

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

ROBERT OTTO, PH.D., LMFT, individually)
and on behalf of his patients, JULIE)
HAMILTON, PH.D., LMFT,)
individually and on behalf of her)
patients, Plaintiffs)
,v.)
)
CITY OF BOCA RATON,)
FLORIDA, COUNTY OF)
PALM BEACH, FLORIDA)
)
)
Defendants)

Civil Action No.: _____

INJUNCTIVE RELIEF SOUGHT

EXHIBIT D

Sexual reorientation therapy not unethical: Column

Nicholas A. Cummings Published 6:07 p.m. ET July 30, 2013 | Updated 6:14 p.m. ET July 30, 2013

Southern Poverty Law Center wrongly fighting against patients' right to choose.



(Photo: Mel Evans, AP)

The [Southern Poverty Law Center](http://www.splcenter.org/) (<http://www.splcenter.org/>) has done amazing service for our nation in fighting prejudice. But it has gone astray in its recent [New Jersey lawsuit](http://www.splcenter.org/get-informed/news/splc-files-groundbreaking-lawsuit-accusing-conversion-therapy-organization-of-fraud) (<http://www.splcenter.org/get-informed/news/splc-files-groundbreaking-lawsuit-accusing-conversion-therapy-organization-of-fraud>) charging JONAH, formerly Jews Offering New Alternatives for Healing, a group that offers to help gay people change their orientation, with committing consumer fraud. The sweeping allegation that such treatment must be a fraud because homosexual orientation can't be changed is damaging. The lawsuit is the [opening salvo](http://prospect.org/article/new-gay-rights-frontier) (<http://prospect.org/article/new-gay-rights-frontier>) of a wave of activism intended to discredit therapy offered in 70 clinics across 20 states, according to the SPLC.

When I was [chief psychologist for Kaiser Permanente](http://narth.com/docs/cummings.html) (<http://narth.com/docs/cummings.html>) from 1959 to 1979, [San Francisco's](http://thisbiocity.net/urban-implications-growth-gay-lesbian-populations-suburbs/) (<http://thisbiocity.net/urban-implications-growth-gay-lesbian-populations-suburbs/>) gay and lesbian population burgeoned. I personally saw more than 2,000 patients with same-sex attraction, and my staff saw thousands more. We worked hard to develop [approaches to meeting the needs of these patients](http://narth.com/docs/cummings.html). (<http://narth.com/docs/cummings.html>)

Individual's goals

They generally sought therapy for one of three reasons: to come to grips with their gay identity, to resolve relationship issues or to change their sexual orientation. We would always inform patients in the third group that change was not easily accomplished. With clinical experience, my staff and I learned to assess the probability of change in those who wished to become heterosexual.

STORY FROM USA TODAY NETWORK SHOP
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([https://shop.usatodaynetwork.com/sales/mba-bootcamp-bundle-lifetime-access?](https://shop.usatodaynetwork.com/sales/mba-bootcamp-bundle-lifetime-access?utm_source=news&utm_medium=polar&utm_campaign=onlinecourses)
[utm_source=news&utm_medium=polar&utm_campaign=onlinecourses](https://shop.usatodaynetwork.com/sales/mba-bootcamp-bundle-lifetime-access?utm_source=news&utm_medium=polar&utm_campaign=onlinecourses))

Of the roughly 18,000 gay and lesbian patients whom we treated over 25 years through Kaiser, I [believe](http://narth.com/docs/cummings.html) (<http://narth.com/docs/cummings.html>) that most had satisfactory outcomes. The majority were able to attain a happier and more stable homosexual lifestyle. Of the patients I oversaw who sought to change their orientation, hundreds were successful.

I believe that our rate of success with reorientation was relatively high because we were selective in recommending therapeutic change efforts only to those who identified themselves as highly motivated and were clinically assessed as having a high probability of success.

Patients over politics

Since then, the role of psychotherapy in sexual orientation change efforts has been politicized. Gay and lesbian rights activists appear to be convincing the public that homosexuality is one identical inherited characteristic. To my dismay, some in the organized mental health community seem to agree, including the [American Psychological Association](http://www.apa.org/) (<http://www.apa.org/>), though I don't believe that view is [supported by scientific evidence](#)

ADVERTISING

Gays and lesbians have the right to be affirmed in their homosexuality. That's why, as a member of the APA Council of Representatives in 1975, I sponsored the resolution by which the APA stated that homosexuality is not a mental disorder (<http://www.lifesitenews.com/news/former-president-of-apa-says-organization-controlled-by-gay-rights-movement/>) and, in 1976, the resolution (http://www.consciencedefense.org/contents/media/Nicholas_Cummings_Declaration.pdf), which passed the council unanimously, that gays and lesbians should not be discriminated against in the workplace.

But contending that all same-sex attraction is immutable is a distortion of reality. Attempting to characterize all sexual reorientation therapy as "unethical" (<http://www.splcenter.org/get-informed/news/oregon-doctor-should-be-investigated-for-unethical-use-of-conversion-therapy>) violates patient choice and gives an outside party a veto over patients' goals for their own treatment. A political agenda shouldn't prevent gays and lesbians who desire to change from making their own decisions.

Whatever the situation at an individual clinic, accusing professionals from across the country who provide treatment for fully informed persons seeking to change their sexual orientation of perpetrating a fraud serves only to stigmatize the professional and shame the patient.

Nicholas Cummings was president of the American Psychological Association (1979-80).

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individually and on behalf of her)	
patients,)	
Plaintiffs)	INJUNCTIVE RELIEF SOUGHT
v.)	
CITY OF BOCA RATON,)	
FLORIDA, COUNTY OF)	
PALM BEACH, FLORIDA,)	
Defendants)	

EXHIBIT E

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You are here: [Home](#) > Legislators are Not Psychotherapists!



[Legislators are Not Psychotherapists!](#)

by [admin3](#) on January 26, 2014 in [Press Release](#)

Gainesville, Florida – January 27, 2014 – The American College of Pediatricians urges legislators to refrain from legislating psychotherapy. Similar to laws recently enacted in California and New Jersey, a bill is being considered in Virginia to ban professional therapists from practicing conversion therapy with same-sex attracted adolescents who, or whose parents, request such therapy. Although several medical groups have moved to discourage this practice, there is no firm basis for their position. The scientific literature, however, is clear: Same-sex attractions are more fluid than fixed, especially for adolescents — many of whom can and do change. The outcomes for the treatment of unwanted attractions are no different than outcomes for other difficult psychological problems. There is not a single randomized controlled study demonstrating universal failure and/or harm from Sexual Orientation Change Efforts (SOCE). However, there is a body of literature demonstrating a variety of positive outcomes from SOCE.

Barring change therapy or SOCE will threaten the health and well-being of children wanting therapy. With no other options available, same-sex attracted young people will believe that they have no choice but to engage in homosexual behaviors. These behaviors place them at risk for grave physical and psychological harm. Adolescents have a right to explore sexual orientation change efforts (SOCE) with full informed consent and under the care of mental health experts in the field, just as they do for other concerns.

For more information on this topic, visit www.FactsAboutYouth.com and ACPeds.org.

See also [NARTH commentary](#) on the California Bill SB 1172

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Media Contact

Michelle Cretella, MD, FCP

P: (352) 376-1877

F: (352) 415-0922

E: admin@acped.org

About Us

The American College of Pediatricians is a national medical association of licensed physicians and healthcare professionals who specialize in the care of infants, children, and adolescents. The mission of the College is to enable all children to reach their optimal physical and emotional health and well-being.

[Make a gift!](#)

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THE SOUTHERN DISTRICT OF FLORIDA

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

Plaintiffs,)

v.)

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

Defendants)

Civil Action No.: _____

INJUNCTIVE RELIEF SOUGHT

EXHIBIT F

Richard Mast

From: Florida Department of Health <fdh@mycusthelp.net>
Sent: Wednesday, October 18, 2017 2:48 PM
To: Richard Mast
Subject: Public Records Request :: P038855-092117

--- Please respond above this line ---

10/18/2017

Richard Mast
PO Box 540774
Orlando FL 32854

Re: Public Records Request-Tracking #P038855-092117

Dear Richard Mast,

The Florida Department of Health received a Public Records Request from you on 9/21/2017. Your request mentioned:

Copies of any and all public records including complaints against licensed professionals filed with the Department of Health and any and all reports in the possession of the Department relating to: 1. "Sexual Orientation Change Efforts" or "SOCE;" 2. "conversion therapy;" 3. "reparative therapy;" 4. efforts to reduce or eliminate same-sex attractions; 5. any counseling, practice, or treatment performed with the goal of changing a person's sexual orientation or gender identity, or 6. any instance of aversive activity or technique, including but not limited to electrical shocks, cold water, sleep deprivation, shouting, or any form of mental or physical abuse, performed or conducted with the goal of changing a person's sexual orientation or gender identity.

The Division of Medical Quality Assurance has received your request for public records.

The Department has no records responsive to your request.

Sincerely,

Analyst Thompson
Operations Analyst II

Florida Department of Health

Division of Medical Quality Assurance
Bureau of Operations
Public Records Team
4052 Bald Cypress Way, Bin # C-01
Tallahassee, FL 32399-3251
Phone: (850) 245-4252, Option 4
Fax: (850) 487-9537

Department Mission: To protect, promote and improve the health of all people in Florida through integrated state, county, and community efforts.

Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. Please consider the environment before printing this e-mail.

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PALM BEACH, FLORIDA,)	
Defendants)	

EXHIBIT G



May 2, 2012

The Honorable Ted Lieu
Senator, 28th Senate District
State Capitol, Room 4090
Sacramento, CA 95814

**RE: SB 1172 (Lieu) - Sexual Orientation Change Efforts
Oppose Unless Amended
Set for hearing: May 8, 2012**

Dear Senator Lieu:

On behalf of the California Association of Marriage and Family Therapists, the California Psychological Association, the California Psychiatric Association, and the California Association for Licensed Professional Clinical Counselors, we wish to convey our continued joint position of Opposed Unless Amended on SB 1172. We believe the bill as drafted, would inhibit and prevent attempts by, and perhaps create liability for, therapists who legitimately explore sexual identity and gender concerns.

We'd like to thank you and the sponsors of the measure for reaching out and having several stakeholders meetings aimed at crafting a consensus measure. At this time, we continue to have the following concerns about the bill:

Definition of Sexual Orientation Change Efforts ("SOCE"):

As written, the current definition of SOCE is ambiguous and vague as to what kinds of therapy conceptually fall under the definition of SOCE. This definition can and will be interpreted by providers, consumers and legal minds in vastly different manners, as evidenced by the communications of all the various stakeholders to date. To the extent that this legislation is attempting to undertake an unprecedented restriction of psychotherapy, it is essential that the definition of such a restriction be narrowly tailored and not overly broad. Without such limits on the definition, there cannot be a restriction for any population, including minors, due to the unintended consequences of banning legitimate and helpful therapies.

Since the introduction of this legislation, we have agreed that any psychotherapy based on the assumption that homosexuality is a mental disorder or pathology and that a patient must therefore change her/his sexual orientation demonstrates unprofessional conduct. And while we

have suggested amendments to restrict the current broad and sweeping definition as currently written, those amendments have not been accepted to date.

Minors Ability to Consent to SOCE:

While we agree with and support the Author's concern about coercion or forced treatment upon minors, we are troubled by the sudden removal of a minor's ability to consent to their own uncoerced psychotherapy just recently granted to them by this Legislature in 2010. In 2010, SB 543 (Chapter 503, Statutes of 2010) was signed into law, which allowed minors (12 years and older) to consent to their own mental health treatment if the minor was "mature enough to participate intelligently in the mental health treatment." Moreover, as mentioned above, because of the vague and unclear definition of SOCE, we are concerned about what implications the definition may have on a minor's ability to generally explore their sexuality.

Definition of Therapeutic Deception:

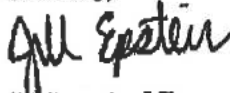
This language and definition is troubling. It implies that the act of SOCE in itself is an act of deception, which is vague and misleading. Further, because of the ambiguity of this wording, it could likely create liability for a psychotherapist who is practicing SOCE, even if practicing under a lawful informed consent as spelled out in this legislation. We would suggest rewording this definition to: "Therapeutic deception" means a representation by a psychotherapist that sexual orientation change efforts are endorsed by leading medical and mental health associations or that they ~~can or~~ will reduce or eliminate a person's sexual or romantic desires, attractions, or conduct toward another person of the same sex."

Informed Consent:

We have general concerns about what is proposed in the current proposed Informed Consent language and have forwarded to the Author a proposed Informed Consent jointly agreed upon by the California Association of Marriage and Family Therapists, California Psychological Association, California Psychiatric Association, and California Association for Licensed Professional Clinical Counselors. Included within our proposed Informed Consent are the requirements that: provider describe his/her experience that qualifies them to provide such services, a description of the potential risks and consequences of SOCE, a statement that homosexuality is not a mental disorder, reference to the most recent psychotherapeutic association's positions and/or resolutions on SOCE, and a statement that failure to comply is unprofessional conduct. Included with this letter is a sample of our Informed Consent proposal.

For the reasons stated above, we must take the position of Opposed Unless Amended at this time. We look forward to working with the Author, the Sponsors, and any other interested parties on this bill.


Sincerely,



Jim Epstein, J.D.
Executive Director
California Association of Marriage and Family Therapists



Randall Hagar
Director of Government Affairs
California Psychiatric Association



Amanda Levy
Director, Government Affairs
California Psychological Association



Dean Porter
Executive Director
California Association for Licensed Professional Clinical Counselors

cc: Members, Senate Judiciary Committee

Proposed Informed Consent Provision

(a) Prior to the commencement of sexual orientation change efforts by a psychotherapist, the psychotherapist shall obtain the verbal and written informed consent from the patient. The informed consent procedure shall ensure that at a minimum all of the following information is given to the patient verbally and in writing:

- 1) a description of the education, training, or experience of the psychotherapist that qualifies him or her to provide the services to be rendered;
- 2) a description of the potential risks, and consequences of such treatment;
- 3) a statement that indicates that homosexuality is not a mental disorder according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM IV) and that it was removed as a mental disorder in 1973;
- 4) a statement that the psychotherapist will not impose his or her personal values or religious views upon the patient;
- 5) reference to the most recent position statement, resolutions, research or findings of the leading state or national psychotherapeutic associations as defined in this Section.

(b) The written informed consent signed by the patient shall become part of the patient's mental health treatment record.

(c) The failure of a psychotherapist to comply with this section shall constitute unprofessional conduct.

From: Frieser, Diana Grub
To: Rand Hoch; Denise Nieman
Cc: Fernandez, Christopher
Subject: RE: PBCHRC - Conversion Therapy appeal - National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018)
Date: Tuesday, July 10, 2018 7:57:25 AM
Attachments: [image002.png](#)
[image003.png](#)

Rand,
Thanks, we'll look forward to receiving it.
Diana

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch
Sent: Monday, July 9, 2018 6:18 PM
To: Frieser, Diana Grub ; Denise Nieman
Subject: PBCHRC - Conversion Therapy appeal - National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018)
Diana,

The Southern Poverty Law Center has a filing in the Tampa case tomorrow that they will send you that lays out our views on the effect of the NIFLA decision. I will forward a copy to you and to Denise.

Rand
On Tue, Jul 3, 2018 at 5:04 PM, Rand Hoch <rand-hoch@usa.net> wrote:

Will get back to you in a few days on this. Have circulated your request to our team of lawyers across the US.

Rand
On Tue, Jul 3, 2018 at 4:11 PM, Frieser, Diana Grub <DFGrieser@ci.boca-raton.fl.us> wrote:

Rand,
As I believe you know, the City was formally served in connection with the Robert W. Otto and Julie H. Hamilton v. City of Boca Raton and County of Palm Beach case ("Conversion Therapy" case). Since then, the decision in the U.S. Supreme Court case of National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018) was issued. Unfortunately, the decision disapproves of two cases relevant to the Conversion Therapy case: King v. Governor of New Jersey, 767 F.3d 216 (C.A.3 2014) and Pickup v. Brown, 740 F.3d 1208 (C.A.9 2014), specifically with respect to the differentiation of "professional" speech from First Amendment protected speech. I'd appreciate your thoughts regarding the implications of this recent U.S. Supreme Court decision on the pending Conversion Therapy case. Let me know if you would like to schedule a time to discuss the issue.

Thanks and I'll wait to hear from you,
Diana

Diana Grub Frieser | City Attorney
City of Boca Raton, Office of the City Attorney
[201 W. Palmetto Park Road • Boca Raton, FL 33432](#)
P 561-393-7716 | dgfrieser@myboca.us

Stay connected...



Please note: Florida has a very broad public records law. Most written communications to or from local officials regarding city business are public records, and are available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. The City of Boca Raton scanned this outbound message for viruses, vandals and malicious content and found this message to be free of such content.

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ERRATA SHEET

Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton,
Ph.D., LMFT vs. City of Boca Raton, Florida, and County
of Palm Beach, Florida
Case No. 9:18-CV-80771
Taken: August 29, 2018

DO NOT WRITE ON TRANSCRIPT - - ENTER CHANGES HERE:

Page: 25 Line: 9
Now reads:
somebody's
Should read: somebody who is
Reason for Change: transcription

Page: 72 Line: 4
Now reads:
Yes. That had heightened at that point.
Should read: Yes. Both. They had heightened at that point.
Reason for Change: transcription, clarification

Page: 188 Line: 8
Now reads:
MR. MIHET: Form. I have seen
Should read: MR. MIHET: Form. ¶ THE WITNESS: I have seen
Reason for Change: transcription

Page: _____ Line: _____
Now reads:

Should read: _____
Reason for Change: _____

Page: _____ Line: _____
Now reads:

Should read: _____
Reason for Change: _____

Under penalties of perjury, I declare that I
have read my foregoing transcript and, together with any
changes made above, the facts stated herein are true.

Robert W. Otto 9/25/18
ROBERT W. OTTO, PH.D., LMFT Date

1 ERRATA SHEET A

2 Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton,
3 Ph.D., LMFT vs. City of Boca Raton, Florida, and County
4 of Palm Beach, Florida
Case No. 9:18-CV-80771
Taken: August 30, 2018

5 DO NOT WRITE ON TRANSCRIPT - - ENTER CHANGES HERE:

6 Page: 25 Line: 5
Now reads:

7 any
Should read: many

8 Reason for Change: transcription

9 Page: 78 Line: 8
Now reads:

10 continue to feel depressed.
Should read: not continue to feel depressed.

11 Reason for Change: transcription

12 Page: 78 Line: 25
Now reads:

13 that show harm -- is that
Should read: that show harm -- that

14 Reason for Change: transcription

15 Page: 83 Line: 9
Now reads:

16 inhabitable
Should read: ungovernable

17 Reason for Change: transcription

18 Page: 88 Line: 2
Now reads:

19 confusion theories.
Should read: confusion.

20 Reason for Change: transcription

21 Under penalties of perjury, I declare that I
22 have read my foregoing transcript and, together with any
23 changes made above, the facts stated herein are true.

24 
25 JULIE H. HAMILTON, PH.D., LMFT

9/27/18
Date

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ERRATA SHEET B

Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton,
Ph.D., LMFT vs. City of Boca Raton, Florida, and County
of Palm Beach, Florida
Case No. 9:18-CV-80771
Taken: August 30, 2018

DO NOT WRITE ON TRANSCRIPT - - ENTER CHANGES HERE:

Page: 229 Line: 17
Now reads:
and gender identity.
Should read: not gender identity.
Reason for Change: transcription

Page: 234 Line: 10
Now reads:
that you're talking
Should read: but you're talking
Reason for Change: transcription

Page: 252 Line: 13
Now reads:
Sometimes I don't
Should read: Sometimes. I don't
Reason for Change: transcription

Page: 254 Line: 8
Now reads:
I failed to initiate to
Should read: I failed to initiate two
Reason for Change: transcription

Page: 275 Line: 5
Now reads:
their
Should read: your
Reason for Change: transcription

Under penalties of perjury, I declare that I
have read my foregoing transcript and, together with any
changes made above, the facts stated herein are true.



JULIE H. HAMILTON, PH.D., LMFT

9/27/18
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ERRATA SHEET C

Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton,
Ph.D., LMFT vs. City of Boca Raton, Florida, and County
of Palm Beach, Florida
Case No. 9:18-CV-80771
Taken: August 30, 2018

DO NOT WRITE ON TRANSCRIPT - - ENTER CHANGES HERE:

Page: 276 Line: 25

Now reads:

laws

Should read: flaws

Reason for Change: transcription

Page: 283 Line: 17

Now reads:

been

Should read: put

Reason for Change: transcription

Page: 293 Line: 23

Now reads:

I

Should read: we

Reason for Change: transcription

Page: 297 Line: 17

Now reads:

Yardhouse

Should read: Yarhouse

Reason for Change: transcription

Page: 300 Line: 22

Now reads:

attractions or behavior

Should read: attractions, or behavior

Reason for Change: transcription

Under penalties of perjury, I declare that I
have read my foregoing transcript and, together with any
changes made above, the facts stated herein are true.



JULIE H. HAMILTON, PH.D., LMFT

9/27/18
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ERRATA SHEET D

Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton,
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of Palm Beach, Florida
Case No. 9:18-CV-80771
Taken: August 30, 2018

DO NOT WRITE ON TRANSCRIPT - - ENTER CHANGES HERE:

Page: 305 Line: 11
Now reads:
city
Should read: study
Reason for Change: transcription

Page: 314 Line: 19
Now reads:
beyond
Should read: before
Reason for Change: transcription

Page: 321 Line: 3
Now reads:
tenancy
Should read: tendency
Reason for Change: transcription


Page: _____ Line: _____
Now reads:

Should read: _____
Reason for Change: _____

Page: _____ Line: _____
Now reads:

Should read: _____
Reason for Change: _____

Under penalties of perjury, I declare that I
have read my foregoing transcript and, together with any
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 9/27/18
JULIE H. HAMILTON, PH.D., LMFT Date

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THE SOUTHERN DISTRICT OF FLORIDA

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

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

Plaintiffs,)

v.)

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

Defendants.)

**DEFENDANT, CITY OF BOCA RATON’S
RESPONSE TO PLAINTIFFS’ FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Fed. R. Civ. P. 26, 36, S.D. Fla. L.R. 26.1, and the Court’s Joint Discovery Plan for Preliminary Injunction Motion (“Joint Discovery Plan”) [ECF 50], Defendant, City of Boca Raton (“City”) serves this response to the First Set of Requests for Admission from Plaintiffs, Robert W. Otto and Julie H. Hamilton (collectively, “Plaintiffs”), and states as follows:

GENERAL OBJECTIONS

1. The City object to Plaintiffs’ Instructions to the extent that the demand discovery efforts or production beyond what is required in the Federal Rules of Civil Procedure, the Local Rules for the Southern District of Florida, or the Court’s orders regarding discovery.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

REQUEST FOR ADMISSION 1:

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

RESPONSE: Admitted.

REQUEST FOR ADMISSION 2:

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

RESPONSE: This request for admission assumes, incorrectly, that a Minor is capable of consent to SOCE counseling under Florida law. *See* Chapter 743, Fla. Stat. To the extent Plaintiffs seek an admission based on an incorrect legal assumption, the City cannot admit or deny said request. To the extent Plaintiffs seek an admission that the City has not received any complaint that any Minor was subjected to SOCE counseling within the City against that Minor's wishes, admitted.

REQUEST FOR ADMISSION 3:

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

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

RESPONSE: Admitted. To the extent the City's public hearings may be considered investigations, the City held public hearings on September 25, 2017, and October 10, 2017, discussing Ordinance No. 5407.

REQUEST FOR ADMISSION 4:

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

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the City itself undertook or commissioned, as opposed to studies, research, or investigations

undertaken by third parties which the City may have reviewed or relied upon.]

RESPONSE: Admitted. To the extent the City's public hearings may be considered investigations, the City held public hearings on September 25, 2017, and October 10, 2017, discussing Ordinance No. 5407.

REQUEST FOR ADMISSION 5:

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

RESPONSE: To the extent that "voluntary" may be construed as a synonym for "consent," a legal term, pursuant to Florida law Minors are incapable of consenting to SOCIE counseling. *See* Chapter 743, Fla. Stat. Notwithstanding, denied.

REQUEST FOR ADMISSION 6:

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

RESPONSE: The City is incapable of admitting or denying RFA 6 because "consent" is a legal term and, pursuant to Florida law, Minors are incapable of consenting to SOCE counseling. *See* Chapter 743, Fla. Stat.

REQUEST FOR ADMISSION 7:

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

RESPONSE: Objection. This request for admission assumes, incorrectly, that Ordinance No. 5407 is a restriction on speech when, in fact, Ordinance No. 5407 is a regulation of professional conduct. The City considered and adopted the least restrictive means of advancing the City's compelling interest in the physical and psychological well-being of minors and, notably, Ordinance No. 5407 provides a religious exemption for clergy or other religious leaders providing religious counseling or instruction to congregants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail on August 22, 2018 on all counsel of record on the attached Service List.

Respectfully submitted,

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SERVICE LIST
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CASE NO. 18-CIV-80771-RLR

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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.)	

**DEFENDANT, CITY OF BOCA RATON’S AMENDED RESPONSE TO
PLAINTIFFS’ FIRST SET OF REQUESTS FOR ADMISSION NOS. 6 AND 7**

Pursuant to Fed. R. Civ. P. 26, 36, S.D. Fla. L.R. 26.1, and the Court’s Joint Discovery Plan for Preliminary Injunction Motion (“Joint Discovery Plan”) [ECF 50], Defendant, City of Boca Raton (“City”) serves this Amended Response to the First Set of Requests for Admission Nos. 6 and 7 from Plaintiffs, Robert W. Otto and Julie H. Hamilton (collectively, “Plaintiffs”), and states as follows:

REQUEST FOR ADMISSION 6:

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

RESPONSE: The City is incapable of admitting or denying RFA 6 because “consent” is a legal term and, pursuant to Florida law, Minors are incapable of consenting to SOCE counseling. *See* Chapter 743, Fla. Stat. To the extent Plaintiffs define to “consent” as “voluntary assent,” as opposed to “legal consent,” denied.

REQUEST FOR ADMISSION 7:

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

than the Ordinance as enacted.

RESPONSE: Objection. This request for admission assumes, incorrectly, that Ordinance No. 5407 is a restriction on speech when, in fact, Ordinance No. 5407 is a regulation of professional conduct. The City considered and adopted the least restrictive means of advancing the City's compelling interest in the physical and psychological well-being of minors and, notably, Ordinance No. 5407 provides a religious exemption for clergy or other religious leaders providing religious counseling or instruction to congregants. Subject to and without waiver of the foregoing objection, to the extent Request for Admission No. 7 asks only what alternatives the City considered, denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail on September 11, 2018 on all counsel of record on the attached Service List.

