

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.)	

**PLAINTIFFS' SECOND AMENDED
NOTICE OF TAKING DEPOSITIONS OF DEFENDANTS**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, the Court's Amended Discovery Plan for Preliminary Injunction Motion (DE 50, "Discovery Plan"), and the agreement of the parties, Plaintiffs will take the following depositions upon oral examination before a court reporter or some other officer duly authorized by law to take depositions, at the dates, times, and locations shown for the witnesses (or at such other date(s), time(s), and location(s) as to which the parties may mutually agree), for the purpose of discovery or as evidence in this action, which depositions will be recorded by stenographic means:

WITNESS	DATE, TIME	LOCATION
COUNTY OF PALM BEACH, FLORIDA	September 20, 2018 9:00 A.M.	Palm Beach County Attorney's Office 300 North Dixie Highway, Suite 359 West Palm Beach, FL 33401
CITY OF BOCA RATON, FLORIDA	September 21, 2018 9:00 A.M.	Boca Raton City Hall 201 West Palmetto Park Road Boca Raton, FL 33432

Each deposition will commence on the date and time specified and continue thereafter until the deposition has been completed.



DESCRIPTION OF MATTERS FOR EXAMINATION

Each Defendant, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, will designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on the Defendant's behalf, regarding the matters for examination set forth below, subject to the definitions also set forth below.

DEFINITIONS

The following definitions apply to the matters for examination below:

A. "**Minor**" means an individual under eighteen (18) years of age.

B. As directed to Defendant City of Boca Raton, Florida, the "**Ordinance**" means City of Boca Raton Ordinance 5407, adopted by the City Council of the City of Boca Raton, Florida on October 10, 2017.

C. As directed to Defendant County of Palm Beach, Florida, the "**Ordinance**" means Palm Beach County Ordinance No. 2017-046, adopted by the Board of County Commissioners of Palm Beach County, Florida on December 19, 2017.

D. "**SOCE**" means sexual orientation change efforts, including without limitation any counseling, practice, or treatment that assists an individual in changing his or her sexual orientation or gender identity, and further including without limitation any 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.

MATTERS FOR EXAMINATION

1. Defendant's purported interest in banning SOCE counseling for minors, including without limitation any complaint or other evidence of alleged harm Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

2. Any evidence that any minor within Defendant's jurisdiction was subjected to SOCE counseling against his or her will, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

3. Any evidence of alleged harm posed by voluntary SOCE counseling for minors who desire, request, or willingly consent to SOCE counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

4. Any evidence of alleged harm caused by voluntary SOCE counseling for minors within Defendant's jurisdiction who desired, requested, or willingly consented to SOCE

counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

5. Any evidence that minors lack the ability to consent to voluntary SOCE counseling, or have the ability to consent to other treatments or procedures such as abortions, gender transition/reassignment, or same-sex relationship-affirming counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

6. Any ~~less restrictive~~ alternative to the Ordinance which Defendant considered prior to adopting the Ordinance, and all reasons for rejecting any such alternative.

7. All communications and coordination, between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.

8. Defendant's consideration, debate, enactment, interpretation, application, and enforcement of the Ordinance, including Defendant's internal and external communications regarding same.

9. The factual matters disclosed in any declaration or affidavit filed by Defendant in opposition to Plaintiffs' Motion for Preliminary Injunction (DE 8).

10. [Deleted].

11. [Deleted].

12. Defendant's document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—

- a. the physical or digital/electronic locations of the documents produced;**
- b. the time period(s) covered by the documents produced;**
- c. the search terms used to locate potentially responsive, electronically stored documents; and**
- d. the document custodian(s) consulted for responsive documents or from whom the documents were obtained for production.**

13. The extent to which Defendant regulates: (a) any other clinical practice methods besides SOCE counseling; (b) 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; (c) any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any other professions, professionals or professional conduct,

besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d).¹

/s/ Roger K. Gannam
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: rgannam@LC.org
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this September 13, 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/ Roger K. Gannam
Roger K. Gannam
Attorney for Plaintiffs

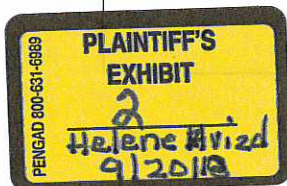
¹ Judge Reinhart sustained Defendants' respective objections to this topic in his bench ruling on September 12, 2018 (DE 87). Plaintiffs, however, will file an objection to the ruling in due course, and retain this topic pending Judge Rosenberg's disposition of Plaintiffs' objection.

1 exist. There are, in fact, many people who desire
2 change, including many teenagers. Please don't
3 disregard this population. Please don't take away
4 the right of young people to seek licensed
5 professional counseling when they are distressed by
6 their unwanted attractions. Would you want this
7 for your child? Would you want your child to have
8 no other choice? Please vote no on this ordinance.
9 Thank you.

10 MR. HOCH: Hi. My name is Rand Hoch. I'm
11 president of -- and founder of the Palm Beach
12 County Human Rights Council. Mayor McKinlay and
13 Commissioners, thank you for taking a look at this
14 ordinance at our request.

15 Over the past two years we've heard from two
16 individuals, minors, who have been required to go
17 to conversion therapy by their parents. These are
18 kids with gay friends who are comfortable where
19 they are; It's their parents that have a problem
20 with their children being gay or lesbian.

21 I guess I'm the first lawyer other than Helene
22 to talk today. You've heard legal advice from a
23 bunch of psychologists and other people, but I have
24 to tell you, Helene has done an amazing job looking
25 at this for the past year and a half. She's read



1 every case that's out there. She has challenged
2 Trent Steele and I and Jamie Foreman from the
3 council on every section that might be a problem, a
4 year and a half of legal research, and she won most
5 of the arguments. Things --

6 When we first made the presentation, we were
7 overreaching. We knew that we wanted everything.
8 We wanted to prohibit advertising of conversion
9 therapy, which is illegal in two states because
10 conversion therapy is fraudulent. There is no
11 evidence that it works. Among the federal cases,
12 they wouldn't even allow one of the witnesses, who
13 was a conversion therapist, to testify because he
14 lacked scientific knowledge and reality that was
15 acceptable by the courts.

16 Our ordinance is different than the one in
17 Miami-Dade County. It's narrower because of
18 Helene. She took a look at what was going on there
19 and said, "This opens us up to a problem," so she
20 closed the gap.

21 Florida legislature has never had a hearing on
22 conversion therapy regardless of what you've been
23 told. Excuse me?

24 COMMISSIONER: Can you address that?

25 MR. HOCH: Okay. They've never had a hearing

1 on conversion therapy. Bills have been filed, but
2 they have refused to amend the sections of the law
3 that governs psychologists, psychiatrists, medical
4 providers, to specifically address conversion
5 therapy, and that's the problem and that's why
6 we're here today. That's why we've been to other
7 places throughout the county, and other groups have
8 been throughout Florida because there is a problem.
9 Conversion therapy causes harm. That is proven in
10 every one of the studies that we provided you.

11 And I apologize for giving you hundreds of
12 pages of things to review, but it's consistent.
13 And these are done by real groups. They're not
14 done by the American College of Pediatricians --
15 and I have ten seconds left -- so nothing affects
16 free speech. It affects conduct, and that has been
17 dealt with by the United States Supreme Court and a
18 lot of lower courts. Thank you.

19 COMMISSIONER BURDICK: Thank you.

20 That concludes the members of the public who
21 wish to speak, but we do have a number of cards
22 here that do not want to speak but wanted their
23 names read into the record.

24 Amanda Canate is in support. Dylan Brocks is
25 in support. Carly Cass is in support. Sherman

1 MR. HOCH: Mayor McKinlay, Commissioners, my
2 name is Rand Hoch. I'm president and founder of
3 the Palm Beach County Human Rights Council.

4 For almost three decades county commissioners
5 and other public officials have enacted laws and
6 policies to protect LGBTQ people. As a result,
7 Palm Beach County is now one of the safest places
8 in the world for LGBTQ people to live, study, work,
9 create families, raise children, and retire, and I
10 want to thank you for that.

11 I also want to commend Helene for modifying
12 the ordinance to take into effect the concerns
13 raised by Commissioner Abrams at the last meeting.
14 Helene has gone to great lengths to balance the
15 interest of children, parents, and therapists. Not
16 a single word needs to be added or deleted from the
17 draft presented to you today. If enacted, this
18 ordinance will serve as a model for other counties
19 around the state and the nation.

20 For the past 18 months I've had to endure
21 people suggesting to elected officials that gay
22 people are God's mistakes, and then go on to say
23 that they are the ones who can fix the mistakes
24 through therapy. How arrogant. I have been taught
25 that each one of us is created in God's image.



1 I have been taught that God does not make
2 mistakes, and I believe those statements to be
3 true. I also believe the statements and
4 conclusions from virtually every mainstream
5 scientific, medical, psychiatric, and psychological
6 organization in this country that conversion
7 therapy is ineffective and it causes harm to
8 children.

9 So the choice before you today is clear. You
10 can vote to protect children from harm or you can
11 vote to protect these people who want to continue
12 to cause children harm. Basically the choice is
13 between kids and quacks. Please vote to protect
14 the kids. Thank you, and Happy Holidays, Happy New
15 Year.

16 COMMISSIONER BURDICK: Madam Mayor, we have 13
17 additional cards who do not wish to speak this
18 morning but are in opposition.

19 MAYOR MCKINLAY: And we will enter those into
20 the record. Commissioner Valeche.

21 COMMISSIONER VALECHE: Mr. Hoch, I just had
22 a -- you can go over there, I think.

23 Just in terms of the complaints, it was
24 mentioned earlier that there were two that the HRC
25 knows of. Could you give me an idea of who those

1 complaints were registered with, who they
2 originated from, what the disposition of them was,
3 et cetera?

4 MR. HOCH: Gladly.

5 COMMISSIONER VALECHE: Give us some color on
6 that, please.

7 MR. HOCH: Both of the complaints regard
8 children who live in your district.

9 COMMISSIONER VALECHE: Okay.

10 MR. HOCH: We received complaints from the
11 mothers of gay people because their friends, the
12 gay children's friends who also identified as gay,
13 were being subjected to conversion therapy.

