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, and 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.	)	

[PLAINTIFFS' PROPOSED POST-HEARING]
FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

INTRODUCTION

> **As I will show you in the . . . APA report, your Honor, *there have been no factors discovered about what types of therapy cause harm* and what types of therapies are going to lead to a benefit.**
>
> ***Because we don't know* the identifying factors of what about this person makes the therapy beneficial, *we don't know*.**[1]

Plaintiffs brought this civil action, on behalf of themselves and their minor clients, to challenge the constitutionality of Boca Raton City Ordinance 5407, "Prohibition Of Conversion Therapy On Minors," and Palm Beach County Ordinance 2017-046, "Prohibition Of Conversion Therapy On Minors" (collectively "the Ordinances"). (DE 1 (V. Compl.), ¶ 2.) Plaintiffs bring their constitutional claims under the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. §1983.[2]

The case is now before the Court on Plaintiffs' Motion for Preliminary Injunction (DE 8). The Court held a hearing on the motion on October 18, 2018 (DE 129). In retrospect, the hearing could have ended on the above admission by Defendant Palm Beach County, that "we don't know" what kind of "conversion therapy" causes harm. For reasons explained below (*see infra* Part II.H), this order could end with that admission as well. Just as the Court gave the parties a full hearing, however, and to ensure the parties a full opportunity for appellate review, the Court provides herein a complete analysis of Plaintiffs' motion. Having read the motion and heard the argument of counsel, and being otherwise fully advised, the Court makes the following findings of fact and conclusions of law, and grants Plaintiffs' Motion for Preliminary Injunction.

---

[1] Hrg. Tr., pg. 124:3–8 (emphasis added) (argument of counsel for Def. Palm Beach County).

[2] Plaintiffs' Verified Complaint also includes claims under Article I, §§ 3 and 4 of the Florida Constitution, the Florida Patient's Bill of Rights and Responsibilities, Fla. Stat. § 381.026, and the Florida Religious Freedom Restoration Act, Fla. Stat. § 761.03.

I. FINDINGS OF FACT.

A. Plaintiffs' and Their Talk Therapy.

1. Plaintiff Robert W. Otto, Ph.D., LMFT Would Practice Voluntary, Non-Aversive SOCE Talk Therapy in Boca Raton and Palm Beach County but for the Ordinances.

1. Plaintiff, Robert W. Otto, Ph.D, LMFT, is a licensed marriage and family therapist. (DE 1 (V. Compl.), ¶ 122.[3]) Dr. Otto maintains a counseling practice in the City of Boca Raton and in other parts of Palm Beach County, including regular appointments in unincorporated Palm Beach County. (DE 121-7 (Otto Dep.), at 19:21–20:5, 143:23-144:2; DE 1 (V. Compl.), ¶¶ 125, 127.)

2. Prior to the Ordinances, Dr. Otto's counseling clients included minors voluntarily seeking counseling to reduce or eliminate unwanted same-sex attractions, behaviors, and identity, which counseling is within a therapeutic category known as sexual orientation change efforts (SOCE). (DE 121-7 (Otto Dep.), at 143:2–15; DE 1 (V. Compl.), ¶¶ 3, 4, 126, 128, 129, 131.) Dr. Otto does not call his SOCE counseling "conversion therapy," and does not know anyone who does. (DE 121-7 (Otto Dep.), 176:4–22, 190:17–191:9; DE 121-28 (Otto Interrog. Resps.), pg. 4.)

3. Dr. Otto also does not believe he can himself change any person's sexual orientation or gender identity or expression, and therefore does not himself seek to change any client in those areas. (DE 121-7 (Otto Dep.), pg. 43, line 25–pg. 44, line 20, pg. 54, lines 21–24, pg. 56, lines 10-18; DE 121-24 (Otto Interrog. Resps.), pg. 5.) Dr. Otto does believe, however, that through talk therapy people can make their own changes to reduce or eliminate unwanted same-sex attractions, behaviors, or identity, or gender confusion, and Dr. Otto assists minor clients with their own goals. (DE 121-7 (Otto Dep.), pg. 43, line 25–pg. 44, line 20 ("And, again, this is client-centered and client-directed with clients' goals. So when you ask me about trying to change somebody, I am not trying to change anybody on anything. These are client issues that clients want to seek change on, and they come asking for assistance as they walk through that journey, and we talk about that process in speech."), pg.51, lines 21–24 ("Again, I can't force that teenager to change. If the teenager wants to change, obviously he or she can. There's lots of examples."), pg.

---

[3] The City expressly **accepts as true** the allegations of Plaintiffs' Verified Complaint for preliminary injunction purposes. (DE 83 (City Opp'n Pls. Mot. Prelim. Inj.), pg. 2 n.2.) The County offers no evidence to the contrary either.

56, lines 10–18 ("Now if that teenager wants to change, even in sexual orientation issues or attractions or behaviors or obedience behaviors or school behaviors or anything else like that, then that teenager can experience change."), pg. 63, line 21–pg. 64, line 10 ("I didn't initiate that. I didn't ask that. And, interestingly enough, over the course of our sessions together she went from identifying herself as a lesbian to identifying herself as a bisexual to saying 'I'm heterosexual. I have a boyfriend.'"); DE 121-28 (Otto Interrog. Resps.), pgs. 2, 5–6 ("Otto notes that he does not engage in therapy where his goal is to change any client's sexual orientation or gender identity, but that he seeks to help clients achieve the goals that the clients themselves determine are appropriate for them.")

4. Dr. Otto practices exclusively talk therapy, consisting only of client-centered and client-directed conversations with his clients, concerning the clients' goals. (DE 121-7 (Otto Dep.), pg. 20, line 23–pg. 21, line 22 ("I want to make a distinction that the therapy I provide is 100 percent speech . . . ."), pg. 22, lines 12–21 ("Well, when my client's [sic] come and they're asking me to work with them, they're sharing discomfort or challenges in their lives, and they want me to help them walk through those issues in the ways that they deem helpful and productive to reduce the stress—the distress in their worlds. And so we do that through speaking about those issues."), pg. 43, line 25–pg. 44, line 20 ("And, again, this is client-centered and client-directed with clients' goals."), pg. 146, lines 8–11 ("It's all talk therapy. It's all counseling speech."); DE 121-28 (Otto Interrog. Resps.), pgs. 4–6 ("Otto's practice focuses on conversations and discussions that address what the clients present with, what the clients wish to explore or address, and the goals and aims that the clients wish to pursue.")

5. Dr. Otto's talk therapy practice does not include any form of aversion treatment, which is treatment involving reprimand, punishment, or shame to turn a person away from certain thoughts or behaviors. (DE 1 (V. Compl.), ¶ 72; DE 121-7 (Otto Dep.), pg. 121, lines 22–23; DE 126–22 (Rep. of APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Rep.")), at 22[4] ("Behavior therapists tried a variety of aversion treatments, such as inducing nausea, vomiting, or paralysis; providing electric shocks; or having the individual snap an elastic

[4] Due to multiple filings of the APA Report in this Court, the ECF pagination displayed on the version filed at DE 126-22 (Plaintiffs' Exhibit 22) is obscured. Accordingly, the APA Report is cited by its original page numbering.

band around the wrist when the individual became aroused to same-sex erotic images or thoughts. Other examples of aversive behavioral treatments included . . . shame aversion . . . .").) Dr. Otto's practice also does not include any form of coercive or involuntary treatment. (DE 121-7 (Otto Dep.), pg. 46, line 15–pg. 48, line 3 ("And in this regard, since we're talking about minors, if they don't want to participate in a conversation, they keep their mouths closed, end of story, game's over, let's go home. So I can't coerce somebody to even participate in a conversation, okay."), pg. 52, line 22–pg. 56, line 18 ("[I]f the teenager is not going to talk about what the parents want to talk about, you know, I can't force the teenager to do that. We can talk—'What's interesting to you? Let's talk about what's interesting to you.' And we'll go with whatever the teenager's goals are at that point and talk about that. . . . But I can't—and I don't impose, you know, the parents' goals on that teenager.") ("But when it comes to a teenager, who might have sexual orientation preferences that are different than the parents, I can't force that teenager to do anything. If the teenager wants to talk about something, that's all I can talk about is what they want to talk about. I can't impose change because I can't change that teenager that the parents may want. I can't impose that on them because I can't change that teenager.").)