Respectfully submitted,

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CASE NO. 18-CIV-80771-RLR

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OTTO vs BOCA RATON

MICHAEL WOIKA

09-21-18

Page 1

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

CASE NO. 9:18-cv-80771-RLR

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,

Plaintiffs,

vs.

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

Defendants.

_____ /

* * * * *

DEPOSITION OF MICHAEL WOIKA
TAKEN AT THE INSTANCE OF THE PLAINTIFFS

* * * * *

DATE: September 21, 2018
PLACE: 201 West Palmetto Park Road
Boca Raton, Florida 33432
TIME: 10:02 - 4:02 o'clock p.m.

FLORIDA COURT REPORTING
561-689-0999

9:18-cv-80771-RLR
PLAINTIFFS' EXHIBIT 41

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21 Also Present:
22 Robert W. Otto, Ph.D., LMFT
Julie H. Hamilton, Ph.D., LMFT
23
24
25

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18	Plaintiffs' Exhibit No. 28 marked for identification	179
19	(E-mail chain starting from Rand Hoch to Diana Grub Frieser dated June 19, 2018)	
20		
21		
22		
23		
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25		

1 The deposition of MICHAEL WOIKA, witness, was taken
 2 before me, Rachele Cibula, Notary Public, State of
 3 Florida at large, at 201 West Palmetto Park Road, in the
 4 City of Boca Raton, County of Palm Beach, State of
 5 Florida, pursuant to notice in said cause for the
 6 purpose of taking said deposition at the instance of the
 7 Plaintiffs in the above-styled action pending in the
 8 above-styled court.

9 THE COURT REPORTER: Raise your right hand,
 10 Please, sir.

11 THEREUPON,

12 MICHAEL WOIKA,
 13 being by me first duly sworn to testify the whole truth
 14 as is hereinafter certified, testifies as follows:

15 THE WITNESS: Yes.

16 * * * * *

17 DIRECT EXAMINATION

18 BY MR. MIHET:

19 Q. Good morning, Mr. Woika.

20 A. Good morning.

21 Q. We've already met. And you know that we're here
 22 to take your deposition this morning -- actually, the
 23 City of Boca Raton's deposition through you, its
 24 designee. Just a couple of ground rules that you heard
 25 yesterday to make sure we're on the same page.

Page 5

1 Everything that you or I say today is being
2 transcribed by the nice reporter sitting here next to
3 us. So it's important for us to speak one at a time.
4 Okay?

5 A. Yes.

6 Q. It's important for you to verbalize your answers
7 because the reporter cannot accurately transcribe
8 nonverbal communications. Is that okay?

9 A. Yes.

10 Q. I very much doubt this is going to happen today;
11 but, if I do happen to ask you an inarticulate
12 question --

13 A. Okay.

14 Q. -- that you don't understand, will you ask me to
15 rephrase it?

16 A. Of course.

17 Q. If you answer my question, I'm going to
18 understand that you understood it; and you intended to
19 provide the response that you did. Is that fair?

20 A. Yes.

21 Q. I'm hoping we won't be here nearly as long as we
22 were together yesterday, but we probably will spend a
23 little time together. So, if you should need a break at
24 any time, please ask; and we will accommodate you so
25 long as a question is not pending. Is that good?

1 A. Sounds great.

2 Q. Excellent.

3 Throughout the day today, I may refer for short
4 to the City. Will you know I'm talking about the City
5 of Boca Raton?

6 A. Yes.

7 Q. And, if I refer for short to the ordinance,
8 you'll know I'm referring to the Conversion Therapy Ban
9 Ordinance that the City of Boca Raton has enacted which
10 is the subject of this lawsuit?

11 A. Yes.

12 Q. I'm going to show you what we marked yesterday as
13 Plaintiffs' Exhibit 1. You've seen this document
14 before?

15 A. Yes.

16 Q. This is a copy of Plaintiffs' Second Amended
17 Notice of Taking Depositions of Defendants, right?

18 A. Yes, it is.

19 Q. And you'll notice, on pages two and three, there
20 are thirteen matters for examination that are
21 identified?

22 A. Yes.

23 Q. Now, it's my understanding that you have been
24 designated by the City of Boca Raton to provide
25 testimony as to each one of those matters except for

1 matter number thirteen; is that accurate?

2 A. Yes, noting that ten and eleven are deleted, as
3 well.

4 Q. Sure. I suspect your testimony on topics ten and
5 eleven is going to be very brief or maybe nonexistent
6 today.

7 A. Sure.

8 Q. And so you understand that, as to the topics on
9 which you are designated, you will be providing the
10 City's knowledge and the City's position?

11 A. Yes.

12 Q. What did you do to prepare for today's
13 deposition?

14 A. Did a number of things. I spoke to a number of
15 individuals. I looked at -- and I'm sure you're going
16 to ask me whose those are. I looked at the documents,
17 including the ordinance, all of the backup material,
18 e-mails that were produced. I looked at the videos of
19 the public hearing for the ordinance. Individuals I
20 talked with include the attorneys who framed and -- not
21 framed but drafted the document. I talked with
22 George Brown who is the Deputy City Manager. I spoke
23 with Doug Sheedy who is our code compliance manager. I
24 believe that's the -- the main -- the main parts of it.

25 Q. Okay. Which of the attorneys that drafted the

1 ordinance did you speak with?

2 A. Chris Fernandez.

3 Q. I believe he's with us today?

4 A. He is.

5 Q. Anyone else?

6 A. Our City Attorney.

7 Q. Who is that?

8 A. Diana Grub Frieser.

9 Q. Anyone else?

10 A. Outside counsel.

11 Q. That would be Mr. Abbott or his colleagues?

12 A. Correct.

13 Q. When did you begin your preparation for the
14 deposition?

15 A. Several weeks ago. Two, three weeks ago.

16 Q. Can you give me a rough idea of how much total
17 time you spent preparing? Is it a couple hours? Is it
18 ten hours? Is it five minutes?

19 A. It's more than a couple hours. And, not
20 including yesterday's deposition at the County, probably
21 ten hours. Eight, ten, twelve hours.

22 Q. You would consider attending yesterday's
23 deposition as preparation for today?

24 A. Perhaps. It was instructive.

25 Q. You said you reviewed a number of documents. I

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1 believe you referred to the ordinance, and you referred
2 to materials, and you referred to e-mails. Do you know
3 if those documents have all been provided to the
4 Plaintiffs in this case?

5 A. I believe, yes.

6 Q. Okay. And did you review any documents that have
7 not been provided to the Plaintiffs in this case?

8 A. No. I believe everything that I looked at was --
9 had been provided.

10 Q. Okay. Did you speak with anyone who is not an
11 attorney or not employed by the City of Boca Raton to
12 prepare for today's deposition?

13 A. No.

14 Q. Did you speak with Mr. Hoch?

15 A. No.

16 Q. Have you ever spoken with Mr. Hoch?

17 A. Perhaps as a greeting but nothing substantial.

18 Q. Ever spoken with Mr. Hoch about conversion
19 therapy ban?

20 A. No.

21 Q. Ever spoke with Mr. Hoch about this litigation?

22 A. No.

23 Q. Have you had a chance to give deposition
24 testimony before?

25 A. Yes.

1 Q. Several times?

2 A. Yes.

3 Q. About how many?

4 A. A dozen.

5 Q. Okay.

6 A. Maybe not quite that many. It seems like a lot
7 more.

8 Q. That was in the course of your employment for the
9 City of Boca Raton?

10 A. Yes.

11 Q. And what position do you hold with the City?

12 A. I'm the Assistant City Manager.

13 Q. And how long have you held that position?

14 A. Since 2004. So almost fourteen years.

15 Q. Are you the only Assistant City Manager?

16 A. Yes.

17 Q. What is Mr. Brown's position?

18 A. He's the Deputy City Manager.

19 Q. So, in the hierarchy of things, are you lateral
20 colleagues; or is one a little higher than the other?

21 A. We're more or less lateral. He has a little bit
22 more seniority, so he's technically a bit more senior.

23 Q. What is the difference between an Assistant City
24 Manager and a Deputy City Manager?

25 A. We each have a group of departments that we

1 liaison with. And so, if you look at the hierarchy, we
2 have a City Manager; and then there are our levels,
3 assistant and the deputy. And then the different
4 departments and divisions are categorized kind of split
5 between the two.

6 Q. And who is the City Manager?

7 A. Leif Ahnell, A-h-n-e-l-l.

8 Q. And so, if I understand what you just told me
9 correctly, you have Leif Ahnell sitting at the top; and
10 then we have you and Mr. Brown underneath him, more or
11 less lateral?

12 A. That's correct.

13 Q. And what departments would be under your
14 leadership?

15 A. I'll go through them. There's a number of
16 departments, number of divisions. The departments are
17 recreation services, municipal services, utility
18 services. And then the divisions: Information
19 technology; management services, which is risk and HR;
20 community relations; communications; economic
21 development. I think that's all.

22 Q. Okay. And what about under Mr. Brown's
23 supervision?

24 A. He has the city clerk. I should start with
25 departments, again. Development services, police, fire

1 and then the city clerk as a division. Oh, and finance.
2 I'm sorry, financial services.

3 Q. Okay. I know we're not here to talk about you a
4 whole lot today. But, just so I have a better
5 understanding of who I'm talking to, briefly tell me
6 what your educational background is.

7 A. I've got a bachelor's and master's degree from
8 Penn State University in environmental engineering. And
9 I have an MBA from University of Phoenix at Denver.

10 Q. And do you happen to know what Mr. Brown's
11 educational background is? If you know.

12 A. He went to -- he went to Georgetown. I don't
13 know -- I believe he has a bachelor's in something from
14 Georgetown.

15 Q. Okay. Do you hold any professional licenses?

16 A. Yes.

17 Q. What are those?

18 A. I'm a professional engineer.

19 Q. Any others?

20 A. No.

21 Q. Do you know if Mr. Brown holds any professional
22 licenses?

23 A. I don't.

24 Q. Okay. When did the City of Boca Raton first
25 begin to consider a ban on conversion therapy?

1 A. There was correspondence, an e-mail from
2 Rand Hoch, Palm Beach County Human Rights Council
3 approximately July of 2017.

4 Q. And so is that how the issue of conversion
5 therapy first came about within the City of Boca Raton
6 was through this e-mail from Mr. Hoch?

7 A. To my understanding, yes. There may have -- that
8 was the first that the Council was -- as a whole was
9 brought into that subject.

10 Q. Was this e-mail sent to the Council as a whole or
11 to individual Council members?

12 A. Individual Council members were all addressed,
13 but it was the same e-mail.

14 Q. Okay. What was the need for the conversion
15 therapy ban that was being asserted by Mr. Hoch in this
16 communication?

17 A. In his e-mail correspondence, he had two
18 attachments. And his e-mail was rather terse, as I
19 recall. It just said, please see attached. One was a
20 memo from the Human Rights Council talking about the --
21 the -- I guess you could call it the need or his -- his
22 understanding of the need for conversion therapy within
23 Boca Raton. And the other was a -- a model ordinance
24 that he suggested that the City emulate and pass.

25 Q. Okay. Did Mr. Hoch claim that any citizens of

1 Boca Raton had been harmed or were being harmed by
2 conversion therapy?

3 A. Directly? No.

4 Q. Directly, no.

5 Had the City ever received --

6 A. By, "directly," I mean, he didn't mention
7 particular instances.

8 Q. He didn't mention anyone within the City that had
9 ever been harmed by conversion therapy?

10 A. That's correct.

11 Q. Did he mention any conversion therapy
12 practitioners in the City of Boca Raton?

13 A. In that e-mail, he did not.

14 Q. Okay. Did he subsequently mention any
15 practitioners in the City of Boca Raton?

16 A. I think there was an e-mail provided by Mr. Hoch
17 subsequent to this that did list a practitioner.

18 Q. Subsequent to the ordinance being enacted or
19 subsequent to the first communication?

20 A. Subsequent to the first communication.

21 Q. How many practitioners did he identify in that
22 e-mail?

23 A. One.

24 Q. And who was that partitioner?

25 A. I believe the last name was Gray. But, subject

1 to check, I believe that's the practitioner.

2 Q. It certainly was not Dr. Otto?

3 A. It was not.

4 Q. Or Dr. Hamilton?

5 A. It was not.

6 Q. And what did he say about Mister or Dr. Gray in
7 this e-mail?

8 A. I believe it was Gray. I don't know. But I
9 believe that that e-mail from -- from Rand Hoch
10 suggested that there was a practitioner who listed as
11 one of their services something to the effect of
12 unwanted or undesired sexual attractions or something.
13 It listed as one of the areas of behavior.

14 Q. Okay. It didn't say that they listed conversion
15 therapy as a service that they provided?

16 A. I think that's correct. They did not.

17 Q. Okay. You said that this practitioner advertised
18 that they could provide help for unwanted same-sex
19 attractions. And he considered that as a need for the
20 City to enact a conversion therapy ban? Is that the
21 gist?

22 A. No.

23 MR. ABBOTT: Object to the form.

24 MR. MIHET:

25 Q. No?

1 A. No. I think, as you asked a question, he did not
2 identify any specific individuals or situations in that
3 original e-mail. In the subsequent one, I believe there
4 was -- a Council had asked for some clarification. And
5 he provided that to the council person but did not -- I
6 don't believe tried to characterize what that -- other
7 than to say, this is what the person listed on their --
8 on their -- as an area of practice.

9 Q. Do you know if those e-mails were provided to the
10 Plaintiffs in this case?

11 A. They were.

12 Q. They were? I don't recall seeing them. Maybe,
13 if you are able to refer us to a Bates number at some
14 point today.

15 MR. ABBOTT: When we take a break, I'll take
16 a peek and see if I can find it for you, sure.

17 MR. MIHET: Thank you.

18 BY MR. MIHET:

19 Q. Had the City of Boca Raton ever received any
20 complaints from -- let me strike that and try again.

21 Prior to enacting the ordinance, had the City of
22 Boca Raton ever received complaints that one of its
23 citizens had been or was being harmed by conversion
24 therapy?

25 A. No.

1 Q. Prior to enacting the ban, had the City of Boca
2 Raton attempted to determine whether any of its citizens
3 had been or were being harmed by conversion therapy?

4 A. No, not to my knowledge.

5 Q. So that would include the time after Mr. Hoch
6 raised the issue of conversion therapy in or around
7 July 2017, correct?

8 A. Correct.

9 Q. Okay. Did the City of Boca Raton ever consider
10 or discuss whether it should attempt to determine if
11 conversion therapy was harming its own citizens?

12 MR. ABBOTT: Object to the form.

13 THE WITNESS: No.

14 BY MR. MIHET:

15 Q. How did the City's -- let me try that again.

16 How did the fact that no one within the City
17 complained about conversion therapy harm factor into the
18 City's decision on whether or not an ordinance was
19 necessary?

20 MR. ABBOTT: Object to the form.

21 THE WITNESS: If I understand your question
22 correctly, the City -- as part of the correspondence
23 from Rand Hoch, there were a number of reports that were
24 cited and a number of findings in those different
25 reports and statements. And that was used as the basis

1 for the need of the ordinance.

2 MR. MIHET: Okay.

3 THE WITNESS: So is that what you asked?

4 MR. MIHET: No. I guess that's one answer
5 to my question.

6 BY MR. MIHET:

7 Q. Did the City rely on anything other than what you
8 just mentioned?

9 A. No. That was the basis for the ordinance.

10 Q. Okay.

11 (Plaintiffs' Exhibit No. 23 marked for identification)

12 BY MR. MIHET:

13 Q. So, Mr. Woika, I have handed you an exhibit that
14 we have marked as No. 23. And, having looked at this
15 document, do you recognize it?

16 A. Yes.

17 Q. Is this one of the documents you reviewed in
18 preparation for today's deposition?

19 A. Yes, it is.

20 Q. What is this document?

21 A. This document -- there's really two pieces to it.
22 The first is a memorandum from the City Attorney to
23 members of the City Council regarding the conversion
24 therapy -- proposed draft conversion therapy ordinance.
25 And then the second part is that draft ordinance.

1 Q. Okay. Now, this is dated August 17, 2017?

2 A. That is correct.

3 Q. And this is to the Mayor and the City Council of
4 Boca Raton?

5 A. That's correct.

6 And I should say that, when I say, "City
7 Council," it includes the Mayor. I consider the Mayor
8 to be part of the City Council.

9 Q. Sure. I guess I was just referring to the "to"
10 line that says Mayor and City Council.

11 So --

12 A. I just wanted to make sure, when I said, "City
13 Council," the Mayor was certainly included. And I
14 consider the Mayor to be part of the City Council. I
15 wasn't trying to exclude the Mayor.

16 Q. Excellent clarification. Thank you.

17 So this came in time chronologically after the
18 July 2017 e-mails from Mr. Hoch, right?

19 A. That's correct.

20 Q. And so was this memorandum occasioned by
21 Mr. Hoch's request to the Council to consider a
22 conversion therapy ban?

23 A. Yes. And if -- if I can elaborate further?

24 Q. Sure.

25 A. There was an earlier City Council meeting in

1 July --

2 Q. Okay.

3 A. -- by which the Mayor, during her opportunity,
4 said that she had received some e-mail from Rand Hoch
5 and -- and acknowledged the other Council members, as
6 well. And asked the City Attorney to take a look at the
7 draft ordinance and to review it and to prepare
8 something. And I believe this was in response to the
9 Mayor's request.

10 Q. "This," meaning, Exhibit 23?

11 A. Exhibit 23, yes.

12 Q. Okay. All right. I'm going to ask you some
13 questions about some things that are mentioned in this
14 memorandum. Looking at the second paragraph on the
15 first page, it says: Conversion therapy, also known by
16 various other names such as treatment for unwanted
17 same-sex attraction, is the practice of attempting to
18 change a person's sexual orientation through
19 psychological counseling.

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, the ordinance that was eventually enacted by
23 the City Council banned, not only Sexual Orientation
24 Change Efforts, but also Gender Identity Change Efforts,
25 correct?

1 A. That's correct.

2 Q. And yet, in this memorandum, the City Attorney
3 defines conversion therapy solely with respect to sexual
4 orientation. Am I reading that correctly?

5 A. I think, yes, that would be a way of reading and
6 reviewing that.

7 Q. Okay. Well, do you know why the conversion
8 therapy in this memorandum to the City Council was not
9 defined more broadly to include Gender Identity Change
10 Efforts?

11 A. No. To answer the question, I don't know what
12 the City Attorney was -- was thinking. Although, I
13 think, if you read it in its totality, it includes other
14 definitions or other -- other things that might be
15 included in conversion therapy.

16 Q. Okay. Continuing on in that same paragraph, it
17 says: The PBCHRC -- I don't know if we've already
18 established that's the Palm Beach County Human Rights
19 Commission, correct?

20 A. I believe so. Council.

21 Q. Council.

22 A. And I think it's in the first paragraph it
23 defines what that is.

24 Q. There it is.

25 And that is the organization that Mr. Hoch

1 represented or represents?

2 A. That's correct.

3 Q. Okay. So starting that sentence, again: The
4 PBCHRC and the model ordinance rely on and cite to
5 numerous scientific articles and studies that conclude
6 conversion therapy and other Sexual Orientation Change
7 Efforts, SOCE, are ineffective, erroneously presume that
8 homosexuality and gender nonconformity are mental
9 diseases or defects and may, in fact, cause
10 psychological harm particularly to children.

11 Did I read that correctly?

12 A. Yes, you did.

13 Q. And is that claim that Sexual Orientation Change
14 Efforts may, in fact, cause psychological harm,
15 particularly in children, a claim that the City Council
16 accepted and relied upon in enacting the ordinance?

17 A. I think the City Council, when they considered
18 this ordinance, looked, not only to this memo, but other
19 things. This was, I believe, something that they had
20 received and was part of their decision making process.

21 Q. Okay. But the claim that Sexual Orientation
22 Change Efforts may, in fact, cause psychological harm,
23 particularly in children, is that a claim that the City
24 Council accepted and relied upon in enacting the
25 ordinance?

1 A. I think that that was not a conclusion of the
2 City Attorney. I believe she says that the reference
3 materials indicate that. But I'm not sure that was your
4 question. I think your question is: Did they rely upon
5 this memo in that sentence to make their decision? I
6 think that was clearly something that they -- was part
7 of their information available to them as they
8 considered this ordinance.

9 Q. Well, I guess I'm not really asking you whether
10 they relied on this particular memo as much as I'm
11 asking you whether they relied on this proposition. So
12 let me try another way.

13 A. Okay.

14 Q. Does the City of Boca Raton believe that Sexual
15 Orientation Change Efforts may, in fact, cause
16 psychological harm, particularly to children?

17 A. I believe that, as the memo said, the reports
18 that were attached -- the reports that were cited down
19 below, that is the indication from a number of these
20 reports that that is the case.

21 Q. I understand that that's what Mr. Hoch or others
22 claim that that's what the reports show.

23 A. Sure.

24 Q. My question is, not what the reports show, but
25 what the City of Boca Raton believes or contends or what

1 its position is. And so let me try that one more time.

2 Does the City of Boca Raton believe that Sexual
3 Orientation Change Efforts may, in fact, cause
4 psychological harm, particularly to children?

5 A. Sure. And I understand what you're saying. And
6 I'm not trying to -- to avoid your question. But I
7 don't think it's quite as simple as that. I think that
8 there were information. There were studies presented.
9 There was facts and information presented as part of the
10 backup to the ordinance that the City Council reviewed
11 when they made their -- their decision to pass the
12 ordinance.

13 As a whole, I can't tell you what the City
14 Council believes the -- what each individual City
15 Council member believes is true or not true based on
16 those reports.

17 Q. And, just so we're clear, I'm not asking you what
18 an individual City Council member believes or doesn't
19 believe.

20 A. Uh-huh.

21 Q. I'm asking you what the position is of the City
22 of Boca Raton whose designee you are here today.

23 A. Sure.

24 Q. And so what I want to know is: Does the City of
25 Boca Raton take the position that Sexual Orientation

1 Change Efforts may, in fact, cause psychological harm,
2 particularly to children?

3 MR. ABBOTT: Objection. Asked and answered.

4 THE WITNESS: Maybe I wasn't explaining it
5 very well. But I think that, as the City Council
6 reviewed the information and passed the ordinance, they
7 believed that the information that was presented was
8 strong enough to move forward with the passing of the
9 ordinance.

10 BY MR. MIHET:

11 Q. I think we're getting closer.

12 So what I'm hearing you say is that the City
13 Council believes that Sexual Orientation Change Efforts
14 may, in fact, cause psychological harm, particularly in
15 children?

16 A. Based on the fact that they passed the ordinance,
17 based on the -- on these reports which had that as part
18 of their conclusions -- I don't think we're getting that
19 close. But -- as you say. But I think, if the idea is
20 that they reviewed these, those reports had that as one
21 of their conclusions and the City Council used that
22 conclusion as evidence to pass their -- the ordinance,
23 then I think that what you're saying is correct.

24 Q. As you sit here today, are you not able to tell
25 me yes or no in response to my question as to whether or

1 not the City of Boca Raton believes that Sexual
2 Orientation Change Efforts may, in fact, cause
3 psychological harm, particularly in children? Are you
4 able to answer that question with a yes or no today?

5 MR. ABBOTT: Object to the form.

6 Asked and answered.

7 THE WITNESS: I don't think a yes and no is
8 the proper response to that question.

9 MR MIHET: Okay.

10 BY MR. MIHET:

11 Q. You can't say yes or no?

12 A. I cannot say yes or no.

13 Q. Okay. How much more likely is an LGBT minor who
14 undergoes Sexual Orientation or Gender Identity Change
15 Efforts to experience depression versus an LGBT minor
16 who does not undergo those kinds of efforts?

17 A. I don't -- I don't think that I can give you a
18 good answer on that.

19 Q. Okay. The City --

20 A. I don't know.

21 Q. The City doesn't know?

22 A. No.

23 Q. The City doesn't know whether it's five percent
24 more likely, one percent more likely or zero point zero
25 one percent more likely?

1 A. That's correct.

2 Q. How much more likely is an LGBT minor who
3 undergoes Sexual Orientation Change Efforts or Gender
4 Identity Change Efforts to experience feelings of fear
5 or loneliness versus an LGBT minor who does not undergo
6 those kinds of efforts?

7 A. I don't know, and the City does not know.

8 Q. And, if I ask you that same question for
9 rejection, the answer would be the same? The City
10 doesn't know?

11 A. That's correct.

12 Q. And, if I ask you the same question with respect
13 to feelings of anger, the answer would be the same? The
14 City doesn't know?

15 A. That's correct.

16 Q. And, if I ask you the same question as to
17 suicidal thoughts, your answer would be the same? The
18 City doesn't know?

19 A. That's correct.

20 Q. And is it fair to say that the reason the City
21 doesn't know this is because no study has ever found a
22 causal connection between Sexual Orientation or Gender
23 Identity Change Efforts and any harm?

24 A. The reports and information that was -- that was
25 attached to this ordinance, the ones that was relied

1 upon for the ordinance, did not have any of those.

2 Whether one exists or not, I don't think we've done any

3 independent review of the literature or studies.

4 Q. And so --

5 A. So we do not know of any.

6 Q. Okay. And so the City doesn't know the answer to
7 the questions I just posed. And, because the City
8 doesn't know of any study, the City would be unable to
9 determine an answer to the question that I just posed,
10 correct?

11 MR. ABBOTT: Object to the form.

12 THE WITNESS: If you're asking are we
13 relying on any empirical studies, the answer is no.

14 MR. MIHET: Okay.

15 BY MR. MIHET:

16 Q. Continuing in the same memorandum to the next
17 paragraph, it says: The model ordinance is aimed at
18 protecting minors from being exposed to conversion
19 therapy. It contains a blanket prohibition on the
20 practice of conversion therapy on minors by state
21 licensed professionals, physicians, psychotherapists, et
22 cetera.

23 Did I read that correctly?

24 A. Yes.

25 Q. What does the term "blanket prohibition" mean in

1 that context?

2 A. While I have not spoke to the City Attorney on
3 her usage of that term, it appears, from the sentence --
4 just from the -- the sentence structure, it is an
5 umbrella, if you will, a total covering of the practice
6 of conversion therapy.