14 COMMISSIONER VALECHE: And?

15 MR. HOCH: There's nothing we can do about
16 that unless you act today. So these kids are still
17 being forced to go to therapists who are telling
18 them that God does not love them --

19 COMMISSIONER VALECHE: Isn't there -- isn't
20 there some recourse for the parent if they feel
21 their child has been harmed by a professional?

22 MR. HOCH: The parents are the ones who are
23 causing the harm to the children by sending them to
24 therapy. The children are the ones being harmed by
25 the therapy. There is no recourse unless you pass

1 an ordinance and the child comes forward to the
2 county and says, "This is what's happening to me,"
3 and only a complaint is going to trigger this
4 ordinance from taking effect. It's not like
5 anyone's going to go into a therapist's office and
6 sit in with patients.

7 And the children are allowed to waive all of
8 the HIPAA requirements for their therapist. They
9 can tell them because the children are the
10 patients.

11 COMMISSIONER VALECHE: Okay. I understand.
12 But wouldn't the child in this instance, in these
13 two instances, have been able to register a
14 complaint?

15 MR. HOCH: With who? Well, that's the
16 problem.

17 COMMISSIONER VALECHE: Well --

18 MAYOR MCKINLAY: It's not banned.

19 COMMISSIONER VALECHE: -- I think there's a
20 licensing organization. There's a professional
21 organization.

22 MR. HOCH: There is no state law that
23 specifically prohibits therapists from doing
24 conversion therapy. That's the entire problem.
25 That's why 16 communities have already passed this.

1 That's why 10 states have already passed this.
2 That's why dozens of cities and counties around the
3 country have passed it. Without the law, these
4 kids are helpless.

5 COMMISSIONER VALECHE: Well, but there --
6 whether the statute or the regulatory body mentions
7 conversion therapy per se, there's still a
8 prohibition against the psychologist abusing his or
9 her professional position to do harm to a patient
10 and, you know, that can take in a wide range of
11 subjects beyond conversion therapy. And I think
12 there is recourse in those instances, isn't there?

13 MR. HOCH: These psychologists and therapists
14 don't think they're doing harm. That's a problem.
15 That is the problem. And you're dealing with
16 minors, so you're the only ones who can protect
17 them. It's up to the seven of you.

18 COMMISSIONER VALECHE: Well, but in this -- if
19 we were to pass the ordinance, it would be the
20 minors' perception that they were being harmed,
21 it's not the -- whether the psychologist believes
22 they're doing harm or not is totally irrelevant to
23 this, it's the patient who's -- who we're going to
24 be listening to.

25 MR. HOCH: That's correct.

1 COMMISSIONER VALECHE: So why isn't the
2 patient in this case, you know, responsible to --
3 not responsible, but why doesn't they -- why don't
4 they have the option of making the abusive therapy
5 known to the licensing authority?

6 MR. HOCH: I imagine they could, but I don't
7 know if the licensing authority will actually do
8 anything. I do have faith that Palm Beach
9 County --

10 COMMISSIONER VALECHE: Well, why would they be
11 more inclined to report it to the county than they
12 would to -- to the state?

13 MR. HOCH: Don't you get a lot of complaints
14 from people that should really go elsewhere? You
15 are the closest form of government to these kids.
16 They look to you. Don't send them elsewhere. Take
17 responsibility, protect these children.

18 COMMISSIONER VALECHE: All right. Okay.

19 MR. HOCH: Thank you.

20 MAYOR MCKINLAY: And let me add that this is
21 the same state legislature that has refused to hear
22 a ban on conversion therapy under the premise of
23 protection of privacy rights, but the same state
24 legislature that forces a female, who's seeking an
25 abortion, to have a six inch wand stuck between her

1 legs in a forced ultrasound before she can move
2 forward with that procedure.

3 COMMISSIONER BURDICK: Are you ready? I'd
4 like to move the adoption of the ordinance of the
5 Palm Beach County Commissioners, Palm Beach County,
6 Florida Establishing a Prohibition for Conversion
7 Therapy on Minors Ordinance.

8 COMMISSIONER KERNER: Second.

9 MAYOR MCKINLAY: I have a motion by
10 Commissioner Burdick to move the ordinance. I have
11 a second by Commissioner Kerner.

12 Commissioner Abrams, you are recognized.

13 COMMISSIONER ABRAMS: Well, I think in making
14 that motion, we don't want to just give short
15 shrift to the county attorney's caution/admonition
16 on this. You know, we'd be the first county, my
17 understanding, to pass such an ordinance.

18 There's -- it's a gray area. There's no doubt
19 that -- we've already been told there would be
20 lawsuits filed, and I have no doubt of that.
21 They're public-interest organizations that file
22 these lawsuits, such as the one in Tampa. That
23 would result in monetary exposure to the county. I
24 mean there's no doubt.

25 I'm mindful of the county attorney's

AFFIDAVIT OF PABLO RIVERA

BEFORE ME, the undersigned authority, personally appeared Pablo Rivera, who being first duly sworn, on oath, deposes and says:

1. My name is Pablo Rivera. I am over the age of 18 and have personal knowledge of the facts testified to herein.
2. I am currently serving as Senior Server Administrator for Palm Beach County.
3. My job responsibilities include technical and analytical work with responsibilities for technical consulting, server system configuration design, planning, implementation, management and operational support of servers. I have full access to the server operating system, programs, recovery and system utilities.
4. The attached email is a business record and is a true and correct copy of a record maintained in the ordinary course of business.
5. I have personal knowledge of the manner in which Palm Beach County maintains County employee emails. I am a records custodian for Palm Beach County.
6. Palm Beach County's Outlook emails are kept and stored by Palm Beach County in the regular, ordinary course of operations at or near the time the information was available by persons with knowledge of the facts recorded.
7. I personally searched and retrieved the attached email from Palm Beach County's server system.
8. Attached as Exhibit #1 is a true, complete and accurate copy of the December 18, 2017 email from Nick Soful to the Palm Beach County Board of County Commissioners [PBC002849].



FURTHER AFFIANT SAYETH NAUGHT.



Pablo Rivera, Senior Server Administrator
Palm Beach County Information Systems Services

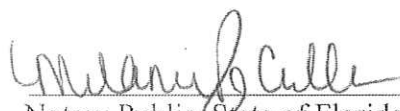
The foregoing affidavit was sworn to and subscribed before me this 10th day of September, 2018.

The Affiant is PABLO RIVERA.

Personally Known to me OR Produced Identification _____

Type of Identification Produced _____

{SEAL}



Notary Public, State of Florida



MELANIE JO CULLEN
MY COMMISSION # FF 244879
EXPIRES: June 28, 2019
Bonded Thru Budget Notary Services

From: [Nick Sofoul](#)
To: [BCC-All Commissioners](#)
Cc: davism23@gmail.com
Subject: Support for Conversion Therapy Ban
Date: Monday, December 18, 2017 10:16:33 PM

Distinguished Commissioners,

I'm writing to you in SUPPORT of a the proposed ban on "conversion therapy" for minors. As a resident and a member of the LGBT community, I have personally heard and been moved by the horrific stories of friends that have been subject to these cruel and inhumane methods. Passing this ordinance would send a strong message that PBC stands with the LGBT community in protecting children from mental and physical abuse of these archaic and dangerous practices.

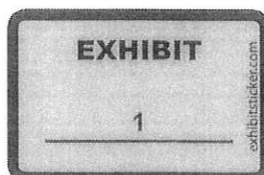
Thank you for your continued leadership. I am a proud PBC resident and hope that you will make the right choice and not be swayed by potential legal challenges by people who dedicate their lives to hatred and intolerance. Please vote in the affirmative.

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.nbcnews.com_feature_nbc-2Dout_outfront-2Dlgbtq-2Dactivist-2Dfights-2Dend-2Dconversion-2Dtherapy-2Dn708816&d=DwlFaQ&c=JMjxdiofvjJKeebMXBrIn8vDKQGalsQQJbzDQHviG0&r=Cu4R514FyZoqqp-Ua9A6wDw8514ndq5dV-cN8-a0jDA&m=t0Biz2omCJb1aeBh4Kpp4TZRYvN-hBE2rcy3Riy9sOo&s=FDezZ2IzzAQHQZhA8mgJfiB0lqLqrQsKGO3o7divQbE&e=