6. As shown above, Dr. Otto does not—and cannot—engage in SOCE talk therapy with any minor client without the client's assenting to it. In addition, prior to engaging in SOCE counseling with any client, Dr. Otto provides an extensive informed consent form and requires the client to review and sign it prior to commencing SOCE counseling. (DE 1 (V. Compl.), ¶ 128; DE 121-7 (Otto Dep.), pg. 46, line 15–pg. 48, line 3, pg. 139, line 18–pg. 49, line 9; DE 121-33 (Otto Payment and Consent Forms), at 7–8.) Dr. Otto's informed consent form outlines the nature of SOCE counseling, explains the controversial nature of SOCE counseling, including the fact that some therapists do not believe sexual orientation can or should be changed, and informs the client of the potential benefits and risks associated with SOCE counseling. (DE 1 (V. Compl.), ¶ 128).)

7. Approximately 90 percent of Dr. Otto's clients profess to be Christians with sincerely held religious beliefs that the Bible is the source of all truth. (DE 121-28 (Otto Interrog. Resps.), pg. 7.) Dr. Otto shares those beliefs, and therapy sessions sometimes include discussion of Biblical viewpoints, including that God created men and women, that they are distinctly different, and that their design was purposeful. (DE 121-28 (Otto Interrog. Resps.), pg. 7; DE 121-7 (Otto Dep.), pg. 158, line 7–pg. 159, line 8 ("There are a lot of biblical truths that would come out in the counseling . . . .").) Dr. Otto also sometimes shares biological information on the

differences between male and female bodies down to the chromosomal and individual cell levels, and discusses neuro-chemistry and its impact on human sexuality. (DE 121-28 (Otto Interrog. Resps.), pg. 7.)

8. Many of Dr. Otto's clients who desire SOCE counseling profess to be Christians with sincerely held religious beliefs conflicting with homosexuality, and voluntarily seek SOCE counseling in order to live in congruence with their faith and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs. (DE 1 (V. Compl.) ¶ 129; DE 121-7 (Otto Dep.), pg. 155, line 9–pg. 156, line 20; DE 121-28 (Otto Interrog. Resps.), pg. 2.)

9. Some of Dr. Otto's minor clients have experienced anxiety, confusion, depression, and even suicidal ideation and attempts as a result unwanted same-sex attractions, behaviors, and identity. (DE 1 (V. Compl.), ¶¶ 132–35.) Those clients seek to engage in SOCE counseling with Dr. Otto but are unable to engage in such counseling because of the Ordinances. (DE 1 (V. Compl.), ¶ 137). Dr. Otto understands the Ordinances to prohibit him from engaging in any SOCE counseling with his minor clients, resulting in his discontinuing any ongoing SOCE counseling despite the clients' and parents' consent and requests to continue, and his declining any new requests for SOCE counseling. (DE 1 (V. Compl.), ¶ 139; DE 121-7 (Otto Dep.), pg. 77, lines 6–18, pg. 78, lines 13–21, pg. 79, line 22–pg. 80, line 14.)

10. Dr. Otto has never received any complaint or report of harm from any of his clients seeking and receiving SOCE counseling, including the many minors whom he has counseled. (DE 1 (V. Compl.), ¶ 130).

11. Because Dr. Otto's talk therapy practice consists of client-centered and client-directed conversations about clients' goals, every therapy session is unique, and Dr. Otto does not perform any set procedure or apply any treatment formula. (DE 121-28 (Otto Interrog. Resps.), pg. 5 ("Otto cannot possibly describe . . . every potential issue or statement that he might like to address in a therapeutic setting because his talk therapy practice is never the same for every client."); DE 121-7 (Otto Dep.), pg. 27, line 23–pg. 28, line 10 (""[E]very client that comes through my door dealing with that particular issue is a different conversation, is a different speech, a different talk back and forth, so there's not a one-size-fits-all to that, okay."), pg. 52, lines 10–21 ("Again, that's not a one-size-fits-all answer."), pg. 66, lines 1–2 ("Of course every situation is different."), pg. 160, lines 2–3 ("[A]gain, every conversation with every client is different . . . .").)

2. Plaintiff Julie H. Hamilton, Ph.D, LMFT Would Practice Voluntary, Non-Aversive SOCE Talk Therapy in Boca Raton and Palm Beach County but for the Ordinances.

12. Plaintiff, Julie H. Hamilton, Ph.D., LMFT, is a licensed marriage and family therapist (DE 1, V. Compl., ¶ 140). Hamilton practices throughout Palm Beach County, including in the City of Boca Raton.[5] (DE 121-8 (Hamilton Dep.), pg. 329, line 3–pg. 335, line 15; DE 96-1 (Hamilton Decl.).) In her current practice, Dr. Hamilton provides individual, marital, and family therapy for a wide variety of issues, including the issues of unwanted same-sex attractions and gender identity confusion. (DE 1, V. Compl., ¶ 142).

13. Dr. Hamilton's practice consists only of talk therapy, which is a conversation that takes place between herself and the client. Hamilton asks the client what his or her goal is and how the client believes Hamilton can be helpful to them during the course of therapy. (DE 121-8 (Hamilton Dep.), pg. 71, lines 2–6; DE 121-24 (Hamilton Interrog. Resps.), pg. 2.) Dr. Hamilton is a client-centered family therapist. She seeks to work from the client's frame of reference, honoring the client's perspective and using the resources that the client presents. Dr. Hamilton explores the client's perspective and does not enter any therapeutic alliance with any preconceived notions of what goals or issues the client may wish to address. Dr. Hamilton also searches for client strengths and builds on those strengths. In addition, Dr. Hamilton works to understand and strengthen family relationships. She helps clients to understand the root causes of their feelings or behaviors, and also helps them to make the changes they are seeking. (DE 121-24 (Hamilton Interrog. Resps.), pg. 7.)

14. Dr. Hamilton believes that she cannot herself change any person's sexual orientation, but that clients can experience a reduction in unwanted same-sex attractions through talk therapy. (DE 121-8 (Hamilton Dep.), pg. 231, lines 1–17.) Dr. Hamilton does not try to eliminate attractions, just as she does not claim she can eliminate any distressing issue that any client presents in therapy. With regard to reducing same-sex attractions, behaviors, or identity, this is sometimes the result of the client better understanding the attractions and addressing underlying

---

[5] Dr. Hamilton previously put her Boca Raton practice on hiatus for a period of time while she taught full time, but now is ramping up again. (DE 121-8 (Hamilton Dep.), pg. 341, line 7–pg. 342, line 3; DE 126-29 (Hamilton Decl.) (describing Hamilton's efforts to obtain Boca Raton and Palm Beach County business tax receipts for annual periods ending September 30, 2018 and September 30, 2019).)

issues. Dr. Hamilton's practice deals only with assisting clients achieve their own goals, addressing the issues the clients wish to address, and focusing solely on the clients' needs. (DE 121-24 (Hamilton Interrog. Resps.), pg. 7.)

15. When a client presents with a therapeutic goal of conforming their attractions and behaviors to their sincerely held religious beliefs or desires to reduce or eliminate unwanted same-sex attractions, behaviors, identity, or gender confusion, Dr. Hamilton discusses the reasons why the client desires such counseling. Dr. Hamilton explains that there are no absolute guarantees in mental health counseling. Dr. Hamilton explains that behavior and thoughts are changeable, but that there is no guarantee feelings or attractions will always change. Dr. Hamilton also informs the client that while many clients can and do experience a successful reduction or elimination of their unwanted same-sex attractions, behaviors, or identity or gender confusion, there is no guarantee that such results are always attainable or equal in degree. (DE 121-24 (Hamilton Interrog. Resps.), pg. 3.)