7 Q. A total ban?

8 A. A total ban.

9 Q. Did the City Council ever consider anything other
10 than a blanket prohibition or a total ban on Sexual
11 Orientation Change Efforts or Gender Identity Change
12 Efforts?

13 A. Are you referring to a ban on certain practices
14 or -- as opposed to a total ban? Is that the question?

15 Q. Yes.

16 A. I think the Council had really the option of
17 passing the ordinance, which is a total ban. And the
18 only other alternate they considered was no ban.

19 Q. Okay. So the answer to my question is, no, the
20 City has never considered anything other than a total
21 ban?

22 A. That's correct.

23 Q. Now, you said -- so, just to be clear, then, the
24 City never considered, for example, banning only
25 aversive therapy as opposed to non-aversive therapy?

1 A. That's correct.

2 Q. The City never considered banning only forced
3 involuntary therapy while allowing therapy that a minor
4 seeks out and voluntarily assents to?

5 A. That's correct.

6 Q. Now, you said in your earlier response that the
7 City's only option was to enact the ban that was
8 proposed or to reject it entirely. Did I understand
9 that correctly?

10 A. That wasn't their only. But that was the
11 decision that the Council was -- was deliberating in the
12 October 2017 meeting.

13 Q. Okay. Now, the Council could have requested
14 information on whether or not a ban that was short of a
15 total ban would still address the perceived problem,
16 correct?

17 A. They could have, yes.

18 Q. The Council could have requested information, for
19 example, on whether or not prohibiting only aversive or
20 forced therapy would still address the asserted harms of
21 conversion therapy?

22 A. They could have.

23 Q. But they never made that request, correct?

24 A. That's correct. They did not.

25 Q. The City Attorney received a model ordinance from

1 Mr. Hoch, correct?

2 A. That's correct.

3 Q. The City Attorney did make a couple of

4 modifications to that model ordinance, correct?

5 A. That's correct. The City Attorney's office.

6 Q. Right.

7 A. Yes.

8 Q. But the City Attorney's office didn't modify the

9 model ordinance that it received to make it less than a

10 total ban?

11 A. That's correct.

12 Q. Could they have done that if they had been

13 instructed to or if they wanted to?

14 A. Yes. The City Council certainly has the ability

15 to ask for modifications.

16 Q. Why didn't the City Council consider anything

17 other than a blanket prohibition or total ban?

18 A. Sure. Well, I can't speak to the Council or the

19 individuals. However --

20 Q. Did you say you cannot speak for the Council?

21 A. The individual Council members.

22 Q. And I'm not asking you --

23 A. Yes.

24 Q. I'm asking you --

25 A. Sure.

1 Q. -- for the Council as a whole, the City of Boca
2 Raton.

3 A. Sure. I believe that the City Council reviewed
4 the documents that were provided as part of the
5 ordinance and felt that the documents supported the
6 intent and the ordinance.

7 Q. Okay. But they never investigated whether or not
8 anything short of a total ban would still address the
9 problems that were being asserted?

10 A. That's correct.

11 Q. Okay. Speaking of the materials that were
12 presented, have you had a chance to review the stack of
13 studies and statements and position papers?

14 A. I have.

15 Q. Did you read them from cover to cover?

16 A. I did not.

17 Q. Okay. There may be a couple three hundred pages
18 or thereabouts?

19 A. Sure. I think one's a hundred and eighty. One's
20 sixty, seventy. Yes. So three hundred pages is
21 probably a fair estimate.

22 Q. Okay. How much time did you take to read them?

23 A. Probably -- probably the better part of an hour.

24 Q. Okay. And --

25 A. Little more, little less because I was referring

1 to other things during that.

2 Q. Sure. Now, I don't know whether you're a speed
3 reader or not. And, in an hour or so, I can probably
4 read about twenty pages or so. Do you have any idea
5 about how many pages of information you can read in an
6 hour?

7 A. I don't.

8 Q. Okay. Fair to say it's twenty, thirty, forty
9 pages, thereabouts?

10 A. Well, don't know. I really have never timed
11 myself. I don't know what I read per minute.

12 Q. Okay. Is it fair to say that, in the hour that
13 you spent reviewing that stack of three hundred pages,
14 you were not able to read all of it?

15 A. Clearly.

16 Q. Okay. How much --

17 A. And -- I'm sorry.

18 Q. Go ahead.

19 A. But, of course, there are some sections that
20 perhaps weren't as pertinent to the issue; and I didn't
21 look at those at all. I tried to focus on the areas
22 that -- that appeared to be pertinent to the ordinance
23 and to this matter.

24 Q. When did you read those materials?

25 A. First time was probably about a week ago, ten

1 days ago; and then I've looked at them periodically
2 throughout --

3 Q. Okay.

4 A. -- including yesterday.

5 Q. Okay. We spent a little bit of time on one of
6 those yesterday.

7 Now, with respect to the City Council, including
8 the Mayor, how much time did they spend reviewing the
9 actual studies and position papers themselves?

10 A. Again, they were provided that information. How
11 much each of them looked at those documents and studied
12 them, I don't know.

13 Q. Okay.

14 A. I'm unable to tell you.

15 Q. So that means the City doesn't know whether or
16 not the individual Councilmen read any of them?

17 A. The information was provided to them.

18 Q. Undoubtedly.

19 The question is: Does the City know whether the
20 members of the City Council actually read any of the
21 studies themselves?

22 A. I'm not sure how we would know that. But the
23 information was -- was presented to the City Council.
24 And, with all ordinances, with all actions they take,
25 they're provided with all information. The level of

1 their review is not something that we would know.

2 Q. So the answer to my question is no?

3 A. The answer to your question is I don't know.

4 Q. Okay. Continuing in the same memorandum we've
5 been discussing, Exhibit 23, the next sentence says: A
6 proposed ordinance would only apply to minors.

7 Did I read that correctly?

8 A. Yes.

9 Q. Why would the City exclude adults from the
10 coverage of the ordinance?

11 A. My understanding is that non-minors, adults, have
12 the -- can both legally consent and have the cognitive
13 ability to assent to that type of treatment.

14 Q. Okay. Is the City's position that a
15 seventeen-year-old cannot voluntarily assent to therapy
16 to assist that seventeen-year-old in changing their
17 gender identity?

18 A. I think --

19 MR. ABBOTT: Object to the form.

20 Go ahead.

21 THE WITNESS: I think the ordinance says
22 that anybody under eighteen, which would be a
23 seventeen-year-old. There would be a ban on conversion
24 therapy for that seventeen-year-old, yes.

25 BY MR. MIHET:

1 Q. Is it the City's position that a
2 seventeen-year-old cannot voluntarily assent to therapy
3 that would assist that seventeen-year-old with his or
4 her desire in changing their gender identity?

5 A. I think -- again, if you read the ordinance,
6 it -- seventeen is less than eighteen, obviously. So,
7 as a minor, they wouldn't -- there would be a ban from
8 that assent.

9 Q. Sure. I'm agreeing with you a hundred percent
10 that the ordinance would prohibit that minor from
11 seeking or engaging in that therapy. My question is
12 quite different, actually.

13 Separate and apart from what the ordinance allows
14 or prohibits --

15 A. Uh-huh.

16 Q. Okay?

17 -- is it the City's position that a
18 seventeen-year-old cannot voluntarily assent to therapy
19 that would assist that individual with their desire to
20 change gender identity?

21 A. Uh-huh. I understand --

22 MR. ABBOTT: Object to the form.

23 THE WITNESS: I'm sorry.

24 BY MR. MIHET:

25 Q. Go ahead.

1 A. I think the -- the studies that were cited in the
2 responses say that a number of the organizations note
3 that minors, children under eighteen, do not have the
4 requisite cognitive ability to make those kind of
5 decisions. So, whether there is an individual at
6 seventeen who has those cognitive or a
7 seventeen-year-old who does not, I don't know that there
8 couldn't be cases on either side. But, in general, I
9 believe that the -- that the reports believe -- or
10 suggest that minors, children/minors are unable to make
11 such assents.

12 Q. Okay. Now, if a minor seeks to change their
13 gender identity -- say you have a seventeen-year-old boy
14 who decides that he is going to identify as a girl. Are
15 you with me?

16 A. Uh-huh.

17 Q. If this minor seeks therapy to affirm him in this
18 decision, the ordinance would permit that kind of
19 therapy, would it not?

20 A. If it's not a change of gender identification,
21 then the ban -- as a minor, there is a ban on people
22 trying to -- therapists trying to change gender
23 identity.

24 Q. Okay.

25 A. If the therapist is not trying to change, then,

1 of course, there would be no violation of the ordinance.

2 Q. But, if the minor wishes for that change to take
3 place and is looking for affirmation therapy to assist
4 the minor with that change, would the ordinance allow
5 that?

6 MR. ABBOTT: Objection. Asked and answered.

7 THE WITNESS: The ban is for a conversion of
8 gender identity.

9 MR. MIHET: Okay.

10 THE WITNESS: And so, in your example, I
11 think you had said that this seventeen-year-old
12 individual born as a boy now wants to identify as a
13 girl; so their gender identity is female. So I'm not
14 sure what you're asking. If the therapist is affirming
15 their gender identity as a female, then they're not
16 converting the gender identity. So that would not be a
17 ban under this ordinance.

18 Q. This ordinance?

19 A. This ordinance.

20 Q. So --

21 A. If I understood you correctly.

22 Q. Right. So, if the minor has already adopted the
23 identity in their mind and comes to a therapist to
24 receive affirmation for that new identity, what I'm
25 hearing you say is that the ordinance would allow that?

1 A. As presented, I believe that's the case, yes.

2 Q. Okay. And, in that case, that particular
3 seventeen-year-old -- let's assume we're still talking
4 about that person --

5 A. Uh-huh.

6 Q. -- would, in the City's view, be able to
7 voluntarily assent to that kind of therapy, correct?

8 A. Yes.

9 Q. Okay. But, if the minor has not yet adopted the
10 new identity, they're maybe on the fence, they're
11 thinking about it, maybe exploring the options, testing
12 the waters and they come to the therapist seeking help
13 with the change that is not yet achieved but in
14 progress, what I'm hearing you say is that the ordinance
15 would prohibit that kind of therapy?

16 MR. ABBOTT: Object to the form.

17 Misstates the prior testimony.

18 And object to the hypothetical.

19 THE WITNESS: The situation that you're
20 talking about -- as I understand the ordinance and -- it
21 is a ban on conversion therapy, changing -- trying to
22 change someone's gender identity. The situation
23 hypothetically presented, I was unable to tell whether
24 or not they're changing their identity or not.

25 MR. MIHET: They're seeking to change. The

1 seventeen-year-old is seeking to change, but they
2 haven't changed yet.

3 THE WITNESS: Then a conversion would be a
4 ban. If someone who is looking to change or looking --
5 if a therapist actively treats to convert their gender
6 identity, then I think that would be a ban of the
7 ordinance.

8 BY MR. MIHET:

9 Q. So if you -- okay.

10 Getting back to the memo that is Exhibit 23 and
11 focusing still on that same sentence that says that a
12 proposed ordinance would only apply to minors, leaving
13 adults -- meaning, adults are free to seek out such
14 therapy if they so choose. Putting aside the issue of
15 an adult's ability to consent, if the conversion therapy
16 is harmful, why would adults be allowed to seek out such
17 harm and to undergo that harm?

18 A. Uh-huh. Well, I think for both of those reasons
19 that we talked about earlier. Someone who is not a
20 minor can both assent and consent to -- to a treatment
21 in this case or to therapy. But that's not -- is that
22 your question?

23 Q. Well, I mean, I know that you can -- as an adult,
24 you can assent and consent to things that harm you,
25 right?

1 A. That's correct.

2 Q. So, for example, if I wanted to go out and shoot
3 heroin up my veins, I can consent and assent to that;
4 but that doesn't make that legal. The state isn't going
5 to allow me to do it just because I can. The state says
6 it's harmful; and so, even though you're a consenting
7 adult, we're going to ban you from doing that, correct?

8 A. Sure.

9 Q. Why doesn't the same logic apply to conversion
10 therapy with respect to adults?

11 A. Well, you brought up the example of heroin.
12 Let's look at smoking, for example. Smoking is
13 something that people generally believe is not healthy.
14 Yet adults can, not only consent, but they can assent;
15 and they can smoke. It's a matter of, even though it
16 might be harmful, there are things that adults can do
17 with their own decisions.

18 Q. Okay. And so are you attempting to say by that
19 example that conversion therapy, in the scheme of
20 things, is perhaps not as harmful as -- as heroin but,
21 you know, as harmful as smoking? I mean, are you --
22 are you --

23 A. No, not at all.

24 Q. Okay.

25 A. It had nothing to do with trying to equate

1 heroin, smoking and conversion therapy.

2 Q. No.

3 A. That was not -- you had brought up an example of
4 heroin. I just thought of the idea of smoking, some of
5 the same things where adults can consent and assent; but
6 it may not be -- it may be harmful to them and to
7 others.

8 Q. Okay. But some things that are harmful to adults
9 they can't legally do, correct?

10 A. You brought up heroin as an example.

11 Q. Okay. So why -- if conversion therapy is
12 harmful, why not prohibit adults from doing it?

13 A. I think your question is perhaps -- under the
14 ordinance, it talks about minors. It talks about trying
15 to protect minors for the reasons we just talked about,
16 consent and assent. In the case of adults, those --
17 those same conditions do not exist. And so I don't know
18 that -- if your question is how -- why doesn't the
19 ordinance cover adults as well as minors, it's for those
20 reasons.

21 Q. Okay. Just so we're on the same page, the City
22 of Boca Raton has the ability to prohibit adults from
23 engaging in harmful behavior even though they are able
24 to consent or assent to that behavior, correct?

25 A. That's correct.

1 Q. And so the City of Boca Raton has the ability to
2 prohibit adults, then, from engaging in conversion
3 therapy even if they have the ability to consent or
4 assent to it?

5 A. Within -- yes. I would think that's generally
6 the case.

7 Q. Okay. That being the case, if conversion therapy
8 is harmful, why not extend the ban to cover adults, as
9 well?

10 MR. ABBOTT: Objection.

11 I think that's the fourth time you asked him
12 that question.

13 THE WITNESS: I think, again, is the -- the
14 ordinance was looking at protecting children, minors
15 under eighteen, who don't have either the consent or
16 assent ability. And that's -- this is a protection for
17 minors.

18 BY MR. MIHET:

19 Q. Does the City of Boca Raton take the position
20 that conversion therapy is harmful enough to ban for
21 minors but not harmful enough to ban for adults?

22 MR. ABBOTT: Object to the form.

23 THE WITNESS: The documents that were
24 reviewed and included as part of the ordinance for the
25 most part deal with children, with minors, not with

1 adults. And that's what the focus of the ordinance was
2 was looking at minors, not adults.

3 MR. MIHET: Okay.

4 THE WITNESS: In the future, could there be
5 ordinances? Could there be legislation with adults?
6 Certainly. But that was not the focus of this
7 ordinance.

8 MR. MIHET: Okay.

9 BY MR. MIHET:

10 Q. Back to the memo that is Exhibit 23 and
11 continuing with the next sentence, it says: It would
12 not apply to clergy or other religious leaders who are
13 acting in their roles as clergy or pastoral counselors
14 or are providing religious instruction to congregants so
15 long as they do not hold themselves out as operating
16 pursuant to a state-issued license.

17 Have I read that correctly?

18 A. Yes.

19 Q. What was the reason for excluding religious
20 practitioners, if you will, from the total ban?

21 A. Sure. The -- as you know, the model ordinance,
22 the one that was presented to the City back in July of
23 2017, included an exclusion for clergy, as well.

24 Q. Okay.

25 A. And that was not something that the City

1 developed on their own. That was something that was
2 adopted by other cities, as you well know.

3 Q. Okay. The City could have --

4 A. Yes.

5 Q. -- amended the model ordinance as it did in other
6 respects to make it apply to religious practitioners, as
7 well?

8 A. Perhaps. But that was not something that was
9 considered as part of the ordinance to take that out.
10 And I believe, in talking with the people who prepared
11 the ordinance, there was a clarification, as you saw,
12 from the model ordinance that tried to clarify who was
13 covered by this, not just clergy, but other members of
14 the congregation who are involved with the religious
15 institutions. But it is something that was included, I
16 believe, originally in the model ordinance as, like, a
17 freedom of religion and not trying to infringe on that.
18 However, I don't know why the original model ordinance
19 was included with that. But that appears to be the
20 case.

21 Q. The model ordinance included already an exemption
22 for clergy, correct?

23 A. That's correct.

24 Q. And the City Attorney actually expanded that
25 exemption to make it clear that it's, not just clergy

1 that are exempted, but any religious --

2 A. Not just ordained because there could be some
3 question about someone who is working as a Sunday school
4 teacher, for example.

5 Q. Right.

6 A. They're not ordained. But are they a member of
7 the -- of the body of the organization.

8 Q. Sure. Fair to say that the City actually
9 broadened the religious exemption in the model
10 ordinance?

11 A. I'd like to say clarified. But perhaps included
12 other individuals than the model ordinance. That's
13 correct.

14 Q. Okay. It didn't remove the exemption altogether?

15 A. It did not.

16 Q. Okay. I believe you said the reason for that is
17 because they wanted to observe First Amendment
18 protections?

19 MR. ABBOTT: Object to the form.

20 THE WITNESS: I did not say that. I believe
21 that is the case. That's my understanding. I don't
22 believe that was clear in the -- in the model ordinance.
23 It didn't specifically say that.

24 MR. MIHET: Okay.

25 THE WITNESS: That's my understanding.

1 BY MR. MIHET:

2 Q. Is conversion therapy any less harmful to a minor
3 when it is provided by an unlicensed member of the
4 clergy as opposed to when it is provided by a licensed
5 therapist?

6 A. I don't know the answer.

7 Q. Does the City know the answer?

8 A. No. There has not -- my understanding, the City
9 has not reviewed any -- any information or any studies
10 on it.

11 Q. Okay. The City believes that, when practiced by
12 a licensed therapist, conversion therapy, including
13 Sexual Orientation Change Efforts and Gender Identity
14 Change Efforts, is harmful to minors, correct?

15 A. They follow the lead of these different -- of
16 these different organizations, yes.

17 Q. So they believe that to be the case?

18 A. That's correct.

19 Q. The City has no reason to believe that, when the
20 same kind of therapy is provided by an unlicensed person
21 such as a pastor, that it's any less harmful, correct?

22 A. There's no independ -- no studies that I know of
23 that the City has looked at that have addressed that.

24 Q. Did the City ever consider that a consequence of
25 banning Sexual Orientation or Gender Identity Change

1 Efforts by licensed therapists would be for those who
2 are seeking that kind of therapy to end up in the hands,
3 so to speak, of unlicensed practitioners?

4 A. I don't believe that was discussed.

5 Q. Okay. The City didn't consider -- well, let me
6 withdraw that.

7 Does the City of Boca Raton have the ability to
8 prohibit members of religious organizations from harming
9 children?

10 MR. ABBOTT: Object to the form.

11 Exceeds the scope of the notice.

12 Calls for a legal conclusion.

13 THE WITNESS: I guess I'd need to know a
14 little bit more about your example, what we're talking
15 about. But...

16 BY MR. MIHET:

17 Q. Well, you know, I'd give you the example of
18 sexual abuse; but I'm not sure whether or not the City
19 passes any laws with respect to that. But, you know,
20 things along those lines. Assuming the City has
21 authority to stop other adults in the City from harming
22 children, would the City have the authority to stop
23 religious entities and their members from harming
24 children in the same way?

25 MR. ABBOTT: Same objection.

1 THE WITNESS: I think the City has --
2 certainly has authority to make rules, regulations,
3 policies that protect children or any citizen, any
4 resident or visitor, yes.

5 BY MR. MIHET:

6 Q. From harm whether or not that harm is caused by
7 an adult or by a member of a religious institution?

8 A. Yes.

9 Q. Okay. Going to the second page of Exhibit 23,
10 the memorandum starts at the top by saying: It is worth
11 noting that, although regulation of health professions
12 occurs through licensure at the state level, there is no
13 express statutory preemption regarding the states
14 regulation of licensed health professions nor any case
15 law finding an implied preemption. However, given the
16 extensive regulation of health professions by the state,
17 it is possible a court may in the future find the
18 regulatory field has been impliedly preempted to the
19 state, thereby prohibiting local regulation.

20 Did I read that correctly?

21 A. Yes, you did.

22 Q. And, if you would look down at the footnote four,
23 the last couple of sentences starting with "also the
24 PBCHRC." Do you see that?

25 A. No. Oh, I see, yes.

1 Q. Do you see that?

2 A. Yes.

3 Q. So follow along with me there.

4 A. Yes.

5 Q. Also the PBCHRC has recommended inclusion of the
6 following in a proposed ordinance. The ordinance shall
7 be automatically repealed should the Florida legislature
8 and/or any court determine that a regulation of
9 conversion therapy is preempted by the State of Florida.
10 We believe this language would be superfluous since the
11 establishment or finding of a preemption would render
12 the ordinance unenforceable by operation of law without
13 the need for an express provision in the draft
14 ordinance.

15 Did I read that correctly?

16 A. Yeah.

17 Q. So is it fair to say that, in looking at the
18 proposed ordinance, the City was concerned about the
19 issue of preemption?

20 A. The City -- preemption was something that the
21 City looked at during the drafting of the ordinance,
22 yes.

23 Q. Okay. Was the City concerned that the regulation
24 of mental health professionals was something that was a
25 state issue for the State of Florida to do as opposed to

1 the City of Boca Raton?

2 A. I think the answer to your question is no. I
3 think -- as phrased. I think that, when this came, as
4 with other jurisdictions, the City had some concerns
5 whether or not the regulation of a state licensed
6 profession was something that was preempted by the state
7 or not and did some research to see whether or not that
8 was the case.

9 As you can see from the memo that the -- neither
10 the case law nor -- there is no express preemption nor
11 did case law support that. And so I believe the City
12 Attorney said that this ordinance makes sense. However,
13 recognizing that in case future there was some implied
14 preemption by the state, that that would render this
15 ordinance pretty much unenforceable.

16 Q. Okay. This paragraph that I read back up in the
17 main text --

18 A. Yes.

19 Q. -- in the first -- in the first paragraph where
20 it says: However, given the extensive regulation of
21 health professions by the state.

22 A. Uh-huh.

23 Q. Does the City of Boca Raton take the position
24 that the State of Florida extensively regulates health
25 professions?

1 MR. ABBOTT: Object to the form.

2 THE WITNESS: I believe that's what it says,
3 and I believe the answer is yes.

4 MR. MIHET: Okay. I know I told you to feel
5 free to ask for breaks. Can I ask for a break?

6 THE WITNESS: Apparently, it's your depo.
7 You can do whatever you want.

8 MR. MIHET: Let's take a quick comfort
9 break.

10 (Recess)

11 BY MR. MIHET:

12 Q. Mr. Woika, I believe you said that the conversion
13 therapy ordinance came up at City Council meetings, at
14 one of them in particular where the -- was it the Mayor
15 asked for additional information to be provided?

16 A. No.

17 Q. Okay. I'm sorry.

18 A. I think the one you're talking about was in July
19 of 2017.

20 Q. Okay.

21 A. And the Mayor, during her portion of the -- of
22 the Council meeting, said that she had received some
23 information from Rand Hoch, from PBC Human Rights
24 Council, and asked the City Attorney to look into it and
25 to take a look at the -- really take a look at the

1 ordinance --

2 Q. Okay.

3 A. -- the draft ordinance.

4 Q. So that was the first Council meeting when the
5 conversion therapy ban came up?

6 A. That's correct.

7 Q. And then, after that, it came up at how many
8 additional council meetings?

9 A. Two.

10 Q. Two.

11 One where they had the first reading or the
12 introduction?

13 A. That's correct.

14 Q. And one where they had the final vote?

15 A. That's correct. September and October
16 respectively for the two meetings --

17 Q. Okay.

18 A. -- of 2017.

19 Q. So, altogether then, I'm counting three City
20 Council meetings where the ordinance was discussed?

21 A. Well, the concept was discussed. The ordinance
22 wasn't really --

23 Q. Right. The ordinance wasn't really the
24 ordinance --

25 A. That's right.

1 Q. -- at the first meeting?

2 A. That's correct.

3 Q. But the conversion therapy ban was discussed at
4 three City Council meetings?

5 A. That's correct.

6 Q. Were there any workshops or sessions other than
7 full blown City Council meetings where the conversion
8 therapy ban was discussed?

9 A. No.

10 Q. Any executive sessions or shade meetings?

11 A. No.

12 Q. Okay. Okay. We're going to have some video time
13 here and look at the videos. They're very short.

14 A. Sure.

15 Q. We're going to look at the video from the first
16 City Council meeting, which is July 25, 2017. And, just
17 for the record --

18 A. Are you going to use this, or do you --

19 Q. We're just going to flip one of these laptops
20 around so you can see it.

21 Just for the record, we're going to play from a
22 file that is titled CCR170725.MP4.

23 MR. GANNAM: And, just for the record, this
24 file was originally produced by the City with the file
25 name Boca Raton underscore CFCA and then a lot of other

1 letters and numbers. We are using a different file name
2 just for simplicity.

3 MR. MIHET: And we're going to provide the
4 thumb drive to the court reporter so that these videos
5 can be appended as exhibits to the deposition.

6 So this first meeting, I've already
7 mentioned the file name, we're going to play from the
8 point in time on this video that is at hour two, minute
9 six, second fifty-nine. Can you see the --

10 THE WITNESS: Yes.

11 (Videotape starts)

12 MAYOR HAYNIE: Thank you very much,
13 Mr. Weinroth.

14 And I'll be very brief. I know many of us
15 have received e-mails and some suggested ordinances
16 regard -- regarding the prohibition of conversion
17 therapy on minors. And I just wanted to pass these on
18 to the City Attorney and just ask that she review our
19 code and see if -- if, perhaps, we already do this and,
20 if not, you know, perhaps some suggestions as to protect
21 the children in our community.

22 COUNCIL PERSON WEINROTH: And I would second
23 that. You know, we've been speaking individually with
24 the proponent of that. And, certainly, this is
25 something that I would like to hear more about and see

1 if it's something that the City should be weighing in
2 on.

3 COUNCIL PERSON: And I also would like to
4 hear more.

5 MAYOR HAYNIE: Yeah. Thank you, Mister
6 (inaudible). I think we all do if it comes to the
7 safety of our children.

8 COUNCIL PERSON WEINROTH: Thank you.

9 MAYOR HAYNIE: Thank you.

10 And, if there's no further --

11 COUNCIL PERSON O'ROURKE: Madam Mayor --
12 (Videotape stopped)

13 BY MR. MIHET:

14 Q. Okay. Is that portion of the video that we
15 watched representative -- let me try that, again.

16 Does that portion of the video that we watched
17 fairly and accurately represent what transpired at the
18 July 25, 2017, City Council meeting with respect to
19 consideration of the ban on conversion therapy?