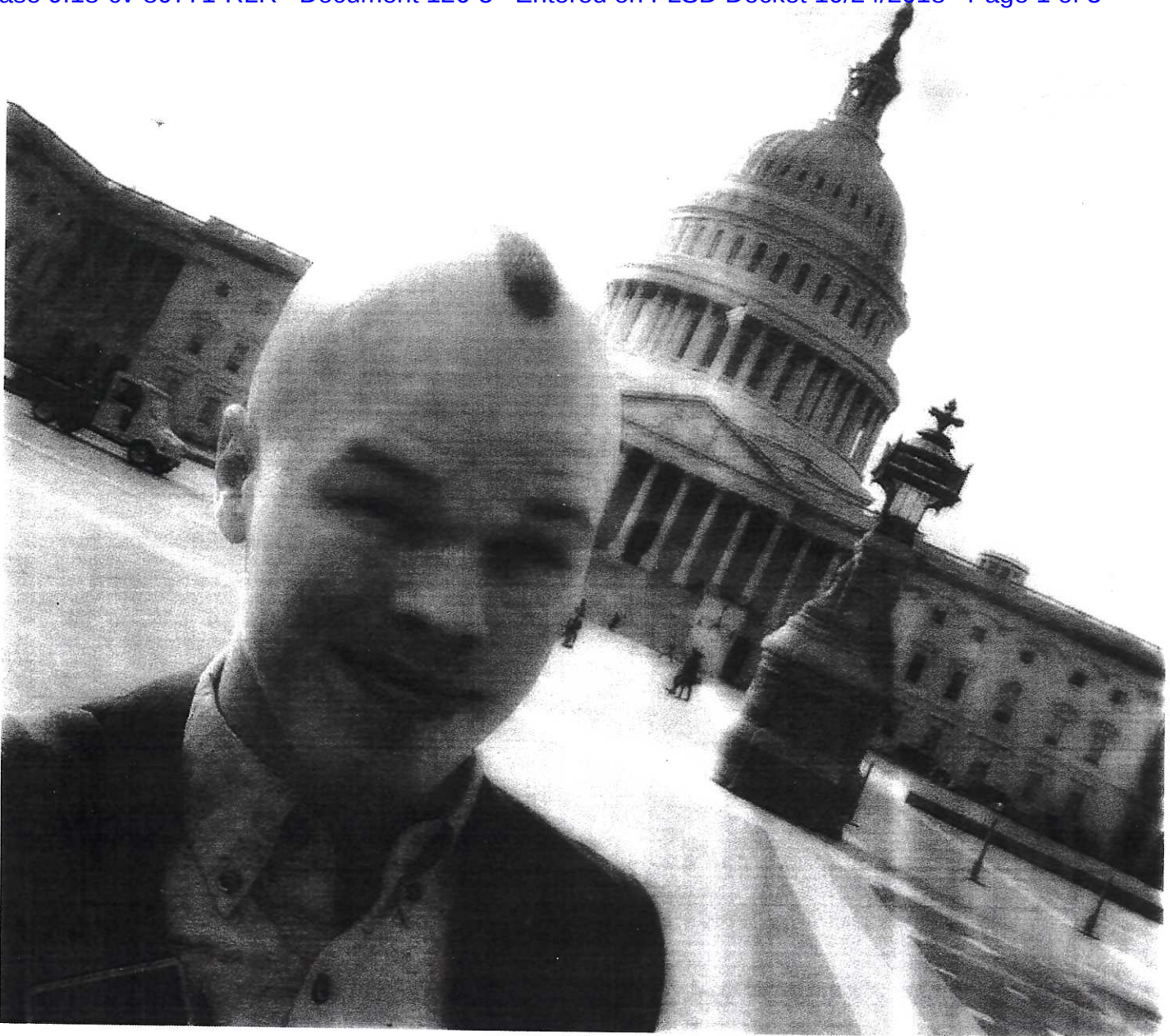
Respectfully,

Nicholas A. Sofoul, AICP
8151 Brigamar Isles Ave
Boynton Beach, FL 33473

Cell: (407)267-6682



PBC 002849



Samuel Brinton in front of the Capitol building in Washington, D.C. Courtesy of Samuel Brinton

Conversion therapy survivor Samuel Brinton wants to cure the world of the controversial practice aimed at changing a person's sexual orientation or gender identity.

Brinton said different conversion therapists use different techniques. From purely psychological methods to less common but more extreme techniques like electroshock therapy, the practice can take many forms, according to Brinton.

"[Conversion therapy] terrifies me, and it reminds me that the work never stops," said Brinton, who identifies as gender-fluid and prefers the non-binary pronouns they and them.

In December, Brinton helped launch 50 Bills 50 States, a grassroots campaign that aims for 2017 to be a year in which "every single state in the country submits a bill to protect LGBT youth from conversion therapy," according to its website.

Conversion therapy for minors is already banned in California, New Jersey, Illinois, Oregon, Vermont and Washington, D.C. So far, Brinton's campaign has raised more than \$11,000 from donors across the country to encourage lawmakers to submit bills in the 45 states where it remains legal. Brinton said their motivation is to spare others the pain they endured.

"Conversion therapy for me was nothing short of hell on earth," Brinton told NBC Out.





Samuel Brinton Courtesy of Samuel Brinton

The 29-year-old activist said they are the child of Southern Baptist missionary parents who believed homosexuality is a sin.

"I came out without realizing I was coming out," Brinton said. "My friends had found a Playboy [magazine] ... and it didn't even really affect me. I told this to my dad. like, 'Wow, I'm so proud I'm not having these thoughts and feelings [about women], but sometimes I do have those feelings when I think about Dale.' [who] was a really good friend of mine ... and I came out without realizing that I was doing it."

Brinton said they were 11 years old when their parents sent them to see a conversion therapist.

"There were seven King James Bibles on a stack on the coffee table," Brinton said, recalling the conversion therapist's small office in an Orlando, Florida strip mall.

Brinton said the so-called therapist used extreme and abusive techniques, including covering Brinton's hand in ice, wrapping it in conductive wires to apply heat, and even electroshock therapy, while forcing Brinton to look at images of men touching. Brinton said the therapist stopped the techniques when he showed Brinton images of men with women.

"First you're supposed to learn that it's painful to touch men, then you're supposed to learn that it's not painful to touch women. Then you're supposed to learn that it's excruciating if you're have sex with men," Brinton explained.

But none of this did anything to change Brinton's attraction to men.

"My parents and my therapist would tell me the reason I wasn't changing was because I didn't try hard enough. I didn't want it hard enough," Brinton said.

RELATED: [Trans Woman Spreads LGBTQ Awareness in Hasidic Community](#)

After two years of trying to change with no results, Brinton said they climbed to the top of the apartment building where their family lived and looked over the edge.

Recommended





Hillary Clinton: Trump will 'wholesale fire people' after midterm election

"I was going to jump off the roof, and my mom had found me, and I told her that God had changed me. That I was OK. I was going to be OK, because I basically just wanted the pain to stop," Brinton said.

"I knew it was a sin to lie, but I knew it was a greater sin to commit suicide, and I had to make that decision," Brinton explained.

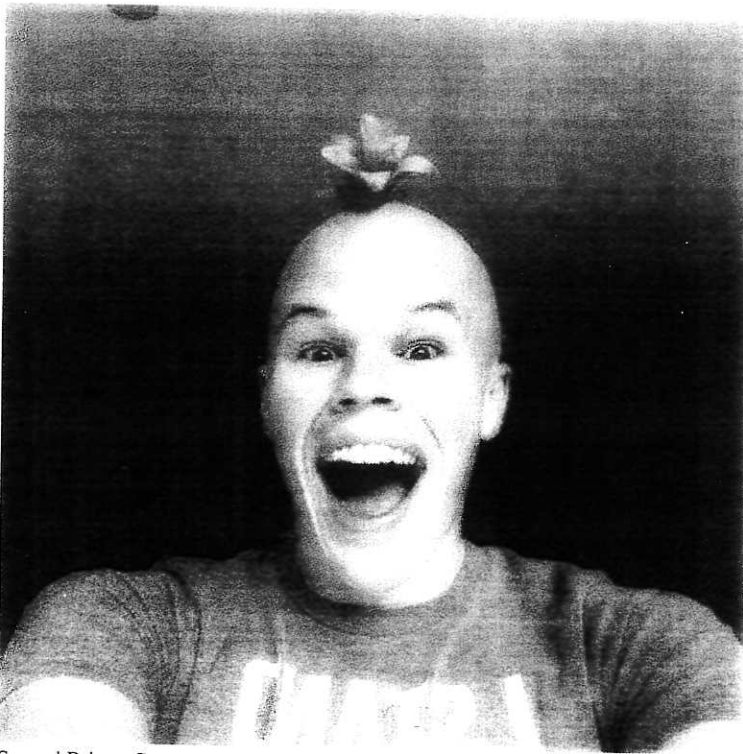
Brinton stayed closeted until they went to Kansas State University, where Brinton made friends with a lesbian couple.

"They took me in," Brinton said. "And I started realizing no, I'm not alone. It's OK to be who you are."

But coming out had a price: Brinton's parents forbid Brinton from coming home.

"I'm sure they did what they did because they loved me, and I'm hoping that in the end it will all be OK," Brinton explained, adding that the relationship is "slowly on the mend." Brinton forgives them but still suffers the side effects of conversion therapy.

"I puked after about 15 seconds of my first gay kiss because ... My mind had so specifically associated what I was doing as wrong," Brinton explained, adding, "I still have pain every single time my boyfriend kisses me."



Samuel Brinton Courtesy of Samuel Brinton

Brinton doesn't let the trauma stop them from being out and proud. The non-binary activist and MIT grad is an engineer and a senior policy analyst in Washington D.C. who advises Congress on nuclear power issues. Brinton is known around the nation's capitol "as the red mohawk guy in stilettos."

"It is not uncommon to see me in a Congressional hearing with my stilettos," Brinton said. "People from both sides of the aisle take me quite seriously, because they know I'm good at what I do regardless of how I look."

When Brinton is not advising Congress on nuclear policy, they are fighting to end conversion therapy through 50 Bills 50 States. The activist realizes the fight to end the practice won't be easy, but is determined.

"I'm here to make sure no child has to go through that again," Brinton concluded.

OutFront is a weekly NBC Out series profiling LGBTQ people who are making a positive difference in the community

Follow NBC Out on [Twitter](#), [Facebook](#) and [Instagram](#).

SPONSORED STORIES

by Taboola

8 Credit Cards You Should Not Ignore If You Own A Business

Nerdwallet

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [MaryLou Berger](#); [Hal Valeche](#); [Paulette Burdick P.](#); [Shelley Vana](#); [Steven Abrams](#); [Melissa McKinlay](#); [Priscilla Taylor A.](#)
Cc: [Verdenia Baker](#); [Denise Marie Nieman](#); [Carly Cass](#); [Chauncey Graham](#); [Dan Hall](#); [Hutch Floyd](#); [Jamie Todd Foreman-Plakas](#); [Jessica Blackman](#); [JP Sasser](#); [Matt McWatters](#); [Meredith Ockman](#); [Rae Franks](#); [Rand Hoch](#); [Reagan South](#); [Trent Steele](#)
Subject: PBCHRC - Request to enact a County Ordinance prohibiting conversion therapy for minors
Date: Monday, June 20, 2016 2:33:19 PM
Attachments: [BCC Conversion Therapy Ban memo 062016.pdf](#)

Attached please find a memorandum (with attachments) concerning enacting an ordinance to prohibit conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County. (A copy of the ordinance enacted earlier this month in Miami Beach is included in the packet.)

For more information concerning banning conversion therapy, please refer to an October 2015 report by the federal Substance Abuse and Mental Health Services Administration published which can be found at <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf> and a more recent report published by the Southern Poverty Law Center entitled "QUACKS: 'Conversion Therapists,' the Anti-LGBT Right, and the Demonization of Homosexuality" may be viewed by going to <https://www.splcenter.org/20160525/quacks-conversion-therapists-anti-lgbt-right-and-demonization-homosexuality>.

