

Rev. 4/18

UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
**CIVIL APPEAL STATEMENT**

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: 19-10604-A

Caption: ROBERT W. OTTO, PH.D. LMFT, individually and on behalf of his patients, and JULIE H. HAMILTON, PH.D., LMFT, individually and on behalf of her patients,  Plaintiffs–Appellants,  v.  CITY OF BOCA RATON, FLORIDA, and COUNTY OF PALM BEACH, FLORIDA,  Defendants–Appellees.	District and Division: <u>Southern District of Florida, West Palm Beach Division</u> Name of Judge: <u>ROBIN L. ROSENBERG</u> Nature of Suit: <u>Civil Rights (440 Other Civil Rights)</u> Date Complaint Filed: <u>June 13, 2018</u> District Court Docket Number: <u>9:18-cv-80771-RLR</u> Date Notice of Appeal Filed: <u>February 13, 2019</u> <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action Has this matter previously been before this court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide (a) Caption: _____ (b) Citation: _____ (c) Docket Number: _____
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	Attorney Name	Mailing Address	Telephone, Fax, Email
For Appellant:			
<input checked="" type="checkbox"/> Plaintiff	<b>Mathew D. Staver</b>	<b>LIBERTY COUNSEL</b>	<b>407-875-1776 P</b>
<input type="checkbox"/> Defendant	<b>Horatio G. Mihet</b>	<b>P.O. Box 540774</b>	<b>407-875-0770 F</b>
<input type="checkbox"/> Other (Specify)	<b>Roger K. Gannam</b>	<b>Orlando, FL 32854</b>	<b>hmihet@LC.org</b> <b>rgannam@LC.org</b>

For Appellee:			
<input type="checkbox"/> Plaintiff	<b>See addendum.</b>	<b>See addendum.</b>	<b>See addendum.</b>
<input checked="" type="checkbox"/> Defendant			
<input type="checkbox"/> Other (Specify)			

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question	<input type="checkbox"/> Final Judgment, 28 USC 1291	<input type="checkbox"/> Dismissal/Jurisdiction	Amount Sought by Plaintiff: \$ _____
<input type="checkbox"/> Diversity	<input checked="" type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1)	<input type="checkbox"/> Default Judgment	Amount Sought by Defendant: \$ _____
<input type="checkbox"/> US Plaintiff	<input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b)	<input type="checkbox"/> Summary Judgment	Awarded: \$ _____ to _____
<input type="checkbox"/> US Defendant	<input type="checkbox"/> Interlocutory Order, Qualified Immunity	<input type="checkbox"/> Judgment/Bench Trial	Injunctions:
	<input type="checkbox"/> Final Agency Action (Review)	<input type="checkbox"/> Judgment/Jury Verdict	<input type="checkbox"/> TRO
	<input type="checkbox"/> 54(b)	<input type="checkbox"/> Judgment/Directed Verdict/NOV	<input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Granted
		<input checked="" type="checkbox"/> Injunction	<input type="checkbox"/> Permanent <input checked="" type="checkbox"/> Denied
		<input type="checkbox"/> Other _____	

Based on your present knowledge:

(1) Does this appeal involve a question of First Impression?  Yes  No  
What is the issue you claim is one of First Impression? \_\_\_\_\_

(2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute?  Yes  No

If Yes, provide

(a) Case Name/Statute See addendum. \_\_\_\_\_

(b) Citation \_\_\_\_\_

(c) Docket Number if unreported \_\_\_\_\_

(3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that

(a) Arises from substantially the same case or controversy as this appeal?  Yes  No

(b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal?  Yes  No

If Yes, provide

(a) Case Name See addendum. \_\_\_\_\_

(b) Citation \_\_\_\_\_

(c) Docket Number if unreported \_\_\_\_\_

(d) Court or Agency \_\_\_\_\_

(4) Will this appeal involve a conflict of law

(a) Within the Eleventh Circuit?  Yes  No

(b) Among circuits?  Yes  No

If Yes, explain briefly:

(5) Issues proposed to be raised on appeal, including jurisdictional challenges:

See addendum.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND

SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 27th DAY OF February, 2019.

Roger K. Gannam

NAME OF COUNSEL (Print)

/s/ Roger K. Gannam

SIGNATURE OF COUNSEL

No. 19-10604

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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

v.