16. Dr. Hamilton does not engage in aversive or coercive techniques, and she is not aware of any practitioner who engages in such practices with clients seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity. (DE 1 (V. Compl.), ¶ 72.) Dr. Hamilton does not coerce her clients into any form of counseling, only engages in SOCE counseling with those clients who desire and consent to it, and always permits her clients to set the goals of any counseling she offers. (DE 1 (V. Compl.), ¶¶ 77, 131, 144.)

17. Dr. Hamilton has had parents who have brought their minor child to therapy to address homosexual attractions or behaviors, and whose minor child did not share the same goal. In such cases where minors have expressed that they are happy identifying as gay, lesbian, or bisexual, and do not want help for changing identity, attractions, or behavior, Dr. Hamilton asks if there is any other goals that the minor is interested in pursuing. In many cases, minors ask for help with social issues, family relationships, parent-child communication, or helping to facilitate the parents' coping with the sexual identity of the child. Dr. Hamilton has helped a number of minors and parents with those goals of the minors, instead of trying to help minors change their attractions, behavior, or identity, when minor clients tell her that they are not seeking change of attractions, behavior, or identity. In other cases, minors have stated that they do not have a therapeutic goal, and therapy is terminated. (DE 1 (V. Compl.), ¶ 148.)

18. Every therapy session with every minor client is different for Dr. Hamilton. (DE 121-8 (Hamilton Dep.), pg. 81, lines 6–7; DE 121-24 (Hamilton Interrog. Resps.), pg. 6.)

19. Many of Hamilton's clients identify themselves as Christians and have sincerely held religious beliefs that the Bible is the only source of truth. Various Biblical truths are sometimes discussed with these Christian clients. (DE 121-24 (Hamilton Interrog. Resps.), pg. 7; DE 121-8 (Hamilton Dep.), pg 143, line 15–pg. 147, line 8; pg. 154, line 22–pg. 157, line 1.)

20. Prior to engaging in therapy for any issue, Dr. Hamilton provides all of her clients with informed consent, in which she explains that, because there are many variables in psychotherapy, there is no guarantee that by pursuing therapy clients will be happier; that no particular treatment method can be guaranteed to be effective; and that therapy can be uncomfortable as clients talk about unresolved life experiences. (DE 1 (V. Compl.), ¶ 143.)

21. Many of Dr. Hamilton's clients are referred through churches or word of mouth, and hold a Biblical worldview. (DE 1 (V. Compl.), ¶ 145.) Dr. Hamilton's clients with same-sex attractions, behaviors, or identity or gender identity confusion who adhere to a Biblical worldview believe that embracing a gay identity is not in accordance with God's plan for their lives, nor is adopting a gender identity that is different from their biological sex. (*Id.*). Many such clients who have same-sex attractions or gender identity confusion, who also prioritize their faith above their feelings, seek out therapy to clear up gender identity confusion, reduce same-sex attractions, change same-sex behaviors, and/or simply live a life consistent with their faith. (DE 1 (V. Compl.), ¶ 146.) Clients who have been living lives inconsistent with their faith often present with internal conflicts, depression, anxiety, substance abuse and so forth; therefore, they are seeking resolution to such turmoil. (*Id.*). Dr. Hamilton currently has clients seeking to engage in what would be considered SOCE counseling, but she is prohibited from engaging in such counseling because of the Ordinances. (DE 1 (V. Compl.), ¶¶ 148–161.)

22. Dr. Hamilton has never received any complaint or report of harm from any of her clients seeking and receiving therapy for any issue, including the many minors that she has counseled. (DE 1 (V. Compl.), ¶ 147.)

23. Dr. Hamilton wants to be able to see adult and minor clients in Boca Raton, has made arrangements for office space to do so, and even has a minor client whom she would see in Boca Raton but for the City Ordinance. (DE 121-8 (Hamilton Dep.), pg. 329, line 24–pg. 335, line 17.) Hamilton has also paid the City of Boca Raton business tax for the annual periods ending

September 30, 2018, and September 30, 2019, and has provided in-person counseling in the City of Boca Raton since this lawsuit was filed. (DE 126-29 (Hamilton Decl.), ¶ 2.)

B. Defendants' Ordinances Banning "Conversion Therapy."

24. The County began considering its ordinance banning "conversion therapy" on June 20, 2016, at the prompting of Rand Hoch, the President and Co-Founder of the Palm Beach County Human Rights Council (PBCHRC). (DE 121-9 (Hvizd Dep.), pg. 21, line 22–pg. 23, line 19, pg. 94, line 9–pg. 98, line 9; DE 126-6 (Pls.' Ex. 6).) In the same manner, Hoch prompted the City's consideration of its "conversion therapy" ordinance in July 2017. (DE 126-41 (Woika Dep.), pg. 12, line 24–pg. 13, line 24.) Defendants enacted their respective ordinances banning "conversion therapy" (collectively, the "Ordinances") in the Fall of 2017. (DE 126-27 (City of Boca Raton Ordinance 5407 (Oct. 10, 2017) (hereinafter "City Ordinance")); DE 126-20 (Palm Beach County Ordinance 2017-46 (Dec. 19, 2017) (hereinafter "County Ordinance")).)

25. The operative language of the Ordinances is identical, as are the practices prohibited. Both Ordinances provide that "[i]t shall be unlawful for any provider to practice conversion therapy on any individual who is a minor regardless of whether the provider receives monetary compensation . . . ." (DE 126-27 (City Ord.), Sec. 1 (9-106); DE 126-20 (Cnty. Ord.), Sec. 5.) The Ordinances' prohibitions are only applicable to licensed practitioners, including licensed marriage and family therapists. (DE 126-27 (City Ord.), Sec. 1 (9-105(c)); DE 126-20 (Cnty. Ord.), Sec. 4.)

26. The Ordinances' define "conversion therapy" in nearly identical terms:

> "Conversion therapy" . . . means . . . any counseling, practice, or treatment performed with the goal of changing an individual's sexual orientation or gender identity, including but not limited to, efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions towards individuals of the same gender or sex.

(DE 126-27 (City Ord.), Sec. 1 (9-105(a)); DE 126-20 (Cnty. Ord.), Sec. 4 ("the practice of seeking to change").)

27. Both Ordinances exclude from their definitions of "conversion therapy":

> counseling that provides support and assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful

> conduct or unsafe sexual practices, **as long as such counseling does not seek to change sexual orientation or gender identity**.

(DE 126-27 (City Ord.), Sec. 1 (9-105(a)) (emphasis added); DE 126-20 (Cnty. Ord.), Sec. 4 (substituting "identity exploration and development" for "development" and other minor variations).)

28. Licensed practitioners who violate the Ordinances are subject to financial penalties. (DE 126-27 (City Ord.), Sec. 1 (9-107); DE 126-20 (Cnty. Ord.), Sec. 6.)

29. Neither Ordinance defines "sexual orientation," "gender identity," "gender expression," or "gender transition."

30. According to the County's 30(b)(6) witness, the same therapy content can be both allowed and prohibited by the County's Ordinance, depending on whether the **intent** is to change a minor's sexual orientation or gender identity. (DE 121-9 (Hvizd Dep.), pg. 260, line 11–pg. 262, line 12, pg. 266, line 14–pg. 267, line 18.) If an adolescent born female, but who identifies as a male for a time, seeks therapeutic help to change her gender identity back to female to align with her biological body, the County Ordinance prohibits licensed therapists from helping her. (DE 121-9 (Hvizd Dep.), pg. 268, lines 15–25.) Indeed, according to the County, if a minor desires and intends to change gender identity and presents that goal to a licensed therapist, the therapist is prohibited by the Ordinance from assisting with the minor's goal, **regardless of whether the therapist also intends to change the minor's gender identity**. (DE 121-9 (Hvizd Dep.), pg. 269, line 2–pg. 270, line 2.)

31. The City interprets its Ordinance the same way, as explained by its 30(b)(6) witness: "[I]f the therapist treats—if the practice is gender identity conversion or sexual orientation conversion, **whether or not it's prompted by the parents, by the therapist, by the child, themselves, that is banned by the ordinance**." (DE 126-41 (Woika Dep.), pg. 154, line 23–pg. 158, line 13 (emphasis added).)