PBCHRC hopes that you will promptly take steps to prohibit the quackery in our county.

Thank you for your consideration.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
[561-358-0105](tel:561-358-0105)





Please respond to:

400 North Flagler Drive, #1402
West Palm Beach, Florida 33401
(561) 358-0105
rand-hoch@usa.net

Rand Hoch
President & Founder
WEST PALM BEACH

Jessica Blackman
Vice President
PALM BEACH GARDENS

Rae Franks
Secretary
WEST PALM BEACH

Daniel S. Hall
Treasurer
WEST PALM BEACH

Carly E. Cass
LAKE WORTH

Hutch Floyd
LAKE CLARKE SHORES

Jamie T. Foreman
LAKE WORTH

Chauncey Graham
WEST PALM BEACH

Matthew McWatters
PALM BEACH GARDENS

Meredith L. Ockman
WEST PALM BEACH

J. P. Sasser
PAHOKEE

Reagan South
BOCA RATON

W. Trent Steele
PALM BEACH GARDENS

P.O. Box 267
WEST PALM BEACH
Florida 33402

561.586.0203

pbchr@aol.com
www.pbchr.org

MEMORANDUM (via e-mail)

To: Mayor Mary L. Berger
Vice Mayor Hal Valeche
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla Taylor

From: Judge Rand Hoch (retired), President and Founder *mh*

Re: Prohibiting conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County

Date: June 20, 2016

“Conversion therapy” (also known as “reparative therapy,”) is counseling based on the erroneous assumption gay, lesbian, bisexual and transgender (LGBT) identities are mental disorders that can be cured through aversion treatment. These discredited practices have long been rejected by our nation’s leading medical and mental health organizations.

In 2001, David Satcher, U.S. Surgeon General during the administration of President George W. Bush, issued a report finding that "there is no valid scientific evidence that sexual orientation can be changed." Years later, California Governor Jerry Brown stated that “[t]hese practices have no basis in science or medicine and they will now be relegated to the dustbin of quackery."

Just last year, the federal Substance Abuse and Mental Health Services Administration concluded that “[d]irecting the child or adolescent to conform to any particular gender expression or identity, or directing parents and guardians to place pressure on the child or adolescent to conform to specific gender expressions and/or identities, is inappropriate and reinforces harmful gender stereotypes.” (The report, which called for the end of conversion therapy, can be found online at: <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>).

Palm Beach County Commissioners
June 20, 2016
Page two —

The Palm Beach County Human Rights Council (“PBCHRC”) recognizes that the practice of conversion therapy, which is most often forced upon minors by their parents or guardians, is extremely harmful. The “treatment” frequently provokes guilt and anxiety. Moreover, it is not uncommon for the therapy to result in depression, self-destructive behavior and suicide.

PBCHRC believes that licensed professionals engaged in conversion therapy are committing fraud and therefore Palm Beach County should enact an ordinance banning the practice.

To date, California, Illinois, New Jersey, Oregon, Vermont, the District of Columbia, Cincinnati and most recently, Miami Beach, have enacted laws to prevent licensed mental health providers from offering conversion therapy to minors. **In each of these jurisdictions, the ban applies only to state-licensed therapists. Unlicensed ones, such as those associated with faith-based groups, retain their religious freedom to engage in such work. Additionally, adults remain free to seek out such therapy.**

Over the years, there have been several legal challenges to the constitutionality of these laws. However, *on three occasions*, the U.S. Supreme Court has declined to hear challenges to the constitutionality laws banning conversion therapy for minors.

As noted above, nearly every major medical and psychological association in the country has come out in opposition to conversion therapy. These include, but are not limited to, .

American Academy of Child Adolescent Psychiatry
American Academy of Pediatrics
American Association of School Administrators
American Association for Marriage and Family Therapy
American College of Physicians
American Counseling Association
American Federation of Teachers
American Medical Association
American Psychiatric Association
American Psychoanalytic Association
American Psychoanalytic Association
American School Counselor Association
American School Health Association
National Association of Social Workers
National Association of School Psychologists
National Association of Secondary School Principals
National Education Association
Pan American Health Organization: Regional Office of the World Health Organization
School Social Work Association of America
World Psychiatric Association

Palm Beach County Commissioners
June 20, 2016
Page three —

On June 8, 2016, the City of Miami Beach became the first public employer in Florida to enact an ordinance banning conversion therapy for minors. I have attached a copy of the ordinance, along with the agenda backup and an article from *The Miami Herald*.

While the Palm Beach County Human Rights Council has asked West Palm Beach Mayor Jeri Muoio and the City Commission to enact an ordinance similar to the one in effect in Miami Beach, we hope that you will promptly take steps to ensure that the quackery known as conversion therapy is prohibited throughout Palm Beach County.

If you have any questions, please do not hesitate to contact me directly.

attachments

copies (w/attachments) via e-mail to: PBCHRC Board of Directors
County Administrator Verdenia Baker
County Attorney Denise Nieman

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [MaryLou Berger](#); [Hal Valeche](#); [Paulette Burdick P.](#); [Shelley Vana](#); [Steven Abrams](#); [Melissa McKinlay](#); [Priscilla Taylor A.](#)
Cc: [Denise Marie Nieman](#); [Helene Hvizd](#); [Todd J. Bonlarron](#); [Carly Cass](#); [Chauncey Graham](#); [Dan Hall](#); [Hutch Floyd](#); [Jamie Todd Foreman-Plakas](#); [Jessica Blackman](#); [JP Sasser](#); [Matt McWalters](#); [Meredith Ockman](#); [Rae Franks](#); [Rand Hoch](#); [Reagan South](#); [Trent Steele](#)
Subject: PBCHRC - Banning Conversion Therapy for Minors - Update
Date: Sunday, July 31, 2016 6:17:29 PM
Attachments: [BCC Conv Ther Memo Update 073116.pdf](#)

Please see attached memorandum dated July 31, 2016 which PBCHRC prepared in light of recent events.

Rand

On Mon, Jun 20, 2016 at 2:32 PM, Rand Hoch <rand-hoch@usa.net> wrote:

Attached please find a memorandum (with attachments) concerning enacting an ordinance to prohibit conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County. (A copy of the ordinance enacted earlier this month in Miami Beach is included in the packet.)

For more information concerning banning conversion therapy, please refer to an October 2015 report by the federal Substance Abuse and Mental Health Services Administration published which can be found at <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf> and a more recent report published by the Southern Poverty Law Center. entitled "QUACKS: 'Conversion Therapists,' the Anti-LGBT Right, and the Demonization of Homosexuality" may be viewed by going to <https://www.splcenter.org/20160525/quacks-conversion-therapists-anti-lgbt-right-and-demonization-homosexuality>.

PBCHRC hopes that you will promptly take steps to prohibit the quackery in our county.

Thank you for your consideration.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
[561-358-0105](tel:561-358-0105)





Please respond to:

400 North Flagler Drive, #1402
West Palm Beach, Florida 33401
(561) 358-0105
rand-hoch@usa.net

Rand Hoch
President & Founder
WEST PALM BEACH

Jessica Blackman
Vice President
PALM BEACH GARDENS

Rae Franks
Secretary
WEST PALM BEACH

Daniel S. Hall
Treasurer
WEST PALM BEACH

Carly E. Cass
LAKE WORTH

Hutch Floyd
LAKE CLARKE SHORES

Jamie T. Foreman
LAKE WORTH

Chauncey Graham
WEST PALM BEACH

Matthew McWatters
PALM BEACH GARDENS

Meredith L. Ockman
WEST PALM BEACH

J. P. Sasser
PAHOKEE

Reagan South
BOCA RATON

W. Trent Steele
PALM BEACH GARDENS


P.O. BOX 267
WEST PALM BEACH
Florida 33402

561.586.0203

pbchr@aol.com
www.pbchr.org

MEMORANDUM (via e-mail)

To: Mayor Mary L. Berger
Vice Mayor Hal Valeche
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla Taylor

From: Judge Rand Hoch (retired), President and Founder 

Re: Banning conversion therapy for minors by state licensed professionals- UPDATE

Date: July 31, 2016

On August 1, our eyes will be on the Seattle (Washington) City Council which will consider a ban on conversion therapy, similar to the one that the Palm Beach County Human Rights Council ("PBCHRC") has asked you, and the West Palm Beach City Commission, to enact. We expect the ban to be enacted, making Seattle the fourth local government (after Cincinnati, Washington, DC and Miami Beach) to ban conversion therapy. It is PBCHRC's hope that once the County Attorney has offered an opinion concerning the legal aspects of enacting such a ban, the Board of County Commissioners will take prompt action to protect LGBTQ children throughout the County.

According to the media, Mat Staver of the Liberty Counsel has threatened to file suit in the event Palm Beach County follows the lead set by California, Illinois, New Jersey, Oregon, Vermont, the District of Columbia, Cincinnati and Miami Beach and enacts an ordinance preventing licensed mental health providers from offering conversion therapy to children.

The Liberty Counsel has been identified as a "hate group" by the Southern Poverty Law Center. For further information concerning the Liberty Counsel go to: www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel

Palm Beach County Commissioners

July 31, 2016

Page two —

On a personal note, I am very familiar with Mat, as he was a frequent litigator in my courtroom during the mid-1990s. Of the two cases he took to trial, he won one and lost one. Although he appealed the one he lost, my order was upheld by the First District Court of Appeal.

Mat and his Liberty Counsel have had a rough time recently. While he gained more notoriety representing Rowan County (Kentucky) Court Clerk Kim Davis, Liberty Counsel initiatives have not fared well in the courts. The US. Supreme Court has soundly rejected the Liberty Counsel's positions on marriage equality and abortion – and has repeatedly refused to overturn bans on conversion therapy.

No doubt, these rejections have impaired Mat's ability to raise funds for the Liberty Counsel. It appears to me that he is going to try raising money by attempting to preserve the rights of licensed therapists to subject minor children to what constitutes verbal, and sometimes physical child abuse known as conversion therapy. In my opinion, this is not a very wise decision in light of all of the court rulings on conversion therapy bans.

In his threat to file suit if Palm Beach County enacts a ban on conversion therapy, Mat emphasized the cost the taxpayers of Palm Beach County would have to bear to litigate his lawsuit.