CITY OF BOCA RATON, FLORIDA, and  
COUNTY OF PALM BEACH, FLORIDA  
Defendants–Appellees

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On Appeal from the United States District Court  
for the Southern District of Florida  
In Case No. 9:18-cv-80771-RLR before the Honorable Robin L. Rosenberg

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**PLAINTIFFS-APPELLANTS' CIVIL APPEAL STATEMENT  
ADDENDUM**

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Mathew D. Staver (Fla. 0701092)  
Horatio G. Mihet (Fla. 026581)  
Roger K. Gannam (Fla. 240450)  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
E-mail: court@lc.org

*Attorneys for Plaintiffs–Appellants*

**No. 19-10604**

**OTTO, etc., et al. v. CITY OF BOCA RATON, etc., et al.**  
**Civil Appeal Statement Addendum**

**Attorneys for Defendant–Appellee City of Boca Raton, Florida:**

Jamie A. Cole Daniel L. Abbott Anne R. Flanigan	WEISS SEROTA HELFMAN COLE & BIERMAN, P.L. 200 East Broward Boulevard Suite 1900 Fort Lauderdale, FL 33301	(954) 763-4242 P (954) 764-7770 F jcole@wsh-law.com dabbott@wsh-law.com flanigan@wsh-law.com
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**Attorneys for Defendant–Appellee County of Palm Beach, Florida:**

Helene Hvizd Rachel Marie Fahey Kim Ngoc Phan	Palm Beach County Attorney’s Office 301 N. Olive Avenue, Ste. 601 West Palm Beach, FL 33401	(561) 355-2582 P (561) 355-4234 F hvizd@pbcgov.org rfahey@pbcgov.org kphan@pbcgov.org
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**Based on Plaintiffs–Appellants’ present knowledge:**

- (2) The determination of this appeal may turn on the interpretation or application of the following cases:**

*Nat’l Inst. for Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).

*Wollschlaeger v. Florida*, 848 F.3d 1293 (11th Cir. 2017).

- (3)(b) Cases pending before other courts involving issues that are substantially the same, similar, or related to an issue in this appeal:**

*Vazzo, etc., et al. v. City of Tampa, Fla.*, No. 8:17-cv-02896-WFJ-AAS (M.D. Fla.) (constitutional challenge to City of Tampa’s so-called “conversion therapy” ban filed Dec. 4, 2017; magistrate judge report and recommendation concluding ban unconstitutional filed Jan. 3, 2019).

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*Doyle, etc., v. Hogan, etc., et al.*, No. 1:19-cv-00190-DKC (D. Md.) (constitutional challenge to State of Maryland’s so-called “conversion therapy” ban filed Jan. 18, 2019).

**(5) Issues proposed to be raised on appeal, including jurisdictional challenges:**

1. Whether the district court erred in denying Plaintiffs–Appellants’ Motion for Preliminary Injunction;
2. Whether the district court erred in holding Plaintiffs–Appellants do not have standing to challenge the City and County ordinances on behalf of Plaintiffs–Appellants’ minor clients;
3. Whether the district court erred in holding Plaintiffs–Appellants are not likely to succeed on the merits of their constitutional free speech challenge to the City and County ordinances under the First Amendment;
4. Whether the district court erred in holding that the City and County ordinances do not discriminate against Plaintiffs–Appellants’ speech on the basis of viewpoint;
5. Whether the district court erred in failing to apply strict scrutiny review to the City and County ordinances’ content-based restrictions on Plaintiffs–Appellants’ speech;
6. Whether the district court erred in holding Plaintiffs–Appellants have the burden to prove that the City and Country ordinances do not satisfy narrow tailoring under strict or intermediate scrutiny;
7. Whether the district court erred in holding Plaintiffs–Appellants are not likely to succeed on the merits of their constitutional prior restraint challenge to the City and County ordinances under the First Amendment;
8. Whether the district court erred in holding Plaintiffs–Appellants are not likely to succeed on the merits of their constitutional vagueness

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Civil Appeal Statement Addendum

challenge to the City and County ordinances under the First Amendment; and

9. Whether the district court erred in holding Plaintiffs–Appellants did not show sufficient irreparable injury for a preliminary injunction to issue on their preemption challenge to the City and County ordinances under Florida law.