C. Defendants' Ordinances are Not Justified by "Overwhelming Research."

1. The "Overwhelming Research" Recited by the Ordinances Contains No Empirical Evidence of Harm.

32. The Ordinances identically claim justification in "overwhelming research," which refers exclusively to ten sources appearing in the Ordinances' respective recitals. (DE 126-27 (City Ord.), pgs. 1–5; DE 126-20 (Cnty. Ord.), pg. ECF 9–12; DE 121-11, (Hvizd Decl.); DE 121-1

(Cnty. Ord.); DE 121-12 – 121-22 (Cnty. Exs. 12–22); DE 121-9 (Hvizd Dep.), pg. 253, line 16–pg. 254, line 21; DE 126-41 (Woika Dep.), pg. 146, lines 12–24.) Neither the "overwhelming research" language nor the cited sources were original to Defendants, however, having been copied from Rand Hoch's model ordinance proposal. (DE 121-9 (Hvizd Dep.), pg 247, line 14–pg. 249, line 23; DE 126-41 (Woika Dep.), pg. 12, line 24–pg. 13, line 24.)

33. The ten sources cited in the Ordinances (collectively, the "Sources," DE 85-2 through 85-13) comprise various reports, statements, and position papers, centering on the 2009 Report of American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (DE 85-5, the "APA Report"). All of the other Sources either cite to the APA Report, or cite to no authorities at all for their positions. (*See, e.g.,* DE 85-12, Substance Abuse and Mental Health Services Administration (SAMHSA), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015); DE 85-13 American College of Physicians Position Paper, *Lesbian, Gay, Bisexual, and Transgender Health Disparities* (2015); DE 85-11, American School Counselor Association Position Paper (2014).)

34. The APA Report does not use the term "conversion therapy." Rather, the APA Report uses "the term sexual orientation change efforts (SOCE) to describe methods (e.g., behavioral techniques, psychoanalytic techniques, medical approaches, religious and spiritual approaches) that aim to change a person's same-sex sexual orientation to other-sex, regardless of whether mental health professionals or lay individuals (including religious professionals, religious leaders, social groups, and other lay networks, such as self-help groups) are involved." (DE 126-22 (APA Rep.), pg. 2 n.**.)

35. The APA Report discloses up front, and repeatedly throughout, that there is no empirical or other research supporting **any conclusions** regarding either efficacy **or harm** from SOCE, especially in children and adolescents. (DE 126-22 (APA Rep.), pg. 3 ("[T]he recent SOCE research **cannot provide conclusions** regarding efficacy or safety . . . ."), pg. 7 ("The research on SOCE **has not adequately assessed** efficacy and safety."), pg. 37 ("These [recent] studies all use designs that **do not permit cause-and-effect attributions to be made**."), pg. 42 ("[T]he recent studies **do not provide valid causal evidence** of the efficacy of SOCE **or of its harm** . . . ."), pg. 42 ("[T]he nature of these studies **precludes causal attributions** for harm or benefit to SOCE . . . ."), pg. 42 ("We conclude that there is a **dearth of scientifically sound research** on the safety of SOCE. . . . Thus, **we cannot conclude how likely it is that harm will occur** from SOCE."), pg.

72 ("**There is a lack of published research on SOCE among children**."), pg. 73 ("**We found no empirical research on adolescents who request SOCE** . . . ."), pg. 91 ("**We concluded that research on SOCE . . . has not answered basic questions of whether it is safe or effective and for whom**."), pg. 91 ("**[S]exual orientation issues in children are virtually unexamined**.") (all emphases added).) None of the other Sources adds anything to the empirical record unequivocally found to be lacking in the APA Report.

36. Despite the "overwhelming research" language in the Ordinances, both Defendants confirmed through their Rule 30(b)(6) witnesses that the Ordinances are not justified by any empirical research. The County said so concisely, albeit reluctantly:

> Q. Well, as you sit here today, are you able to identify a single empirical study since 2009 based upon a causal attribution could be made between SOCE and harm?
>
> A. I can cite at least—I could cite a study that shows a lack of efficacy of conversion therapy.
>
> Q. That's great. But that's not my question.
>
> A. Then no.

(DE 121-10 (Ginsburg Dep.), pg. 40, lines 11–21.) By contrast, the City said so forthrightly and thoroughly:

> Q. Okay. How much more likely is an LGBT minor who undergoes Sexual Orientation or Gender Identity Change Efforts to experience depression versus an LGBT minor who does not undergo those kinds of efforts?
>
> A. I don't—I don't think that I can give you a good answer on that.
>
> Q. Okay. The City—
>
> A. I don't know.
>
> Q. The City doesn't know?
>
> A. No.
>
> Q. The City doesn't know whether it's five percent more likely, one percent more likely or zero point zero one percent more likely?
>
> A. That's correct.
>
> Q. How much more likely is an LGBT minor who undergoes Sexual Orientation Change Efforts or Gender Identity Change

Efforts to experience feelings of fear or loneliness versus an LGBT minor who does not undergo those kinds of efforts?

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

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

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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

A. The reports and information that was—that was attached to this ordinance, the ones that was relied upon for the ordinance, did not have any of those. Whether one exists or not, I don't think we've done any independent review of the literature or studies.

Q. And so—

A. So we do not know of any.

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

. . . .

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

(DE 126-41 (Woika Dep.), pg. 26, line 13–pg. 28, line 13.)

2. The APA Report Discloses Anecdotal Evidence of Benefits from SOCE at Least Equivalent to Anecdotal Evidence of Harm, and More Benefits Perceived by Religious Individuals.

37. Given the lack of empirical research on the outcomes of SOCE, the Task Force looked to participants' perceptions of SOCE, "in order to examine what may be perceived as being helpful or detrimental by such individuals, distinct from a scientific evaluation of the efficacy or harm . . . ." (DE 126-22 (APA Rep.), pg. 49.) The review did not show evidence of one outcome over the other. "[S]ome recent studies document that there are people who perceive that they have been harmed through SOCE, just as other recent studies document that there are people who perceive that they have benefited from it." (DE 126-22 (APA Rep.), pg. 42 (citations omitted).)

38. Nonetheless, the Task Force found several reported benefits of SOCE perceived by participants: "(a) a place to discuss their conflicts; (b) cognitive frameworks that **permitted them to reevaluate their sexual orientation identity, attractions, and selves in ways that lessened shame and distress and increased self-esteem**; (c) social support and role models; and (d) **strategies for living consistently with their religious faith and community**." (DE 126-22 (APA Rep.), pg. 49 (emphasis added) (citations omitted).) "Participants described the social support aspects of SOCE positively." (*Id.*)

39. The Task Force also observed that perceptions of harm may correlate specifically to "aversion techniques." (DE 126-22 (APA Rep.), pg. 41 ("Early research on efforts to change sexual orientation focused heavily on interventions that include **aversion** techniques. Many of these Studies did not set out to investigate harm. Nonetheless, these studies provide some suggestion that harm can occur from **aversive** efforts to change sexual orientation." (emphasis added)).) To illustrate, the Report gives some examples of aversion treatments:

> Behavior therapists tried a variety of aversion treatments, such as inducing nausea, vomiting, or paralysis; providing electric shocks; or having the individual snap an elastic band around the wrist when the individual became aroused to same-sex erotic images or thoughts. Other examples of aversive behavioral treatments included . . . shame aversion . . . .

(DE 126-22 (APA Rep.), pg. 22.)

40. The Task Force also found that individuals' religious beliefs shape their experiences and outcomes:

> [P]eople whose motivation to change was strongly influenced by their Christian beliefs and convictions were **more likely to perceive themselves as having a heterosexual sexual orientation after their efforts.** [T]hose who were less religious were more likely to perceive themselves as having an LGB sexual orientation after the intervention. **Some . . . concluded that they had altered their sexual orientation, although they continued to have same-sex sexual attractions.**

(DE 126-22 (APA Rep.), pg. 50 (emphasis added) (citations omitted).) "The participants had multiple endpoints, including LGB identity, 'ex-gay' identity, no sexual orientation identity, and a unique self-identity." (*Id.*) "Further, the findings suggest that some participants may have reconceptualized their *sexual orientation identity* as heterosexual . . . ." (*Id.* at 50.)