While I trust that Palm Beach County would find the funds to protect minor children from the abuse of conversion therapy, the Palm Beach County Human Rights Council has sought – and has received – confirmation from the National Center for Lesbian Rights (NCLR), our partner in this initiative, that NCLR stands ready to pay for attorneys, expert witnesses, court costs and other litigation expenses that would otherwise have to come out of the County Attorney's budget. In addition, PBCHRC is awaiting response from the Southern Poverty Law Center (SPLC) regarding similar financial and legal assistance. Both the NCLR and the SPLC have litigated attempts to overturn conversion therapy bans before – and as Denise will point out, both have been successful. **So, rest assured, in the event you enact the requested ban and Mat Staver carries out his threat, the taxpayers of Palm Beach County will not be burdened with the expense of litigation.**

On another note, I just watched the video of the public comments made by Dr. Julie Hamilton (f/k/a/ Julie Harren) at the June 21 Commission meeting. I was fascinated.

While Dr. Hamilton identified herself as the former president of the Alliance for Therapeutic Choice and Scientific Integrity, she failed to inform you that from 2009 to 2011, she served as president of President of National Association for Research and Therapy of Homosexuality (NARTH).

Palm Beach County Commissioners
July 31, 2016
Page three —

NARTH was an extremely well-funded for-profit organization made up of therapists, like Dr. Hamilton, who sought to diminish the rights of LGBT people by singling us out as having mental disorders. The organization advocated conversion therapy for children as young as three years old! In addition, the organization encouraged parents to have their children marginalize and ridicule LGBT children:

“Don’t interfere, and let the other children ridicule the child who has lost that clear boundary between play-acting at home and the reality needs of the outside world. Maybe, in this way, the child will re-establish that necessary boundary.”

Psychiatrist Joseph Berger, a member of NARTH’s Scientific Advisory Committee

In 2009, more than 100 of your constituents protested the NARTH conference organized by Dr. Hamilton in West Palm Beach. (In 2012, the organization’s 501(c)(3) tax exempt status was revoked by the Internal Revenue Service.)

In her public comments before you last week, Dr. Hamilton stated that it is “not even debated any more by researchers that people are not simply born gay”, that “[t]here is no such things as conversion therapy. It does not exist. That is a myth that there is something out there that is harming people.” Moreover, she claimed that the therapies she and her colleagues would like to continue to use are “mainstream”.

None of that is true.

What is true is that Dr. Hamilton, by selling her conversion therapy snake oil, has gotten rich by selling the quackery of conversion therapy to the parents of LGBTQ children – and by selling instructional materials to other therapists practicing conversion therapy. Within a very short period of time, she has gone from being a lowly paid counselor at a religious college in Chattanooga to living quite comfortably here in Palm Beach County. Therefore, Dr. Hamilton has a significant economic reason for opposing the ban: the more state and local governments impose bans on conversion therapy, the less income she and her colleagues will earn.

As no doubt Denise will tell you, courts across the nation have ruled that misrepresenting homosexuality as a disorder in marketing conversion therapy services is a violation of consumer protection laws.

Earlier this year, NCLR, SPLC and the Human Rights Campaign (which is not affiliated with PBCHRC) filed a federal consumer fraud complaint with the Federal Trade Commission seeking to ban conversion therapy nationwide. The complaint was filed against People Can Change, an organization which claims sexual orientation and gender identity can be changed through therapy and counseling. The complaint alleges that practitioners of conversion therapy defraud consumers into believing that being LGBT is a mental illness or emotional defect that needs to be cured. Moreover, the complaint alleges that the advertising of that false claim violates the Federal Trade Commission Act which prohibits unfair and deceptive practices.

Palm Beach County Commissioners
July 31, 2016
Page four —

In addition, the Therapeutic Fraud Prevention Act has been introduced in Congress to empower the Federal Trade Commission to crack down on conversion therapy.

However, we can not wait for the federal government to take action. Since 1990, the Palm Beach County Board of County Commissioners has not waited for the federal government to take action. Not for the Civil Rights Act. Not for the Fair Housing Act. Not for the Consolidated Omnibus Budget Reconciliation Act. And not for the Family and Medical Leave Act. You – and your predecessors – have taken the necessary steps to protect women and minorities, while the federal government has remained deadlocked on LGBT rights legislation.

PBCHRC hopes you find this information helpful.

If you have any questions, please do not hesitate to contact me directly.

attachments

copies via e-mail to: PBCHRC Board of Directors
Assistant County Administrator Todd Bonlarron
County Attorney Denise Nieman
Assistant County Attorney Helene Fvizr

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: Conversion therapy ordinance
Date: Thursday, August 04, 2016 11:28:55 PM

No rush on this one.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Thu, Aug 4, 2016 at 6:09 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Hi Rand,

We had hoped to issue an opinion by week's end but that's not going to happen.

My intention, as a professional courtesy especially on such a controversial and highly charged topic, is to share our position with you next week before officially rendering an opinion to the BCC. After you've had a chance to see where we're heading, a formal response to the BCC will be issued.

Enjoy your evening!

Denise Marie

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: Conversion Therapy
Date: Tuesday, August 09, 2016 1:10:37 PM

Works for me. And thanks.

On Tuesday, August 9, 2016, Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hi Rand,

A quick update. I know you said no rush at all, but wanted to let you know where I'm at since my last email.

Be on the lookout for our analysis the week of August 22nd.

Enjoy your day.

Denise Marie

Denise Marie Nieman

Palm Beach County Attorney

301 N. Olive Avenue

Suite 601

West Palm Beach, FL 33401

561.355.3389

dnieman@pbcgov.org

"Practicing Law with Civility is no longer just an option; in Florida, it is mandatory"

From: [Denise Marie Nieman](#)
To: [Rand Hoch](#)
Cc: [Helene Hvizd](#)
Bcc: [Denise-Marie NIEMAN](#)
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Friday, August 26, 2016 5:03:27 PM

Hey Rand,

Greetings from Detroit's airport.

It's fascinating how great lawyers can look at the exact same language and make completely opposite conclusions.

I appreciate that you know much more about the subject than we do, but as you can tell based on our convo yesterday, I made myself very familiar with the issue. On a very basic level, how can we say that CT is a local issue? The entire field of therapy regulation is conducted at the state level.

And if we moved away from regulations into what's ok to advertise as you suggested yesterday, the BCC would have to make significant assumptions that it's not qualified to make.

Helene, feel free to jump in here if any of the cases you found shed more light on the issue.

Rand, I was hoping you'd be able to provide us with something more factually specific. We're on standby.

I truly appreciate your openness and willingness to exchange information and understand where we're coming from. Yesterday's conversation suggested just that. Maybe your team has something at the ready. This is a classic non-localized issue in my view.

Ok, time for me to board. Bon voyage to you as well! My friend is on her way to Scotland right now.

Denise Marie

On Aug 26, 2016, at 3:40 PM, Rand Hoch <rand-hoch@usa.net> wrote:

Helene,

Denise advised me of her concern that "implied preemption" could be an obstacle in having the BCC move forward with PBCHRC's requested ordinance to prohibit conversion therapy on minors.

I have asked the national legal team PBCHRC has put together to looking at this more fully. However, having only briefly researched the issue, I am at a loss to



see how "implied preemption" could even be a valid concern, in light of the precedent set forth by the Florida Supreme Court in *Sarasota Alliance for Fair Elections v. Browning*, 28 So.3d 880 (Fla. 2010). Here are some excerpts from the opinion that I found persuasive:

Preemption is implied "when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." [citation omitted] Implied preemption is found where the state legislative scheme of regulation is pervasive **and the local legislation would present the danger of conflict with that pervasive regulatory scheme.** [citations omitted] In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." [citation omitted] . The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, **and the character of the obligations imposed by the statute are all vital to this determination.** [citation omitted] .

... Florida courts have not found an implied preemption of local ordinances which address local issues. As even the Second District explained in the instant case, "[i]t generally serves no useful public policy to prohibit local government from deciding local issues." [citation omitted]. For example, in *Phantom of Clearwater, Inc. v. Pinellas County*, the Second District concluded that a local ordinance regulating businesses that sold fireworks was not preempted by state statutes regulating both the sale and use of fireworks. [citation omitted] ... The court determined that this did not constitute a "pervasive scheme of regulation." Further, **it found "no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict" with the statutes.**[citation omitted] .

This statutory scheme undoubtedly recognizes that **local governments are in the best position to make some decisions for their localities.**

(all of the emphases has been added by me)

Having reviewed Chapters 458, 459, 490 or 491, Florida Statutes, I could find no legislative scheme that is "so pervasive" as to evidence an intent to preempt the requested county ordinance. Moreover, it is clear that there is no actual conflict between the proposed ordinance and *any* provision in Florida Statutes. Therefore, in light of the clear statements from the Florida Supreme Court, in order for me to understand where you are coming from, it would be beneficial for me to review the legal authority you have been relying upon that, at the moment, seems to be presenting an obstacle to moving forward with our requested ordinance to protect local minors from abuse.

Please let me know when we can get together.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Cc: [Helene Hvizd](#)
Subject: Re: PBCHRC - PBC Conversion Therapy Ban Ordinance - "Implied Preemption"; Proposed Ordinance DRAFT #3
Date: Sunday, August 28, 2016 5:22:09 PM

I know, I know. I'm hoping the better legal minds than mine in my group (the ones who don't open my emails on weekends and evenings), come up with something!

Anyway, my favorite ice cream/gelato place in Paris, Berthillon on Île Saint-Louis re-opens on September 1st. If you are an ice cream fan, it is worth a stop.

Enjoy!

Rand

On Sun, Aug 28, 2016 at 4:17 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Bonsoir Rand and Helene,

Rand, I'm jumping in here only to say that there are significant differences in what you've proposed in the past and what you're asking the BCC to do this time...it was clear that the county could do what it did. Not so much at all with your latest ask, try as hard as we might to find something. There comes a point where others with jurisdiction have to step up.

