rejecting that alternative measure; and the specific portion(s) of any meeting where that alternative measure was considered or discussed.

RESPONSE:

REQUEST FOR PRODUCTION 7:

[If your response to RFA 7 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 7 is anything other than an unqualified admission, then produce all Documents Concerning each less restrictive alternative to Ordinance 5407 considered or discussed by the City, including but not limited to all Documents Concerning any effort conducted by the City to determine the feasibility or efficacy of any less restrictive alternative, and all Documents showing the specific portion(s) of any meeting where that alternative measure was considered or discussed.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 7:

ADDITIONAL INTERROGATORIES

INTERROGATORY 8:

Identify (per Definition # 8) all Persons employed by the City who had any involvement in drafting, considering, debating, amending, voting on, or enacting Ordinance 5407, and describe the nature of each such Person's involvement.

RESPONSE:

INTERROGATORY 9:

Identify (per Definition # 8) all Persons (including organizations) with which the City consulted, collaborated, or otherwise communicated Concerning the drafting, consideration, debate, amendment, voting, or enactment of Ordinance 5407, and describe the nature of each such Person's involvement.

RESPONSE:

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 8:

All Documents Concerning prior drafts or versions of Ordinance 5407 considered by the City.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 8:

REQUEST FOR PRODUCTION 9:

All Documents Concerning the City's drafting, consideration, debate, amendment, voting, or enactment of Ordinance 5407, including but not limited to all staff notes or reports, all legislative memoranda, all research documents, and all transcripts or audio or video recordings of any meeting wherein the Ordinance or any ban on SOCE counseling was considered or discussed.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 9:

REQUEST FOR PRODUCTION 10:

All Documents reviewed or considered by the City in the drafting, consideration, debate, amendment, voting, or enactment of Ordinance 5407, including but not limited to all empirical studies, data, statistics, analyses, research, position papers, testimony, letters, correspondence, or communications.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 10:

REQUEST FOR PRODUCTION 11:

All Communications between or among City Council members, the mayor, or any other City employees or officials regarding the City's drafting, consideration, debate, amendment, voting, or enactment of Ordinance 5407.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 11:

REQUEST FOR PRODUCTION 12:

All Documents Concerning any lobbying or attempts of any advocacy groups or other Persons to influence the City to adopt or reject Ordinance 5407 or any other ban on any form of SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 12:

REQUEST FOR PRODUCTION 13:

All Documents Concerning the City's interpretation, application, or enforcement of Ordinance 5407, including but not limited to any enforcement memoranda or any guidelines provided to enforcement officials.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 13:

REQUEST FOR PRODUCTION 14:

All Documents Concerning the City's enforcement of, or attempts to enforce, Ordinance 5407 against any Person, including, without limitation, all violation notices, fines, warnings, citations, court documents, or Communications.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 14:

REQUEST FOR PRODUCTION 15:

All Communications between the City and Equality Florida Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 5407, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the City and any attorneys for Equality Florida regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 15:

REQUEST FOR PRODUCTION 16:

All Communications between the City and Rand Hoch and/or the Palm Beach County Human Rights Council Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 5407, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the City and any attorneys for Mr. Hoch or the Palm Beach County Human Rights Council regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 16:

REQUEST FOR PRODUCTION 17:

All Communications between the City and any advocacy group (other than Equality Florida or the Palm Beach County Human Rights Council) Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 5407, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the City and any attorneys for advocacy groups regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 17:

REQUEST FOR PRODUCTION 18:

All Communications between the City and Palm Beach County Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 5407, Palm Beach County Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the City and any attorneys for Palm Beach County regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 18:

REQUEST FOR PRODUCTION 19:

All Communications between the City of Boca Raton and the City of Tampa Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 5407, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the City of Boca Raton and any attorneys for the City of Tampa regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 19:

REQUEST FOR PRODUCTION 20:

All Documents Concerning Plaintiff Robert W. Otto's alleged engagement in or provision of any SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 20:

REQUEST FOR PRODUCTION 21:

All Documents Concerning Plaintiff Julie H. Hamilton's alleged engagement in or provision of any SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 21:

REQUEST FOR PRODUCTION 22:

All Documents Concerning any provider of SOCE counseling within the City.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 22:

REQUEST FOR PRODUCTION 23:

Each Document and category of Documents identified or referred to in Your Initial Disclosures served on July 13, 2018, which was not already provided in response to any of the foregoing Discovery Requests.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 23:

REQUEST FOR PRODUCTION 24:

Each Document You reviewed or referenced to obtain Your answer to any of the foregoing Discovery Requests, which was not already provided in response to any of the foregoing Discovery Requests.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 24:

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: hmihet@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

Rachel Fahey

Primary Email: rfahey@pbcgov.org

Secondary Email: dfishel@pbcgov.org

Kim Phan, Esquire

Primary Email: kphan@pbcgov.org

Secondary Email: ldennis@pbcgov.org

PALM BEACH COUNTY ATTORNEY OFFICE

Attorneys for Defendant Palm Beach County, Florida

Daniel L. Abbott

Primary email: dabbott@wsh-law.com

Secondary email: pgrotto@wsh-law.com

Jamie A. Cole

Primary email: jcole@wsh-law.com

Secondary email: msarraff@wsh-law.com

Anne R. Flanigan

Primary email: areilly@wsh-law.com

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)
individually and on behalf of his patients,)
JULIE H. HAMILTON, PH.D., LMFT,)
individually and on behalf of her patients,)

Civil Action No.: 9:18-cv-80771-RLR

Plaintiffs,)

v.)

CITY OF BOCA RATON, FLORIDA,)
and COUNTY OF PALM BEACH,)
FLORIDA,)

Defendants.)

**PLAINTIFF ROBERT W. OTTO’S SECOND SET OF
DISCOVERY REQUESTS TO DEFENDANT CITY OF BOCA RATON, FLORIDA**

Pursuant to Fed. R. Civ. P. 26, 33, 34 and 36, and S.D. Fla. L.R. 26.1, Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following Second Set of Discovery Requests to Defendant City of Boca Raton, Florida (“Defendant” or the “City”). Defendant is directed to serve verified and completed responses, and its document production, in conformance with the above-cited rules, via electronic means, **on or before August 20, 2018**.

Defendant is further instructed to respond pursuant to the same “DEFINITIONS” and “INSTRUCTIONS” contained in Plaintiff Otto’s First Set of Discovery Requests (pp. 1-6), served on July 17, 2018, which are incorporated by reference as if fully set for herein.

ADDITIONAL INTERROGATORIES

INTERROGATORY 10:

Identify each and every City ordinance, regulation, rule, law or provision that the City has considered, enacted or enforced, which regulates any other clinical practice methods besides SOCE counseling.

RESPONSE:

INTERROGATORY 11:

Identify each and every City ordinance, regulation, rule, law or provision that the City has considered, enacted or enforced, which regulates any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling.

RESPONSE:

INTERROGATORY 12:

Identify each and every City ordinance, regulation, rule, law or provision that the City has considered, enacted or enforced, which regulates any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists.