3. The APA Report Excludes Gender Identity Change Efforts, Which Similarly Lack Empirical Research.

41. The APA Report addressed only sexual orientation: "Due to our charge, we limited our review to sexual orientation and **did not address gender identity** . . . ." (DE 126-22 (APA Rep.), pg. 9 (emphasis added).)

42. Another Source cited by the Ordinances, however, points to the same lack of empirical research on the outcomes of gender identity change efforts:

> Different clinical approaches have been advocated for childhood gender discordance. **Proposed goals of treatment include reducing the desire to be the other sex**, decreasing social ostracism, and reducing psychiatric comorbidity. **There have been no randomized controlled trials of any treatment**. . . .

(DE 121-17 (AACAP Statement), ECF pg. 1 (emphasis added) (footnote omitted).) Also:

> **Given the lack of empirical evidence** from randomized, controlled trials of the efficacy of treatment aimed at eliminating gender discordance, the potential risks of treatment, and longitudinal evidence that gender discordance persists in only a small minority of untreated cases arising in childhood, **further research is needed** on predictors of persistence and desistence of childhood gender discordance as well as the long-term risks and benefits of intervention . . . .

(*Id.* at ECF pg. 13 (emphasis added).)

43. As with the APA Report, the AACAP Statement leaves discretion with licensed professionals to make an informed decision, with the patient, about the most appropriate treatment. (DE 121-17 (AACAP Statement), ECF pg. 13 ("As an ethical guide to treatment, 'the clinician has

an obligation to inform parents about the state of the empiric database' . . . ." (footnote omitted), ECF pg. 15 ("The ultimate judgment regarding the care of a particular patient must be made by the clinician in light of all of the circumstances presented by the patient and that patient's family, the diagnostic and treatment options available, and other available resources.").)

44. The APA itself more recently addressed issues of gender identity and minors which were not included in the APA Report. (DE 126-30 (*Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70(9) Am. Psychologist 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf. (hereinafter, "APA TGNC Guidelines").) As a discussion separate from SOCE, these later Guidelines make the point that "[t]he constructs of gender identity and sexual orientation are theoretically and clinically distinct, even though professionals and nonprofessionals frequently conflate them." (DE 126-30 (APA TGNC Guidelines), ECF pg. 4.) Nonetheless, the APA recognized the same absence of research on gender identity change in children: "Due to the evidence that not all children persist in a TGNC identity into adolescence or adulthood, and because **no approach to working with TGNC children has been adequately, empirically validated**, consensus does not exist regarding best practice with prepubertal children." (*Id.* at ECF pg. 11 (emphasis added).) One distinct approach recognized by the APA "to address gender identity concerns in children" is an approach where "children are encouraged to embrace their given bodies and to align with their assigned gender roles." (*Id.*) And again, calling for more research, the APA concludes, "**It is hoped that future research** will offer improved guidance in this area of practice." (*Id.* (emphasis added) (citation omitted).)

45. Notwithstanding the APA's call for future research, however, the APA expressly sanctioned as **imperative** allowing a minor who has selected a gender identity different from his or her biological sex to choose to return:

> Emphasizing to parents the importance of allowing their child the freedom **to return to a gender identity that aligns with sex assigned at birth** or another gender identity at any point **cannot be overstated**, particularly given the research that suggests that not all young gender nonconforming children will ultimately express a gender identity different from that assigned at birth.

(DE 126-30 (APA TGNC Guidelines), ECF pg. 12 (emphasis added).)

46. Other literature by a research scientist favorably cited in the AACAP Statement positively advances treatment to assist children in fading "cross-gender identity" by the time they

reach adolescence. (DE 126-31 (Heino F. L. Meyer-Bahlburg, *Gender Identity Disorder in Young Boys: A Parent- and Peer-Based Treatment Protocol*, 7 Clinical Psychol. and Psychiatry 360 (2002) (hereinafter, "Meyer-Bahlburg")), pg. 361[6] ("We expect that we can diminish these problems if we are able to speed up the fading of the cross-gender identity which will typically happen in any case.") (cited by DE-126-30 (AACAP Statement) at ECF pg. 13 (n.100)); *see also* DE 126-31 (Meyer-Bahlburg), pg. 365 ("The specific goals we have for the boy are to develop a positive relationship with the father (or a father figure), positive relationships with other boys, gender-typical skills and habits, to fit into the male peer group or at least into a part of it, and to feel good about being a boy.").)[7]

---

[6] The CM/ECF system did not affix the Court's official filing header information, including page numbering, to the Meyer-Bahlburg study at DE 126-31 (Plaintiffs' Exhibit 31). Thus, citations are to the study's original page numbering.

[7] The County's attempt to discredit the Meyer-Bahlburg study is rejected. (Hrg. Tr., pg. 140, line 11–pg. 141, line 19.) The County asserted that the study is irrelevant to the Ordinances because the children being studied did not meet with the study therapists. (*Id.* at pg. 140, lines 16–19.) While the County recited one portion of the study ostensibly supporting this assertion (*id.* at pg. 140, line 20–pg. 141, line 3), the County neglected to advise the Court of the portion revealing that the children under study did, in fact, meet with the study therapists for at least two sessions:

> The *evaluation procedures* ***with the child***—usually involving two sessions—include both **structured and unstructured activities**. The first session begins with the observation of how the boy is able to separate from the parent(s) who bring(s) him in.
>
> The session **takes place in an office** . . . . Children who are mature enough are then **orally administered** the CGPQ. It is followed by a GID-specific Draw-a-Person **test with inquiry**. . . . Later the **clinician administers** selected sections of the child version of the GRAS-C . . . . Dependent on when the child appears comfortable enough during session 1 or 2, the **clinician administers** the Gender Identity Interview (Zucker et al., 1993), a semi-structured interview **designed to elicit disclosure** of cross-gender wishes and ambivalences.
>
> For the second session **with the child**, the toy set has been replaced by a dress-up set with stereotypically male (black cape, face mask, sword) and female (high-heeled shoes, hat, boa) role-

4. The APA Report Commends a Client-Directed Approach to Therapy for Clients with Unwanted Same-Sex Attractions, Commends More Research on Voluntary SOCE, and Condemns Only Coercive Therapies.

47. For adults desiring "**to change their sexual orientation** or their behavioral expression of their sexual orientation, or both," the APA reported that "adults perceive a benefit when they are provided with **client-centered** . . . approaches" involving "identity exploration and development," "**respect for the client's values, beliefs, and needs**," and "permission and opportunity to explore a wide range of options . . . **without prioritizing a particular outcome**." (DE 126-22 (APA Rep.), pg. 4.) The Task Force elaborated:

> Given that there is diversity in how individuals define and express their sexual orientation identity, **an affirmative approach is supportive of clients' identity development without an a priori treatment goal concerning how clients identify or live out their sexual orientation or spiritual beliefs.** This type of therapy . . . can be helpful to those who accept, reject, or are ambivalent about their same-sex attractions. **The treatment does not differ, although the outcome of the client's pathway to a sexual orientation identity does.**

(DE 126-22 (APA Rep.), pg. 5 (emphasis added).) "For instance, the existing research indicates that possible outcomes of sexual orientation identity exploration **for those distressed by their sexual orientation** may be: LGB identities[,] **Heterosexual sexual orientation identity**[,] Disidentifying from LGB identities[, or] Not specifying an identity." (*Id.* at pg. 60 (emphasis added) (citations omitted).)[8]

> play outfits. The **inquiry** focuses on the remaining sections of the GRAS-C . . . .

(DE 126–30 (Meyer-Bahlberg), pg. 367 (bold emphasis added).) Given that the County's argument obscured from the Court's view these administering, testing, inquiring, and eliciting practices of the study therapists, the Court did not have the benefit of asking the County's counsel how these practices plausibly could be excluded from the reach of the Ordinances' definitions of "conversion therapy" (*i.e.*, any "counseling, practice, or treatment").