Bonne nuit,
Denise Marie

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
[561.355.3389](tel:561.355.3389) (office)
[561.355.3600](tel:561.355.3600) (fax)
dnieman@pbcgov.org

From: flagler400@gmail.com [flagler400@gmail.com] on behalf of Rand Hoch [rand-hoch@usa.net]
Sent: Sunday, August 28, 2016 1:49 PM
To: Helene Hvizd
Cc: Denise Marie Nieman
Subject: PBCHRC - PBC Conversion Therapy Ban Ordinance - "Implied Preemption"; Proposed Ordinance DRAFT #3

Helene,

While I await more input from our legal team, I am still confused about your concern with "implied preemption". In Denise's recent response from the Detroit airport (she is always working!), she asked "how can we say that CT is a local issue? The entire field of therapy regulation is conducted at the state level." If that is the case, wouldn't the "entire field" of the regulation of discrimination in housing, public accommodations and employment also be "conducted at the state level"? if so, why would "implied preemption" not have applied in the years between 1990 and 2015 when the Board of County Commissioners:



- a. amended the Fair Housing Ordinance to include "sexual orientation and in 2007 to include "gender identity and expression" (1990);
- b. amended the Equal Employment Ordinance to prohibit discrimination based on "sexual orientation" and "gender identity and expression" (2002 and 2007); and or
- c. amended the the Palm Beach County Ordinance for Equal Opportunity to Housing and Places of Public Accommodation by extensively expanding the definition of "places of public accommodation" (2015).

Rand

P.S. To address the concern that the BCC would have to make significant assumptions that it's not qualified to make, it appears that other state and local governmental bodies have made those assumptions based on the existing scientific and medical information. They have put the bases therefor in their ordinances as statutes, just as PBCHRC is proposing the County do proposed in the attached DRAFT #3.

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: [Denise Marie Nieman](#)
To: [Helene Hvizd](#); [Rand Hoch](#)
Subject: RE: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Monday, August 29, 2016 7:17:17 PM

Thanks, Helene!

Rand, that sums it up.

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
561.355.3389 (office)
561.355.3600 (fax)
dnieman@pbcgov.org

From: Helene Hvizd
Sent: Monday, August 29, 2016 4:55 PM
To: Rand Hoch
Cc: Denise Marie Nieman
Subject: RE: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Hello Rand,

In follow-up to your email of Friday, I offer the following synopsis of legal research conducted on the question of whether a County may enact a conversion therapy ban. The dual considerations a local government must address when determining whether it is able to enact legislation in a particular area are preemption and conflict. The Florida Legislature's scheme of licensing and regulating businesses and professions is pervasive, (chapter 458, chapter 459, chapter 490, chapter 491), evidencing an intent that this area be preserved to the Legislature. Neither county nor municipal governments license counselors, and there is no support in the law for a conclusion that regulating counselors is a "local issue" as addressed in *Browning*. To the contrary, every indication is that regulation of businesses and professions, including counselors, is a state issue.

As to conflict, a local ordinance regulating the treatment available to patients would conflict with Florida's broad Patients' Bill of Rights, section 381.026(4)(d), and section 456.41 of the Florida Statutes. Counties are prohibited from enacting an ordinance that conflicts with general law.

The Federal Courts addressing conversion therapy bans in California and New Jersey have examined state statutes, and upheld them, in part, on the basis that those laws were rationally related to a legitimate state interest. The state is charged with regulating and licensing businesses and professions, including counselors, thus they are more readily able to satisfy this test than the County would be. The County plays no part in regulating counselors.

Thank you,



Helene

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch
Sent: Friday, August 26, 2016 3:40 PM
To: Helene Hvizd
Cc: Denise Marie Nieman
Subject: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Helene,

Denise advised me of her concern that “implied preemption” could be an obstacle in having the BCC move forward with PBCHRC’s requested ordinance to prohibit conversion therapy on minors.

I have asked the national legal team PBCHRC has put together to looking at this more fully. However, having only briefly researched the issue, I am at a loss to see how “implied preemption” could even be a valid concern, in light of the precedent set forth by the Florida Supreme Court in *Sarasota Alliance for Fair Elections v. Browning*, 28 So.3d 880 (Fla. 2010). Here are some excerpts from the opinion that I found persuasive:

Preemption is implied "when `the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." [citation omitted] Implied preemption is found where the state legislative scheme of regulation is pervasive **and the local legislation would present the danger of conflict with that pervasive regulatory scheme.** [citations omitted] In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." [citation omitted] . The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, **and the character of the obligations imposed by the statute are all vital to this determination.** [citation omitted] .

... Florida courts have not found an implied preemption of local ordinances which address local issues. As even the Second District explained in the instant case, "[i]t generally serves no useful public policy to prohibit local government from deciding local issues." [citation omitted]. For example, in *Phantom of Clearwater, Inc. v. Pinellas County*, the Second District concluded that a local ordinance regulating businesses that sold fireworks was not preempted by state statutes regulating both the sale and use of fireworks. [citation omitted] ... The court determined that this did not constitute a "pervasive scheme of regulation." Further, **it found "no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict" with the statutes.**[citation omitted] .

This statutory scheme undoubtedly recognizes that **local governments are in the best position to make some decisions for their localities.**

(all of the emphases has been added by me)

Having reviewed Chapters 458, 459, 490 or 491, Florida Statutes, I could find no legislative scheme that is "so pervasive" as to evidence an intent to preempt the requested county ordinance. Moreover, it is clear that there is no actual conflict between the proposed ordinance and *any* provision in Florida Statutes. Therefore, in light of the clear statements from the Florida Supreme Court, in order for me to understand where you are coming from, it would be beneficial for me to review the legal authority you have been relying upon that, at the moment, seems to be presenting an obstacle to moving forward with our requested ordinance to protect local minors from abuse.

Please let me know when we can get together.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Helene Hvizd](#)
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Tuesday, August 30, 2016 12:36:05 PM

Bummer.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Tue, Aug 30, 2016 at 10:37 AM, Helene Hvizd <HHvizd@pbegov.org> wrote:

Hi Rand,

No, our emails are not exempt from a public records request. The work product exemption contained in Chapter 119 that applies to litigation work product of agency attorneys is waived when the work product is disclosed. *See Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007).

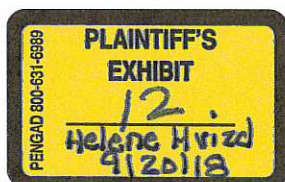
Helene

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch
Sent: Tuesday, August 30, 2016 5:56 AM
To: Denise Marie Nieman; Helene Hvizd
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Since The Liberty Counsel has threatened litigation, I trust that all of our e-mail concerning the litigation are temporarily exempt from public records requests in accordance with Chapter 119.

Is that your understanding as well?

Rand



From: [Denise Marie Nieman](#)
To: [Rand Hoch](#)
Bcc: [Denise Marie Nieman](#)
Subject: Re: CT Opinion
Date: Sunday, March 05, 2017 7:33:32 AM

Good morning Rand!

I was tempted to respond from Miami but knew I'd focus too much on the awesome VC event and didn't want you to have regrets for not going. Definitely go next year!

I suggested that it was a state issue which would eliminate any discussion at the local level so I'm not sure where the working work the cities came in. I also mentioned working with the state association governing therapists to mandate compliance with the national APA code of conduct. That seems to have the most teeth.

As for the other, cities have shared with is their concerns about implied preemption and other areas that we've discussed with you. It's not just a county issue. What I said is that cities are willing to take greater risks with ordinances, they're smaller, know their constituents in a different more hometown way, sign-off on things we wouldn't, etc. We can discuss further on the phone if you wish, but there's a whole different dynamic at play. Panhandling is a great example. Lots of cities did what we told the bcc they couldn't.

We'll keep it in "still researching" mode, but know that nothing will change just because more cities enact ordinances, unless one is tested and upheld on issues of concern to us. It would also be helpful to see how they're enforcing the ordinances and the results of their efforts. Any info you can gather along these lines would be helpful.

By the way, we did confirm with the property appraisers office that the CT therapists you shared with us all work in incorporated areas.

Have a great Sunday!

DM

On Mar 4, 2017, at 09:43, Rand Hoch <rand-hoch@usa.net> wrote:

The Veuve Clicquot Carnival sounded tempting, but I passed up on it (probably a big mistake). Have fun there.

When we first started talking about the county ordinance, you suggested we work on the state level, as well as work with the 39 municipalities. So I thought that the legal concerns you had were unique to counties. Please correct me if I am wrong. And if I am wrong, perhaps your staff needs to take a lot more time in working on this issue so that we can rack up a few more cities, since none of the city attorneys so far seem to be concerned about implied preemption, etc. I'd hate for your opinion to bring our municipal efforts to a "screeching halt" (a favorite term of my Bankruptcy professor, te late Judge Alexander Paskay).

Thanks!



On Sat, Mar 4, 2017 at 9:22 AM, Denise Marie Nieman

<DNieman@pbcgov.org> wrote:

Good morning, Rand!

Ok, that's good to know because I thought there was some urgency when we last met.

As for my opinion, I may not reference Jeff by name but certainly will emphasize that it's a state issue. As for the cities, there's no stopping them from using my opinion. Maybe you don't want it at all? You're not racking up any counties...maybe continue with your city focus? Something to consider. It has been mentioned to us before that cities were waiting for us to issue an opinion...but since it hasn't come out yet, some went ahead anyway.

Let me know.

On a bubblier note, any chance that you're heading to Miami today for Veuve Clicquot Carnaval? Sounds like something up your alley. If so, I'll see you there!

Enjoy your weekend no matter where and how...just make sure champagne comes into play at some point.

Denise Marie

On Mar 4, 2017, at 08:52, Rand Hoch <rand-hoch@usa.net> wrote:

Denise,

No rush on this at all. The longer we wait, the more local ordinances will be enacted - or at least in the pipeline. And I'm sure your office has more pressing matters.

I'm hoping that your opinion includes your recommendation that the state enact Jeff Clemens bill S, 578 (<https://www.flsenate.gov/Session/Bill/2017/00578>) to address the issue statewide -- and that municipalities in the County continue to enact local ordinances. PBCHRC does not want anything in your opinion to be perceived as discouraging municipalities from taking action similar to what has been done (so far) in West Palm Beach, Lake Worth, Boynton Beach and Riviera Beach.

Enjoy the weekend.