20 A. Yes.

21 Q. Now, by my count, that discussion spanned from
22 hour two, minute six, second fifty-nine to hour two,
23 minute seven, second forty-nine. So I'm counting about
24 fifty seconds; is that fair?

25 A. Your numbers -- I think that's approximate time,

1 about a minute, yeah.

2 Q. All right. And was there any other discussion at
3 that meeting regarding the subject of conversion
4 therapy?

5 A. No.

6 Q. Okay. And, if I heard correctly, the discussion
7 centered on a couple of the members saying that they
8 wanted more information about the subject?

9 A. Yes. I think that the Mayor is pretty clear that
10 they had received this information, wanted to know if
11 that was part of our existing code or if there should be
12 something that should be done with this ordinance. And
13 I think that's what Councilman Weinroth said, as well.

14 Q. Said, we would like to hear more? Yes?

15 A. Yes.

16 Q. All right. So next we are going to play the
17 video of the second City Council meeting. This is from
18 the September 26, 2017. And this is a video file that,
19 for the record, is titled CCR170926.MOV. And we're
20 going to play from hour one, minute seven, second two,
21 and on.

22 A. I think that's actually one hour -- is that what
23 you said? One hour and four minutes?

24 Q. Hour one --

25 A. Yeah. Okay.

1 Q. -- minute seven, second two.

2 A. Uh-huh.

3 (Videotape starts)

4 MAYOR HAYNIE: We'll move to introduction of
5 ordinances; and we have a lot, which means we're going
6 to have a very busy meeting next time.

7 So we will begin with Ordinance 5407.

8 Ms. Saxton, will you please read the title.

9 MS. SAXTON: Ordinance 5407, an Ordinance of
10 the City of Boca Raton amending Chapter 9, Code of
11 Ordinances, to create a new Article 6, Prohibition of
12 Conversion Therapy on Minors, prohibiting the practice
13 of conversion therapy on patients who are minors,
14 providing for severability, providing for repealer,
15 providing an effective date.

16 MAYOR HAYNIE: And who would like to
17 introduce Ordinance 5407?

18 COUNCIL PERSON WEINROTH: Madam Mayor, I'll
19 move 5407.

20 MAYOR HAYNIE: Thank you very much,
21 Mr. Weinroth. We'll now take up.

22 (Videotape stopped)

23 BY MR. MIHET:

24 Q. Okay. Was that video a fair and accurate
25 representation of what transpired at the second Council

1 meeting with respect to the ban on conversion therapy?

2 A. Yes. It's the introduction of ordinance.

3 Q. Okay. Was there any other discussion of
4 conversion therapy at this meeting besides what we just
5 watched?

6 A. No, I don't believe so.

7 Q. Now, by my count, that started at hour one,
8 minute seven, second two; and it went on to hour one,
9 minute seven, second thirty-six. So that's about
10 thirty-four seconds; is that about right?

11 A. It seems about right.

12 Q. Okay. So now we're going to watch the third and
13 final meeting where the subject of conversion therapy
14 was discussed. This is from the October 10, 2017, City
15 Council meeting. And, for the record, this is a video
16 that is labeled CCR171010. And we are going to play
17 beginning with minute three, second eleven.

18 (Videotape starts)

19 MAYOR HAYNIE: Or related public hearings.
20 So we will move directly to regular public hearings. At
21 this time, I'd like to ask the city clerk to please read
22 the title of Ordinance 5407.

23 CITY CLERK: Ordinance 5407, an ordinance of
24 the City of Boca Raton amending Chapter 9, Code of
25 Ordinances, to create a new Article 6, Prohibition of

1 Conversion Therapy on Minors, prohibiting the practice
2 of conversion therapy on patients who are minors,
3 providing for severability, providing for repealer,
4 providing for codification, providing an effective date.

5 MAYOR HAYNIE: Thank you very much. And, as
6 you can see, on behalf of the Palm Beach County Human
7 Rights Council who reached out to me, they had asked
8 that we consider this ordinance. We're following in the
9 footsteps of many other Palm Beach County municipalities
10 that have passed a similar ordinance. They being
11 Wellington, Lake Worth, Delray Beach, Palm Beach
12 Gardens, West Palm Beach, Boynton Beach and Greenacres.
13 And, basically, it's protecting the youth of our
14 community from a rather serious possibility of harm.

15 So, Members, any questions? No? No one has
16 any questions? At this time, I'll open the public
17 hearing. Is there anyone present who would like to come
18 forward and address the City Council on this matter?
19 Seeing no one come forward, I'll close the public
20 hearing.

21 And, if there's no further discussion, at
22 this time, I'll entertain a motion.

23 COUNCIL PERSON WEINROTH: Madam Mayor, I'll
24 move Ordinance 5407.

25 MAYOR HAYNIE: Is there a second?

1 COUNCIL PERSON O'ROURKE: I'll second.

2 MAYOR HAYNIE: Okay. So we have a motion by
3 Mr. Weinroth and a second by Ms. O'Rourke. Is there any
4 further discussion?

5 MR. RODGERS: Madam Chair?

6 MAYOR HAYNIE: Mr. Rodgers.

7 MR. RODGERS: Question for our City Manager.
8 How -- and I've looked through this, and I have some
9 concerns of language licensed practice versus
10 unlicensed. How would we enforce this? Would this be
11 like a code violation that we'd bring it forward or...

12 DEPUTY CITY MANAGER BROWN: It would be.
13 I'm not sure how we would enforce it. But it would be
14 in the code-related area.

15 Any other thoughts from the attorney? I
16 don't...

17 MAYOR HAYNIE: Ms. Frieser?

18 MS. FRIESER: That was a -- it's a Code
19 Enforcement process. I concede that it's -- there may
20 be difficulties in actual practical enforcement issue.
21 But it is a Code Enforcement process.

22 MAYOR HAYNIE: Okay. Any further
23 discussion?

24 DEPUTY MAYOR RODGERS: Madam Chair?

25 MAYOR HAYNIE: Mr. Rodgers.

1 DEPUTY MAYOR RODGERS: Full disclosure. I
2 mean, I certainly won't argue health and high standard.
3 I see this as really a state issue. And I'm not going
4 to support it because of that.

5 MAYOR HAYNIE: Okay. Any further
6 discussion?

7 Seeing none, Ms. Saxton, will you please
8 call the roll on Ordinance 5407.

9 MS. SAXTON: Weinroth?

10 COUNCIL PERSON WEINROTH: Yes.

11 MS. SAXTON: Haynie?

12 MAYOR HAYNIE: Yes.

13 MS. SAXTON: O'Rourke?

14 COUNCIL PERSON O'ROURKE: Yes.

15 MS. SAXTON: Singer?

16 COUNCIL PERSON SINGER: Yes.

17 MS. SAXTON: Rodgers?

18 DEPUTY MAYOR RODGERS: No.

19 MS. SAXTON: The motion passes four votes to
20 one.

21 MAYOR HAYNIE: Very good. Thank you very
22 much. We'll --

23 (Videotape stops)

24 BY MR. MIHET:

25 Q. Was that video a fair and accurate representation

1 of what transpired at the third City Council meeting on
2 the subject of this ordinance?

3 A. Yes.

4 Q. By my count, that started at minute three, second
5 eleven; and it went to minute six, second zero. So I'm
6 counting about two minutes and forty-nine seconds. Does
7 that sound about right?

8 A. Numbers seem about right.

9 Q. Was there any other discussion at this City
10 Council meeting on the subject of conversion therapy
11 other than the portion that we just watched?

12 A. No.

13 Q. So, when I'm adding my numbers together, I'm --
14 my math shows me that, between the three meetings
15 combined, there was approximately four minutes and fifty
16 seconds of total consideration that was given to the
17 issue of conversion therapy by the City Council at these
18 meetings. Does that sound about right?

19 A. During the active portion of the meeting, yes,
20 about thirty seconds -- yeah, about five minutes.

21 Q. Okay. And, at this last meeting, it seemed like
22 there were no questions from the members of the Council.
23 Was that -- was that what you saw, as well?

24 A. Well, I think Chair -- or Councilman Rodgers
25 voiced his opinion and said he had some -- some thoughts

1 or some questions on the appropriateness. But,
2 during that other portion -- he was the only one that
3 had raised questions.

4 Q. I should have been a little more clear. By my
5 count, there were three portions of the meeting. There
6 were -- there was first a portion where there were
7 questions by members. Then there was a section for
8 public discussion, and then there was a section for
9 deliberation.

10 A. That's correct.

11 Q. In the first section with respect to questions by
12 members, there were none?

13 A. That's correct.

14 Q. And the public discussion there was none?

15 A. That's correct.

16 Q. In the deliberation section, there was a question
17 from one of the members regarding how this ordinance
18 would be enforced?

19 A. That was one of them, enforcement. Then I think
20 he had some thoughts about whether it should be a local
21 issue or a state issue.

22 Q. With respect to enforcement, he asked the City
23 Manager how this would be enforced. What I heard the
24 City Manager say is, I'm not sure how we would enforce
25 it.

1 A. Uh-huh.

2 Q. But it's a -- it's a code-related area. Does
3 that sound about what he -- right?

4 A. That seems about right, yes.

5 Q. Okay. Why was the City Manager not sure about
6 how this ordinance that was being enacted would be
7 enforced?

8 A. Well, I think, as you well recognize, this is a
9 little bit different than some of the other code
10 enforcement matters that the City handles. And so I
11 think the -- while he recognized it as clearly a Code
12 Enforcement matter, how it would be done wasn't
13 something that wasn't clear.

14 Q. It wasn't something that had been thought out and
15 clearly delineated by that point?

16 A. That's correct.

17 Q. And the -- I think he turns to someone and asked
18 somebody else if they had any thoughts on enforcement.
19 And I'm not sure if that was another City Council member
20 or someone else that responded.

21 A. City Attorney.

22 Q. City Attorney. Is that Ms. Frieser?

23 A. It is.

24 Q. Now, the City Attorney, Miss Frieser says --

25 A. Ms. is probably a better term.

1 Q. Ms.?

2 A. Uh-huh.

3 Q. Ms. Frieser.

4 A. Uh-huh.

5 Q. Isn't that what I said?

6 A. Ms. as opposed to miss.

7 Q. Oh, okay.

8 A. I'm sorry.

9 Q. That's all right.

10 Attorney Frieser.

11 A. Perfect.

12 Q. I believe I heard her say that she also thought

13 that there would be difficulties in the practical

14 enforcement issues?

15 A. Uh-huh.

16 Q. Yes?

17 A. She did.

18 Q. And so what do you think she was referring to?

19 A. Well, again, it is -- a lot of our code

20 enforcement has to do with something that is very

21 visual, easily determined. This is a little bit

22 different; and so there's going to be some different

23 approaches, some different ways of addressing. But it's

24 still a Code Enforcement issue, which I believe is what

25 she had concluded, as well.

1 Q. Okay. When you say that a lot of our Code
2 Enforcement has to do with things that are easily
3 determined, give me an example of what you're talking
4 about.

5 A. Going by a property and seeing that the grass is
6 too tall. It hasn't been cut properly.

7 Q. Okay. That's something that a code enforcement
8 officer can see and can issue a citation on the spot?

9 A. A notice of violation, yeah.

10 Q. In order for a notice of violation to be issued,
11 what does the code enforcement officer have to conclude?

12 A. It doesn't really have to -- it just has to
13 believe that there is a violation of the -- of the City
14 code.

15 Q. Okay. He has to believe that a violation has
16 occurred?

17 A. That's correct.

18 Q. And so he issues a citation?

19 A. Notice --

20 Q. Notice of violation?

21 A. -- of violation, that's correct.

22 Q. And what happens next in the code enforcement
23 process?

24 A. There is an opportunity for the property owner to
25 correct the -- the notice. And, if it's not, then it

1 goes to a special magistrate.

2 Q. And what happens at the special magistrate?

3 A. The special magistrate hears the testimony, hears
4 whatever evidence -- evidence that's presented and makes
5 a determination on the violation and what the remedies
6 could and should be --

7 Q. Okay.

8 A. -- and gives the property owner the opportunity
9 to correct before other penalties accrue.

10 Q. And how many special magistrates does the City of
11 Boca Raton have to deal with code enforcement
12 violations?

13 A. Several. It's a part-time job. And we --
14 there's a number that are rotated through. And there's
15 hearings that are monthly -- bimonthly and monthly.

16 Q. Okay. Now, the special magistrate, is that
17 something that's an elected position; or is it appointed
18 or hired or how is that --

19 A. It's appointed by City Council.

20 Q. And who can be a special magistrate for the City
21 of Boca Raton?

22 A. There is a -- there is a -- a process, an
23 application process and a selection process. I don't
24 know the -- the qualifications of the special
25 magistrates. But there is -- the process is one of

1 application and appointment.

2 Q. Okay. And that is a paid position?

3 A. It is.

4 Q. You said it's part-time, though?

5 A. Yes.

6 Q. About how many hours does a special magistrate
7 work?

8 A. A few hours a month.

9 Q. Okay. Does a special magistrate have to have a
10 minimum level of education?

11 A. I believe -- to check -- that they are required
12 to be attorneys.

13 Q. They are required to be attorneys?

14 A. Uh-huh.

15 Q. Are they required to be attorneys in any
16 particular --

17 A. I think that's the case. But, again, I have not
18 reviewed that as part of this.

19 Q. Okay. Are they required to be attorneys in a
20 particular area of law?

21 A. No, I don't believe so.

22 Q. Okay. So they could be a trust and estates
23 attorney or a property tax attorney or a divorce
24 attorney?

25 A. Again, I don't know the qualifications off the

1 top of my head. However, there is a -- most of the
2 people who are selected are special magistrates in other
3 communities, as well. And they look, not only at their
4 experience professionally, but also as experience in
5 other communities.

6 Q. Okay. How many code enforcement officials are
7 there in the City of Boca Raton?

8 A. By, "officials," you mean, all code officers?

9 Q. Yes.

10 A. I believe there are twenty-one, and there are a
11 couple different categories. There's code -- code
12 compliance officer 1's and 2's. And I think there's
13 about seventeen. There are seventeen of those. I think
14 there are three senior code compliance officers and then
15 a code compliance manager.

16 Q. So that's twenty-one. And is there someone
17 that's sitting at the top of that department?

18 A. That's the code compliance manager is responsible
19 for -- for that group. The code compliance manager
20 reports to the chief building official which reports to
21 development services director.

22 Q. Okay. So who is the code compliance manager
23 currently?

24 A. His name is Doug Sheedy, S-h-e-e-d-y.

25 Q. And you said he reports to the?

1 A. Chief building official.

2 Q. And who is that?

3 A. His name is John Cosmo.

4 Q. Okay.

5 A. C-o-s-m-o-s -- excuse me -- C-o-s-m-o.

6 Q. And he reports to the?

7 A. Development services director.

8 Q. Who is?

9 A. His name is s-h-a-d -- S-c-h-a-a-d,
10 Brandon Schaad.

11 Q. And then Mr. Schaad reports to Mr. Brown?

12 A. That's correct.

13 Q. And Mr. Brown reports to Mr. Ahnell?

14 A. That's correct.

15 Q. What is the difference between the three senior
16 code enforcement officials and the seventeen level 1 or
17 2 officials?

18 A. The level 1 or 2 -- and that's based on
19 certifications. You start out as a 1. You get
20 certified. Then you go to the 2 level. So there could
21 be -- of the seventeen positions, there could be
22 seventeen 1's or seventeen 2's. It's just really based
23 on their own progression and their own certifications.
24 The three seniors are positions that are set. There's
25 only three. So it's not part of progression. But they

1 have more responsibility, and they have some supervisory
2 lead-worker type responsibilities.

3 Q. Okay. Is there a difference in the educational
4 requirements that apply to the level 1 and 2 officials
5 versus the senior officials?

6 A. I don't believe so, no.

7 Q. The same requirements apply to all --

8 A. The same educational requirements?

9 Q. Yes.

10 A. Yes.

11 Q. And what are those educational requirements?

12 A. I believe it's high school required, associate's
13 recommended or suggested.

14 Q. Okay. So, if you have a high school diploma, you
15 could be eligible to be a code enforcement official in
16 the City of Boca Raton, including a senior enforcement
17 official?

18 A. That's correct.

19 The manager requires more. The manager requires
20 at least an associate's. In this case, Doug Sheedy has
21 a bachelor's degree.

22 Q. Okay.

23 A. From Iowa, if that matters.

24 Q. But an AA degree is required?

25 A. That's correct.

1 Q. Okay. Would a -- a GED certificate be
2 sufficient, or you have to have an actual high school
3 diploma?

4 A. No. A GED would be fine.

5 Q. Would be fine. Okay.

6 A. Again, that's the minimum level.

7 Q. Right.

8 A. But there are some who have other college -- of
9 our existing, there are people who have associate's and
10 other college grads.

11 Q. But they're not required to?

12 A. They're not required to. That's correct.

13 Q. Is there -- is there a distinction in the type of
14 code enforcement cases that an official can handle that
15 is based upon their educational experience?

16 A. No.

17 Q. So all code enforcement officers can handle all
18 code enforcement matters?

19 A. I think we call them code compliance officers.
20 But, yes, your basic premise is correct.

21 Q. Okay. And are there any written policies or --
22 or guidelines that the City of Boca Raton has with
23 respect to which code enforcement matters are assigned
24 to which code compliance officers?

25 A. No.

1 Q. Okay.

2 A. And a lot of times, it's geographical. They're
3 assigned geographical areas for the -- a lot of --
4 especially the 1's and the 2's.

5 Q. Okay. So they go out to a particular area, and
6 they're responsible for -- for violations that are
7 occurring in that --

8 A. That occur within that area. That's correct.

9 Q. Okay. With respect to --

10 A. The seniors are not, by the way. The seniors --
11 and some of the 1's and 2's are not geographical. But
12 that's generally how they're organized.

13 Q. Okay. With respect to the enforcement of code
14 violations, is there any custom or practice within Code
15 Enforcement that says these types of violations will be
16 assigned to these code enforcement officers other than
17 the geographical distinction that we just discussed?

18 A. No.

19 Q. Okay. And I take it that's the same, then, for
20 the conversion therapy ordinance? There is not any
21 policy or custom of assigning future alleged violations
22 of the ordinance to a particular code official?

23 A. There's no policies or procedures. But part of
24 my conversation -- I think we had talked earlier -- with
25 Doug Sheedy, who is the code compliance manager, we

1 talked about the conversion therapy ordinance in
2 particular and how he believed it would be handled from
3 a -- if he did receive a complaint, how would it be
4 handled.

5 Q. Okay.

6 A. But there's no written policies or procedures.

7 Q. Okay. Is there any plan to issue any written
8 policies or procedures?

9 A. No.

10 Q. Okay. And I think I know the answer, but so
11 we're clear. Prior to today, have there been any
12 alleged violations of the ordinance?

13 A. No.

14 Q. Have there been any opportunity to have Code
15 Enforcement go through the process yet?

16 A. What do you mean? What process?

17 Q. Of enforcing the ordinance banning conversion
18 therapy.

19 A. No.

20 Q. Have there been any enforcement guidelines or
21 procedures promulgated specifically with respect to
22 enforcement of the ordinance?

23 A. Of the code -- of the conversion therapy
24 ordinance?

25 Q. Yes.

1 A. No.

2 Q. Is there any plan to issue such guidelines or
3 policies?

4 A. No. Although, that's not unique. There's -- for
5 many many of the ordinances, there are not specific
6 plans and procedures for them.

7 Q. But are there some ordinances for which there are
8 specific plans or procedures or guidelines in place?

9 A. There are -- I think, generally, no.

10 Q. Okay.

11 A. Now, there are -- in cases of clarifications,
12 there are some memos that are out defining how you
13 measure grass height, for example.

14 Q. That was exactly the example I was thinking
15 about.

16 A. Okay. And, since I brought that up, so, while
17 there's not a policy/procedure, there is a memo that
18 says, okay, when you -- when you are looking at height,
19 here's some things to consider --

20 Q. Okay.

21 A. -- in doing so.

22 Q. Okay. And these are written memos that any code
23 compliance officer can go and consult?

24 A. Sure. And there aren't very many of those.

25 Q. Okay. But there are some?

1 A. Yeah.

2 Q. Do others come to mind besides the tallness of
3 the grass?

4 A. No.

5 Q. Okay.

6 A. I can't think of anything.

7 Q. That's fine. So -- and I think you drew a
8 distinction between -- you said there are no formal
9 guidelines, but there are these memos. Is there a
10 distinction in your mind between -- between formal
11 guidelines and these -- these memos? Or...

12 A. Well, when you say, "formal guidelines," I'm
13 thinking that is there a laid-out procedure? Is there
14 a here's what you do should this happen? This is the
15 first step. This is the second step. This is the third
16 step. So, no, I don't believe there's any of those
17 exist. Some of those things I talked about are really
18 more clarifications of things that have come up where
19 there has been some question about the height. Where
20 should you measure that? What does that really mean?
21 And I think that there was some memos put out on those.
22 So I don't consider those to be procedures. They're
23 really more --

24 Q. Guidance?

25 A. -- guidance -- sure, guidance documents or

1 clarification documents.

2 Q. Okay. And, with respect to the conversion
3 therapy ordinance, there are no formal guidelines or
4 these -- these less formal guidance documents or memos?

5 A. That's correct.

6 Q. Okay. Now, earlier, you said that this ordinance
7 is -- I think you said a little bit different than other
8 matters because other matters are easily determinable --

9 A. Uh-huh.

10 Q. -- determined. Do you remember that?

11 A. I do.

12 Q. And what did you mean by that?

13 A. Well, as we briefly discussed, there are some
14 code matters that are easily discernable. A simple
15 drive-by observation can produce a notice of violation.
16 It's very easy to engage. It's very easy to determine
17 if it is in violation of the code. Of course, there's
18 others that are more difficult. And the conversion
19 therapy, it will be one that will be more difficult than
20 driving by and looking at the height of grass.

21 Q. Okay. With the driving by and looking at the
22 height of grass, the City has no concerns that that's
23 something that someone with a GED or a high school
24 diploma can do accurately and fairly?

25 A. I think someone who is trained, yes, can

1 certainly be a code compliance officer.

2 Q. Okay. In order for a code compliance officer to
3 issue a notice of violation --

4 A. Uh-huh.

5 Q. -- does a compliance officer have to witness the
6 violation occurring?

7 A. No.

8 Q. Okay. So, if, for example, a neighbor complains
9 that the yard next door has grass that's really tall,
10 hasn't been cut in months --

11 A. Uh-huh.

12 Q. -- makes that complaint by telephone to the
13 compliance officer --

14 A. Uh-huh.

15 Q. -- right, can the compliance officer issue a
16 notice of violation without first going to investigate
17 and confirm that, in fact, the grass is as tall as is
18 being reported?

19 A. Yes.

20 Q. He can?

21 A. Uh-huh.

22 Q. Does that actually happen in practice?

23 A. I think it depends a little on the infraction.
24 In the case of grass, which is, as we talked about, very
25 easily discernible, I would think the code officer would

1 go out and see if that's -- and do some investigation to
2 see what he can observe, to see if that is -- the
3 complaint is something worth issuing a notice of
4 violation for.

5 Q. So, in that example at least, the enforcement
6 officer would not issue a notice of violation without
7 visually confirming the violation?

8 A. They could. I would think, in that case, they
9 probably would verify.

10 Q. Okay. In what instances would they issue the
11 notice of compliance -- sorry -- the notice of violation
12 without first confirming the existence of the violation?

13 A. There could be instances where it is not -- you
14 talked about whether or not they witnessed. Here's an
15 example -- and it may not be a great example. Someone
16 reports an illegal dumping on a lot next to them --

17 Q. Okay.

18 A. -- and they see what the -- what the truck name
19 is and the company name. We don't see them do it. We
20 see -- and we get a complaint. That may be something
21 that we don't have the visual for, but we could issue
22 the NOV.

23 Q. Okay. Now, would you have to go out and see the
24 evidence of the dumping to confirm that a dumping
25 actually took place?

1 A. In that case, would you have to? No. In this
2 case, would they probably? Yes.

3 Q. Okay.

4 A. But it would not be a requirement.

5 Q. In practice, the code compliance officer would
6 not issue a citation to the company alleged to have
7 dumped without at least confirming that the -- that
8 there's a pile of stuff that's been dumped?

9 A. Sure.

10 Q. Okay.

11 A. And, again, that was my off-the-top example. But
12 could there be other cases in which there wasn't
13 something visual to check? Of course. And they could
14 issue without having the opportunity to look at
15 something.

16 Q. Okay.

17 A. Yes.

18 Q. What -- can you give me an example?

19 A. I knew you were going to ask that. Give me a sec
20 to think about it. But, clearly, there are things in
21 the code that violate the code that do not require a
22 visual.

23 Q. Okay.

24 A. I'm blank right now.

25 Q. Can't think of any. If you think of any --

1 A. Sure.

2 Q. -- before we finish our time today --

3 A. Of course.

4 Q. -- would you remember to tell me? Thank you.

5 A. I'll just say, I'm a little focused on what
6 you're saying. I'm not really thinking about other
7 things. But perhaps, during lunch, I'll give it some
8 thought.

9 Q. Are you able to understand what I'm asking today?

10 A. Yes. You're fine so far.

11 Q. Good. My confidence was suffering a little bit.

12 What happens in a situation where -- for example,
13 a neighbor complains about the grass and the code
14 enforcement officer is busy today. He can't go out
15 there until tomorrow. He goes out there tomorrow, and
16 the grass has been cut.

17 A. Uh-huh.

18 Q. What would happen in that case when he gets there
19 and the grass is code compliant?

20 A. Uh-huh.

21 Q. What would happen?

22 A. In that case, there would not be a notice of
23 violation. In most cases, notices of violation are to
24 enforce code, to try to have people follow the code.
25 It's not really a punitive process as much as it is just

1 preventing people from violating code. So, in the case
2 of a grass or a sidewalk or something issued, the code
3 violation is corrected, then the code compliance officer
4 has -- has no need to issue a notice of violation.

5 Q. Okay. And, with the dumping example, if the code
6 officer is busy today and goes out tomorrow and the
7 matter that was dumped was already cleaned up, would he
8 have reason to issue a notice of violation in that case?