[8] In connection with its SOCE review and recommendations, the APA Report highlighted a problem with the sexual orientation terminology in the academic research:

48. A key finding from the Task Force's review "is that those who participate in SOCE, **regardless of the intentions of these treatments**, and those who resolve their distress through other means, **may evolve during the course of their treatment in such areas as self awareness, self-concept, and identity**." (DE 126-22 (APA Rep.), pg. 66 (emphasis added); *id.* at 61 ("Given . . . that many scholars have found that **both religious identity and sexual orientation identity evolve**, it is important for LMHP to explore the development of religious identity and sexual orientation identity." (emphasis added) (citations omitted)).)

49. The Task Force identifies the **same essential framework** "for children and adolescents who present a desire to change either their sexual orientation or the behavioral expression of their sexual orientation, or both, or whose parent or guardian expresses a desire for the minor to change."[9] (DE 126-22 (APA Rep.), pg. 5.) Specifically, for children and youth, "[s]ervices . . . should support and respect age-appropriate issues of **self-determination**; services should also be provided in the least restrictive setting that is clinically possible and should maximize self-determination. At a minimum, **the assent of the youth should be obtained, including whenever possible a developmentally appropriate informed consent to treatment**." (*Id.* (emphasis added).)

50. The Task Force also highlighted the ethical importance of client self-determination, encompassing "the ability to seek treatment, consent to treatment, and refuse treatment. **The**

> Recent studies of participants who have sought SOCE **do not adequately distinguish between sexual orientation and sexual orientation identity**. We concluded that the failure to distinguish these aspects of human sexuality has led SOCE research to obscure what actually can or cannot change in human sexuality. . . . **[S]ome individuals modified their sexual orientation identity** (e.g., individual or group membership and affiliation, self-labeling) **and other aspects of sexuality** (e.g., values and behavior). . . . **[I]ndividuals, through participating in SOCE, became skilled in ignoring or tolerating their same-sex attractions. Some individuals reported that they went on to lead outwardly heterosexual lives, developing a sexual relationship with an other-sex partner, and adopting a heterosexual identity**.

(DE 126-22 (APA Rep.), pgs. 3–4 (emphasis added).)

[9] The APA Report defines "*adolescents* as individuals between the ages of 12 and 18 and children as individuals under age 12." (DE 126-22 (APA Rep.), pg. 71 n.58.)

informed consent process is one of the ways by which self-determination is maximized in psychotherapy." (DE 126-22 (APA Rep.), pg. 68 (emphasis added); *see also id.* at 6 ("LMHP **maximize self-determination** by . . . providing effective psychotherapy that explores the client's assumptions and goals, without preconditions on the outcome [and] **permitting the client to decide the ultimate goal of how to self-identify and live out her or his sexual orientation**. . . . [T]herapy that increases the client's ability to cope, understand, acknowledge, and integrate sexual orientation concerns into **a self-chosen life** is the measured approach.").)

51. The Task Force viewed the concept of self-determination as equally important for minors: "It is now recognized that **adolescents are cognitively able to participate in some health care treatment decisions**, and such participation is helpful. [The APA] encourage[s] professionals to seek the assent of minor clients for treatment." (DE 126-22 (APA Rep.), pg. 74 (emphasis added) (citations omitted); *see also id.* at 77 ("The ethical issues outlined [for adults] are also relevant to children and adolescents . . . .").)

52. In light of this strong self-determination ethic regarding youth, the Task Force "recommend[ed] that when it comes to treatment that purports to have an impact on sexual orientation, LMHP assess the adolescent's ability to understand treatment options, provide developmentally appropriate informed consent to treatment, and, at a minimum, obtain the youth's assent to treatment." (*Id.* at 79.) "[F]or children and adolescents who present a desire to change their sexual orientation or their behavioral expression of their sexual orientation, or both, or whose guardian expresses a desire for the minor to change," the Task Force recommended "approaches [that] support children and youth in identity exploration and development without seeking predetermined outcomes." (*Id.* at 79–80.) "LMHP should strive to maximize autonomous decision making and self-determination and avoid coercive and involuntary treatments."[10] (*Id.* at 76.) "The use of inpatient and residential treatments for SOCE is inconsistent with the recommendations of the field." (*Id.* at 74–75.)

---

[10] The APA Report defines "*coercive treatments* as practices that compel or manipulate a child or adolescent to submit to treatment through the use of threats, intimidation, trickery, or some other form of pressure or force." (DE 126-22 (APA Rep.), pg. 71 n.59.) It defines "*involuntary treatment* as that which is performed without the individual's consent or assent and which may be contrary to his or her expressed wishes." (*Id.* at 71 n.60.)

53. Apart from recommending against coercive, involuntary, and residential treatments, the Task Force **did not recommend the end of SOCE**. Rather, without empirical evidence of SOCE efficacy or harm, the Task Force merely recommended that clients not be lead to **expect** a change in sexual orientation through SOCE. (DE 126-22 (APA Rep.), pg. 66.) Indeed, The Task Force cited literature expressly cautioning **against declining SOCE** therapy for a client who requests it.

> LMHP who turn down a client's request for SOCE at the onset of treatment without exploring and understanding the many reasons why the client may wish to change may instill hopelessness in the client, who already may feel at a loss about viable options. . . . **[B]efore coming to a conclusion regarding treatment goals, LMHP should seek to validate the client's wish to reduce suffering and normalize the conflicts at the root of distress**, as well as create a therapeutic alliance that recognizes the issues important to the client.

(DE 126-22 (APA Rep.), pg. 56 (emphasis added) (citation omitted).)

54. The Task Force also called for more research on SOCE. (DE 126-22 (APA Rep.), pg. 91 ("Any future research should conform to best-practice standards for the design of efficacy research. Additionally, **research into harm and safety is essential**."), pg. 91 ("**Future research** will have to better account for the motivations and beliefs of participants in SOCE."), pg. 91 ("**This line of research should be continued and expanded to include conservatively religious youth and their families**.") (all emphases added).)

55. The Task Force also noted, "The debate surrounding SOCE has become mired in ideological disputes and competing political agendas." (DE 126-22 (APA Rep.), pg. 92 (citation omitted).) One policy recommendation "urges the APA to: . . . Encourage **advocacy groups, elected officials**, policymakers, religious leaders, and other organizations to seek accurate information and avoid promulgating inaccurate information." (*Id.* (emphasis added).) The Task Force's call for future research implicitly rejected the suggestion by some that "SOCE should not be investigated or practiced until safety issues have been resolved." (*Id.* at 91.)

56. Given the absence of empirical evidence on SOCE outcomes, and the emphasis on client-centered approaches, the Task Force recommended that choosing SOCE counseling be given to the discretion of licensed mental health providers (LMHP):

> [The APA Ethics Code] establishes that psychologists aspire to provide services that maximize benefit and minimize harm. . . .

> When applying this principle in the context of providing interventions, **LMHP assess the risk of harm, weigh that risk with the potential benefits, and communicate this to clients through informed consent procedures** that aspire to provide the client with an understanding of potential risks and benefits that are accurate and unbiased. . . .
>
> In weighing the harm and benefit of SOCE, LMHP can review with clients the evidence presented in this report. Research on harm from SOCE is limited, and some of the research that exists suffers from methodological limitations that make broad and definitive conclusions difficult. . . .

(DE 126-22 (APA Rep.), pg. 67 (emphasis added) (citations omitted); *see also id.* at 6 ("LMHP reduce potential harm and increase potential benefits by basing their scientific and professional judgments and actions on the most current and valid scientific evidence, such as the evidence provided in this report.").)[11]

5. The APA Report Specifically Calls for Therapists to Respect and Consider the Religious Values of Individuals Desiring Therapy.