RESPONSE:

INTERROGATORY 13:

Identify each and every City ordinance, regulation, rule, law or provision that the City has considered, enacted or enforced, which regulates any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling.

RESPONSE:

INTERROGATORY 14:

Identify each and every research (and not merely position papers or other opinions) to which the City refers as “overwhelming research” in the following statement within Ordinance 5407:

“WHEREAS, the City Council hereby finds the overwhelming research demonstrating that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, ...”

and, for each research you identify, Identify each page which you contend to contain the stated conclusion “that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons.”

RESPONSE:

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 25:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 10, which the City has considered, enacted or enforced to regulate any other clinical practice methods besides SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 25:

REQUEST FOR PRODUCTION 26:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 11, which the City has considered, enacted or enforced to regulate any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 26:

REQUEST FOR PRODUCTION 27:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 12, which the City has considered, enacted or enforced to regulate any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 27:

REQUEST FOR PRODUCTION 28:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 13, which the City has considered, enacted or enforced to regulate any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 28:

REQUEST FOR PRODUCTION 29:

All Documents Concerning each research (and not merely position papers or other opinions) identified in Your response to Interrogatory 14.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 29:

REQUEST FOR PRODUCTION 30:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a Minor in changing or reducing his or her unwanted romantic attractions to the same sex.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 30:

REQUEST FOR PRODUCTION 31:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a Minor in changing or reducing unwanted same-sex sexual behaviors.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 31:

REQUEST FOR PRODUCTION 32:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a gender confused Minor in re-gaining confidence and peace with his or her anatomical sex.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 32:

REQUEST FOR PRODUCTION 33:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to affirm a Minor in his or her belief that he or she is of a sex or gender that is different from his or her anatomical sex, and/or that there are no short- or long-term negative effects of doing so.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 33:

REQUEST FOR PRODUCTION 34:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is psychologically, emotionally or physically safe and effective to assist a Minor in transitioning to a sex different from his or her anatomical sex, and/or that there are no short- or long-term negative effects of doing so.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 34:

REQUEST FOR PRODUCTION 35:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to withhold therapy from a Minor who is distressed about his or her unwanted homosexual attractions, and who desires to receive therapy to reduce those unwanted attractions.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 35:

REQUEST FOR PRODUCTION 36:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to only offer therapy that affirms and supports a distressed Minor who is seeking change regarding unwanted homosexual attractions or gender identity confusion, rather than helping that Minor to make the changes he or she is seeking.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 36:

REQUEST FOR PRODUCTION 37:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safer to wait until a Minor turns 18 years of age before providing therapy for unwanted homosexual attractions or gender identity confusion.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 37:

REQUEST FOR PRODUCTION 38:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safer, better or more desirable for a Minor who desires change and seeks counseling regarding unwanted homosexual attractions or gender identity confusion to receive that counseling from a non-licensed provider rather than a licensed provider.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 38:

REQUEST FOR PRODUCTION 39:

All Documents showing or evidencing the time, circumstances and extent to which the City considered any of the research identified in Your responses to Interrogatory 14 or produced in response to Requests for Production 29 through 38.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 39:

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: hmihet@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

Rachel Fahey

Primary Email: rfahey@pbcgov.org
Secondary Email: dfishel@pbcgov.org

Kim Phan, Esquire

Primary Email: kphan@pbcgov.org
Secondary Email: ldennis@pbcgov.org

PALM BEACH COUNTY ATTORNEY OFFICE

Attorneys for Defendant Palm Beach County, Florida

Daniel L. Abbott

Primary email: dabbott@wsh-law.com
Secondary email: pgrotto@wsh-law.com

Jamie A. Cole

Primary email: jcole@wsh-law.com
Secondary email: msarraff@wsh-law.com

Anne R. Flanigan

Primary email: areilly@wsh-law.com

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

Horatio G. Mihet
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)	
individually and on behalf of his patients,)	
JULIE H. HAMILTON, PH.D., LMFT,)	
individually and on behalf of her patients,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
and COUNTY OF PALM BEACH,)	
FLORIDA,)	
)	
Defendants.)	

**PLAINTIFF ROBERT W. OTTO’S FIRST SET OF
REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS
FOR PRODUCTION TO DEFENDANT PALM BEACH COUNTY, FLORIDA**

Pursuant to Fed. R. Civ. P. 26, 33, 34 and 36, S.D. Fla. L.R. 26.1, and the Court’s Joint Discovery Plan for Preliminary Injunction Motion (“Joint Discovery Plan”) (dkt. 25), Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following First Set of Requests for Admission (“RFA”), Interrogatories, and Requests for Production (“RFP”), (collectively “Discovery Requests”), to Defendant Palm Beach County, Florida (“Defendant” or the “County”). Defendant is directed to serve verified and completed responses, and its document production, in conformance with the above-cited rules and the Joint Discovery Plan, via electronic means, on or before August 10, 2018.

Defendant is further instructed to respond pursuant to the following Definitions and Instructions:

DEFINITIONS

Throughout these Discovery Requests, whether capitalized or not, the following terms shall have the following definitions:

EXHIBIT B

1. “**All**” shall be construed as all, each, any, and every.
2. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Discovery Requests all information that might otherwise be construed to be outside of their scope.
3. “**Communication**” means any meeting, interview, conference, conversation, discussion, correspondence, message, or other occurrence whereby thoughts, opinions, facts, or data are transmitted or otherwise exchanged between two or more persons by any means including but not limited to electronic, written, telephonic, or in person.
4. “**Complaint**” means any formal or informal, written or verbal, notice, report, statement, description, information, account, or narrative, from any source.
5. “**Concerning**” means in any way, directly or indirectly, referring to, describing, evidencing, constituting, relating to, alluding to, amending, assisting with, cancelling, commenting on, comprising, confirming, considering, contradicting, discussing, endorsing, identifying, incorporating, mentioning, modifying, negating, pertaining to, qualifying, reflecting, regarding, relevant to, representing, revoking, showing, suggesting, supplementing, supporting, terminating, underlying, or otherwise involving the stated subject matter.
6. “**Defendant,**” “**County,**” “**You,**” and “**Your**” mean Palm Beach County, Florida, its subsidiaries and affiliates, its Mayor and Board of County Commissioners members, and all other principals, officers, employees, agents, consultants, attorneys, and/or others acting on their behalf.
7. “**Document(s)**” has the broadest possible meaning permissible under the Federal Rules of Civil Procedure and/or applicable precedent, including, without limitation, any handwritten, typewritten, printed, recorded, electronic, or electronically stored information, or graphic matter however produced or reproduced, whether or not in the possession, custody, or control of the defendant(s) or the plaintiff(s), and whether or not claimed to be privileged against discovery on any ground, including but not limited to: all contracts, reports, records, lists, memoranda, correspondence, telegrams, telexes, telefaxes, emails, appointment calendars, diaries,

schedules, films, videos, photographs, sound recordings, signed or unsigned documents, as well as sent or unsent drafts of documents. A draft or non-identical copy is a separate Document within the meaning of this term.