9 A. I think they could depending on the situation.
10 If the neighbor said, you know what, I'm going to suck
11 it up and just throw away the stuff myself, there could
12 still be a violation. Depends who picked it up. I'm
13 not sure if that's the greatest example that I picked.
14 If the answer is does the material still have to be
15 there for them to issue a notice? No, it wouldn't
16 necessarily have to be that way.

17 Q. Okay.

18 A. Now, I think that the -- before a matter is
19 brought to the special magistrate, I think that they try
20 to have some kind of backup to it; but it's not a
21 requirement.

22 Q. Okay. Now, you said that the ordinance with
23 respect to the conversion therapy ban is a little bit
24 different than these other matters we discussed --

25 A. Yes.

1 Q. -- right?

2 And it's different how?

3 A. Well, as we just eluded to, it's easy to --
4 something that is very physically, very easily
5 discernible. The grass as you're driving by, that's
6 something that's very visual; and it's easily
7 documented. It's easily determined if it's a violation
8 or not. Something that is part of the conversion
9 therapy, there would have to be a complaint, which is
10 not unusual. A good portion of our code cases stem from
11 initial complaint. But the -- the manner of proceeding
12 next is a little bit different than some of the easily
13 discernible visual things.

14 Q. Okay. And what is that matter of proceeding next
15 in the context of the conversion therapy ordinance?

16 A. Sure. Well, the code compliance officer -- and I
17 think earlier as I talked to our manager --

18 Q. Mr. Sheedy?

19 A. Mr. Sheedy.

20 I had asked, if there were to be a complaint,
21 would the code person -- code compliance person handle
22 it; or what would be the process? He thought that,
23 because we have not had any yet, that at least the
24 initial would go to him for his review and management.
25 But what would happen I think would still be very

1 similar is that the code compliance officer or the
2 manager, whomever was handling it, would take the
3 complaint, do whatever investigation or not as they felt
4 appropriate before it went to the special magistrate.

5 In the meantime, if there was enough to go to the
6 magistrate, then they would issue a notice of violation
7 to address the issue.

8 Q. Okay. So a complaint regarding a potential
9 violation of the conversion therapy ordinance could go
10 either to a code compliance officer or perhaps to the
11 manager?

12 A. Yeah. I would think that it would initially go
13 to the code compliance officers. That's typically the
14 case. But, when it came to them, they may choose -- and
15 I think they've been instructed to -- to -- on cases
16 where it's outside their normal operation, to ask for
17 the assistance of the code compliance manager.

18 Q. Okay. So take an example. Code compliance
19 officer receives a telephone call from someone --

20 A. Uh-huh.

21 Q. -- who heard it from a friend who heard it from a
22 friend who heard it from another that Dr. Otto has been
23 messing around with conversion therapy.

24 A. Uh-huh.

25 Q. Would that compliance officer believe it?

1 You have a minor calling a code enforcement
2 officer; and, he says, hey, you know, I'm -- I'm a boy
3 and -- but I like to do things that girls like to do. I
4 like to play with dolls and do other things. And I went
5 to Dr. Hamilton, and she told me that I really should
6 focus on being a boy and that I should be proud of my
7 boyhood and that I should do boy things. And, you know,
8 I told her that I wanted to do girl things. And it just
9 -- the whole thing made me feel really sad and
10 depressed. Okay? That's the information that's relayed
11 to the code enforcement officer.

12 A. Uh-huh.

13 Q. Does the code enforcement officer -- well, what
14 does he do?

15 MR. ABBOTT: Object to the hypothetical.

16 THE WITNESS: How old of a person are we
17 talking?

18 MR. MIHET: Well, let's say this is a
19 nine-year-old boy.

20 THE WITNESS: Okay. I'm not sure I can
21 answer directly. I know generally what would happen.
22 The -- in answer to your earlier question could the code
23 enforcement officer write a notice of violation based on
24 the complaint, the answer is, if he felt that it
25 violated this ordinance -- or that ordinance, the answer

1 is he could -- he or she could do so at that point.

2 Having that lack of details, they may chose,
3 in conjunction with the manager, to do some additional
4 work; whether to talk to the therapist, whether to talk
5 to the parents or something else to determine if that
6 violation occurred.

7 MR. MIHET: Okay.

8 BY MR. MIHET:

9 Q. So, in this particular case, the code enforcement
10 officer calls the parents and the parents say, oh, we
11 didn't know he made that call. We prefer not to speak
12 with you.

13 A. Uh-huh.

14 Q. And then he calls Dr. Hamilton. And, she says, I
15 can't speak with you about this. This is covered by my
16 patient/client privilege.

17 A. Sure.

18 Q. What would the code enforcement officer do in
19 that case?

20 A. I think --

21 MR. ABBOTT: Object to the hypothetical.

22 THE WITNESS: Again, the hypothetical that
23 -- not knowing all the facts, they could chose to do one
24 of a couple things. They --

25 MR. MIHET: Let me just interrupt you for a

1 second.

2 BY MR. MIHET:

3 Q. Those are the facts that he has available, the
4 ones that I've just described.

5 A. Sure. But he didn't -- we don't know the
6 conversation with the parents. We don't know the
7 conversation with Dr. Hamilton. We don't know the
8 specifics of what was said, what was asked in order to
9 make that determination. I know that those are the
10 general facts.

11 Q. Okay.

12 A. But, obviously, there are more things that are
13 going to be included in their deliberation.

14 Q. Except, in this particular case, they weren't
15 able to get anything from the parents or --

16 A. So the parents have hung up on them?

17 Q. Right.

18 A. And Hamilton hung up on them?

19 Q. Right.

20 But the only thing they have now is what the
21 nine-year-old boy reported about his interaction --
22 alleged interaction --

23 A. Sure.

24 Q. -- with Dr. Hamilton.

25 A. So, based on the hang up of everybody else and

1 the terse conversation that the nine-year-old had, the
2 code officer would have to make the call on whether or
3 not that he believed that the code was violated. And,
4 if so, then he'd write a notice of violation to
5 Dr. Hamilton. And, if not -- and I'm guessing, as part
6 of that, he would also talk with the manager and try to
7 get some kind of a collaborative decision on what the
8 next steps would be.

9 Q. Okay.

10 A. But if they -- but if they felt there was a
11 violation, then they could certainly right up the NOV.

12 Q. So the code compliance officer would have to make
13 a determination on whether or not the therapist
14 encouraging the boy to do boy things and discouraging
15 the boy from doing girl things amounts to what the
16 ordinance defines and prohibits as conversion therapy?

17 A. Yeah. They would not be the final arbitrator.
18 But they would be someone who would determine in their
19 judgment if it violated and, if so, write the NOV and
20 deliver the NOV. The magistrate would be the person who
21 would be, if you will, the -- the arbitrator of whether
22 or not that violation really was a violation and what
23 needs to be done to remedy if it is or if it gets
24 tossed.

25 Q. As in all other cases?

1 A. As in all other cases, exactly.

2 Q. Sure. But, in terms of initiating the process of
3 the -- the state, so to speak -- not the state. That's
4 the wrong word. In terms of initiating the process of
5 the government --

6 A. Yes.

7 Q. -- it's the code compliance officer that would
8 have to make the determination as to whether or not a
9 violation took place?

10 A. Sure. Now, there's always resources available if
11 -- in this case, if they -- if there was a question,
12 they could certainly call the City Attorney's office.
13 They could certainly call others in the City for some
14 guidance on that matter.

15 Q. Okay.

16 A. But, yeah, I don't want to portray that this
17 person -- that this code enforcement officer, that she's
18 out there or he's out there by himself doing this.
19 There are other resources available. So it's not
20 necessarily their call.

21 Q. Okay.

22 A. But, ultimately, it's the code compliance section
23 that would issue the NOV.

24 Q. Okay. Now, with respect to other violations like
25 the grass or the dumping example, the code compliance

1 officer handles that on his own?

2 A. Absolutely.

3 Q. Okay.

4 A. Because it's something that happens on a
5 relatively frequent basis. They're comfortable with it.
6 They know what code to cite. They're familiar with
7 the -- because it happens on a relatively frequent
8 basis. This would be -- as we talked about, this is not
9 a frequent occurrence.

10 Q. Okay. Nevertheless, because the ordinance is on
11 the books, the City has to be prepared to enforce it?

12 A. That's correct.

13 Q. Is there any policy by the City as to whether or
14 not it would enforce a violation of the ordinance?

15 A. There's been nothing that said that they
16 wouldn't.

17 Q. Okay.

18 A. Because it passed and is now codified, it is part
19 of the code; and it's to be enforced.

20 Q. Okay. And so does it give the City any pause
21 that a code compliance officer with a high school
22 diploma or the GED equivalent would be called upon to
23 determine whether or not a professional therapist
24 licensed by the state and subject to the state's
25 guidelines violated an ordinance of the City through the

1 professional speech and advice of that therapist?

2 MR. ABBOTT: Object to the form.

3 THE WITNESS: I think -- I'm not sure giving
4 pause. But, clearly, there are things in our code that
5 are not something that they do on a regular basis that
6 would be -- for example, there is a -- a fertilizer
7 ordinance that we have. And so people who apply
8 fertilizer have to be certified. They all have to do it
9 in a certain way. Our code people with -- you're saying
10 your -- with our GED requirement, even though I think a
11 lot of them are more knowledgeable than just their just
12 high school diploma, would now have to understand
13 fertilizer, fertilizer application, which might be
14 outside their background, as well.

15 So there are certainly instances or
16 certainly code provisions that don't come up very
17 frequently that are going to be -- might be difficult
18 for them to come to some kind of a notice. But that's
19 why we have the managers. That's why we have other
20 resources available to help them when they go through
21 that.

22 BY MR. MIHET:

23 Q. Now, in the fertilizer example that you gave, the
24 ordinance that you are referring to requires that
25 certain fertilizer be applied by licensed applicators --

1 A. Uh-huh.

2 Q. -- for lack of a better term?

3 A. Yes.

4 Q. And, in order for a licensed -- I'm sorry. If
5 someone applies that fertilizer without the proper
6 license, they would be in violation of the ordinance?

7 A. That's correct.

8 Q. So, in that particular example, the code
9 compliance officer would have to determine whether or
10 not the person applying the fertilizer has the requisite
11 license?

12 A. Or whether they believe they have it or not,
13 that's correct.

14 Q. Right. So --

15 A. Whether they believe that the code was violated.

16 Q. Right.

17 A. Yes.

18 Q. So, to determine whether or not the alleged
19 violator is properly licensed, they would consult a City
20 roll or some other database of licensed fertilizer
21 applicators?

22 A. If one existed, yes, they could; or they could
23 ask for that certification. But, if the person wasn't
24 around, they could issue the notice of violation without
25 knowing, without being able to determine. And then the

1 magistrate could then sort it out at that point.

2 Q. And the alleged violator could come in and say,
3 hey, here's my license; and the whole thing goes away?

4 A. That's correct.

5 Q. Now, that doesn't strike me like a very difficult
6 enforcement decision for the GED-trained code compliance
7 officer to make. He can simply determine whether or not
8 an applicator has the requisite license or not?

9 A. Sure. And I wasn't really talking about the
10 application but the types of fertilizer they have to go
11 down. They have to be a certain phosphorous/nitrogen
12 ratios that can go down at certain times and under
13 certain conditions. And knowing whether something is an
14 11-to-1 or 20-to-5 ratio is not something that might be
15 easily discernible by a code enforcement officer.

16 Q. Well, he can look at the ingredient list for the
17 particular fertilizer, right?

18 A. If he had the bag, if he had the fertilizer.

19 If he gets a complaint from a neighboring
20 property saying, hey, some guy was just here; and he put
21 down fertilizer that I think is not appropriate for the
22 fertilizer ordinance --

23 Q. Okay.

24 A. -- how would he go about making that -- if he
25 goes there and the applicator is there, they can talk.

1 They can evaluate whether or not -- if there is the bag
2 in the trash, they can look at it to evaluate. But, if
3 they don't, then they certainly are able to write the
4 NOV based on what they know, what they've heard and then
5 let the magistrate determine whether or not that
6 fertilizer was applied properly. That's the point I was
7 trying to make. And, again, it's probably not -- not
8 the best analogy. But it's one that we've recently
9 passed, that discussion.

10 MR. ABBOTT: Is that a good spot?

11 MR. MIHET: I think that's a good spot to
12 stop for lunch.

13 (Recess)

14 BY MR. MIHET:

15 Q. Mr. Woika, are you ready to proceed?

16 A. I am.

17 Q. Just a reminder that you're still under oath.

18 And we will try to see if we can wrap up before too long
19 here.

20 A. Great.

21 Q. Is there a particular standard that applies with
22 respect to when a code compliance officer can issue a
23 notice of violation? I'm thinking probable cause or
24 something along those lines.

25 A. There is not. I think that there is -- for the

1 notice to go to the magistrate, they obviously want to
2 have enough information, enough of a case to be able to
3 prove up. But I don't know that there's a -- a
4 threshold of probable cause like you might have on the
5 criminal side. I don't think that there's anything
6 that's been established for the code.

7 Q. But, at a minimum, the code compliance officer
8 has to believe that a violation has occurred and that he
9 has enough evidence to prove the violation so that he's
10 not wasting the special master's time?

11 A. I think that's fair.

12 Q. There's not a policy or even a practice where the
13 code compliance officer can just say, well, I'm not too
14 sure about this; but let me just write it up and we'll
15 let the master sort it out?

16 A. No. That -- I mean, I think they could do that;
17 but that would not be encouraged and --

18 Q. That's not what they do in practice?

19 A. That's correct.

20 Q. Okay. And we're in agreement that, for a code
21 compliance officer to determine whether or not a
22 violation of the conversion therapy ordinance has taken
23 place, he would have to make some type of a judgment
24 call? It's not as simple as going to measure the height
25 of the grass or to check the County rolls to see if a

1 license is in place, correct?

2 A. That's correct.

3 Q. Okay. At the beginning of the deposition, you
4 listed a number of departments and divisions that are
5 under your supervision.

6 A. Uh-huh.

7 Q. What kind of supervisory authority, if you will,
8 do you exercise over those departments and divisions?

9 A. It depends.

10 Q. Okay.

11 A. Some divisions I have direct supervisory. Others
12 I'm more of a coordinating -- a liaison, if you will.

13 Q. Okay. And, over the divisions -- let me strike
14 that and try again.

15 Over the ones that you are more of a coordinating
16 liaison, is there somebody else at your level that has
17 supervisory authority; or is it still you that's the
18 supervisor?

19 A. It's still me. For example, utility services.
20 Utility services is a separate department. And the
21 department director for utility services reports to the
22 City Manager. However, they report to the City Manager
23 through me. Even though I'm not their direct
24 supervisor, we still talk. We still -- the documents
25 would come to me before they went to the City Manager.

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1 We have discussions on projects and things. So I'm kind
2 of the filter between the utilities and the City
3 Manager. There's not another report -- technically, I'm
4 not Chris Helfrich's supervisor. But I am the person
5 from the City Manager's office who is assigned to his
6 department.

7 Q. Got it.

8 Which of the departments and divisions that you
9 identified are ones that you do have direct
10 supervisory --

11 A. It would be easier to say the ones that I don't.

12 Q. Okay.

13 A. The ones that I don't are utility services,
14 recreational services and municipal services. Those are
15 the ones that have department directors. They have
16 their own operation. They report supervisory to the
17 City Manager. However, they go kind of through me as
18 liaison, as coordinator.

19 Q. Okay.

20 A. All the ones that -- other ones there is, I am
21 their department director.

22 Q. Okay. Over on Mr. Brown's side of the equation,
23 does the same structure apply? There are some divisions
24 or departments that he has direct supervisory authority
25 over and some where he is more of a liaison?

1 A. Yes.

2 Q. And which ones would be the ones where he does
3 not have direct supervisory?

4 A. Police, fire. And we're currently transitioning,
5 so development won't be. We -- for a while, he was the
6 department director for development services.

7 Q. Okay.

8 A. But we now have a development services director.
9 And so we're phasing out of him being department head
10 and having our development services director be that
11 entity.

12 Q. When did that start -- that process start?

13 A. About six, eight months ago.

14 Q. Okay. So, up until six or eight months ago, he
15 was the direct supervisor of development services?

16 A. That's correct.

17 Q. Is he still to a certain extent but gradually
18 less so or --

19 A. Yes.

20 Q. So we said police and fire he is not the direct
21 supervisor. Development services he is kind of
22 releasing the reins?

23 A. That's correct.

24 Q. Are there any others where he is not the direct
25 supervisor?

1 A. No.

2 Q. Does the code enforcement division fall under
3 development services?

4 A. It does.

5 Q. It does.

6 So, up until six or eight months ago, he was the
7 direct supervisor of Code Enforcement?

8 A. That's correct.

9 Q. Okay. Today, is -- is Code Enforcement still
10 under his direct supervision; or has that already been
11 transitioned off?

12 A. Been transitioned off.

13 Q. When was that transition?

14 A. Started, like, I want to say six, seven -- five,
15 six, seven, eight months ago.

16 Q. Okay. And who has been sort of placed under him
17 or -- or in charge of the development services?

18 A. Just a bit of explanation. We hired a new chief
19 building official --

20 Q. Okay.

21 A. -- who had some code experience. And the same --
22 at or about the same time, we hired a new development
23 services director about maybe a year -- maybe six months
24 before that. And so, with those two new people, the new
25 structure is that the Code Enforcement, who used to work

1 directly for George Brown, now works for Cosmo,
2 John Cosmo, as the chief building official --

3 Q. Okay.

4 A. -- who then reports through development to
5 George. So it's -- there's another few intermediary
6 levels between Code Enforcement and George Brown.

7 Q. Got it.

8 Getting back to the departments and divisions
9 over which you have direct supervisory capacity --

10 A. Uh-huh.

11 Q. -- what kind of supervision do you exercise?

12 A. Not -- in what way?

13 Q. I guess I'm wanting to get a general idea of how
14 you exercise supervision over them.

15 A. We meet. We go over things. I sign leave slips,
16 valuations for those different groups.

17 Q. Okay. How familiar do you have to be with the
18 departments and divisions that you directly supervise in
19 order for you to be able to adequately fulfill your
20 responsibilities as supervisor?

21 A. I think, certainly, the more knowledgeable the --
22 that probably the easier it is. I don't know if you
23 need to be an expert but certainly have an idea of what
24 the functions are and how it works. It certainly helps
25 to be a manager, of course.

1 Q. Okay. And do you feel like you have pretty good
2 command of what happens in the departments and divisions
3 that you directly supervise?

4 A. I'd like to think so, yes.

5 Q. As between you and your counterpart, Mr. Brown,
6 which one of you two do you think would have a better
7 understanding and knowledge of the inner workings of the
8 departments and divisions that you directly supervise?

9 A. It's a little bit different because George has
10 been here a long time, and he has supervised a lot of
11 the departments that I have currently liaison with. And
12 I've had some of the ones that he has. So I think, if
13 your question is who, for example, knows municipal
14 services, the functions, better? I have done it for the
15 last couple of years. But I think that both of us are
16 familiar with a lot of the operations of the City.

17 Q. Okay. With respect to the departments and
18 divisions that Mr. Brown directly supervises or
19 supervised, as between you and him, who would have a
20 better understanding and knowledge of the inner workings
21 of those departments?

22 A. Again, because I used to supervise the financial
23 services -- he has it currently now. So they're --
24 they're -- I don't know if either one has a little
25 better idea. The police/fire I've never supervised. So

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1 he probably has a little better idea of functions, even
2 though, of course, as -- in both of our roles, it would
3 be nice if we were able to say this is siloed and we
4 never do the other. But, in our organization,
5 fortunately or unfortunately, we end up being part of
6 projects across all departments.

7 Q. Okay. With respect to Code Enforcement, as
8 between you and Mr. Brown, who has a better
9 understanding of the inner workings of that department?

10 A. Probably George.

11 Q. Okay.

12 (Plaintiffs' Exhibit No. 25 marked for identification)

13 BY MR. MIHET:

14 Q. Mr. Woika, I've handed you a document that we
15 have marked as Exhibit 25. You can take a minute to
16 familiarize yourself with it. I'll be asking you some
17 specific questions about its contents.

18 A. Yes. I've seen this.

19 Q. Okay. When is the last time you saw this
20 document before just now?

21 A. This morning.

22 Q. Okay. This is a chain of e-mail communications
23 between it looks like yourself and Mr. Brown and the
24 City Attorney and perhaps the City Manager, correct --

25 A. That's correct.

1 Q. -- dated July 18, 2017?

2 Now, in the first e-mail in the chain, which is
3 in the bottom half of the document, it appears that
4 Mr. Hoch is transmitting some materials wherein he says,
5 please see attached.

6 A. Uh-huh.

7 Q. And --

8 A. Right. I think we talked about that e-mail.
9 That was the first e-mail under which there were two
10 attachments. One was the -- his memo from the Human
11 Rights Council. The other one was that draft ordinance.

12 Q. Got it.

13 This is the e-mail that started it all?

14 A. It is.

15 Q. Okay.

16 A. Maybe not started it all. But, yes, that was
17 that e-mail we talked about.

18 Q. Okay. And so, on -- on the top of this page, we
19 see Mr. Brown's response, correct?

20 A. Yes.

21 Q. All right. And so he says: While I find
22 so-called conversion therapy inherently wrong and
23 totally abhorrent, a local ordinance banning such
24 practice would be extremely difficult, if not
25 impossible, to enforce.

1 Did I read that correctly?

2 A. Yes.

3 Q. What was Mr. Brown saying or referring to in that
4 statement?

5 A. I think his -- that statement is not much
6 different than the statement we talked about earlier
7 from Council Person Rodgers and City Attorney and City
8 Manager at the council meeting that we looked at talking
9 about enforcement and difficulties with enforcement of
10 this ordinance.

11 Q. Like you said, you don't think it's much
12 different. Would you agree with me that it is different
13 in degree? I mean, as I recall, the City Manager said
14 something to the effect of I'm not sure how we would
15 enforce it, right?

16 A. That's correct.

17 Q. The City Attorney said something to the effect of
18 that there may be difficulties in practical enforcement
19 issues?

20 A. That's correct.

21 Q. Mr. Brown, the direct supervisor of the Code
22 Compliance Department at that time, right?

23 A. Uh-huh, yes.

24 Q. He seems to go a lot further to say it would be
25 extremely difficult, if not impossible, to enforce.

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1 Would you agree with me that that is different than the
2 statements that the others made?

3 A. Yes. That's what it says. And I think you --
4 you've identified the quotes --

5 Q. Okay.

6 A. -- close -- closely.

7 I guess my point, not to say that they were the
8 same quote, to say that they all recognized the
9 difficulty in enforcement of this ordinance for the
10 reasons that we talked about earlier.

11 Q. Sure. I understand.

12 I guess the reason I felt it necessary to follow
13 up with you is it seemed to me like you were stating or
14 perhaps implying that they were not much different in
15 degree. And I think we've established that they are?

16 A. Yes.

17 Q. Okay. Now, he goes on to say: Proving a
18 violation before the special magistrate would
19 necessarily require public disclosure by a patient or
20 credible witness that the treatment had been
21 administered in violation of the ordinance.

22 Do you see that?

23 A. Yes.

24 Q. What do you think he is attempting to convey
25 there?

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1 A. I think the same things we've been talking about,
2 that, when you get before a special magistrate, in order
3 to prove your case, in order to be successful in your
4 case, you'd have to have enough evidence to weigh in
5 your favor in front of a special magistrate. And I
6 believe what he is saying -- what it says is that it
7 would require some disclosure by the patient or
8 patient's family or therapist in order to prove the case
9 up before the magistrate.

10 Q. Or some credible witness?

11 A. Or credible witness.

12 Q. Okay.

13 A. Some kind of firsthand evidence I believe is what
14 he is saying.

15 Q. Right. And that particularly as to whether the
16 treatment had been administered in violation of the
17 ordinance, right?

18 A. Yes. That's what it says.

19 Q. Okay. Now, he goes on to say: The City has not
20 adopted ordinances limiting or regulating professions
21 otherwise regulated by the state.

22 Do you see that?

23 A. I do.

24 Q. What do you think he was trying to say there?

25 MR. ABBOTT: Counsel, we can cover this

1 briefly. But I think this is the category that the
2 judge has limited discovery on.

3 But why don't you answer that question, and
4 I assume we're going to move on pretty quickly.

5 MR. MIHET: Yes.

6 THE WITNESS: I think it has to do with the
7 preemption that we talked about earlier. I think it has
8 to do with local regulation of professions that are also
9 regulated by the state.

10 BY MR. MIHET:

11 Q. Was Mr. Brown on -- on July 18, 2017, in a
12 position to know whether or not the City had adopted
13 ordinances limiting or regulating professions otherwise
14 regulated by the state?

15 MR. ABBOTT: Objection.

16 Exceeds the proper scope of the deposition.

17 THE WITNESS: Mr. Brown had the same
18 position he is now. He is Deputy Manager. And he
19 has -- he's familiar with the -- the code then as he is
20 now.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. After Mr. Brown sent this communication, was
24 there additional discussion between him and you and/or
25 others with respect to whether or not this proposed

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1 local ordinance would be extremely difficult, if not
2 impossible, to enforce? And, by that, I mean,
3 discussion that is not reflected on this Exhibit 25.

4 A. I don't know of any.

5 Q. Okay. In terms of the experience or expertise of
6 the code compliance officers, do they have any
7 experience or expertise in enforcing ordinances against
8 licensed professionals?

9 A. I don't know that -- that there is -- let me ask
10 you a question. Are you wondering if there's policies
11 or procedures against code, against -- no, there's
12 not --

13 Q. Okay.

14 A. -- against licensed professionals. However, if
15 licensed professionals violate the code, there's no
16 reason why they can't enforce.

17 Q. If a licensed professional has grass that's too
18 tall at his house or at his place of business, there's
19 no reason why a code enforcement --

20 A. Sure, that too.

21 Q. Okay.

22 A. But, if there was a provision in the code that
23 dealt with professional standards or that they felt was
24 being violated, they could certainly do so. I can't
25 think of anything top of head. It wouldn't necessarily

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1 have to be just limited to their property. It could be
2 their practice. It could be their --

3 Q. But, in terms of the experience or expertise that
4 they already have --

5 A. Uh-huh.

6 Q. -- in enforcing regulations against licensed
7 professionals, I understood you to say that they don't.

8 A. They don't have specific ones. This is not
9 exactly on point. But, if there is a requirement for
10 medical offices to have some kind of something and they
11 don't have that, they can certainly come in and -- as
12 I'm explaining it, that doesn't even sound close to
13 being what you say. But they do have the authority to
14 be able to do that.