Rand

P.S. It looks like we've still got 5 solid votes and we still have not spoken directly with Steve and Hal.

On Fri, Mar 3, 2017 at 5:52 PM, Denise Marie Nieman
<DNieman@pbcgov.org> wrote:

Hey Rand!

I still intend to send out the opinion before the next bcc meeting 3/14, but the Mayor won't be there. Not sure where your 12 floor discussions ended up...if it matters. Just wanted to let you know.

If it does matter, I'd welcome the extra time...next meeting is 4/4.

Let me know.

Have a great weekend!!!

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](mailto:Denise_Marie_Nieman)
Subject: Re: PBCHRC - Countywide Conversion Therapy Ban
Date: Wednesday, April 12, 2017 5:53:21 PM

Thanks.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Wed, Apr 12, 2017 at 5:41 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Hi Rand,

Of course! In fact I told the comm'rs why I haven't issued an opinion yet after you and I spoke...that we didn't want what I had to say to impact your efforts with the cities. I'm surprised you are getting questions unless they didn't want to take my word for it. In any event, I was holding off indefinitely. Let me know when you want it to go, keeping in mind that nothing that happens with cities holds much persuasive value unless a court rules on the exact issues I'm concerned about.

I'll be on standby...

> On Apr 12, 2017, at 17:30, Rand Hoch <rand-hoch@usa.net> wrote:

>

> Denise,

>

> Can we put off your memo until July? We've got a Final Hearing in July in one of the municipalities, and it would be a big help. (I've explained to the Commissioners who have inquired why we aren't moving forward quickly with the County Ordinance, and they are on board).

>

> Thanks!

>

> Rand

>

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



From: [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: PBCHRC - Directing the County Attorney to draft a countywide ordinance to ban conversion therapy for minors by licensed professionals
Date: Wednesday, September 20, 2017 5:49:04 PM

We really need it to include both incorporated and unincorporated.

I don't foresee the League's process to be lengthy. The topic was brought up earlier in the year by Lake Worth City Commissioner Andy Amoroso on the only opposition came from Wellington Mayor Anne Gerwig. If you can get a draft done soon, I think the League should be able to get it on the agenda for their meeting in October which should allow the BCC to hold the two hearings in November.

On Wed, Sep 20, 2017 at 5:14 PM Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hey Rand,

When you say countywide, you mean countywide applicable in the unincorporated and incorporated areas? I ask because many people use it just to mean throughout the county's jurisdiction. You have so many cities who moved forward already and I still have enforcement concerns...which I mentioned in my BCC email (being relieved that none of the 6 were in the unincorporated area). Please clarify, yet know that I'll be recommending unincorporated only. Besides, that way we won't have to go through the potentially lengthy league of cities process.

Thanks!

Denise Marie

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch

Sent: Wednesday, September 20, 2017 2:49 PM

To: Paulette Burdick P. <PBurdick@pbcgov.org>; Melissa McKinlay <MMcKinlay@pbcgov.org>; Hal Valeche <HValeche@pbcgov.org>; Mack Bernard <MBernard@pbcgov.org>; MaryLou Berger <MBerger@pbcgov.org>; Steven Abrams <SAbrams@pbcgov.org>; Dave Kerner M. <DKerner@pbcgov.org>

Cc: Todd J. Bonlarron <TBonlarr@pbcgov.org>; Denise Marie Nieman <DNieman@pbcgov.org>; Trent Steele <trent@trentsteele.com>

Subject: PBCHRC - Directing the County Attorney to draft a countywide ordinance to ban



conversion therapy for minors by licensed professionals

Dear colleagues,

First of all, let me congratulate you on the excellent job done by the County in dealing with Hurricane Irma. We dodged a huge bullet, your work clearly demonstrated to the public that the County was fully prepared for whatever was coming our way. Kudos to you and to county staff.

Over the past few weeks, Denise and I have spoken concerning banning conversion therapy countywide. It is my hope that you will give her direction at next week's BCC meeting to draft an ordinance to prohibit both the practice and the advertising of conversion therapy, as outlined in PBCHRC's e-mail dated August 28, 2017 (See below).

PBCHRC's Board hopes that the vote to direct -- as well as the votes to enact -- will be unanimous, just as the votes by the Miami-Dade County Commissioners have been. They are expected to unanimously vote on Final Reading on October 3 to enact a countywide ordinance to ban conversion therapy for minors by licensed professionals.

Thank you.

Judge Rand Hoch (retired)

President and Founder

Palm Beach County Human Rights Council

400 North Flagler Drive, #1402

West Palm Beach, FL 33401

561-358-0105

pbchrc.org

----- Forwarded message -----

From: **Rand Hoch** <rand-hoch@usa.net>

Date: Mon, Aug 28, 2017 at 4:58 PM

Subject: PBCHRC - Moving forward with a countywide ordinance to ban conversion therapy for minors by licensed professionals

To: Denise Nieman <dnieman@pbcgov.org>

Cc: "Todd J. Bonlarron" <TBonlarr@pbcgov.org>, Paulette Burdick <pburdick@pbcgov.org>, Melissa McKinlay <mmckinlay@pbcgov.org>, Hal Valeche <hvaleche@pbcgov.org>, Mack Bernard <Mack@mackbernard.com>, Mary Lou Berger <mberger@pbcgov.org>, Steve Abrams <sabrams@pbcgov.org>, Dave Kerner <dkerner@pbcgov.org>, Trent Steele <trent@trentsteele.com>

Denise,

On behalf of the Board of Directors of PBCHRC, I want to thank you for delaying moving forward with the direction received from the County Commissioners last summer regarding providing information concerning our request that the Commissioners enact a countywide ordinance to ban conversion therapy for minors by licensed professionals.

Over the past year, conversion therapy bans have been enacted in Florida in West Palm Beach, Lake Worth, Boynton Beach, Riviera Beach, Delray Beach, Wellington, Greenacres, Miami, Wilton Manors, Miami Beach, Bay Harbor Islands, El Portal, Key West and Tampa. And on September 9, the Miami-Dade County Board of County Commissioners will have Final Reading on their ordinance banning conversion therapy for minors. From what I have been told, it appears that the vote will be unanimous, just as it was on First Reading earlier this summer.

In addition the the Florida laws, across the nation, California, Connecticut, Illinois, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, the District of Columbia, Pima County (AZ), Cincinnati (OH), Seattle (WA), Pittsburgh (PA), Toledo (OH), Columbus (OH), Philadelphia (PA), Allentown (PA), Dayton (OH) and Athens (OH) also have laws preventing licensed mental health providers from offering conversion therapy to minors.

At this time, PBCHRC would like you to move forward with providing your office's opinion concerning enacting a countywide ordinance to ban conversion therapy for minors by licensed professionals. As we have discussed, your staff's legal opinions may well not be in agreement with that of PBCHRC and the 12 municipal attorneys (and one County Attorney) in Florida whom have addressed these matters, but be that as it may, we would like to move forward at this time.

The purpose of the ordinance we are requesting is to protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, from exposure to the serious harms caused by conversion therapy. Due to the serious harms to minors caused by conversion therapy/reparative therapy/sexual orientation change efforts, it should be prohibited for a licensed therapist to provide conversion therapy/reparative therapy/sexual orientation change efforts services to minors throughout Palm Beach County. Additionally, the County has an interest in protecting all of its residents from unfair or

deceptive trade practices, and advertising that a person provides conversion therapy/reparative therapy/sexual orientation change efforts to minors should specifically constitute false and deceptive acts. Enacting these provisions would be exercises of police power of the County for the public safety, health, and welfare; and its provisions shall be liberally construed to accomplish that purpose.

In the event you do receive direction from the BCC, it is PBCHRC's hope that an **ORDINANCE RELATED TO PROHIBITION OF UNFAIR OR DECEPTIVE TRADE PRACTICES AND TO PROHIBIT OF CONVERSION THERAPY ON MINORS** which your office will draft will serve as a model for other counties throughout Florida. PBCHRC would like it to cover the following revisions to the County's Code of Ordinances:

I. PROHIBITION OF CONVERSION THERAPY

Chapter 18, Miscellaneous Provisions and Offenses would be amended to prohibit conversion therapy on minors by licensed practitioners for monetary compensation. Unlicensed practitioners (e.g., clergy) are specifically excluded from the ordinance). Civil penalties payable to Palm Beach County are \$500.00 for the first violation and \$1,000.00 for each repeat violation. Each day that a violation occurs constitutes a separate offense.

II. ADVERTISING OF CONVERSION THERAPY PROHIBITED

Chapter 9, Consumer Affairs would be amended to prohibit advertising by any provider of conversion therapy, where such advertising claims—

- (1) to change another individual's sexual orientation or gender identity;
- (2) to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; or
- (3) that such efforts are harmless or without risk to individuals receiving such therapy.

It is PBCHRC's hope that should the BCC give you direction to draft an ordinance, that First Reading would occur at the first BCC meeting in November. Hopefully, that timeframe will provide your staff with adequate time to put everything together.

Again, thank you for extending PBCHRC the courtesy of waiting until significant progress has been made in Florida before moving forward.

Judge Rand Hoch (retired)

President and Founder

Palm Beach County Human Rights Council

400 North Flagler Drive, #1402

West Palm Beach, FL 33401
561-358-0105

pbchrc.org

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

--

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: Conversion Therapy
Date: Friday, September 08, 2017 7:40:06 AM

Thank you -- and keep safe.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Thu, Sep 7, 2017 at 6:52 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Dear Commissioners,

This is in response to the BCC's direction last summer to research the viability of the adoption of a County ordinance banning "Conversion Therapy", a form of counseling that attempts to change one's sexual orientation. The direction was given at the request of Rand Hoch on behalf of the PBC Human Rights Council.

We strongly believe that this area should be regulated by the state since it is the state who licenses and otherwise governs therapists. However, we are cognizant of the likelihood of that happening after Senator Clemens made numerous attempts to enact state law, all of which failed. I am also of the opinion that professional oversight organizations should mandate compliance with their guidelines instead of making them aspirational, which would allow for a more direct consequence to the therapist than attempting to enforce a local ordinance. That method of addressing the issue also seems futile, thus the plea for local governments to step in.