8. “**Identify**” means to state, when used in reference to –

(a) **a natural person**, his or her: (i) full name; (ii) present or last known home address (including street name and number, city or town, state and zip code), and telephone number; (iii) present or last known business address (including street name and number, city or town, state and zip code), and telephone number; (iv) present or last known occupation, position, business affiliation, and job description; and (v) occupation, position, business affiliation, and job description at the time relevant to the particular Discovery Request being answered;

(b) **a company, corporation, association, partnership, or legal entity other than a natural person**: (i) its full name; (ii) a description of the type of organization or entity; (iii) the full address of its principal place of business; (iv) the jurisdiction of incorporation or organization; and (v) the date of its incorporation or organization;

(c) **a document**: (i) its description (for example, letter, memorandum, report, etc.); (ii) its title; (iii) its date; (iv) the number of pages thereof; (v) its subject matter; (vi) the identity of its author(s), signatory or signatories, and any person who participated in its preparation; (vii) the identity of its addressee(s) or recipient(s); (viii) the identity of each person to whom copies were sent and each person by whom copies were received; (ix) its present location; and (x) the identity of its present custodian(s) (if any such document was but is no longer, in your possession or subject to your control, state what disposition was made of it and when);

(d) **an oral communication or statement**: (i) the date and time it occurred; (ii) the place it occurred; (iii) the complete substance of the communication; (iv) the identity of each person to whom such communication was made, by whom such communication was made, and who was present when such communication was made; (v) if by telephone, the identity of each person who made the telephone call, who received the telephone call, and who otherwise participated in the call; and (vi) the identity of all documents recording, memorializing, or

concerning the subject of the communication.

9. “**Including**” is used to illustrate only and should not be construed as limiting in any way.

10. “**Minor**” means any Person less than 18 years of age.

11. “**Ordinance 2017-046**” and “**Ordinance**” mean Palm Beach County, Florida Ordinance 2017-046 passed by the Board of County Commissioners on December 19, 2017.

12. “**Person**” means and includes all natural persons, entities, governmental units, partnerships, firms, corporations, companies, associations, joint ventures, any other form of business organization or arrangement, and any form of public, private, or legal entity.

13. “**Sexual orientation change efforts,**” “**SOCE counseling,**” and “**SOCE**” mean any counseling, practice, or treatment that assists an individual to change his or her sexual orientation or gender identity, including efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex.

14. The singular form of any noun or pronoun includes the plural, and vice versa.

15. Terms in the present tense include terms in the past tense, and terms in the past tense include terms in the present tense.

INSTRUCTIONS

1. **Duty to Supplement.** These Discovery Requests shall be deemed continuing in nature so as to require timely supplemental responses when necessary to reflect events occurring and information becoming available subsequent to the serving of Your initial response.

2. **Scope of Knowledge.** Answers to these Discovery Requests are to be based upon all knowledge or information available to the County, including, but not limited to, all information or knowledge derivable from government or other records, and all knowledge or information possessed by any Person, including but not limited to any employee, agent, attorney, expert witness, consultant, representative, or other advisor, subject to the instruction, direction, or control of the County.

3. **Lack of Knowledge.** With respect to any Discovery Request that the County may allege that it is unable to answer due to insufficient knowledge, the County must specify the nature of all inquiries made in an attempt to fully answer the Discovery Request.

4. **Form of Responses.** Each Discovery Request is to be answered separately and fully. If responding on a different document, for the convenience of the Court and the parties please restate each Discovery Request prior to the County's written response.

5. **OBJECTIONS.** You should answer each Discovery Request fully, unless it is objected to, in which event the County shall answer each part to which it does not object and specifically and separately specify the grounds for any objection. **Pursuant to the Standing Discovery Order in this case (dkt. 12), the County:**

- (a) "shall not make nonspecific, boilerplate objections";
- (b) "shall not make General Objections that are not tied to a particular discovery request";
- (c) "shall not recite a formulaic objection followed by an answer to [any] request," and shall not "object to a discovery request, and then state that 'notwithstanding the above,' the [County] will respond to the discovery request, subject to or without waiving such objection";
- (d) shall not make any "vague, overly broad, or unduly burdensome" objections without "explain[ing] the specific and particular way in which a request is vague, overly broad, or unduly burdensome";
- (e) shall not make any "undue burden" objections unless "supported by a statement (generally an affidavit) with specific information demonstrating how the request is overly burdensome";
- (f) shall not make any "vagueness" objections without an "attempt to obtain clarification from opposing counsel **prior** to objecting on vagueness grounds" (emphasis added); and

(g) shall not make any “overbroad or unduly burdensome” objections without “confer[ing] in good faith with opposing counsel to narrow the scope of the request **before** asserting these objections” (emphasis added).

6. **Signatures.** The answers are to be signed by an authorized representative of the County and objections, if any, are to be signed by the attorney making them.

7. **Oath.** Pursuant to Fed. R. Civ. P. 33(b)(3), the answers to Interrogatories shall be provided under oath.

8. **PRIVILEGE ASSERTIONS.** If the County refuses to answer any portion of any Discovery Request on the ground of any privilege, the County shall: (a) identify the privilege claimed; (b) provide a privilege log simultaneously with its responses containing, at a minimum, all of the information required by S.D. Fla. L.R. 26.1(e)(2)(B) and (C); and (c) answer fully the remaining portion of the Discovery Request.

9. **Business Records.** If the County elects to respond to any Interrogatory by reference to business records pursuant to Fed. R. Civ. P. 33(d), the County shall strictly comply with all requirements of S.D. Fla. L.R. 26.1(e)(3)(A)–(C), including the 14-day production deadline.

10. **Bates Labeling.** All documents produced by the County shall be sequentially Bates stamped in a manner that does not cover or obstruct any other content.

11. **Responsive Document Identification.** For each Discovery Request as to which the County is producing documents, the County shall identify in its written response to that Discovery Request the Bates ranges of documents produced which are responsive to that request.

12. **Production of Entire Document.** If any part of a document is responsive to any request herein, produce the entire document.

13. **Date Range.** Unless otherwise specifically noted, the relevant date range for these Discovery Requests is **January 1, 2008** to the present, and extending through the end of this litigation, including all appeals.

DISCOVERY REQUESTS

REQUEST FOR ADMISSION 1:

Admit that the County has not received any Complaint that any Minor was harmed by any SOCE counseling provided within the County.

RESPONSE:

INTERROGATORY 1:

[If your response to RFA 1 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 1 is anything other than an unqualified admission, then for each Complaint received by the County that a Minor was harmed by any SOCE counseling provided within the County, Identify (per Definition # 8): the Person(s) making the Complaint, the date of the Complaint, the nature of the conduct and harm alleged in the Complaint, the Person(s) receiving the Complaint, the Person(s) allegedly providing the SOCE counseling, the location(s) of the SOCE counseling, the date(s) of the SOCE counseling, the nature of the SOCE counseling, and the Person(s) allegedly harmed.