15 Q. Sure. And, just so we're clear, I'm not asking
16 about authority. I'm asking about practical --

17 A. Sure.

18 Q. -- experience or expertise. And I understand you
19 to say that they don't have that.

20 A. They don't have procedures. I'm not sure that
21 they don't have experience. But they don't have
22 procedures or practical guides, if you will, written
23 guidelines.

24 Q. Okay. Well, you say you're not sure whether they
25 have experience.

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1 A. Sure.

2 Q. Do they have experience or expertise? I mean,
3 have they been doing this a lot or enough to develop
4 experience and expertise?

5 A. Besides having the certifications through
6 whatever professional organization, others -- they have
7 worked at other -- other communities. They have worked
8 at other professions. So I don't know what their level
9 -- and it's individual what their level of experience
10 working with professional licensed professions are.

11 But, from a City standpoint, we do not -- we have
12 not provided training specifically to professional --

13 Q. Regulations.

14 A. Thank you.

15 (Plaintiffs' Exhibit No. 26 marked for identification)

16 BY MR. MIHET:

17 Q. So now I'm showing you a document that we have
18 marked as Exhibit 26. Take just a minute to familiarize
19 yourself with it. I'll ask you a few questions about
20 this one. And we're going to go through it sort of step
21 by step. So if you just want to --

22 A. Sure. Yes, I've seen it.

23 Q. Okay. When is the last time you saw this
24 document?

25 A. This morning.

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1 Q. Okay. Starting with the -- and, just for the
2 record, this is a chain of e-mail communications
3 spanning from July 21, 2017, to July 21, 2017, so same
4 date. And there's the Bates number City 991 through
5 993. Starting with the last page, City 993, and with
6 the bottom e-mail which is the first e-mail in this
7 chain of communications. Are you there?

8 A. I am.

9 Q. This is an e-mail from Mr. Brown to it looks like
10 three individuals; a Lori LaVerriere, an M. Bornstein
11 and a P. Schofield. Do you see that?

12 A. Yes.

13 Q. Do you know who those three individuals are?

14 A. I do.

15 Q. Who are they?

16 A. Lori is the City Manager of Boynton Beach.
17 Mike Bornstein is the City Manager of Lake Worth, and
18 Paul is the City Manager of Wellington.

19 Q. Okay. So Mr. Brown is communicating with them.
20 And, he says, colleagues: Each of your cities has
21 adopted a conversion therapy prohibition ordinance
22 according to information we have been provided. Have
23 any of you established specific enforcement procedures?
24 What methods of investigation are utilized to determine
25 if a violation is occurring/has occurred? Have any

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1 cases been prosecuted? Please let me know when you have
2 time. Thanks.

3 Did I read that correctly?

4 A. Uh-huh, yes.

5 Q. Why did Mr. Brown send this inquiry to his
6 colleagues at these other cities?

7 A. There was an e-mail that came out just before
8 this -- it might have been the day before. I think it
9 was the day before -- from Rand Hoch to the same group
10 that was sent, the first one, a couple days earlier.

11 Q. Okay.

12 A. And it had a listing of the ordinances that had
13 been passed by other cities in Palm Beach County
14 including Wellington, Lake Worth and Boynton Beach. And
15 I believe what George was asking, because of his earlier
16 questions -- earlier thoughts about enforcement, was
17 finding out what others were doing regarding enforcement
18 of the ordinances that they had already passed.

19 Q. Okay. Do you know whether anyone had asked
20 Mr. Brown to make this inquiry or whether he did so on
21 his own initiative?

22 A. I think there's an e-mail that came out before
23 this one that said I will check with the other
24 municipalities or something along those lines. I don't
25 remember what the exact wording was. But it was

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1 follow-up to one of these e-mails. There's one that
2 said he would do so.

3 Q. Do you recall who he sent that e-mail to?

4 A. I think it was to Frieser, Leif and I. I think
5 it was part of that chain. I think it was follow-up
6 after -- after this one.

7 Q. Okay. Do you know if that particular e-mail was
8 produced to the Plaintiffs in this case?

9 A. That's why I looked at it this morning. So I
10 believe it was. And it might be on the tail end of
11 another e-mail. But I remember seeing something that he
12 would contact other jurisdictions.

13 Q. Okay. That's a document that -- well, let me ask
14 your attorney.

15 MR. MIHET: Do you know if that document has
16 been produced?

17 MR. ABBOTT: I'm virtually sure it has.
18 What I candidly asked the witness to review was -- was a
19 subset of the material that has been produced. But let
20 me know if you can't find it or if I've made an error.
21 But we'll certainly get you a copy.

22 MR. MIHET: All right. I don't recall
23 seeing it. So...

24 THE WITNESS: It was a one-line e-mail. And
25 it was I believe at the end of this chain or as part of

1 this one.

2 MR. MIHET: Okay.

3 BY MR. MIHET:

4 Q. Do you recall if somebody was asking him, hey,
5 what are other people doing; and he responds saying,
6 I'll check? Or whether he volunteered to say, I'll
7 check to see what others were doing?

8 A. I don't believe it was a response. I believe he
9 just said, I will check what other jurisdictions are
10 doing.

11 Q. Okay.

12 A. It might be after the one -- there was an e-mail
13 that came to -- and it's probably there. There was an
14 e-mail that came from Rand Hoch that listed six or seven
15 different ordinances from the different municipalities
16 that had -- and it went to the City Council and Attorney
17 and City Manager. And I believe it got forwarded to
18 George and I. And I believe the next one from George
19 said -- or from George said, I'll check other -- these
20 other jurisdictions.

21 Q. Okay. And that's an e-mail that you looked at
22 this morning in preparation for this deposition?

23 A. Yes, I believe so.

24 Q. Okay. And --

25 A. I think that was on the production e-mail one.

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1 Q. Okay. And looking at that e-mail refreshed your
2 recollection or informed your recollection about the
3 matters you're testifying here today?

4 A. What's that?

5 Q. Looking at that e-mail --

6 A. Yes. Yes, exactly.

7 MR. MIHET: Okay. Well, we'll look in the
8 production again to double check. But, if we don't have
9 it, we would ask that we receive that, as well.

10 MR. ABBOTT: Sure. In fact, do you think we
11 could find -- if you wanted to take a break, we might be
12 able to find another copy.

13 MR. MIHET: Maybe on the next --

14 THE WITNESS: I'm sure I can.

15 MR. MIHET: Yeah, on the next break. Let's
16 keep going, and we'll look for it.

17 MR. ABBOTT: Okay.

18 BY MR. MIHET:

19 Q. All right. So he sends out this communication.
20 The first response appears to be the one that is
21 immediately above that, still on page 993. And it's
22 from Lori LaVerriere. I'm probably butchering that
23 pronunciation. But it looks like it comes back three
24 minutes or so after he sent his response. Do you see
25 that?

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1 A. Uh-huh, yes.

2 Q. And, she says, Hi George, we have not established
3 any enforcement procedures or methods of investigation.
4 I'm thinking we will more likely be responding to a
5 specific complaint.

6 Do you see that?

7 A. Yes.

8 Q. Now, Mr. Brown responds immediately to that,
9 looks like two minutes later. It begins -- the header
10 is on the bottom of the previous page, 992.

11 A. Uh-huh.

12 Q. But the substance is at the very top of 993. He
13 says, thanks Lori, that is what I expected to hear.

14 Do you see that?

15 A. Uh-huh, yes.

16 Q. What is he saying when he says, "that is what I
17 expected to hear"?

18 A. I think, again, speaking -- I don't -- I can't
19 say exactly what George -- but my interpretation, after
20 reading this, would be is that George has already
21 expressed his -- his belief that it would be a difficult
22 thing to enforce. And so, when she said that she will
23 be -- she'll be looking at complaint-based violations, I
24 think he would agree -- he agreed that that would
25 probably be the only way that you could reasonably

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1 expect to enforce this. You're not going to be sitting
2 in on sessions. We're not going to do some kind of a
3 sweep or break-in on somebody. It's really just going
4 to be based on complaints.

5 Q. Okay. So then it looks like Lori LaVerriere
6 responds back same minute. And that's at the bottom of
7 992. And, she says, are you contemplating procedures,
8 enforcement, et cetera? Do you see that?

9 A. Yes.

10 Q. And then he writes back about six minutes later
11 right above that. And, he says: I have recommended we
12 adopt a resolution stating our position against it
13 rather than an ordinance making it an offense because we
14 would not want to get between a family and its child
15 based on a complaint from a child or a third party. We
16 are in the early stages of considering the matter. I
17 consider it a more or less unenforceable ordinance and a
18 matter that is not something our local government should
19 take up.

20 Did I read that correctly?

21 A. Yes.

22 Q. So what was he talking about when he said, I've
23 recommended we adopt a resolution instead of the
24 ordinance?

25 A. I think just what he said is --

1 Q. Okay.

2 A. I think, at this point, he believed, for the
3 reasons you had talked about earlier, that he thought a
4 -- a better alternative to this would be to have a
5 resolution as opposed to an ordinance with enforcement.

6 Q. And the reason for that -- or one of the reasons
7 for that is because he, as the supervisor of the Code
8 Compliance Department, believed that the ordinance as
9 proposed would be more or less unenforceable, correct?

10 A. He considered it to be more or less
11 unenforceable. That's what he wrote, yes.

12 Q. Okay. And the "he" here is the direct supervisor
13 of the Code Compliance Department at that time?

14 A. That's correct.

15 Q. Okay. Now, what -- who did he make the
16 recommendation to with respect to a resolution being the
17 better approach rather than the ordinance?

18 A. I think really the only people that he could talk
19 to -- reasonably talk to -- and I don't recall him
20 talking to me about it. He may have -- would probably
21 be the City Attorney's Office and the City Manager.

22 Q. Okay. And was his recommendation ever considered
23 by the City Council?

24 A. No, not that I know of.

25 Q. Why not?

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1 A. That was never presented to them. They were
2 presented the -- the ordinance as -- as suggested or as
3 passed on by the Mayor to the City Attorney's Office who
4 prepared the ordinance. And the Mayor elected to go
5 forward with that ordinance.

6 Q. Why was Mr. Brown's recommendation not presented
7 to the City Council?

8 A. In this case or in general?

9 Q. In this case.

10 I mean, he -- I believe you said that he made a
11 recommendation perhaps to the City Manager or the City
12 Attorney?

13 A. Sure.

14 Q. Why did either one of those two people not take
15 that recommendation and make it to the City Council?

16 A. Sure. Well, as I'm sure you're aware from how
17 the organization, the two people that work for City
18 Council are the City Manager and the City Attorney.
19 Almost everything we do funnels through one of those two
20 individuals. It is not unusual -- it's not common but
21 it's not unusual for people who are involved with new
22 ordinances, new resolutions, new developments, new
23 actions not to like all or part of a resolution. And
24 they make recommendations.

25 I make recommendations all the time to the

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1 Manager. He may or may not like them. If he doesn't, I
2 don't say, "and stop doing whatever." I go with what he
3 thinks is the right approach, and I work hard to make
4 sure that happens. So to have someone not agree with a
5 draft ordinance, draft resolution, development project,
6 work order doesn't necessarily mean that -- that that --
7 that disagreement is manifested in a change.

8 Q. Okay. Now, did Mr. Brown's statement or opinion,
9 if you will, that the ordinance as proposed would be
10 more or less unenforceable, did that make it to the City
11 Council as part of its deliberation of the ordinance?

12 A. I'm looking. I thought I saw it in this earlier
13 memo. No. If the question is did this e-mail chain get
14 to -- or the content of this e-mail chain get to the
15 City Council, I think the answer is no.

16 Q. Well, that covers part of my question. My
17 question was a little broader than this particular
18 e-mail to ask whether the opinion of Mr. Brown that this
19 proposed ordinance was more or less an unenforceable
20 one, did that make it to the Commission for its
21 consideration, whether as expressed in this e-mail or
22 some other document or testimony or statement?

23 A. I want to say, no, because I think the --

24 Q. And I think I said Commission; but I meant
25 Council, City Council.

1 A. Thank you. I took it as that.

2 Q. Okay.

3 A. I don't know that it was.

4 Q. Okay. Certainly, it was not covered or discussed
5 during any of the three meetings that we watched video
6 of today?

7 A. Yes, it was. It was certainly mentioned when we
8 were -- when they were talking. And I think we talked
9 about it earlier when the City Manager said, I'm not
10 sure how we would enforce. And the City Attorney said
11 she concedes that there -- it might be difficult to
12 enforce. So that clearly was talked about at that
13 meeting.

14 Q. Right. The issue of enforceability was
15 discussed?

16 A. Yes.

17 Q. What I meant to say -- and I apologize if I
18 wasn't clear -- that, certainly, Mr. Brown's opinion
19 that this was more or less an unenforceable ordinance,
20 that wasn't presented to the City Council in any of the
21 three meetings, correct?

22 A. I think that's correct.

23 Q. Okay. Would it have been important -- and strike
24 that just for clarity.

25 A. At least not in the public meetings as you -- as

1 you have framed it, yes.

2 Q. Okay. We've already covered the other
3 alternatives earlier when I asked you if -- if the --
4 the opinion that he expressed here, if that had made it
5 to the Council. And I believe you said that you did not
6 believe that it did.

7 A. I did not believe that it did.

8 Now, I'll caveat that slightly in that there may
9 have been conversations between the City Attorney and
10 individuals --

11 Q. Okay.

12 A. -- but I don't know of those. But, as a Council
13 as a whole, I don't believe anything was transmitted.

14 Q. Okay. Now, at the third meeting of the City
15 Council at which the ordinance was discussed and where
16 the final vote ultimately occurred, we've already
17 established that at least two people there were -- were
18 expressing some concerns or doubts -- I don't want to
19 get hung up on the terminology -- but some concerns
20 about the enforceability of the ordinance through the
21 Code Compliance division.

22 A. Sure. I would suggest actually three because the
23 question came from a Council member and then answered by
24 the two staff members. So, yes, two that -- two staff
25 members talked about it, yes.

1 Q. Correct.

2 Wasn't it important for them -- as they were
3 considering whether or not or how the Code Compliance
4 division could enforce this ordinance, wasn't it
5 important for them to hear from the direct supervisor of
6 that division and to get his thoughts or input on the
7 enforceability of the ordinance?

8 A. No. And I say the -- it is unusual -- it would
9 be very unusual if anybody -- people who were in the
10 organization to address the Council, to have internal
11 memos or e-mails being presented as part of a package to
12 City Council.

13 Q. Okay.

14 A. That's not the way the procedure generally works.
15 Everything's worked out through the staff, through the
16 Attorney's office, through the City Manager's side. And
17 that is presented to Council for their review, for their
18 decision to go forward, not to go forward or to modify.

19 Q. Sure. But we saw an example where, at the first
20 Commission meeting -- Commission. I keep saying
21 Commission. At the first Council meeting, the City
22 Council decided that it wanted more information; and it
23 asked for more information, right?

24 A. Uh-huh. Yes, I heard that.

25 Q. So, if the City Council was having concerns or

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1 doubts about whether or not the enforcement -- the Code
2 Enforcement division could enforce this ordinance, they
3 could have asked for additional or more information from
4 the direct supervisor of that department, correct?

5 A. No. They would have asked for the City Manager
6 and asked for more information. And, if the City
7 Manager felt that he needed to talk to George or to Doug
8 or to someone else, he could certainly do so. But the
9 Council only works through, as we talked about, the
10 Attorney and the Manager.

11 MR. MIHET: Okay. It looks like we found
12 that e-mail. So --

13 MR. ABBOTT: Okay. Good.

14 MR. MIHET: -- we'll call off the search
15 party.

16 MR. ABBOTT: Okay.

17 BY MR. MIHET:

18 Q. All right. In the same exhibits, same page,
19 looking at the e-mail right above the one we just
20 discussed, we see about seventeen minutes later
21 Lori LaVerriere responds back to Mr. George; and, she
22 says, agreed. Do you see that? It's difficult --

23 A. Yes, yes.

24 Q. -- to see but --

25 A. Yes.

1 Q. -- it's there.

2 So the first sentence is agreed, period, right?

3 A. Uh-huh.

4 Q. She is agreeing with Mr. George --

5 A. Mr. Brown.

6 Q. I'm sorry, Mr. Brown.

7 -- that, among other things, ordinances like this
8 are more or less unenforceable?

9 A. I don't think that's what -- if you look at the
10 previous e-mail, I'm not sure what she's agreeing with
11 is that he has recommended a resolution.

12 Q. Okay.

13 A. Then their early stages of considering this
14 matter.

15 Q. Okay.

16 A. So I'm not sure what she's agreed with.

17 Q. Well, the reason he wrote to Ms. LaVerriere is
18 that --

19 A. Yes.

20 Q. -- her city had already passed the resolution,
21 right?

22 A. Sure.

23 Q. So --

24 A. But there's also --

25 MR. ABBOTT: Excuse me. I'm sorry.

1 Objection.

2 Did you mean to say a resolution?

3 MR. MIHET: No, an ordinance.

4 BY MR. MIHET:

5 Q. Right?

6 A. Yes. I think you're -- I'm sorry, I interrupted
7 you; and I shouldn't have.

8 Q. I guess my question was: She wouldn't be
9 agreeing with him that they're in the early stages of
10 the process. Her jurisdiction had already passed the
11 ordinance, right?

12 A. It did.

13 Q. Okay. So I guess we can't really get into her
14 mind then. We don't know whether she agreed with only a
15 sentence or all of it. But she agreed?

16 A. In concept. I don't know if she agreed that the
17 matter is not something that our local government should
18 take up, that it's unenforceable, that it is --

19 Q. Okay.

20 A. I'm not sure what she's agreeing to.

21 Q. She certainly didn't write back and say, oh, the
22 enforcement is a breeze here, this is what we're doing;
23 and you'll have no problems?

24 A. Clearly.

25 Q. Okay. Now, she continues to say: Elected

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1 received a lot of pressure from Rand Hoch. Do you see
2 that?

3 A. I do.

4 Q. When she says, "elected," is she talking about
5 the City Commissioners in her jurisdiction?

6 A. I believe she's talking about elected officials.

7 Q. Is elected sort of a -- a usual way to refer to
8 them?

9 A. It can be, yes.

10 Q. Okay. So then Mr. Brown responds about three
11 minutes later right above that message at the very top
12 of 992. Do you see that?

13 A. I do.

14 Q. And, he says: As are ours. Do you see that?

15 A. Yes.

16 Q. What do you think he's saying there?

17 A. I believe he is agreeing that the elected
18 officials in Boca Raton are getting --

19 Q. A lot of pressure from Rand Hoch?

20 A. I'm not sure pressure. But, certainly, Rand Hoch
21 is communicating with them, as well.

22 Q. Well, now --

23 A. Okay. You could certainly --

24 Q. -- she said to him that the electeds are getting
25 a lot of pressure, right?

1 A. Yes, it does.

2 Q. And so he doesn't respond back and say ours are
3 getting some communications too?

4 A. You're right.

5 Q. He says, "as are ours"?

6 A. Yes, it does.

7 Q. So what he's saying to her is our elected
8 officials are also getting a lot of pressure from
9 Rand Hoch, essentially?

10 A. That's what it -- appears that it says, yes.

11 Q. What pressure were the Boca Raton elected
12 officials getting from Rand Hoch?

13 A. Well, I think he's talking the e-mails -- they
14 had gotten a number of e-mails from him the previous.
15 And I believe that there were evidence of phone calls,
16 individual meetings with the Council members and
17 Rand Hoch.

18 Q. Okay. And what was the general nature of those
19 meetings and -- of the pressure that was being applied?

20 A. I was not present at the meetings. I don't know.
21 Or the phone calls. I think there were more phone calls
22 than meetings.

23 Q. Okay.

24 A. I do not know what the discussion was during
25 those phone calls.

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1 Q. Okay. Would Mr. Brown presumably because he's
2 representing that a lot of pressure has been applied?

3 A. No. Generally, when outside people call the
4 Council, there's no one from staff. It's a one-on-one
5 conversation.

6 Q. Okay. So, understanding that you weren't privy
7 to those particular communications, have you had any
8 discussions since then to familiarize or to inform you
9 as to what the particulars were of the pressure that was
10 being applied? And what I'm asking is, you know -- I
11 wasn't there either; so I'm just hypothesizing. But,
12 you know, was Mr. Hoch talking about, you know, mounting
13 an election campaign to replace an elected official with
14 someone else that would be more, you know, friendly to
15 what he was proposing? Or was he proposing to have
16 telephone calls coming in? What sort of pressure was
17 being applied?

18 A. Yeah, I understand the question. I don't.
19 Haven't talked to anybody, the Council or otherwise,
20 that has relayed any of the discussion that happened
21 with Rand Hoch.

22 Q. Okay. And so if I wanted --

23 A. Which, by the way, is not unusual for third
24 parties who are -- have a suggestion for an ordinance or
25 a resolution or a development to talk to Council

1 directly.

2 Q. Right. Or to apply a lot of pressure?

3 A. To apply -- yes.

4 Q. Okay. So, if I wanted to find out what the
5 particular -- what the particulars are of the pressure
6 that Mr. Hoch was applying, who would I talk to other
7 than Mr. Hoch, of course?

8 MR. ABBOTT: Object to the form.

9 THE WITNESS: I think Mr. Hoch is probably
10 the best.

11 MR. MIHET: Right. He may not want to tell
12 me.

13 BY MR. MIHET:

14 Q. So in terms of the City of Boca Raton?

15 A. I think he would be the better person. I don't
16 know of anybody else staff-wise who could --

17 Q. All right. The Council members, themselves?

18 A. They're the ones who spoke with him, yes.

19 Q. Okay. All right. At the top of the first page
20 of this Exhibit 26, which is 991, you'll see that
21 another of the three recipients also responded to
22 Mr. Brown's same e-mail. Do you see that?

23 A. Yes.

24 Q. And this is a Paul Schofield?

25 A. Uh-huh.

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1 Q. And, I'm sorry, I forget. Which municipality was
2 he with?

3 A. Wellington.

4 Q. Wellington.

5 A. Village of Wellington, not the City of
6 Wellington.

7 Q. Yeah. Actually, it says right there in his
8 signature line, doesn't it? It does.

9 A. Oh, yes. Yes, it does.

10 Q. All right. And he writes back and he says: Good
11 morning, George. I would prefer to discuss that
12 ordinance in person, period. What do you think -- why
13 do you think that he would have preferred to discuss it
14 in person?

15 A. I don't know.

16 Q. Okay. Having said that, we do have a specific
17 enforcement mechanism. And I don't have any clear idea
18 how we could train either our code enforcement staff or
19 law enforcement staff to actually enforce it.

20 Did I read that correctly?

21 A. Yes.

22 Q. So we had Ms. LaVerriere writing back. Now we
23 have Mr. Schofield writing back. And it appears that he
24 also is having a hard time imaging how this type of
25 ordinance would be enforced by Code Enforcement?

1 A. Uh-huh.

2 Q. Yes?

3 A. Yes.

4 Q. She goes on to -- he goes on to say: If we
5 receive a complaint, we'll deal with it individually and
6 most likely referee it to one of the state governing
7 bodies. The MD's, DO's and clinicians all have their
8 own State Boards.

9 Do you see that?

10 A. Yes.

11 Q. What was Mr. Schofield conveying to Mr. Brown
12 there?

13 A. I'll give it my best interpretation. And I think
14 the word referee is probably refer.

15 Q. Yes.

16 A. And I believe what he is suggesting is that --
17 from Wellington that, if they receive a complaint, they
18 will -- instead of prosecuting it through their Code
19 Enforcement or law enforcement, that they would refer it
20 to one of the state regulating Boards.

21 Q. So he's saying, we don't think we could train our
22 Code Enforcement staff to enforce this kind of
23 ordinance. So we will send it --

24 A. Code Enforcement or law enforcement.

25 Q. Or law enforcement.

1 So we'll send it up to Tallahassee and see if
2 they can deal with it?

3 A. Essentially. Those are the words. But, yes,
4 that concept.

5 Q. Okay. Now, did either Ms. LaVerriere or
6 Mr. Schofield's opinions with respect to the
7 enforceability of these kinds of ordinances make it to
8 the Boca Raton City Council for its consideration?

9 A. Not that I know of, no.

10 Q. Okay. So, when they voted on the particular
11 ordinance banning conversion therapy, they didn't --
12 they were not aware that Mr. Brown had solicited and
13 received this input from the neighboring municipalities?

14 A. That's correct.

15 Q. Has the City of Boca Raton considered an option
16 whereby complaints would be referred to the state
17 governing bodies in Tallahassee?

18 A. No, not that I know of. Not yet.

19 Q. Okay. Is there a reason for that?

20 A. No. I think -- I think the ordinance, as it was
21 enacted, as it was passed, empowered -- authorized Code
22 Enforcement. There really wasn't another mechanism
23 outlined in that ordinance.

24 Q. Right. To your knowledge or the City's
25 knowledge, if you know, does -- do the state Governing

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1 Boards in Tallahassee get involved in enforcing local
2 city ordinances in Florida?

3 A. Generally, no.

4 Q. Okay. You said --

5 A. You're talking about, like, not just licensing?
6 You're talking about DEP, DOH, all state agencies?

7 Q. Yeah.

8 A. Or licensing groups?

9 Q. Well, I mean, I guess I'm wondering. I don't --

10 A. I think -- I think I can answer the question
11 probably more clearly --

12 Q. Okay.

13 A. -- that they -- the state agencies and regulatory
14 bodies do not enforce local ordinances.

15 Q. That's what I was trying to determine. Thank
16 you.

17 A. Uh-huh.

18 Q. And so the option that Mr. Schofield was
19 considering for Wellington would not appear to be a
20 viable option for that reason?

21 A. Unless he felt that the infraction violated some
22 other tenets of their -- of their licensure, then,
23 certainly, they could pass it on.

24 Q. Okay.

25 A. But, yes, to -- and try to have them enforce a

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1 local ordinance is probably not going to be very
2 successful.

3 Q. Okay.

4 (Plaintiffs' Exhibit No. 27 marked for identification)

5 BY MR. MIHET:

6 Q. So I've handed you now a document that we have
7 marked as Exhibit 27. And do you recognize this one?

8 A. Yes. This is Ordinance 5407.

9 Q. This is the conversion therapy ordinance that was
10 enacted by the City of Boca Raton and that we've been
11 discussing throughout the day today?