57. The APA Task Force highlighted the particular stress experienced by individuals of conservative religious faiths who "struggle to live life congruently with their religious beliefs," and that this stress "had mental health consequences." (DE 126-22 (APA Rep.), pg. 46–47.) "Some conservatively religious individuals felt a need to change their sexual orientation because of the positive benefits that some individuals found from religion . . . ." (*Id.* at 47.) Thus, the Task Force "proposed an approach that respects religious values and welcomes all of the client's actual and potential identities by exploring conflicts and identities without preconceived outcomes. This approach does not prioritize one identity over another and may aide a client in creating a sexual orientation identity consistent with religious values." (DE 126-22 (APA Rep.), pg. 67 (citation omitted).) "Although there are tensions between religious and scientific perspectives, the task force

---

[11] The AAMFT, which sets ethical standards for marriage and family therapists such as Plaintiffs, agrees with the APA Task Force's permissive approach for licensed providers: "AAMFT expects its members to practice based on the best research and clinical evidence available," and, "treatment of those clients who present feeling confused about or wanting to change their sexual orientation should be undertaken with great care, knowledge, and openness." (DE 121-23 (Cnty. Ex. 23), pgs. 3, 5.)

and other scholars do not view these perspectives as mutually exclusive." (DE 126-22 (APA Rep.), pg. 67 (citations omitted).)

D. Defendants Received No Complaints or Evidence of Harm from SOCE When Considering Their Ordinances.

58. In Rand Hoch's e-mailed memorandum which prompted the County to take up the therapy ban, Hoch represented that "'[c]onversion therapy' (also known as 'reparative therapy,') is counseling based on the erroneous assumption that gay, lesbian, bisexual and transgender (LGBT) identities are mental disorders that can be cured through **aversion treatment**." (DE 126-6 (Pls.' Ex. 6), pg. 2) (emphasis added).) Hoch also represented that "conversion therapy . . . **is most often forced upon minors** by their parents or guardians [and] is extremely harmful." (DE 126-6 (Pls.' Ex. 6), pg. 4 (emphasis added).) Upon receiving Hoch's request, however, the County did not direct any investigation as to whether anyone in the County had been harmed by "conversion therapy," voluntary, aversive, or otherwise. (DE 121-9 (Hvizd Dep.), pg. 26, line 21–pg. 27, line19.) Nonetheless, Attorney Hvizd was assigned the task of drafting the ordinance requested by Hoch, and she undertook her own informal investigation in connection with her drafting assignment. (DE 121-9 (Hvizd Dep.), pg. 27, line 20–pg. 28, line 3, pg. 31, line 1–pg. 33, line 25.) Hvizd found no reports of any person harmed by "conversion therapy" in Palm Beach County, or in Florida. (*Id.*; DE 121-1 (Ginsburg Dep.), pg. 12, lines 5–25.)

59. At the December 5, 2017 County Commission meeting at which the County Ordinance was considered, Hoch represented to the Board, "we've heard from two individuals, minors who have been **required** to go to conversion therapy by their parents." (DE 121-9 (Hvizd Dep.), pg. 34, lines 1–13, pg. 36, line 9–pg. 37, line 18; DE 126-2 (Pls.' Ex. 2), pg. 1, lines 10–17 (emphasis added).) Hoch did not describe what the "conversion therapy" consisted of, including whether it was aversive or non-aversive, or voluntary or forced. (*Id.*) No Commissioner asked Hoch what kind of therapy was involved, or what kind of harm was claimed. (DE 121-9 (Hvizd Dep.), pg. 50, line 5–pg. 51, line 20.) At the second Commission meeting where the County Ordinance was considered, on December 19, 2017, Hoch clarified that the complaints were "from the mothers of gay people because their friends, the gay children's friends who also identified as gay, were being subjected to conversion therapy." (DE 121-9 (Hvizd Dep.), pg. 55, line 2–pg. 58, line 21; DE 126-3 (Pls.' Ex. 3), pg. 3, lines 10–13.) And, according to Hoch, the friends of the complainants' children were being **forced** to go. (DE 121-9 (Hvizd Dep.), pg. 61, line 20–pg. 62,

line 12; DE 126-3 (Pls.' Ex. 3), pg. 3, lines 15–18.) But the Commissioners did not undertake to find out, from Hoch or anyone else, the type of therapy or the nature of harm allegedly experienced by the unnamed friends of the children of the mothers who complained to Hoch. (DE 121-9 (Hvizd Dep.), pg. 65, line 2–pg. 66, line 7.)

60. The County may or may not have considered an additional complaint e-mailed to the Commissioners by Nick Sofoul on December 18 at 10:16 PM, the night before the second and final Commission Meeting where the County Ordinance was considered and ultimately voted on. (DE 121-9 (Hvizd Dep.), pg. 73, line 2–pg. 78, line 20; DE 126-4 (Pls.' Ex. 4), pg. 3.) The Sofoul e-mail represented that Sofoul "[had] personally heard and been moved by the horrific stories of friends that have been subject [sic] to these cruel and inhumane methods." (DE 121-9 (Hvizd Dep.), pg. 78, line 21–pg. 79, line 2.; DE 126-4 (Pls.' Ex. 4), pg. 3.) Sofoul's email cited an article discussing forced, involuntary, aversive conversion therapy. (DE 126-5 (Pls. Ex. 5).) Even if the Commissioners were aware of the e-mail prior to voting on the County Ordinance, however, they did not undertake to determine what "friends" Sofoul was writing about, whether they were minors, whether they were residents of Palm Beach County (or Florida), what "methods" Sofoul heard about, and whether the "friends" were forced as was illustrated in Sofoul's linked article. (DE 121-9 (Hvizd Dep.), pg. 79, line 3–pg. 82, line 4.)

61. In sum, the County received no evidence of harm suffered by any minor in its jurisdiction as a result of voluntary SOCE or "conversion therapy." (DE 121-10 (Ginsburg Dep.), pg. 15, lines 11–22.) The only "evidence" of harm attributed to SOCE was the anecdotal, multi-layered hearsay communicated by Hoch, which he in turn claims to have heard from the mothers of friends of the supposed victims, and possibly the hearsay e-mail of Sofoul, regarding unnamed "friends" subjected to unidentified "methods" in unidentified jurisdictions. (DE 121-10 (Ginsburg Dep.), pg. 10, line 9–pg. 12, line 4.)

62. Hoch was also the originator of the City Ordinance, and he made the same unsubstantiated representations of harm to the City Council. (DE 126-41 (Woika Dep.), pg.12, line 24–pg. 14, line 10.) Prior to enacting its Ordinance, the City had never received a complaint about harm from "conversion therapy," and the City never investigated whether any of its citizens had been harmed by "conversion therapy." (DE 126-41 (Woika Dep.), pg. 16, line 19–pg. 18, line 9.) The City based its determination of need for the Ordinance entirely on Hoch's request. (DE 126-41 (Woika Dep.), pg. 16, line 19–pg. 20, line 11; DE 126-23 (Pls.' Ex. 23).) Thus, the City likewise

considered no evidence of harm in its jurisdiction before enacting its Ordinance, and considered no empirical evidence of harm from "conversion therapy" elsewhere. (DE 126-41 (Woika Dep.), pg. 26, line 13–pg. 28, line 13.)

E. Defendants Did Not Consider Any Less Restrictive Alternatives to Their Outright Therapy Bans.

63. There is no evidence that the County seriously considered any alternative to the outright therapy ban in its Ordinance. For example, there is no evidence that the County considered banning only the "aversion treatment" or "therapy . . . forced upon minors" complained of by Hoch in his memorandum to the County Commissioners setting the Ordinance in motion. (DE 126-6 (Pls.' Ex. 6), pgs. 2–3.) There is no evidence that, for example, Dr. Hamilton's suggested revision to the draft County Ordinance to prohibit only "coercive counseling . . . against the individual's will" ever made it to the Commissioners for consideration. (DE 121-9 (Hvizd Dep.), pg. 273, line 2–pg. 279, line 23; DE 126-21 (Pls.' Ex. 21), pg. 1–2.) And, while the Board received public comment asking it to consider alternatives, such as banning shock therapy, there is no evidence that the Board gave the requests any consideration whatsoever. (DE 121-9 (Hvizd Dep.), pg. 39, line 20–pg. 30, line 11.)