RESPONSE:

REQUEST FOR PRODUCTION 1:

[If your response to RFA 1 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 1 is anything other than an unqualified admission, then for each Complaint received by the County that a Minor was harmed by any SOCE counseling provided within the County, produce:

- (a) all Documents Concerning that Complaint;
- (b) all Documents Concerning how that Complaint was processed, handled, investigated, prosecuted, and/or resolved by the County;
- (c) all Documents Concerning any interview, investigation, or report conducted by the County in connection with that Complaint;

- (d) all internal Communications of County personnel regarding that Complaint; and
- (e) all Communications of County personnel with any Person(s) not employed by the County regarding that Complaint.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 1:

REQUEST FOR ADMISSION 2:

Admit that the County has not received any Complaint that any Minor was subjected to SOCE counseling within the County against that Minor's wishes or without that Minor's consent.

RESPONSE:

INTERROGATORY 2:

[If your response to RFA 2 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 2 is anything other than an unqualified admission, then for each Complaint received by the County that a Minor was subjected to SOCE counseling within the County against that Minor's wishes or without that Minor's consent, Identify (per Definition # 8): the Person(s) making the Complaint, the date of the Complaint, the nature of the conduct and harm alleged in the Complaint, the Person(s) receiving the Complaint, the Person(s) allegedly providing the SOCE counseling, the location(s) of the SOCE counseling, the date(s) of the SOCE counseling, the nature of the SOCE counseling, and the Person(s) allegedly subjected involuntarily to SOCE counseling.

RESPONSE:

REQUEST FOR PRODUCTION 2:

[If your response to RFA 2 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 2 is anything other than an unqualified admission, then for each Complaint received by the County that a Minor was subjected to SOCE counseling within the County against that Minor's wishes or without that Minor's consent, produce:

- (a) all Documents Concerning that Complaint;
- (b) all Documents Concerning how that Complaint was processed, handled, investigated, prosecuted, and/or resolved by the County;
- (c) all Documents Concerning any interview, investigation, or report conducted by the County in connection with that Complaint;
- (d) all internal Communications of County personnel regarding that Complaint; and
- (e) all Communications of County personnel with any Person(s) not employed by the County regarding that Complaint.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 2:

REQUEST FOR ADMISSION 3:

Admit that, prior to enacting Ordinance 2017-046, the County did not conduct or commission any of its own empirical studies, research, or investigation to determine whether any Minor within the County had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

INTERROGATORY 3:

[If your response to RFA 3 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 3 is anything other than an unqualified admission, then for each study, research, or investigation conducted or commissioned by the County prior to enacting Ordinance 2017-046 to determine whether any Minor within the County had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent, Identify (per Definition # 8): the Person(s) who conducted the study, research, or investigation; the date(s) when the study, research, or investigation was conducted; the nature of that study, research, or investigation; the results of that study, research, or investigation; and any Person(s) allegedly found to have been harmed by, or involuntarily subjected to, SOCE counseling.

[For the sake of clarity, this Interrogatory is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

REQUEST FOR PRODUCTION 3:

[If your response to RFA 3 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 3 is anything other than an unqualified admission, then for each study, research, or investigation conducted by the County prior to enacting Ordinance 2017-046 to determine whether any Minor within the County had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent, produce:

- (a) all Documents Concerning that study, research, or investigation;
- (b) all internal Communications of County personnel regarding that study, research, or investigation; and
- (c) all Communications of County personnel with any Person(s) not employed by the County regarding that study, research, or investigation.

[For the sake of clarity, this RFP is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 3:

REQUEST FOR ADMISSION 4:

Admit that, prior to enacting Ordinance 2017-046, the County did not conduct or commission any of its own empirical studies, research, or investigations to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

INTERROGATORY 4:

[If your response to RFA 4 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 4 is anything other than an unqualified admission, then for each study, research, or investigation conducted or commissioned by the County prior to enacting Ordinance 2017-046 to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor, Identify (per Definition # 8): the Person(s) who conducted the study, research, or investigation; the date(s) when the study, research, or investigation was conducted; the nature of that study, research, or investigation; the results of that study, research, or investigation; and any Person(s) allegedly found to have been harmed by any voluntary SOCE counseling.

[For the sake of clarity, this Interrogatory is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

REQUEST FOR PRODUCTION 4:

[If your response to RFA 4 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 4 is anything other than an unqualified admission, then for each study, research, or investigation conducted by the County prior to enacting Ordinance 2017-046 to determine whether voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor, produce:

- (a) all Documents Concerning that study, research, or investigation;
- (b) all internal Communications of County personnel regarding that study, research, or investigation; and
- (c) all Communications of County personnel with any Person(s) not employed by the County regarding that study, research, or investigation.

[For the sake of clarity, this RFP is limited to empirical studies, research, or investigations that the County itself undertook or commissioned, as opposed to studies, research, or investigations undertaken by third parties which the County may have reviewed or relied upon.]

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 4:

REQUEST FOR ADMISSION 5:

Admit that none of the third party empirical studies, research, investigations, resolutions, or position papers which the County reviewed prior to enacting Ordinance 2017-046 concluded that voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

RESPONSE:

INTERROGATORY 5:

[If your response to RFA 5 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 5 is anything other than an unqualified admission, then for each third party study, research, investigation, resolution, or position paper reviewed by the County prior to enacting Ordinance 2017-046, Identify: the specific conclusion which you contend to have been made therein regarding voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive; the specific page number(s) where you contend that conclusion to exist; and the specific portion of any meeting wherein the County considered that specific conclusion.

RESPONSE:

REQUEST FOR PRODUCTION 5:

[If your response to RFA 5 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 5 is anything other than an unqualified admission, then produce each third party empirical study, research, investigation, resolution, or position paper which the County reviewed prior to enacting Ordinance 2017-046, and which you contend to have concluded that voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 5:

REQUEST FOR ADMISSION 6:

Admit that, prior to enacting Ordinance 2017-046, the County did not review any empirical studies, research, investigations, resolutions, or position papers examining the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

INTERROGATORY 6:

[If your response to RFA 6 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 6 is anything other than an unqualified admission, then Identify: each study, research, investigation, resolution, or position paper reviewed by the County prior to enacting Ordinance 2017-046 which You contend to have examined the ability or inability of Minors to consent to SOCE counseling; the specific page number(s) where you contend that discussion to exist; and the specific portion of any meeting wherein the County considered that specific discussion.

RESPONSE:

REQUEST FOR PRODUCTION 6:

[If your response to RFA 6 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 6 is anything other than an unqualified admission, then produce each study, research, investigation, resolution, or position paper which the County reviewed prior to enacting Ordinance 2017-046, and which you contend to have examined the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 6:

REQUEST FOR ADMISSION 7:

Admit that, prior to enacting Ordinance 2017-046, the County did not consider or discuss any alternative means of meeting its asserted interests which would have been less restrictive on speech than the Ordinance as enacted.