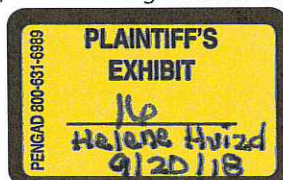
Our initial research revealed a number of significant legal issues that would have prevented my office from signing off for legal sufficiency. Assistant County Attorney Helene Hvizd and I reviewed our concerns with Mr. Hoch and ultimately mutually agreed to hold off issuing an unfavorable opinion to give us time to monitor how the pending cases evolve and to see how the jurisdictions who did move forward with an ordinance administered and enforced same. We also wanted to see if any of the new enactments would be challenged. To the best of our knowledge, none have been.

As Mr. Hoch pointed out in his recent email, a number of cities in Florida did adopt ordinances. At the time of the BCC's directive, the City of Miami Beach was the only city in Florida to ban conversion therapy. Further, Miami-Dade is close to final adoption of its ordinance, making it the only county in Florida to have such a prohibition.

While we still have legal concerns including, but not limited to, implied preemption, the Florida Patients' Bill of Rights, conflicting federal circuit court opinions, and parental rights, there were some arguments that advanced to a point where we were able to move from a definite "no" to a "maybe" (I use this term since the case law can go either way), clearing the path for an ordinance should a majority of the BCC so directs.

In addition to the legal issues, after researching the history of conversion therapy, I felt it important to bring to your attention some general observations, as well as some practical concerns. Most of the universal complaints seem to be about religious organizations that the ordinance would not legally be able to address. Further, all of the six therapists who have been identified to us as practicing conversion therapy in PBC are located in the incorporated areas of the County, which I suppose is a plus because one of the main concerns is enforcement. It's difficult to imagine how a County Code Enforcement Officer would be able to issue a citation for a violation. How would an officer determine if a violation occurred? The ordinances play more of a deterrent role.

In any event, we can bring back an ordinance banning conversion therapy if directed.



PBC 008000

9:18-cv-80771-RLR
PLAINTIFFS' EXHIBIT 16

Should you have any questions, please let me know.

Denise Marie

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
561.355.3389 (office)
561.355.3600 (fax)
dnieman@pbcgov.org

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

From: [Helene Hvizd](#)
To: [Rand Hoch](#)
Cc: [Trent Steele](#); [Denise Marie Nieman](#); [Robert Santos-Alborna](#); [Shannon Fox](#)
Subject: Re: PBCHRC -- Countywide Conversion Therapy Ban
Date: Wednesday, August 09, 2017 9:15:57 PM

Hello Rand,

I am thorough in advising my clients.

Our Code Enforcement Division will be relying on complaints to begin their investigation. We may not, in fact likely will not, have a minor's consent, (of course, we would likely need a minor's parent's consent, correct?), to rely on in order to secure a minor's medical records.

Your help in addressing this concern is greatly appreciated.

Thank you,

Helene

----- Original message -----

From: Rand Hoch <rand-hoch@usa.net>
Date: 8/9/17 8:47 PM (GMT-05:00)
To: Helene Hvizd <HHvizd@pbcgov.org>
Cc: Rand Hoch <rand-hoch@usa.net>, Trent Steele <trent@trentsteele.com>, Denise Marie Nieman <DNieman@pbcgov.org>, Robert Santos-Alborna <RSantosAlborna@pbcgov.org>, Shannon Fox <SXfox@pbcgov.org>
Subject: PBCHRC -- Countywide Conversion Therapy Ban

Helene,

I truly do not understand why you are making this so complicated -- and why more than a dozen municipal attorneys in the state of Florida (as well as the Miami-Dade County Attorney) have not seen any of the concerns you have been raising for more than a year as being obstacles for protecting children in Palm Beach County from the harms being inflicted on them by at least five licensed counselors who are advertising that they perform conversion therapy in Palm Beach County..

For the ordinance to be enforced, the minor has to come forward and file a complaint, so the minor can clearly waive confidentiality of his or her own medical records. For the same reason, there are no problems with HIPPA.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Wed, Aug 9, 2017 at 2:47 PM, Helene Hvizd <HHvizd@pbcgov.org> wrote:



Hello Rand,

A question has occurred regarding enforcement of a conversion therapy ban ordinance. Enforcement of such an ordinance necessarily implicates review of a minor's medical records. Will you please address how a conversion therapy ban ordinance can be enforced given the protections afforded a minor's medical records and the patient/therapist privilege?

I am copying Robert Santos-Alborna, the County's Code Enforcement Director, and Shannon Fox, the Assistant County Attorney who represents code-enforcement. If we are given direction to draft a conversion therapy ban ordinance, Robert and Shannon will be involved in the process.

Thank you, Rand,

Helene

SENIOR CODE ENFORCEMENT OFFICER

NATURE OF WORK

This is technical and supervisory work in the enforcement of the County's Building and Zoning related codes and ordinances.

An employee in a position allocated to this class is responsible for planning, assigning and supervising the work of subordinate code enforcement officers in addition to performing field work requiring the application of all such codes and ordinances. Work involves consulting with code enforcement officers in matters of code interpretations and enforcement procedures, supervising investigations in process, responding to citizen complaints concerning subordinates, conducting field investigations relating to construction projects, land use situations and minimum Housing Code Standards. A superior reviews work through an analysis of work reports.

EXAMPLES OF WORK

Writes performance evaluations; issues counseling forms/disciplinary actions; handles employee complaints and grievances; recommends the hiring, termination and promotion of staff.

Supervises and reviews the investigation of complaints involving land usage, noise, fences and related matters arising from enforcement of the Zoning and accessory codes; insures that timely action is taken on all complaints.

Prepares evidence against violators and presents cases at meetings of the Code Enforcement Board.

Investigates citizen complaints to determine validity; issues violation notices, notices to correct and citations.

Makes follow-up inspections to determine progress of compliance.

Inspects sites to determine compliance with landscaping and property development regulations; Occupational License approval.

Assists public with information on Building and Zoning related matters; attends public meetings for purposes of providing information regarding Code Enforcement Division functions.

Provides training for code enforcement officers.

Performs related work as needed.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES

Thorough knowledge of County Building and Zoning related codes and ordinances.

Thorough knowledge of Departmental and Divisional policies and procedures and ability to comply with same.

Considerable knowledge of administrative and procedural requirements pertaining to area of responsibility, office and supervisory procedures and practices.

Ability to read and interpret codes, maps and legal descriptions.

Ability to communicate effectively, both verbally and in writing, with staff and the general public; and submit reports and maintain regulatory records.



SENIOR CODE ENFORCEMENT OFFICER - CONT'D

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES - CONT'D

Ability to supervise and train subordinates.

Ability to make decisions in the field consistent with code requirements, policies and procedures.

Ability to compose clear and concise reports.

Ability to meet and deal with the public in a professional manner; maintain a pleasant and calm demeanor with upset or irate citizens.

Ability to use various research materials with proficiency.

MINIMUM ENTRANCE REQUIREMENTS

Graduation from high school or an equivalent recognized certification; preferably supplemented with college level course work in Public or Business Administration or a closely related field; three (3) years experience in the interpretation and enforcement of land use regulations as a code enforcement officer, including one (1) year experience in a supervisory capacity; or any equivalent combination of related training and experience.

Rev. 9/93

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Cc: [Todd J. Bonlarron](#); [Helene Hvizd](#)
Subject: Re: PBCHRC - Please keep the Conversion Therapy Ordinance on the agenda for 12/19
Date: Tuesday, December 12, 2017 11:36:03 AM

If the ordinance is not passed on the 19th, the County Commissioners will be seen as giving credence to The Liberty Counsel, the Florida Family Association and the other anti-LGBTQ hate groups who will run with this far and wide. Remember, these groups have to publish the real reasons why the BCC took this action (if they do) -- and they won't.

Personally, if I was on the BCC, I would not enjoy being recognized as a "champion" of these hate groups, but ...

Anyway, I'll start making calls and see if I can count to four.

In the event I can't get the votes, can we just have it pulled from the agenda at the meeting without explanation? Broward County is set to move forward on their ordinance on second reading in January and I wouldn't want your recommendation to also carry over to a large county with a lot of at-risk kids.

Please let me know.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Tue, Dec 12, 2017 at 11:24 AM, Denise Marie Nieman <DNieman@pbcbgov.org> wrote:
It has to stay on the agenda because it was advertised, so no worries there.

Rand, I have never and would never recommend that our county move forward with something under judicial review. This is the ideal issue to go to school on some other local government. Of course, they don't have to accept my recommendation. That has happened before.

I'm surely in favor of doing whatever we can to help any child, adult or animal. You should know this by now. But...this is an enforceable ordinance anyway. So we're assuming it will have a deterrent effect. Why risk taxpayer exposure now?

You got a 6-1 vote on first reading. That's something to be proud of. We went from no way to we can now sign off to let's wait a bit...if it's as clear as some believe, we'll be able to move forward after sum J or dismissal.



Denise Marie Nieman
Palm Beach County Attorney

On Dec 12, 2017, at 11:04, Rand Hoch <rand-hoch@usa.net> wrote:

Todd,

Please keep the Conversion Therapy Ordinance on the agenda for 12/19. The County Attorney's office will make whatever recommendation they see appropriate and PBCHRC would like to have the opportunity to make our case as well.

The harm being done to children in Palm Beach County is real. To let this continue for years while the federal courts consider a civil case should be a decision left to the BCC.

Thanks

Rand

On Tue, Dec 12, 2017 at 10:19 AM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hi Rand,

I know a lot of work has gone into the ordinance and that efforts are still being made now to make changes acceptable to both sides, but the ordinance up for final reading is what was before the BCC on first reading with some changes based on BCC comments.

The Tampa challenge of an ordinance that's practically identical to ours changes things now.

I will be recommending that the BCC not move forward until a determination is made in that case. It would be crazy to adopt an ordinance that is under review. Surely you understand. When the court rules, assuming all's well, we'll bring it back for first and second reading again, eliminating all the questions about its legality. We'll be on very solid ground. I trust you understand.

If the BCC doesn't accept my recommendation, the other changes being worked on now can be recommended at the hearing. They have to be anyway, so it's all good.

Denise Marie Nieman
Palm Beach County Attorney