12 A. That's correct.

13 Obviously, the stamp on the top is not part of
14 that document. But --

15 Q. Okay.

16 A. -- I'm not sure what that is.

17 Q. Right. By, "the stamp on the top," you mean, the
18 one that says case --

19 A. Yeah. Yeah, yeah, yeah.

20 Q. Okay. That's from a filing in the case that
21 we're --

22 A. Yes.

23 Q. -- we're in right now.

24 A. Yes.

25 Q. But the City of Boca Raton insignia at the top --

1 A. Of course.

2 Q. -- that's part of the document?

3 A. Of course.

4 Q. Okay. Now, this document -- this ordinance,
5 according to the information on the last page, was
6 passed and adopted by the City Council on October the
7 10th of 2017?

8 A. That's correct.

9 Q. And we see here that we have the four -- or
10 rather three Commissioners and the Mayor who -- three
11 Council people and the Mayor who voted in favor. And we
12 have the Deputy Mayor, Jeremy Rodgers, voting against?

13 A. That's correct.

14 Q. And that's what we saw reflected in the video
15 that we watched, as well?

16 A. Exactly. I mean, yes.

17 Q. If you'll flip over to page five of the
18 ordinance. And, when I say, "page five," I mean, page
19 five at the bottom of the ordinance.

20 And, if you'll look over at -- beginning on line
21 three, it says: Whereas, City of Boca Raton has a
22 compelling interest in protecting the physical and
23 psychological wellbeing of minors, including, but not
24 limited to, lesbian, gay, bisexual, transgender and
25 questioning youth, and in protecting its minors against

1 exposure to serious harms caused by sexual orientation
2 and gender identity efforts.

3 Did I read that --

4 A. Change efforts.

5 Q. Change efforts.

6 Did I read that correctly with that modification?

7 A. Yes.

8 Q. Okay. Why does this recitation of the City of
9 Boca Raton's interest appear in the ordinance?

10 A. Well, there are two reasons; one minor one, one
11 more important. The first is that I believe this
12 recital or one similar to it was part of the model
13 ordinance that was the basis for this ordinance.

14 Q. Is that the minor reason?

15 A. Yes.

16 Q. Okay. And what's the major reason?

17 A. I think the major reason is anytime that we have
18 an ordinance or a resolution, the reasons for
19 promulgating such ordinance or resolution are tried to
20 be laid out in the recitals. And so the reasons for the
21 background are all part of the whereas clauses before
22 you get to the substantive what's -- what now is going
23 to be the action of the ordinance or resolution.

24 Q. Okay. And so, with respect to stating what the
25 interest is of the City in enacting a particular

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1 ordinance, is that important to have in there for
2 subsequent purposes like enforcement or litigation or --
3 or -- or why?

4 A. Or just -- yes. Those, plus just explaining
5 why -- you know, this is what the Council feels. This
6 is why they're acting the way that they do by passing
7 this ordinance.

8 Q. Okay.

9 A. This sets the stage for the reasoning, the
10 thought process, why the Council is voting to do what's
11 in the -- in the action portion of the ordinance or
12 resolution.

13 Q. How important is it for the listing of the City's
14 interest to be complete. That is, to include all of the
15 asserted interests of the City in passing the ordinance?

16 A. I'm not sure you can have all. But I think the
17 primary ones, the ones that are most important -- while
18 I did not draft this one, I do draft a lot of ordinances
19 and resolutions. And we try to tell the stories so that
20 the Council can follow along and see if this makes sense
21 as they review the resolution, as they review the
22 ordinance, to see the thought process, to see the
23 reasoning, to see why the actions follow the -- to make
24 sure that the actions follow the reasons.

25 Q. Okay. Now, this particular ordinance says that

1 the interest that's being asserted by the City is to
2 protect its minors against exposure to serious harms
3 caused by Sexual Orientation and Gender Identity Change
4 Efforts?

5 A. It does say that.

6 Q. Were there other interests that the City was
7 asserting besides the one that's mentioned here?

8 A. Other -- ones that aren't mentioned in the
9 ordinance?

10 Q. Right.

11 A. Other compelling reasons?

12 Q. Compelling or otherwise or not compelling, I
13 guess, is what I'm asking. Were there other things that
14 the -- other interests that the City was trying to
15 address or vindicate with this ordinance that are not
16 listed in this outlining of the compelling interest?

17 MR. ABBOTT: I'm sorry. Just so I'm clear,
18 you're asking if there are any interests outside of this
19 single whereas clause or any interest outside of the
20 language contained in the ordinance as a whole?

21 BY MR. MIHET:

22 Q. Well, I guess, since this clause deals with the
23 asserted interest specifically -- and, just for clarity,
24 if there are other interests that the City was trying to
25 address that are not listed in this clause, I'd like to

1 identify those.

2 A. I think this is the stated interest for this
3 ordinance.

4 Q. Okay. So the answer to my question is that there
5 were not other ones?

6 A. This is the only one listed in the ordinance,
7 yes.

8 Q. Okay. Are you aware of any other ones besides
9 the one that's listed in the ordinance?

10 A. No.

11 Q. Okay.

12 A. There may be. But I can't think of -- I think,
13 if there was other -- I can't think of any other
14 interests, I guess.

15 Q. Okay. Well, just for clarity in the record, the
16 first of the deposition topics on which you were
17 designated to testify is Defendant's -- that's the City
18 of Boca Raton -- purported interest in banning SOCE
19 counseling for minors. So, when you say you can't think
20 of any, I guess I'd like to -- to try to --

21 A. Sure.

22 Q. -- exhaust you a little bit. If you can tell me
23 that, you know, having prepared for that topic, you --
24 there are no others, I'll accept that. But --

25 A. I think the ordinance does speak for itself. It

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1 lists the rationale for why this ordinance is being
2 enacted. And that is listed as the compelling. I
3 believe that's the only one listed in the ordinance.

4 Q. Okay. I guess what I'm trying to avoid is a
5 situation where we've addressed this one in litigation.
6 And then the City of Boca Raton comes back and says, oh,
7 yeah, but we've got six other ones here that we also
8 were trying to vindicate that we forgot or for whatever
9 reason we didn't put in there.

10 A. Understood.

11 Q. Okay? So, as you sit here today as the designee
12 on the City of Boca Raton on the subject of its interest
13 being vindicated by this ordinance, this is the only one
14 that you're aware of?

15 A. Yes, as described by the document, itself,
16 between studies and the following whereas clause which
17 kind of equates the two.

18 Q. Okay. Now, the clause that we just read says
19 that the compelling interest is in protecting its
20 minors. Do you see that?

21 A. Yes.

22 Q. So what does the "its" modify or mean there?

23 A. I believe it refers to within the City of Boca
24 Raton --

25 Q. Okay.

1 A. -- which is where the ban is. It's only the
2 jurisdictional boundaries of the City.

3 Q. Okay. So the City of Boca Raton doesn't have an
4 interest in protecting the minors of Broward County?

5 A. An interest. Perhaps the ability to legislate,
6 the ability to govern the actions of Broward County not
7 so much. I believe this -- what it refers to is the
8 just jurisdictional opportunities that are available to
9 the City.

10 Q. Okay. So protecting the minors that are
11 residents of Boca Raton?

12 A. That is correct.

13 Q. And, in fact, the ordinance does not purport to
14 prohibit any therapist that resides or works in the City
15 of Boca Raton from traveling to another municipality and
16 providing what the order defines as conversion therapy
17 in that other locality?

18 A. I believe the -- I know I'm sure you've read the
19 prohibition. It's for treatment within the City
20 boundaries.

21 Q. Okay.

22 A. I don't believe, as we just talked, the City has
23 the wherewithal to govern the operations of another
24 jurisdiction.

25 Q. Okay. Now, does the City have an interest in

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1 protecting minors from another County like Broward
2 County who wish to come in and visit a therapist whose
3 office is in the City of Boca Raton?

4 A. I think, if your question is: Can a therapist
5 who resides in the City treat someone from outside the
6 City under -- under this ordinance? Is that your
7 question?

8 Q. Well, let's start with that.

9 A. I think the answer is this ban's treatment of
10 anybody -- any minor within City boundaries.

11 Q. Okay. So the ordinance then would prohibit a
12 minor from Broward County from coming into Boca Raton
13 and receiving therapy services here?

14 A. I believe so, yes.

15 Q. Okay. And so then the question is: What
16 interest does the City have in protecting that minor who
17 does not reside in the City of Boca Raton? I mean, does
18 "that minor" refer to when it says protecting its
19 minors?

20 A. I understand your question. You're trying to
21 determine whether "its" is limiting to only residents of
22 the City. And I don't think that the ban is limited to
23 just residents of the City. The ban is of conversion
24 therapy practices within the City. And it doesn't
25 specify only for City residents or only for visitors and

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1 residents. It's a ban of the -- so I'm not sure those
2 two are on -- are -- you can equate the two.

3 Q. Uh-huh. Does Code Enforcement enforce -- well,
4 strike that.

5 The whereas clause that's immediately under the
6 one we just discussed which begins on line seven of this
7 page five, it says: Whereas, the City Council hereby
8 finds the overwhelming research demonstrating that
9 Sexual Orientation and Gender Identity Change Efforts
10 can pose critical health risks. Do you see that?

11 A. I do.

12 Q. Okay. The overwhelming research that's being
13 referred to here and that the City Council was referring
14 to is the research that is described in the preceding
15 whereas clauses of this ordinance?

16 A. That's correct.

17 Q. There is not some other research that the City
18 Council was considering and that it found to also
19 demonstrate the -- the things that are being asserted
20 here that was not included in the previous whereas
21 clauses?

22 A. As a body, the research that was included as part
23 of the ordinance is the -- the documentation that they
24 used to determine if this ordinance should be passed.

25 Q. All right. So the overwhelming research that's

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1 being referred to on line seven refers to the previous
2 whereas clauses?

3 A. That's correct.

4 Q. Okay. Now, this ordinance bans both Sexual
5 Orientation Change Efforts as well as Gender Identity
6 Change Efforts?

7 A. It does.

8 Q. And we see that in the definition of conversion
9 therapy which is on page six beginning with line ten,
10 correct?

11 A. That's correct.

12 Q. That definition says: Conversion therapy or
13 reparative therapy means interchangeably any counseling,
14 practice -- I'm sorry. I think I misread that with a
15 comma. So let me try again.

16 Conversion therapy or reparative therapy means
17 interchangeably any counseling, practice or treatment
18 performed with the goal of changing an individual's
19 sexual orientation or gender identity, including but not
20 limited to efforts to change behaviors, gender identity
21 or gender expression or to eliminate or reduce sexual or
22 romantic attractions or feelings towards individuals of
23 the same gender or sex.

24 Did I read that correctly?

25 A. Yes.

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1 Q. The terms counseling, practice or treatment, are
2 they intended to all mean the same thing; or is there a
3 distinction between the three?

4 A. There probably is a similarity, but there
5 probably are distinctions between each of those terms.

6 Q. And what is that distinction, in general?

7 A. I'm not sure I'm the best person to define that.

8 However, to me, just by the look of those, I
9 think treatment probably has a different -- different
10 definition than counseling.

11 Q. Okay.

12 A. I think they all have probably different --
13 they're probably very similar in definitions. But
14 there's probably aspects of one that don't fall into the
15 other.

16 Q. Okay. Now, you mentioned that you may not be the
17 best person to ask. For the record, you have been
18 designated by the City to provide us its position with
19 respect to the interpretation of the ordinance, correct?

20 A. Yes.

21 Q. Okay. And you feel capable of providing that
22 position?

23 A. Best I can.

24 Q. Okay. That's all we can ask for.

25 A. Uh-huh.

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1 Q. So does the City then see a difference between
2 treatment and counseling?

3 A. I think, as I mentioned, those words are similar.
4 But, the exact definition, they're -- I'm sure is
5 different. And so they're related, but there may be
6 activities that fall under one or not under the other.

7 Q. Okay. Now, those -- can you think of some
8 activities that might fall under one but not the other?

9 A. No.

10 Q. Okay. Now, those words are not defined in the
11 ordinance, correct?

12 A. Uh-huh. No, they're not.

13 Q. Okay. In order for one of the City's code
14 enforcement officers to determine whether or not he or
15 she believes that a violation of the ordinance has
16 occurred, they would first have to determine whether or
17 not something that is described to them that took place
18 in the confines of a therapist's office amounts to
19 counseling, practice or treatment, correct?

20 A. To determine if the conversion therapy is
21 happening, yes, that is part of the definition, yes.

22 Q. Okay. And, without a definition of those terms
23 being provided to them and without any enforcement
24 memorandum or guidelines being provided to them, how
25 would you expect someone with a GED equivalent to

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1 determine whether or not a course of communication
2 between Dr. Hamilton and one of her patients is
3 counseling or is practice or is treatment or is none of
4 those three?

5 A. I think the -- as you well know, in a lot of
6 documents, that because the -- it's hard to sometimes
7 capture in a definition what an activity might be. I
8 think these three together form a -- a pretty good
9 handle on the types of activities that a therapist or
10 licensed therapist might do in their office or outside
11 their office.

12 So to know whether a -- a code -- a compliance
13 officer to determine whether something is counseling or
14 practice or treatment I'm not sure is necessary, if
15 that's your question. But I think it gives a fairly
16 good idea of the types of things that would -- would be
17 something that they could hang their hat on when they're
18 -- when they're looking to see whether something would
19 be conversion therapy. And I realize that's a bit of a
20 rambling answer; so let me try it, again.

21 The -- these three concepts together I think are
22 meant to give a little bit of latitude. If someone
23 says, well, I wasn't counseling, I was -- I was
24 providing treatment and -- or I wasn't doing treatment.
25 I was counseling. But, together, those three seem to

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1 represent the type of activities that might be going on
2 in a therapist's or licensed office.

3 Q. Okay. But you would recognize that it is
4 possible for a therapist and a minor to interact,
5 whether in the office or at the ice cream parlor or at
6 the basketball court or at the city park without being
7 engaged in counseling, practice or treatment, correct?

8 A. Of course.

9 Q. And so, you know, if the two of them have a
10 conversation, you know, it could be talking about -- for
11 example, you know, with a minor client that's interested
12 in basketball --

13 A. Uh-huh.

14 Q. -- they could be talking about the basketball
15 game that took place last night on TV, right?

16 A. Sure.

17 Q. And it's possible that that could just be a
18 conversation about basketball without any counseling or
19 therapeutic component?

20 A. Of course.

21 Q. But it's also possible that that conversation may
22 have been brought up by the therapist for a therapeutic
23 purpose. For example, to point out how masculine those
24 guys are who are, you know, running around the court --

25 A. Uh-huh.

1 Q. -- correct?

2 A. Sure.

3 Q. And so, in order for a code enforcement officer
4 to decide whether or not a violation of the ordinance
5 has likely taken place such that a notice of violation
6 can or should be issued, he or she would have to
7 determine whether or not that conversation about
8 basketball was merely a conversation or whether it
9 constituted counseling, practice or treatment?

10 A. Sure. I think you might be coming at it in the
11 wrong direction.

12 Q. Okay.

13 A. And -- or maybe not. You certainly have thought
14 longer and harder than I have. But the -- as I
15 understand this ordinance, it bans conversion therapy.
16 So, if you were having a conversation, whether or not
17 that was considered to be counseling or a conversation,
18 as long as it didn't cross that threshold of trying to
19 change a gender identity or -- or -- then that would be
20 fine.

21 And even counseling that doesn't change --
22 obviously, the key things are gender. What are the --
23 changing an individual's sexual orientation or gender
24 identity. That's kind of the key. So you start with
25 that, I would think. And then, if that becomes an

1 issue, then you look to see how was that done. So the
2 counseling, practice or treatment is really just the
3 delivery mechanism to this change behaviors, change
4 identity, change gender expression.

5 Q. So the code enforcement officer would or would
6 not have to decide whether or not a particular statement
7 or statements that are alleged to have been made in
8 violation of the ordinance constitutes counseling,
9 practice or treatment?

10 A. I think --

11 MR. ABBOTT: Objection. Asked and answered.

12 THE WITNESS: I think they would. But the
13 first step would be to say: Was there gender identity?
14 Was there sexual orientation? An attempt to change the
15 individual's sexual identity, gender -- sexual
16 orientation, gender identity? And, if that's the case,
17 could you -- would that be considered a counseling,
18 practice or treatment performed?

19 MR. MIHET: Okay.

20 THE WITNESS: And I would suggest that, if
21 that were the -- if there was an attempt to change
22 sexual orientation/gender identity, then it would be
23 fairly easy to say that falls into the counseling,
24 practice or treatment category.

25 BY MR. MIHET:

1 Q. And --

2 A. So -- go ahead. I'm sorry.

3 Q. And so what would you have to know whether or not
4 the discussion about basketball that we just
5 referenced --

6 A. Uh-huh.

7 Q. -- is part of -- you know, is counseling,
8 practice or treatment to change gender identity or is it
9 not?

10 A. So, again, I think what I've said is that the
11 determination initially has to be about trying to change
12 gender identity or sexual orientation.

13 Q. Okay.

14 A. So, if that decision -- if that judgment is that
15 that was not the case, then it doesn't really matter
16 what that -- what that interaction was.

17 Q. Okay.

18 A. If it was something that judgment-wise was
19 intended to be a change in gender identity or sexual
20 orientation, then I think it is likely that you could
21 determine whether that happened as counseling, practice
22 or treatment.

23 Q. Okay. So, if a minor is interested in changing
24 sexual orientation or gender identity and is looking to
25 receive some assistance in that area and goes to

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1 Dr. Otto's office and Dr. Otto decides that, on this
2 particular session, what they should do is watch a
3 basketball game so that he can point out to this
4 particular minor client how men can be comfortable with
5 their masculinity and try to provide strong, you know,
6 male role models and examples of, you know, males -- you
7 know, guys doing what guys like to do on a basketball
8 court --

9 A. Uh-huh.

10 Q. -- how would a code enforcement officer who
11 received a -- who receives that complaint decide whether
12 or not that interaction constitutes counseling, practice
13 or treatment for the purpose of changing gender identity
14 or sexual orientation?

15 A. I think you've asked the same question a couple
16 of times now, so I guess I'm not being clear. So let me
17 try one more time -- although, I think it's going to be
18 repetitious -- is that, as with any complaint, the code
19 officer I think will look to first see not if it's a
20 practice, a counseling or a treatment being performed.
21 I think they're going to look to see if that threshold
22 of conversion therapy was reached. And I think that is
23 the operative part of this, not whether it was done
24 counseling, practice or treatment.

25 So, in your instance of your hypothetical, if

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1 they've got a complaint from a third party, from the
2 minor, from the family that the -- that Dr. Otto was
3 practicing conversion therapy and it involved watching
4 basketball, I don't think that basketball is the
5 operative. I don't know that treatment, counseling --
6 it's that conversion therapy that would be the key. And
7 I think the code compliance officer or the code
8 compliance manager, once receiving that complaint, would
9 look to see best they could if this complaint was
10 something that was worth -- not was worth -- something
11 that was due additional investigation and an NOV.

12 Q. So I guess this is what I'm trying to get at.
13 And it wasn't the same question I was asking because I
14 had added to it the fact that the minor in this case
15 wasn't just there to kill time but was there with the
16 actual intent to try to change that minor's sexual
17 orientation or gender identity. I had added that to --

18 A. I don't think -- I don't think that changes the
19 response.

20 Q. Okay. Why not?

21 A. I think that, no matter what the activity is;
22 watching basketball, getting zapped on the wrist with a
23 band or electrical or therapy, whatever that might be,
24 if the goal of that is to change gender identity, then
25 that would be covered by this ban.

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1 Q. Okay. And, when you say, "the goal," whose goal
2 are we talking about?

3 A. I'm sorry. I don't know what I said.

4 Q. You said, if the goal of that activity is --

5 A. Oh, the intent. If the intent of the activity is
6 to change sexual identity -- or gender identity/sexual
7 orientation, then --

8 Q. It's prohibited?

9 A. -- then it's prohibited.

10 Q. And so my question is: Whose intent does the
11 code enforcement officer have to look at? The minor's
12 or the therapist's or both?

13 A. I think it's a ban on therapists. It's not --
14 it's not governing the youth. It's governing the
15 therapist's activities.

16 Q. Okay. So, if a minor shows up and the minor has
17 the intent of changing their sexual orientation or
18 gender identity --

19 A. Uh-huh.

20 Q. -- but the therapist engages in counseling,
21 practice or treatment and the therapist doesn't share
22 that intent, then that would not be a violation of the
23 ordinance?

24 A. I think it would. I think that, if the therapist
25 treats -- if the practice is gender identity conversion

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1 or sexual orientation conversion, whether or not it's
2 prompted by the parents, by the therapist, by the child,
3 themselves, that is banned by the ordinance.

4 Q. Okay.

5 A. That's my understanding.

6 Q. Okay. And so, just so we're clear then, if the
7 minor wishes to receive this type of counseling and the
8 therapist wishes to provide the minor with that which
9 the minor seeks, which is to assist the minor with the
10 minor's goals, if those goals are to change sexual
11 orientation or gender identity, then that would be
12 prohibited by the ordinance?

13 A. That's my understanding, yes.

14 Q. Okay. Now, the ordinance says -- when it defines
15 conversion therapy, it says: Counseling, practice or
16 treatment performed with the goal of changing an
17 individual's sexual orientation or gender identity
18 including but not limited to efforts to change
19 behaviors, gender identity or gender expression.

20 Do you see that?

21 A. I do.

22 Q. So, within the context of gender identity, what
23 types of efforts to change behaviors or -- or feelings
24 would be prohibited by the ordinance?

25 MR. ABBOTT: Object to the form.

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1 THE WITNESS: I'm not -- it seems rather
2 straightforward --

3 MR. MIHET: Okay.

4 THE WITNESS: -- that a child identifies
5 with a particular orientation. The efforts to convince,
6 to treat, to change that would be something that would
7 be prohibited under the ordinance.

8 BY MR. MIHET:

9 Q. Okay. Now, you heard a couple of these examples
10 yesterday; and we heard what the County's position was
11 as to them. And I'm interested in hearing the City's
12 position, as well.

13 A. I can't guarantee I was paying close attention.
14 You may have to repeat them.

15 Q. I will do just that.

16 If a prepubertal child, say a ten-year-old, was
17 born as a boy --

18 A. Uh-huh.

19 Q. -- but has now expressed a female gender
20 identity --

21 A. Uh-huh.

22 Q. -- would the ordinance prohibit a therapist from
23 encouraging that child to embrace his given male body
24 and to align with his assigned gender role, that is, his
25 boyhood?

1 A. If the child identifies as a female and the goal
2 of the therapy is to change their identity back to a
3 male, then, yes, I think that would be prohibited by the
4 ordinance --

5 Q. Okay.

6 A. -- which I believe is what your example was.

7 Q. So that's part of the example. And, you know,
8 you added, if the goal is to change the identity back to
9 male, that would be prohibited. But if -- let's take it
10 this way.

11 A. Uh-huh.

12 Q. There's a complaint made to code enforcement by
13 either the child or the child's parent and they say,
14 this is a ten-year-old prepubertal child born as a boy,
15 identifies as a female. He has visited Dr. Hamilton,
16 and Dr. Hamilton encouraged this child to embrace his
17 given male body and to align with his assigned gender
18 role.

19 A. So in that -- in doing that, is Dr. Hamilton
20 trying to change the identification of that individual
21 from female, which they're currently identifying with,
22 to identifying as a male?

23 Q. Let's say, in the first example or in option A,
24 yes, she is.

25 A. Then I think that that would be a clear --

1 clearly a violation of the ordinance.

2 Q. Okay. And another variant, let's say that that
3 information is not provided to the code enforcement
4 officer.

5 A. Which information?

6 Q. Whether or not Dr. Hamilton, what her intent was.
7 All that is provided to the code enforcement officer is
8 that this particular prepubertal ten-year-old child,
9 born as a boy, identifies as a female, visited
10 Dr. Hamilton; and she encouraged the child to embrace
11 his given male body and to align with his assigned
12 gender role.

13 A. Uh-huh.

14 Q. We don't know why she did it. Is that a
15 violation of the ordinance?

16 A. I'm assuming you're kind of going back to your
17 statement of this morning, your hypothetical of this
18 morning where that's the only information the code
19 officer has. The parents have hung up. Dr. Hamilton
20 has hung up on. And so that's the only information they
21 have.

22 Q. Yes.

23 A. So, as I think we talked before, they could make
24 the determination based on the facts they know and
25 decide whether or not that covered or not.

1 Q. Okay.

2 A. I think, with a nine- or ten-year-old -- what did
3 you say?

4 Q. Ten-year-old.

5 A. Ten-year-old.

6 That might be a difficult thing to go forward.
7 Now, when they talk with the ten-year-old, maybe the
8 ten-year-old is someone who they feel is a -- can
9 present a good case, it -- has a clear idea; and they
10 can go with that. But I would suggest, as we talked
11 earlier, trying to make that case, trying to present
12 something to the special magistrate without the
13 corroboration of the therapist or the parents or another
14 party, another witness, that would be a tough thing to
15 do on its own. But, yes, they could as a code -- as a
16 code compliance person.

17 Q. Okay.

18 A. If nothing else, it could be the start of -- of
19 an investigation.

20 Q. Okay.

21 A. But they have to look at other factors, as well.

22 Q. If the -- if the child or the parent were to say
23 to the code enforcement officer that the child was
24 looking for help to change back to, you know, a male
25 gender identity and that that information was shared

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1 with Dr. Hamilton, how would that impact the analysis?

2 A. I think you're trying to give different examples.

3 But I think the ordinance pretty much speaks for itself.

4 No matter what the consent, no matter what the assent is

5 by the child or the parents, this prohibits Dr. Hamilton

6 from performing conversion therapy within the City.

7 Q. Okay. Now, for that same child, would the

8 ordinance prohibit a therapist from verbally endorsing

9 or supporting behaviors and attitudes that align with

10 the child's sex assigned at birth?

11 A. Is the goal to make them feel better? Is the

12 goal to change their sexual -- I mean, if the goal is to

13 change --

14 Q. Uh-huh.

15 A. -- if the goal is conversion therapy, then it

16 would be a -- it would violate.

17 Q. So you have a ten-year-old prepubertal child --

18 A. Uh-huh.

19 Q. -- and he was born as a boy; and he presents to

20 Dr. Otto and says, you know, that he is really

21 interested in girls, wants to play with dolls, wants to

22 hang out with friends that are girls, wants to dress up

23 as a girl, wants to do things that girls want to do and

24 he has no interest in things that boys want to do and is

25 experiencing distress as a result of the fact that he

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1 wants to do all these things that girls want to do and
2 yet, you know, he has a male anatomy. When he shows
3 up --

4 A. So, to me -- and, clearly, I'm not a clinician in
5 any event. But what you just explained to me sounds
6 like someone who is identifying with -- as a female.
7 But, again, I am not the best person to make that call.
8 Perhaps someone, you know, who's a therapist could do
9 so.