RESPONSE:

INTERROGATORY 7:

[If your response to RFA 7 is solely an unqualified admission, you may state so in response here and skip the remainder of this Interrogatory].

If your response to RFA 7 is anything other than an unqualified admission, then for each less restrictive alternative to Ordinance 2017-046 considered or discussed by the County, Identify: the alternative measure considered or discussed by the County; all efforts conducted by the County to determine the feasibility or efficacy of that alternative measure; all reasons for rejecting that alternative measure; and the specific portion(s) of any meeting where that alternative measure was considered or discussed.

RESPONSE:

REQUEST FOR PRODUCTION 7:

[If your response to RFA 7 is solely an unqualified admission, you may state so in response here and skip the remainder of this RFP].

If your response to RFA 7 is anything other than an unqualified admission, then produce all Documents Concerning each less restrictive alternative to Ordinance 2017-046 considered or discussed by the County, including but not limited to all Documents Concerning any effort conducted by the County to determine the feasibility or efficacy of any less restrictive alternative, and all Documents showing the specific portion(s) of any meeting where that alternative measure was considered or discussed.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 7:

ADDITIONAL INTERROGATORIES

INTERROGATORY 8:

Identify (per Definition # 8) all Persons employed by the County who had any involvement in drafting, considering, debating, amending, voting on, or enacting Ordinance 2017-046, and describe the nature of each such Person's involvement.

RESPONSE:

INTERROGATORY 9:

Identify (per Definition # 8) all Persons (including organizations) with which the County consulted, collaborated, or otherwise communicated Concerning the drafting, consideration, debate, amendment, voting, or enactment of Ordinance 2017-046, and describe the nature of each such Person's involvement.

RESPONSE:

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 8:

All Documents Concerning prior drafts or versions of Ordinance 2017-046 considered by the County.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 8:

REQUEST FOR PRODUCTION 9:

All Documents Concerning the County's drafting, consideration, debate, amendment, voting, or enactment of Ordinance 2017-046, including but not limited to all staff notes or reports, all legislative memoranda, all research documents, and all transcripts or audio or video recordings of any meeting wherein the Ordinance or any ban on SOCE counseling was considered or discussed.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 9:

REQUEST FOR PRODUCTION 10:

All Documents reviewed or considered by the County in the drafting, consideration, debate, amendment, voting, or enactment of Ordinance 2017-046, including but not limited to all empirical studies, data, statistics, analyses, research, position papers, testimony, letters, correspondence, or communications.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 10:

REQUEST FOR PRODUCTION 11:

All Communications between or among County Commissioners, the mayor, or any other County employees or officials regarding the County's drafting, consideration, debate, amendment, voting, or enactment of Ordinance 2017-046.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 11:

REQUEST FOR PRODUCTION 12:

All Documents Concerning any lobbying or attempts of any advocacy groups or other Persons to influence the County to adopt or reject Ordinance 2017-046 or any other ban on any form of SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 12:

REQUEST FOR PRODUCTION 13:

All Documents Concerning the County's interpretation, application, or enforcement of Ordinance 2017-046, including but not limited to any enforcement memoranda or any guidelines provided to enforcement officials.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 13:

REQUEST FOR PRODUCTION 14:

All Documents Concerning the County's enforcement of, or attempts to enforce, Ordinance 2017-046 against any Person, including, without limitation, all violation notices, fines, warnings, citations, court documents, or Communications.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 14:

REQUEST FOR PRODUCTION 15:

All Communications between the County and Equality Florida Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the County and any attorneys for Equality Florida regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 15:

REQUEST FOR PRODUCTION 16:

All Communications between the County and Rand Hoch and/or the Palm Beach County Human Rights Council Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the County and any attorneys for Mr. Hoch or the Palm Beach County Human Rights Council regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 16:

REQUEST FOR PRODUCTION 17:

All Communications between the County and any advocacy group (other than Equality Florida or the Palm Beach County Human Rights Council) Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the County and any attorneys for advocacy groups regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 17:

REQUEST FOR PRODUCTION 18:

All Communications between the County and the City of Boca Raton, Florida Concerning this lawsuit, any Plaintiff, SOCE counseling, City of Boca Raton Ordinance 5407, Palm Beach County Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the County and any attorneys for the City of Boca Raton regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 18:

REQUEST FOR PRODUCTION 19:

All Communications between the County and the City of Tampa Concerning this lawsuit, any Plaintiff, SOCE counseling, Ordinance 2017-046, or any other actual or proposed ban on any form of SOCE counseling. For the sake of clarity and without limitation, as with all other requests, this Request is intended to encompass Communications between any attorneys for the County and any attorneys for the City of Tampa regarding the enumerated subjects.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 19:

REQUEST FOR PRODUCTION 20:

All Documents Concerning Plaintiff Robert W. Otto's alleged engagement in or provision of any SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 20:

REQUEST FOR PRODUCTION 21:

All Documents Concerning Plaintiff Julie H. Hamilton's alleged engagement in or provision of any SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 21:

REQUEST FOR PRODUCTION 22:

All Documents Concerning any provider of SOCE counseling within the County.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 22:

REQUEST FOR PRODUCTION 23:

Each Document and category of Documents identified or referred to in Your Initial Disclosures served on July 13, 2018, which was not already provided in response to any of the foregoing Discovery Requests.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 23:

REQUEST FOR PRODUCTION 24:

Each Document You reviewed or referenced to obtain Your answer to any of the foregoing Discovery Requests, which was not already provided in response to any of the foregoing Discovery Requests.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 24:

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: hmihet@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

Rachel Fahey

Primary Email: rfahey@pbcgov.org
Secondary Email: dfishel@pbcgov.org

Kim Phan, Esquire

Primary Email: kphan@pbcgov.org
Secondary Email: ldennis@pbcgov.org

PALM BEACH COUNTY ATTORNEY OFFICE

Attorneys for Defendant Palm Beach County, Florida

Daniel L. Abbott

Primary email: dabbott@wsh-law.com
Secondary email: pgrotto@wsh-law.com

Jamie A. Cole

Primary email: jcole@wsh-law.com
Secondary email: msarraff@wsh-law.com

Anne R. Flanigan

Primary email: areilly@wsh-law.com

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

Horatio G. Mihet
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)
individually and on behalf of his patients,)
JULIE H. HAMILTON, PH.D., LMFT,)
individually and on behalf of her patients,)

Civil Action No.: 9:18-cv-80771-RLR

Plaintiffs,)

v.)

CITY OF BOCA RATON, FLORIDA,)
and COUNTY OF PALM BEACH,)
FLORIDA,)

Defendants.)

**PLAINTIFF ROBERT W. OTTO’S SECOND SET OF
DISCOVERY REQUESTS TO DEFENDANT PALM BEACH COUNTY, FLORIDA**

Pursuant to Fed. R. Civ. P. 26, 33, 34 and 36, and S.D. Fla. L.R. 26.1, Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following Second Set of Discovery Requests to Defendant Palm Beach County, Florida (“Defendant” or the “County”). Defendant is directed to serve verified and completed responses, and its document production, in conformance with the above-cited rules, via electronic means, **on or before August 20, 2018.**

Defendant is further instructed to respond pursuant to the same “DEFINITIONS” and “INSTRUCTIONS” contained in Plaintiff Otto’s First Set of Discovery Requests (pp. 1-6), served on July 17, 2018, which are incorporated by reference as if fully set for herein.