10 Q. Okay.

11 A. And, if that were the case and the goal of
12 Dr. Otto -- I think was your example of this case --
13 tried to change that identity, the gender identity to a
14 male, then, yes, that would be a violation of this
15 ordinance.

16 Q. Okay. So what if the ten-year-old prepubertal
17 child hasn't progressed far enough into the exploration
18 of gender identity to say clearly I now identify as a
19 girl --

20 A. Uh-huh.

21 Q. -- but still, nonetheless, experiences all of the
22 inclinations that I've just talked about in terms of
23 wanting to do --

24 A. I would --

25 Q. Let me just finish for the record.

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1 -- wanting to do all the things that girls want
2 to do and not wanting to do things that boys want to do.
3 So, without a clear declaration that I identify as a
4 girl, is it still a violation of the ordinance for
5 Dr. Otto to do the things that we talked about, that is,
6 to verbally endorse and support behaviors and attitudes
7 that align with the male biology of the child while to
8 verbally discourage behaviors and attitudes that align
9 with the female identity?

10 A. I would guess that, whether or not the child
11 declares that they have a different -- or are
12 identifying as one or the other, their actions would
13 really put them in the category of one or the other or
14 both or -- and so, whether they declare it or not, I
15 think it's -- that gender identity as presented is one
16 that this ordinance would prohibit the attempt to
17 convert through therapy, counseling -- or counseling,
18 practice or treatment.

19 Q. Okay. So, if the child doesn't declare it, you
20 know, I identify as a girl --

21 A. And not being a counselor, but I don't suspect
22 that is an uncommon event.

23 Q. Right. That happens a lot.

24 A. Could happen.

25 Q. So the child doesn't declare it. The therapist

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1 doesn't declare it. Is a code enforcement officer able
2 to make that determination that this child has
3 progressed far enough along in the gender identity
4 exploration process to where this child now identifies
5 as a girl, notwithstanding the failure to so declare;
6 and so, therefore, the efforts that have been engaged in
7 amount to conversion therapy?

8 A. I understand the question. Now, in that case, as
9 we've talked about, this is going to be a
10 complaint-based process.

11 Q. Okay.

12 A. So, if the child is -- has not come forward, if
13 the therapist hasn't come forward, if the parents
14 haven't come forward, it is unlikely that we would know
15 what's going on as a City, as a code. So until --
16 unless and until there is a complaint, which means
17 someone believes that there is a -- an attempt, a goal
18 of trying to change gender identity, that would be the
19 trigger for someone to take a look at. And, at that
20 point, then what you're talking about would have to be
21 part of that judgment.

22 Q. Now, I probably wasn't as clear as I should have
23 been with the example. I wasn't suggesting that the
24 child hadn't declared to a code enforcement officer
25 that, you know, these things took place. I was

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1 suggesting that, in discussing with a code enforcement
2 officer what took place in the therapy sessions with the
3 therapist, the child doesn't declare that -- that he now
4 identifies as a girl. The child hasn't reached that
5 level in the exploration of gender identity yet.

6 A. Uh-huh.

7 Q. How is the code enforcement officer able to
8 determine whether the child was far enough along in the
9 gender identity exploration such that the efforts of the
10 therapist are conversion therapy or that the child was
11 still male in both biological sex and identity and yet
12 was merely exploring these things but no actual
13 conversion took place?

14 A. Sure. I think I understood. That was a long
15 question, but I think I got the gist of it. I think
16 that kind of goes back to the question that we had gone
17 over a few times this morning and this afternoon. Let's
18 say that that child talks to a code officer and
19 describes just what you're saying --

20 Q. Okay.

21 A. -- and that code officer evaluates it and says,
22 you know, I'm not clear. I'm going to talk to the
23 parents. I'm going to -- and they hang up. Talk to --
24 I'm not sure who to use as an example. The professional
25 hangs up. So they're only looking at that description.

1 Q. Yes.

2 A. Could they write an NOV? The answer is they
3 probably could, but they probably would look for more
4 corroboration. They're not going to take this nine,
5 eight, ten-year-old, whatever, and use that unless, for
6 some reason, that nine, ten-year-old was very -- was
7 able to describe, was able to put into words their
8 feelings, the treatment and how it -- and, as they
9 described it, if the code compliance officer felt that
10 that covered this, then they could go over. But I think
11 that would be unlikely, as we talked before, without
12 some other information or evidence.

13 Q. And you have no concerns about entrusting a code
14 enforcement officer with a high school diploma with
15 making that judgment call?

16 A. You know, you keep talking about high school
17 diplomas as -- I mean, that's certainly a level of
18 education. But I would suggest that there are people of
19 high school educations who are very astute and very --
20 and -- and --

21 Q. And I did not mean to use that in a derogatory
22 sense at all.

23 A. And I would suggest that there are PhD's who
24 don't.

25 Q. Right.

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1 A. But I think, if your question is, are code
2 officers the people who are entrusted to make that call?
3 Yes.

4 Q. And you don't have any concerns about whether or
5 not they are capable of making that call rightly?

6 A. I am concerned about every call they make
7 rightly, whether it has to do with grass or whether it
8 has to do with -- certainly, the concerns of children
9 are paramount. That's the reasons that we passed the
10 ordinance in the first place is to try to have
11 protections against -- for the children in the City.

12 But, to answer your question, anytime anybody's
13 making those kind of judgments, it's a concern. Do I
14 feel that they are able to make that? Yes.

15 Q. So, again, when I was using high school diploma,
16 I was not using that in a derogatory sense. I want to
17 contrast that with someone who has both a BS degree or a
18 BA degree and professional licensure from the state as a
19 licensed mental health therapist. Would not a licensed
20 mental health therapist be much better equipped to make
21 these types of judgment calls as to, for example,
22 whether or not a minor patient had sufficiently
23 progressed in the gender identity exploration such that
24 the efforts we've been talking about amount to
25 conversion therapy or not?

1 A. Sure.

2 MR. ABBOTT: Objection. Asked and answered.

3 THE WITNESS: And I think that someone who
4 is trained in a field, no matter what that field is,
5 certainly has some advantages. Now, I would also
6 suggest that, in an investigation, I think it is
7 doubtful that Dr. Hamilton or Dr. Otto will hang up on
8 our code officer, would provide the information that
9 would allow them to make a better call. Maybe not. But
10 I'm hoping that's the case. And I'm hoping the parents
11 don't hang up, as well.

12 So there would not be -- I think all the
13 instances that we're talking about where you're
14 wondering whether a code officer, based on one set of
15 facts, another set of facts from a nine-year-old child
16 is going to know whether we're going to have a NOV or a
17 special magistrate is very hypothetical and I think
18 maybe not as realistic as some other examples.

19 BY MR. MIHET:

20 Q. Well, you don't think it would be realistic for
21 the City to expect a therapist to cooperate with the
22 City in investigating that therapist for possible code
23 violations, do you?

24 A. I think, if they knew about the ban and they were
25 doing something that was well within their practice,

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1 they would be willing to talk about it, maybe not
2 divulging the specifics -- the HIPAA, the other things
3 that might be going on. But, yes, I would expect that
4 professionals would cooperate with the City.

5 Q. And the code enforcement officers, they don't
6 receive training in issues of child development or
7 exploration or gender identity or things along those
8 lines, do they?

9 A. No, not formally.

10 Q. Okay.

11 A. No. Not by the City, I should say.

12 Q. Okay. And it's not a requirement of their job
13 that they receive that kind of training from anywhere
14 else, is it?

15 A. No, it's not.

16 Q. Okay. So would the answer be any different to
17 the -- the question if, instead of using a prepubertal
18 child, a ten-year-old, we would use a six-year-old who
19 was born as a boy, identifies as a girl, likes to dress
20 as a girl and likes to do things that girls do, doesn't
21 show any interest in things that boys do, would the
22 ordinance allow a therapist to seek to help this
23 six-year-old boy embrace his boyhood and feel good about
24 being a boy through talk therapy that encourages
25 masculine activities, increased relationships with male

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1 role models, play dates with other boys, et cetera, and
2 discourages cross gender behavior?

3 MR. ABBOTT: Object to the form.

4 THE WITNESS: I think the question is very
5 similar to the one you asked before, and I think the
6 answer would be very similar. If the goal was to try to
7 change gender identity, then it would be prohibited by
8 this ordinance.

9 BY MR. MIHET: Okay.

10 BY MR. MIHET:

11 Q. What about an adolescent -- so now we're talking
12 about someone, you know, between thirteen and eighteen.

13 A. Uh-huh.

14 Q. Born as a female but has been identifying as a
15 male for some time. Okay?

16 A. Uh-huh.

17 Q. If that minor seeks therapeutic help in changing
18 gender identity behaviors and expressions back to match
19 her biological body, would the ordinance prohibit a
20 therapist from providing talk therapy to assist with
21 that identity change back?

22 A. I think that the same process we've talked about
23 with the ten, the six and now the thirteen, fifteen,
24 it's the same -- same ordinance; and it covers minors
25 the same way.

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1 Q. Okay. So the answer to the question is: Yes,
2 the example I just gave would be conversion therapy
3 prohibited by the ordinance?

4 A. Yes, I believe.

5 Q. You say you believe?

6 A. Yes.

7 Q. The City believes?

8 A. Yes.

9 Q. Okay.

10 MR. MIHET: Take another quick break.

11 THE WITNESS: Of course.

12 (Recess)

13 BY MR. MIHET:

14 Q. Okay. Mr. Woika, I've got one more example that
15 I want to run by you.

16 A. Sure.

17 Q. We have a sixteen-year-old boy who comes to see
18 Dr. Otto because he's having difficulty at school with
19 schoolwork and friends and just feels a lot of stress
20 and distress that he wants help with. In the process of
21 talking with this minor, Dr. Otto determines -- or
22 learns that the minor is spending an inordinate amount
23 of time on technology, you know, surfing the web and
24 video games and doing things other than homework and,
25 you know, more productive things. He shares that

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1 concern with the minor's parents. And, as a result, the
2 parents take away the Xbox and the telephone and the
3 other things that the sixteen-year-old enjoys using.
4 Are you with me?

5 A. So far.

6 Q. So now we have a very angry sixteen-year-old.
7 And he calls Code Enforcement; and, he says, I was with
8 Dr. Otto in therapy sessions. I told him that I was
9 gay, and he proceeded to engage in therapy with me to
10 try to convert me back to being straight. Are you with
11 me?

12 A. Uh-huh.

13 Q. How is Dr. Otto able to defend himself now in the
14 code enforcement process that ensues?

15 A. Sure. I think we've gone through this a couple
16 times that that call comes to the code officer, the code
17 compliance officer.

18 Q. Okay.

19 A. As we've talked about, the code person is going
20 to take the complaint, evaluate it and try to do things
21 like talk to the parents. And I'm guessing, in this
22 case, the parents would not just hang up but would say,
23 no, that's not the case. This is what happened. And
24 that would go into the investigation. Similarly, I
25 think, if the code person called -- I'm sorry. This is

1 Dr. Otto?

2 Q. Dr. Otto, yes.

3 A. Otto.

4 And called Dr. Otto and said, we have this
5 complaint. Do you care to talk about it? Now, they --
6 he may or may not be able to based on the privacy.

7 Q. HIPAA?

8 A. What's that?

9 Q. The privacy laws, you mean?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Okay.

14 A. But if both Otto and parents hang up and we're
15 left with just the complaint of the --

16 Q. Sixteen-year-old.

17 A. -- sixteen-year-old, then the code enforcement
18 person would have to decide whether or not that, by
19 itself, warrants having a notice of violation or not.

20 Q. So, in this particular case, the parents would
21 say, well, we weren't part of the sessions --

22 A. Uh-huh.

23 Q. -- with Dr. Otto, so we can't say what actually
24 took place in those sessions. And Dr. Otto says, I'd
25 love to tell you something; but I can't because of HIPAA

1 and other, you know, state laws.

2 A. Sure.

3 Q. So now the code enforcement officer has only what
4 the sixteen-year-old tells him. Does he issue a --

5 A. I'm guessing that -- I'm sorry.

6 Q. Does he issue a notice of violation or no?

7 MR. ABBOTT: Object to the hypothetical.

8 THE WITNESS: In that case, as we just
9 talked about, the parents I would say would -- even
10 though they would say they weren't part of the session
11 say, as a result of all of this, yes, he has no more
12 Xbox. We've taken away the cell phone and whatever. I
13 think that would go into the weight of the decision of
14 the code compliance officer and/or the manager to take a
15 look at that.

16 But, absent all that, I think we're back
17 where we were this morning, which is it's really up to
18 the code compliance officer to determine if that -- if
19 that complaint by itself was valid enough to issue the
20 NOV.

21 Q. Sure. And I understand it would be up to his
22 discretion.

23 I guess my question is: What would he do? Would
24 he issue the citation or not?

25 A. I don't know the answer. I mean, I don't think

1 you can make that based on that hypothetical. Without
2 having a discussion with the sixteen-year-old, without
3 having the benefit of talking -- what the parents said
4 and without talking to what the treatment professional
5 said, I think it would be hard to know what that answer
6 is.

7 Q. Okay. And you believe that a level 1 or 2 code
8 compliance officer has the requisite skill and training
9 to be able to interview that minor, to interview the
10 minor's parents, to assess the facts that we've just
11 discussed and to make a judgment call as to whether or
12 not this minor is telling the truth with respect to
13 conversion therapy actually has been attempted on him or
14 whether he is merely acting out of revenge?

15 A. Sure. I understand that question.

16 And one of the things that you keep saying is
17 that this code compliance officer is going to make
18 decisions almost like they're in a vacuum, and they're
19 not. We've talked a little bit about the manager that's
20 available. We've talked about the City Attorney that's
21 available. We talked about other professionals. We
22 have the ability to go through any one of our
23 departments and -- and offer assistance if that were to
24 be the case. If it's this touchy, perhaps we need to
25 have one of our other professionals get involved with

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1 it. It's not just that person's decision on some of
2 these cases where this is a fair amount of judgment in
3 it.

4 Q. Ultimately, it's the compliance officer that
5 decides whether or not a notice of violation has to be
6 issued?

7 A. Through the manager, yes.

8 Q. And the City Attorney that you mentioned I
9 believe two or three times as being an available
10 resource, would it be the same City Attorney that we
11 heard on the video say that she didn't know exactly how
12 this -- this ordinance would be enforced in practice?

13 MR. ABBOTT: Object to the form.

14 THE WITNESS: Yeah. I think, something
15 along those lines. I'm not sure what were her exact
16 words. But, yes, her office. That is the City
17 Attorney. We only have one.

18 BY MR. MIHET:

19 Q. Okay. As you might appreciate, Mr. Woika, this
20 subject matter that we've been discussing today creates
21 a lot of strong emotions and feelings on both sides
22 of -- of the issue. Would you agree with me?

23 A. By whom? By --

24 Q. Well, by people who think that conversion therapy
25 is harmful and should be prohibited versus those who

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1 feel that, you know, talk therapy should be permitted
2 for individuals who seek and request it.

3 A. The reason I ask that is we had a public hearing.
4 No one showed either side. It didn't look like it was
5 very hotly contested. And, until this lawsuit, we
6 really haven't heard much about it. So I'm not sure
7 that I would agree that it's a hotly-contested dividing
8 subject.

9 Q. Okay. Are you aware of whether or not this issue
10 was hotly contested at the county level when it occurred
11 there?

12 A. Peripherally.

13 Q. Okay. What are you aware of?

14 A. Just the fact that their ordinance, there was a
15 lot more discussion regarding their passing of the
16 ordinance than happened here or other communities.

17 (Plaintiffs' Exhibit No. 28 marked for identification)

18 BY MR. MIHET:

19 Q. Okay. I've shown you a document that we have
20 marked as Exhibit 28. You've had a chance to peruse it.
21 Do you recognize this document?

22 A. Yes.

23 Q. When is the last time that you've seen this prior
24 to just now?

25 A. This morning.

1 Q. Okay. Seems like you looked at a lot of
2 documents this morning.

3 A. I was up early.

4 Q. Looking at the message that starts on the bottom
5 of page one, which is Tuesday, June 19, 2018, message
6 from Diana Frieser -- am I saying that right, by the
7 way?

8 A. It's Diana --

9 Q. Oh.

10 A. -- Diana Frieser, as in, like, the bottom half of
11 a refrigerator.

12 Q. Got it. Diana Frieser, that's the City Attorney,
13 right?

14 A. Yes, it is.

15 Q. She writes to Rand Hoch. We know it's Rand Hoch
16 because, if you look at the message that follows it
17 beginning on the middle of the next page, you'll see
18 that she was responding to something that Mr. Hoch had
19 written her. Do you see that?

20 A. Yes.

21 Q. And, for the record, this is City 492, 493 and
22 494 that comprises Exhibit 28.

23 So she writes to Mr. Hoch. And, evidently, this
24 is after this particular lawsuit has been filed,
25 correct?

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1 A. Yes.

2 Q. Okay. First line on the -- I'm sorry. Last line
3 on the bottom of the first page, she says: We
4 appreciate the interest from you and the Palm Beach
5 County Human Rights Council regarding this newly-filed
6 litigation.

7 Do you see that?

8 A. Yes.

9 Q. She goes on and says: We recall the assurances
10 and support pledged by the PBCHRC during the City's
11 consideration of the ordinance prohibiting conversion
12 therapy with respect to minors, which is the focus of
13 the complaint, and believe those resources will be
14 valuable.

15 Did I read that correctly?

16 A. You did.

17 Q. What assurances and support pledged was
18 Ms. Frieser referring to?

19 A. There was correspondence from Rand Hoch and the
20 PBC Human Rights Council sometime back when the
21 ordinance was being considered. And I don't remember
22 the -- which correspondence there was. But there was a
23 pledge that, hey, we're in this with you as the Council.
24 If things happen, we're here to -- to help you fight off
25 anybody who's trying to take down the ordinance. And

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1 that may not have been a great paraphrase, but it's
2 something along those lines. And I think that the City
3 Attorney was saying, hey, remember those correspondence?
4 What do you -- what are you willing to bring to the
5 table?

6 Q. You said you'd take care of us. Now here's your
7 chance?

8 A. Something along those lines, yes.

9 Q. Did the assurances and support that was pledged
10 by Mr. Hoch's organization play any part in the City
11 Council's decision as to whether or not to enact the
12 ordinance?

13 A. It was something that they had. I don't know to
14 the extent that that played into their decision making.

15 Q. Okay. How often does the City of Boca Raton get
16 sued for civil rights or, you know, Constitutional First
17 Amendment violations, if you know? Is that a very rare
18 thing, or is it a common occurrence?

19 MR. ABBOTT: Object to the form.

20 THE WITNESS: I don't believe it's common.

21 MR. MIHET: Okay.

22 THE WITNESS: We have had some.

23 MR. MIHET: Okay.

24 BY MR. MIHET:

25 Q. Ms. Frieser goes on in the next sentence to say:

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1 I believe it would be appropriate for us to touch base
2 regarding the defense of the ordinance once the City is
3 served; and, at that time, we can discuss coordination
4 of the financial and legal resources PBCHRC is prepared
5 to provide the City to supplement the City's efforts.

6 Do you see that?

7 A. I do.

8 Q. What financial or legal resources is PBCHRC
9 providing for the City's defense of the ordinance?

10 MR. ABBOTT: Objection.

11 This exceeds the scope of any topic that was
12 identified for the deposition. But go ahead and answer.

13 MR. MIHET: For the record, I disagree. I
14 think there is a topic that does seek the City's -- the
15 extent of the City's coordination with advocacy groups
16 with respect to the ordinance. And I think this is
17 fairly covered. Go ahead.

18 THE WITNESS: The Human Rights Council is
19 not contributing any financial contributions to the
20 defense.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. How about legal resources?

24 A. I think they've identified attorneys in other
25 jurisdictions that are either being sued or have been

1 served. And I think they may have sent a position paper
2 or two.

3 Q. Okay. Are those attorneys involved actively in
4 defending the City of Boca Raton?

5 A. No.

6 Q. They're just providing their input or knowledge?

7 A. Not even that. They've just been identified.

8 Q. Okay. The statement you made earlier where you
9 say they're not providing any financial resources, can I
10 understand that to mean that they -- they're not paying
11 for attorney's fees; and they're not paying for any fees
12 by consultants or experts or otherwise?

13 A. I don't believe that they are -- have paid for
14 any of our legal or other fees.

15 Q. To include experts or consultants?

16 A. That's correct.

17 Q. Okay. Is there any expectation of future payment
18 from Mr. Hoch's organization with respect to the defense
19 of the ordinance?

20 A. No. I think, if it turns out that he does, I
21 don't believe the City will turn the money away. But
22 there's -- at this point, I don't believe anybody
23 expects that they will take over defense or paying for
24 defense.

25 Q. There's not any kind of indemnification agreement

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1 or promises or anything along those lines whether
2 formally in writing or verbally?

3 A. No.

4 Q. And is there any understanding with Mr. Hoch
5 whether or not his organization would either be
6 responsible or help with any damages or attorney's fee
7 judgments that the City might incur as a result of this
8 litigation?

9 A. I have not seen anything to that.

10 Q. Okay. Now, if we look at the message that's just
11 above the one we discussed which begins at the top of
12 the first page of this Exhibit 28, this appears to be
13 the response from Ms. Frieser back to -- well --

14 A. I'm sorry. Which one are you on?

15 Q. I take that back. This appears to be Mr. Hoch's
16 response to Ms. Frieser.

17 MR. ABBOTT: He's at the top of page one.

18 MR. MIHET: Yeah. At the top of page one.

19 THE WITNESS: Okay. Front page?

20 MR. MIHET: Yeah.

21 THE WITNESS: Okay.

22 BY MR. MIHET:

23 Q. Message from Ms. Frieser to Rand Hoch on June 19,
24 2018, at eight-oh-seven p.m. Do you see that?

25 A. Yes, I do.

1 Q. And she's responding to the message that we just
2 read?

3 A. Yes.

4 Q. So she -- he says in the second full paragraph
5 that: I have asked Denise if the County was interested
6 in seeing if we could secure outside counsel on a pro
7 bono basis. They declined.

8 Do you see that?

9 A. I do.

10 Q. Do you know who is -- who he is referring to
11 there?

12 A. I believe the County Attorney, Denise Nieman.

13 Q. "County," meaning Palm Beach County?

14 A. Yes. Denise Marie Nieman, as I believe we
15 clarified yesterday.

16 Q. Yes. Then he goes on and says: We also reminded
17 them that we can pay for experts' expenses, et cetera;
18 and they took us up on that one.

19 Do you see that?

20 A. I do.

21 Q. Are you familiar with any of those arrangements?

22 A. I am not.

23 Q. Okay. Then he continues to say: We'll do the
24 same for Boca, but I trust you'll be coordinating with
25 the County.

1 A. It says that, yes.

2 Q. Okay. Then skipping down to the PS, do you see
3 that underneath his name?

4 A. Yes.

5 Q. It says: PS, we were fortunate to get
6 Judge Robin Rosenberg on the case.

7 Do you see that?

8 A. I do.

9 Q. Do you know why he considers himself fortunate to
10 get Judge Robin Rosenberg?

11 A. I don't.

12 Q. Okay. You don't know what he's referring to?

13 A. I don't.

14 Q. However, he continues, PBCHRC Voters Alliance has
15 endorsed her husband, Michael McAuliffe, in his campaign
16 for Circuit Court Judge. So PBCHRC will be working
17 behind the scenes with the parties on the case so that
18 Judge Rosenberg does not get recused.

19 Do you see that?

20 A. I do.

21 Q. Do you know what he was referring to when he said
22 that PBCHRC would be working behind the scenes?

23 A. No. And, as you can see from Diana's -- I don't
24 think that was anything that she asked or wanted to
25 know. I think that was something that he volunteered.

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1 And I'm not sure that we know what the ramifications of
2 Judge Rosenberg slash Michael McAuliffe, how that works
3 or how they're going to be working behind the scenes.

4 Q. Okay. What work behind the scenes is PBCHRC
5 providing?

6 A. I don't know. I don't think -- the City does not
7 know what he's doing.

8 Q. Okay. Because it's behind the scenes?

9 A. Apparently so.

10 Q. So I think you may have answered this question.
11 I was going to ask: Does the City share Mr. Hoch's
12 concern that PBCHRC's open involvement would lead to
13 Judge Rosenberg's recusal? And I think kind of
14 addressed this --

15 A. We're not working with them and certainly don't
16 know -- not working to get Rosenberg not recused.

17 Q. Not working to get her not recused. I'm trying
18 to work through --

19 A. Yeah. We're not -- we're not -- I was trying to
20 read that. We are not working for or against Rosenberg
21 to get her on or off the case.

22 Q. Okay. You're not cooperating with Mr. Hoch's
23 effort to stay behind the scenes so as to avoid recusal?

24 A. That's correct.

25 Q. Okay. Has anyone from the City communicated with

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1 Mr. Hoch to -- to tell him that he should keep his
2 involvement out in the open and not behind the scenes?

3 A. I don't believe so.

4 Q. Okay. Does the City have any plans to -- to
5 bring Mr. Hoch's involvement, whether behind the scenes
6 or in the open, to the attention of Judge Rosenberg?

7 A. No.

8 Q. Okay. Is there any other questions that you'd
9 like for me to ask?

10 A. Where's the quickest exit?

11 MR. MIHET: I think those are all the
12 questions that I have. You've been very helpful. Thank
13 you.

14 MR. ABBOTT: Rachel, anything from you?

15 MS. FAHEY: No.

16 MR. ABBOTT: And no questions from the City.
17 We'll read.

18 (Proceedings concluded at 4:02 o'clock p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele L. Cibula, the undersigned authority,
certify that MICHAEL WOIKA personally appeared before me
and was duly sworn.

Witness my hand and official seal this 30th day of
September, 2018.



Rachele L. Cibula
RACHELE L. CIBULA
Notary Public, State of Florida
My Commission #FF 936928
Expires: December 14, 2019

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C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele Lynn Cibula, Notary Public, State of
Florida at Large,

DO HEREBY CERTIFY that I was authorized to and did
stenographically report the foregoing deposition; and
that the transcript is a true and correct transcription
of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel connected with the action, nor am I
financially interested in the action.

Dated this 30th day of September, 2018.


RACHELE LYNN CIBULA, NOTARY PUBLIC

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