ADDITIONAL INTERROGATORIES

INTERROGATORY 10:

Identify each and every County ordinance, regulation, rule, law or provision that the County has considered, enacted or enforced, which regulates any other clinical practice methods besides SOCE counseling.

RESPONSE:

INTERROGATORY 11:

Identify each and every County ordinance, regulation, rule, law or provision that the County has considered, enacted or enforced, which regulates any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling.

RESPONSE:

INTERROGATORY 12:

Identify each and every County ordinance, regulation, rule, law or provision that the County has considered, enacted or enforced, which regulates any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists.

RESPONSE:

INTERROGATORY 13:

Identify each and every County ordinance, regulation, rule, law or provision that the County has considered, enacted or enforced, which regulates any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling.

RESPONSE:

INTERROGATORY 14:

Identify each and every research (and not merely position papers or other opinions) to which the County refers as “overwhelming research” in the following statement within Ordinance 2017-046:

"WHEREAS, the Palm Beach County Board of County Commissioners hereby finds the overwhelming research demonstrating that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, trans-gender or questioning persons, ..."

and, for each research you identify, Identify each page which you contend to contain the stated conclusion “that sexual orientation and gender identity change efforts can pose critical health risks to lesbian, gay, bisexual, trans-gender or questioning persons.”

RESPONSE:

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 25:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 10, which the County has considered, enacted or enforced to regulate any other clinical practice methods besides SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 25:

REQUEST FOR PRODUCTION 26:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 11, which the County has considered, enacted or enforced to regulate any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 26:

REQUEST FOR PRODUCTION 27:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 12, which the County has considered, enacted or enforced to regulate any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 27:

REQUEST FOR PRODUCTION 28:

All Documents Concerning any ordinance, regulation, rule, law or provision identified in Your response to Interrogatory 13, which the County has considered, enacted or enforced to regulate any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 28:

REQUEST FOR PRODUCTION 29:

All Documents Concerning each research (and not merely position papers or other opinions) identified in Your response to Interrogatory 14.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 29:

REQUEST FOR PRODUCTION 30:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a Minor in changing or reducing his or her unwanted romantic attractions to the same sex.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 30:

REQUEST FOR PRODUCTION 31:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a Minor in changing or reducing unwanted same-sex sexual behaviors.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 31:

REQUEST FOR PRODUCTION 32:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is impossible for a therapist to successfully assist a gender confused Minor in re-gaining confidence and peace with his or her anatomical sex.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 32:

REQUEST FOR PRODUCTION 33:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to affirm a Minor in his or her belief that he or she is of a sex or gender that is different from his or her anatomical sex, and/or that there are no short- or long-term negative effects of doing so.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 33:

REQUEST FOR PRODUCTION 34:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is psychologically, emotionally or physically safe and effective to assist a Minor in transitioning to a sex different from his or her anatomical sex, and/or that there are no short- or long-term negative effects of doing so.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 34:

REQUEST FOR PRODUCTION 35:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to withhold therapy from a Minor who is distressed about his or her unwanted homosexual attractions, and who desires to receive therapy to reduce those unwanted attractions.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 35:

REQUEST FOR PRODUCTION 36:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safe and effective to only offer therapy that affirms and supports a distressed Minor who is seeking change regarding unwanted homosexual attractions or gender identity confusion, rather than helping that Minor to make the changes he or she is seeking.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 36:

REQUEST FOR PRODUCTION 37:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safer to wait until a Minor turns 18 years of age before providing therapy for unwanted homosexual attractions or gender identity confusion.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 37:

REQUEST FOR PRODUCTION 38:

A copy of all research studies (and not merely position statements or other opinions) that you contend to conclude or demonstrate that it is safer, better or more desirable for a Minor who desires change and seeks counseling regarding unwanted homosexual attractions or gender identity confusion to receive that counseling from a non-licensed provider rather than a licensed provider.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 38:

REQUEST FOR PRODUCTION 39:

All Documents showing or evidencing the time, circumstances and extent to which the County considered any of the research identified in Your responses to Interrogatory 14 or produced in response to Requests for Production 29 through 38.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 39:

Respectfully submitted,

/s/ Horatio G. Mihet

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: hmihet@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

Rachel Fahey

Primary Email: rfahey@pbcgov.org
Secondary Email: dfishel@pbcgov.org

Kim Phan, Esquire

Primary Email: kphan@pbcgov.org
Secondary Email: ldennis@pbcgov.org

PALM BEACH COUNTY ATTORNEY OFFICE

Attorneys for Defendant Palm Beach County, Florida

Daniel L. Abbott

Primary email: dabbott@wsh-law.com
Secondary email: pgrotto@wsh-law.com

Jamie A. Cole

Primary email: jcole@wsh-law.com
Secondary email: msarraff@wsh-law.com

Anne R. Flanigan

Primary email: areilly@wsh-law.com
WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

Horatio G. Mihet
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 9:18-CV-80771-ROSENBERG/REINHART**

ROBERT W. OTTO, and JULIE H.
HAMILTON,

Plaintiffs,

vs.

CITY OF BOCA RATON, FLORIDA and
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

**AMENDED DISCOVERY PLAN FOR
PRELIMINARY INJUNCTION MOTION**

The Court hereby orders the following:

- August 16, 2018** Plaintiffs shall serve their responses to Defendants' written discovery requests, along with any document production, via electronic means for same day delivery. Documents which are too voluminous to email shall be provided via Google Drive, Dropbox or other easily accessible cloud delivery system.
- August 20, 2018** Defendants shall serve their responses to Plaintiffs' written discovery requests, along with any document production, via electronic means for same day delivery. Documents which are too voluminous to email shall be provided via Google Drive, Dropbox or other easily accessible cloud delivery system.
- August 29-30, 2018** Defendants shall take Plaintiffs' deposition at a mutually agreeable time and place. Both Plaintiffs shall be available on the first date, and at least one of them shall be available on the second date, if necessary.
- September 10, 2018** Defendants shall file their responses to Plaintiffs' Motion for Preliminary Injunction, together with all supporting materials.
- September 17, 2018** Plaintiffs shall take the County's Rule 30(b)(6) deposition, at a mutually agreeable time and place.
- September 18, 2018** Plaintiffs shall take the City's Rule 30(b)(6) deposition, at a mutually agreeable time and place.

EXHIBIT C

October 8, 2018 Plaintiffs shall file their Reply in support of the preliminary injunction motion, together with all supporting materials.

October 9, 2018 The parties shall exchange their Witness and Exhibit Lists. *See* DE 11 at 7 for more information regarding the format required for the parties' Witness and Exhibit Lists and for their Exhibits.

October 12, 2018 The parties shall file a Joint Hearing Plan that follows the same format as the Trial Plan required by the Court before trial. *See* DE 11 at 7-9. The parties also shall file their Exhibit and Witness Lists. If no evidence is to be presented at the Hearing, the parties shall file a Notice so indicating.

The parties shall simultaneously file proposed Findings of Fact and Conclusions of Law at 5:00 p.m. The proposed Findings of Fact and Conclusions of Law shall be emailed to the chambers email (rosenberg@flsd.uscourts.gov) in Word format. The submissions may not exceed twenty (20) pages in length. Proposed Conclusions of Law must be supported by citations to authority.

October 18-19, 2018 at 9:00 a.m. Hearing on Plaintiffs' Motion for Preliminary Injunction. The Court has set aside two (2) days for the hearing.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 8th day of August, 2018.

Copies furnished to:
Counsel of record


ROBIN L. ROSENBERG

From: [Horatio Mihet](#)
To: [Williams, Robert](#)
Cc: jerry.gewirtz@tampagov.net; [Roger Gannam](#); [Daniel Schmid](#)
Subject: RE: vazzo - discovery requests and depositions
Date: Friday, August 17, 2018 1:26:50 PM

This is a very surprising and disappointing response, Rob. I thought we were making progress, and spent a great deal of time during a very busy week to come up with the search terms and other narrowing factors below.

On the phone, you indicated that a Jan.1, 2012 start date would be reasonable. We are now cutting off another year. You indicated that you thought the City would have to search “thousands” of custodians for ESI. We are identifying only a couple dozen below. You indicated that you thought a hit list of 5,000 or fewer ESI documents would be reasonable. We are providing search terms that are likely to yield fewer hits. We are not asking the City to do anything that other municipalities haven’t already been required to do – in 30 days. In fact, we are asking the City to do much less.

What **specifically** does the City find objectionable in our proposal below? How many hits do the search terms generate (when run on the custodians and date ranges we proposed), and how long would it take the City to review them?

Your “fishing expedition” accusations are brand new in our discussions, and entirely unwarranted. So is your rush to the Court. This move is transparently calculated to deprive Plaintiffs of critical discovery before the hearing. You can anticipate that we will not be gentle in our response. I urge you to reconsider, stand down, and engage in good faith with us to conduct legitimate discovery on an agreeable timetable.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel
PO Box 540774
Orlando, FL 32854
(407) 875-1776 phone
(407) 875-0770 fax
LC.org
Offices in DC, FL, and VA
*Licensed in Florida and Ohio

This message and any attachment are intended for the person to whom it is addressed. If you are not the intended recipient, notify us immediately by replying to this message and deleting it from your computer, because any distribution of this message by you is strictly prohibited. Email cannot be guaranteed secure or error-free. We do not accept responsibility for errors that result from email transmissions. Opinions expressed in this email are solely those of the author and do not necessarily represent those of the organization.

From: Turner, Pamela <pturner@burr.com> **On Behalf Of** Williams, Robert
Sent: Friday, August 17, 2018 1:16 PM
To: Horatio Mihet <hmihet@lc.org>
Cc: jerry.gewirtz@tampagov.net
Subject: RE: vazzo - discovery requests and depositions

Harry,

There is really no reason to continue this dialogue. When we spoke yesterday I told you that I wanted to keep the October 10 hearing date that Magistrate Judge Sansone worked so hard to schedule for us and, to that end, asked you to provide me with the description of the discovery items that you would absolutely need for that hearing and

EXHIBIT D

that could be accomplished in 30 days. The list you sent me does not even remotely approach achieving that objective and tells me that further good faith efforts on my part would be fruitless. Accordingly, I am going to file the Defendant's Motion for Extension of Time today and will recite that the Plaintiffs do not agree to the extension in accordance with Local Rule 3.01(g).

In the meantime, the City will embark on the process of responding to your recently served discovery as we are required to do under the Federal Rules of Civil Procedure and our local discovery rules.

Nevertheless, I urge you to reconsider the approach you have taken. Regardless of the temporal limitations, many of your discovery requests are objectionable on their face and, in my opinion, constitute a totally unreasonable and unfair fishing expedition.

Rob

Robert V. Williams • *Partner*

201 North Franklin Street
Suite 3200
Tampa, Florida 33602
direct 813-367-5712 • fax 813-221-7335 • main 813-221-2626
rwilliams@burr.com • www.burr.com
blog: www.burr.com/blogs/securities-litigation/

AL • DE • FL • GA • MS • NC • TN

The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you

From: Horatio Mihet [mailto:hmihet@lc.org]

Sent: Friday, August 17, 2018 9:31 AM

To: Williams, Robert <rwilliams@burr.com>; jerry.gewirtz@tampagov.net; Robin Horton-Silverman <Robin.Horton-Silverman@tampagov.net>

Cc: Turner, Pamela <pturner@burr.com>; Kimber Spitsberg <Kimber.Spitsberg@tampagov.net>; leticia.mckinney@tampagov.net

Subject: RE: vazzo - discovery requests and depositions

Rob – further to our ongoing discussions on narrowing Plaintiffs' discovery requests, we are willing to narrow the "first round" of ESI searches as follows. We reserve the right to broaden the search in subsequent rounds, if there is a legitimate reason.

A. **Date Range for First Round:** January 1, 2013 through the present (day when search is run).

B. **Custodians to be Searched in First Round:**

1. Bob Buckhorn, Mayor
2. Mike Suarez
3. Lorena Hardwick
4. Charlie Miranda
5. Mary Bryan
6. Yvonne Yolie Capin
7. Cynthia Sarff
8. Harry Cohen
9. Ian Whitney

10. Frank Reddick
11. Cedrick McCray
12. Guido Maniscalco
13. Carrie Henriquez
14. Luis Viera
15. Christopher Berg
16. Salvatore Territo
17. Martin Shelby
18. Earnest Mueller
19. Shirley Foxx-Knowles
20. Sal Ruggiero
21. Jerry Gewirtz
22. Robin Horton Silverman
23. Rob Williams
24. To the extent not already included in the above (I think most are):
 - a. All individuals identified in Defendants' Initial Disclosures
 - b. All individuals identified in Plaintiffs' Initial Disclosures
 - c. All current City Council members and the mayor
 - d. All people who signed the Ordinance in suit, or whose names appear in the Ordinance
 - e. all City employees or Council members or staff who had material involvement in the consideration, drafting, enactment, interpretation or enforcement of the Ordinance
 - f. any former mayors, council members, or staff members (back to the time the Ordinance was first considered) who are still under Defendants' control, or whose communication accounts are still in Defendants' possession
 - g. all attorneys and staff (inside and outside counsel) who worked on the Ordinance or who are working on this lawsuit
 - h. any other person known to Defendants to have had a material or substantial involvement in the consideration, drafting, enactment, interpretation or enforcement of the Ordinance, or in the defense of this lawsuit. (Defendants are in a better position to know this than Plaintiffs, at least until we take Defendants' depositions).

C. **Devices and Accounts Searched in First Round:** In addition to the computers, mobile devices and communication accounts used by the above custodians which are owned or maintained by the City, we would ask and expect the City to instruct those custodians under its employment or control to also search their "personal" devices (e.g., mobile phones for text messages) and "personal" accounts (e.g., gmail) for any responsive ESI.

D. **Search Terms for First Round:**

1. sexual orientation change efforts
2. SOCE
3. S.O.C.E.
4. reparative therapy
5. reparative counseling
6. conversion therapy
7. conversion counseling
8. conversion /5 ban
9. reorientation therapy
10. reorientation counseling
11. change counseling
12. change therapy

13. gay therapy
14. gay /5 ban
15. sexual orientation
16. gender identity
17. APA Task Force Report
18. APA Report
19. APA Task Force
20. APA Resolution
21. American Psychological Association
22. Rand Hoch
23. Vazzo
24. Pickup /3 David
25. Pickup /10 Brown
26. Ninth Circuit
27. King /10 New Jersey
28. Third Circuit
29. Otto
30. Equality Florida
31. SPLC
32. Southern Poverty Law Center
33. NCLR
34. National Center for Lesbian Rights
35. 2017-47
36. Liberty Counsel
37. Mihet
38. Fahey

The foregoing terms cover only ESI, and only the subject matter related to SOCE and the Ordinance in suit. They should not be the exclusive means employed by Defendants to gather all documents responsive to all of Plaintiffs' discovery requests. For example, we will leave it to Defendants for now as to how they will search for the various studies, or the various non-SOCE ordinances, requested by Plaintiffs.

Please let me know how many "hits" the City gets with the above parameters. As we discussed, if it is more than 5,000, we will work with you to further narrow, as possible.

We still have a telephone call scheduled for 2 pm today. Let me know if we need to talk then or at another time.

Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*

Liberty Counsel

PO Box 540774

Orlando, FL 32854

(407) 875-1776 phone

(407) 875-0770 fax

LC.org

Offices in DC, FL, and VA

*Licensed in Florida and Ohio

This message and any attachment are intended for the person to whom it is addressed. If you are not the intended recipient, notify us immediately by replying to this message and deleting it from your computer, because any distribution of this message by you is strictly prohibited. Email cannot be guaranteed secure or error-free. We do not accept responsibility for errors that result from email transmissions. Opinions expressed in this email are solely those of the author and do not necessarily represent those of the organization.

From: Horatio Mihet
Sent: Thursday, August 16, 2018 11:15 AM
To: 'Williams, Robert' <rwilliams@burr.com>; 'jerry.gewirtz@tampagov.net' <jerry.gewirtz@tampagov.net>; 'Robin Horton-Silverman' <Robin.Horton-Silverman@tampagov.net>
Cc: 'Turner, Pamela' <pturner@burr.com>; 'Kimber Spitsberg' <Kimber.Spitsberg@tampagov.net>; 'leticia.mckinney@tampagov.net' <leticia.mckinney@tampagov.net>
Subject: RE: vazzo - discovery requests and depositions

Rob – thanks for your call. As discussed, I will provide you with a list of search terms and document custodians either later today or tomorrow morning. Plaintiffs share the City's desire to keep the October 10 hearing date, and are willing to work with the City to ensure that the discovery sought can reasonably be accomplished prior to the hearing.

Kind Regards,

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel
PO Box 540774
Orlando, FL 32854
(407) 875-1776 phone
(407) 875-0770 fax
LC.org
Offices in DC, FL, and VA
*Licensed in Florida and Ohio

This message and any attachment are intended for the person to whom it is addressed. If you are not the intended recipient, notify us immediately by replying to this message and deleting it from your computer, because any distribution of this message by you is strictly prohibited. Email cannot be guaranteed secure or error-free. We do not accept responsibility for errors that result from email transmissions. Opinions expressed in this email are solely those of the author and do not necessarily represent those of the organization.

From: Horatio Mihet
Sent: Thursday, August 9, 2018 4:49 PM
To: Williams, Robert <rwilliams@burr.com>; jerry.gewirtz@tampagov.net; Robin Horton-Silverman <Robin.Horton-Silverman@tampagov.net>
Cc: Turner, Pamela <pturner@burr.com>; Kimber Spitsberg <Kimber.Spitsberg@tampagov.net>; leticia.mckinney@tampagov.net
Subject: vazzo - discovery requests and depositions
Importance: High

Rob and Company:

Please find attached a Word and PDF version of Plaintiff Vazzo's First Set of Discovery Requests to Defendant City of Tampa. **Kindly acknowledge receipt.**

Please NOTE:

1. Pursuant to Defendants' prior consent to receive electronic service of discovery requests, we will not serve paper copies of the attached unless we are requested to do so (in writing).
2. Please let me know a good time **on this coming Monday or Tuesday** for us to have a telephonic meet-and-confer regarding the ESI searches to be conducted by the City (search terms, document custodians, date

ranges, etc.).

3. It is important that we receive the City's responses and document production timely, on or before the September 8, 2018 due date, so that we have sufficient time to review them prior to the two depositions we need to take in the last week of September.
4. Speaking of depositions, we need to take the depositions of (a) Defendant Ruggiero, and (b) Defendant Tampa's Rule 30(b)(6) designee, on any two consecutive days in the week of September 24. Please let us know ASAP which days work on your end. Please also let us know whether you are able to host the depositions, or whether we need to find a suitable location ourselves.
5. We will identify the Rule 30(b)(6) topics more fully in a forthcoming formal deposition notice, but, to assist you in identifying the proper designee and his/her available dates, we will generally seek testimony on the same topics covered by the attached discovery requests (for example: complaints regarding SOCE; studies conducted, commissioned or reviewed by the City regarding SOCE and the findings thereof; City's asserted interests in enacting the Ordinance; City's efforts to narrowly tailor the Ordinance; City's drafting, consideration, debate, voting, enactment, enforcement, interpretation and application of the Ordinance; the extent to which the City regulates other clinical practice methods, health professionals, other professionals or other professions; City's responses to the Discovery Requests; City's search for responsive documents and City's Document Production; and the factual assertions in the City's Motion to Dismiss and Preliminary Injunction briefs/supporting materials).

I look forward to hearing from you, and I thank you for your anticipated prompt response.

HGM

Horatio G. Mihet, Esq.*
*Vice President of Legal Affairs and
Chief Litigation Counsel*
Liberty Counsel
PO Box 540774
Orlando, FL 32854
(407) 875-1776 phone
(407) 875-0770 fax
LC.org
Offices in DC, FL, and VA
*Licensed in Florida and Ohio

This message and any attachment are intended for the person to whom it is addressed. If you are not the intended recipient, notify us immediately by replying to this message and deleting it from your computer, because any distribution of this message by you is strictly prohibited. Email cannot be guaranteed secure or error-free. We do not accept responsibility for errors that result from email transmissions. Opinions expressed in this email are solely those of the author and do not necessarily represent those of the organization.