64. Though it could have, the City did not consider any alternative to the blanket ban contained in its Ordinance. (DE 126-41 (Woika Dep.), pg. 28, line 16–pg. 32, line 10 ("I think the Council had really the option of passing the ordinance, which is a total ban. And the only other alternate they considered was no ban.").) Thus, the City never considered banning only aversive therapy, or only coercive or forced therapy. (*Id.*) In fact, during the three City Council meetings covering the Ordinance's conception, introduction, and enactment, the Council spent **less than five minutes** considering it. (DE 126-41 (Woika Dep.), pg. 52, line 12–pg. 63, line 20; DE 126-24 (Pls.' Ex. 24).)

F. Defendants Knew Their Ordinances Were Not Enforceable by Their Code Enforcement Officials.

65. In her September 7 "definite-no-to-maybe" e-mail to Commissioners (DE 126-16 (Pls.' Ex. 16)), Nieman expressed her legal reservations about tailoring the proposed Ordinance to the supposed problems to be remedied, namely conversion therapies by religious organizations that the Ordinance would not touch, and the inability of the County to enforce the Ordinance against licensed therapists in any event:

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

(DE 126-16 (Pls.' Ex. 16), pg. 1 (emphasis added).)

66. Prior to enactment of the City Ordinance, Deputy City Manager George Brown, who was the direct supervisor of code compliance at the time, cautioned the City Attorney Diana Grub Frieser about enforcement in a July 18, 2017 e-mail:

> While I find so-called "conversion therapy" inherently wrong and totally abhorrent, **a local ordinance banning such practice would be extremely difficult, if not impossible, to enforce**. Proving a violation (before the special magistrate) would necessarily require public disclosure by a patient or credible witness that the "treatment" had been administered in violation of the ordinance. **The City has not adopted ordinances limiting or regulating professions otherwise regulated by the state**.[12]

(DE 126-41 (Woika Dep.), pg. 104, line 7–pg. 107, line 16; DE 126-25 (Pls.' Ex. 25) (emphasis added).)

67. Brown's concerns about enforceability caused him to inquire with city managers of other cities where similar therapy ban ordinances had been adopted in a July 21, 2017 e-mail:

> Each of your cities has adopted a conversion therapy prohibition ordinance . . . . Have any of you established specific enforcement procedures? What methods of investigation are utilized to determine if a violation is occurring/has occurred? Have any cases been prosecuted?

---

[12] This concern for the City's competence to enforce a therapy ban no doubt informed the City Attorney's preemption concerns in her communication to the City Council. (*See infra* Part II.I; DE 126-23 (Pls.' Ex. 23), pg. 1.)

(DE 126-41 (Woika Dep.), pg. 112, line 17–pg. 114, line 18; DE 126-26 (Pls.' Ex. 26), pg. 3.) A response from Boynton Beach City Manager Lori LaVerriere prompted this follow-up from Brown:

> I have recommended we adopt a resolution stating our position against it, rather than an ordinance making it an offense, because we would not want to get between a family and its child based on a complaint from the child or a third party. We are in the early stages of considering the matter. **I consider it a more or less unenforceable ordinance and a matter that is not something our local government should take up.**

(DE 126-41 (Woika Dep.), pg. 119, lines 5–21; DE 126-26 (Pls.' Ex. 26), pg. 2 (emphasis added).) There is no evidence that either Brown's recommendation that a resolution be passed instead of an ordinance, or his concern that an ordinance would be unenforceable, was ever communicated to the City Council before enactment. (DE 126-41 (Woika Dep.), pg. 120, line 15–pg. 121, line 5, pg. 122, line 8–pg. 123, line 3.) A likely explanation for the City Council's disregard of the enforcement (and preemption) concerns raised by the City Attorney and staff is revealed in the subsequent exchange between LaVerriere and Brown, wherein LaVierriere wrote, "**Agreed. Electeds received a lot of pressure from Rand Hoch**," to which Brown replied, "**As are ours**." (DE 126-26 (Pls.' Ex. 26), pg. 2 (emphasis added).)

68. The Village Manager of the Village of Wellington, Paul Schofield, also commiserated with Brown regarding unenforceability:

> [W]e do not have a specific enforcement mechanism and **I don't have any clear idea how we could train either our Code Enforcement staff of [sic] law enforcement staff to actually enforce it.** If we receive a complaint will deal with it individually and **most likely referee [sic] it to one for the state governing bodies. The M.D.'s, D.O.'s and clinicians all have their own state boards.**

(DE 126-26 (Pls.' Ex. 26), pg. 1 (emphasis added).) Neither LaVerriere's nor Schofield's concurrences with Brown's enforcement doubts were shared with the Boca Raton City Council. (DE 126-41 (Woika Dep.), pg. 135, lines 5–9.)

69. Council Member Rodgers also had doubts about enforcement, which he raised with the Council and City staff at the meeting where the Ordinance was enacted, prompting responses from both the City Manager and City Attorney Frieser:

> MR. RODGERS: Madam Chair?

> MAYOR HAYNIE: Mr. Rodgers.
>
> MR. RODGERS: Question for our City Manager. How—and I've looked through this, and I have some concerns of language licensed practice versus unlicensed. **How would we enforce this?** Would this be like a code violation that we'd bring it forward or...
>
> [CITY MANAGER]: It would be. **I'm not sure how we would enforce it.** But it would be in the code-related area.
>
> [MR. RODGERS:] Any other thoughts from the attorney? I don't...
>
> MAYOR HAYNIE: Ms. Frieser?
>
> MS. FRIESER: That was a—it's a Code Enforcement process. **I concede that it's—there may be difficulties in actual practical enforcement issue.** But it is a Code Enforcement process.

(DE 126-41 (Woika Dep.), pg. 59, lines 12–18, pg. 61, lines 5–21, pg. 62, line 23–pg. 63, line 3.) Suffice it to say, at the time of enactment, enforcement of the City Ordinance had not been clearly delineated or even thought out. (DE 126-41 (Woika Dep.), pg. 65, lines 5–16.)

70. The practical inability of the City to enforce its ordinance was confirmed by the City's Rule 30(b)(6) witness on enforcement, who struggled (understandably) to grasp the concepts underlying the City Ordinance:

> Q. So you have a ten-year-old prepubertal child—
>
> A. Uh-huh.
>
> Q.—and he was born as a boy; and he presents to Dr. Otto and says, you know, that he is really interested in girls, wants to play with dolls, wants to hang out with friends that are girls, wants to dress up as a girl, wants to do things that girls want to do and he has no interest in things that boys want to do and is experiencing distress as a result of the fact that he wants to do all these things that girls want to do and yet, you know, he has a male anatomy. When he shows up—
>
> A. So, to me—and, **clearly, I'm not a clinician** in any event. But what you just explained to me sounds like someone who is identifying with—as a female. **But, again, I am not the best person to make that call. Perhaps someone, you know, who's a therapist could do so**.
>
> Q. Okay.
>
> A. And, if that were the case and the goal of Dr. Otto—I think was your example of this case—tried to change that identity, the

> gender identity to a male, then, yes, that would be a violation of this ordinance.
>
> Q. Okay. So what if the ten-year-old prepubertal child hasn't progressed far enough into the exploration of gender identity to say clearly I now identify as a girl—
>
> A. Uh-huh.
>
> Q.—but still, nonetheless, experiences all of the inclinations that I've just talked about in terms of wanting to do—
>
> . . . .
>
> —wanting to do all the things that girls want to do and not wanting to do things that boys want to do. So, without a clear declaration that I identify as a girl, is it still a violation of the ordinance for Dr. Otto to do the things that we talked about, that is, to verbally endorse and support behaviors and attitudes that align with the male biology of the child while to verbally discourage behaviors and attitudes that align with the female identity?
>
> A. **I would guess that, whether or not the child declares that they have a different—or are identifying as one or the other, their actions would really put them in the category of one or the other or both** or—and so, whether they declare it or not, I think it's—that gender identity as presented is one that this ordinance would prohibit the attempt to convert through therapy, counseling—or counseling, practice or treatment.

(DE 126-41 (Woika Dep.), pg. 163, line 17–pg. 165, line 18 (emphasis added).)

71. As with other ordinances, complaints of violations of the therapy ban Ordinances would be investigated by code enforcement officials and decided by special masters, neither of whom would be required to be licensed mental health professionals, or trained to interpret scientific literature such as the APA Report, or otherwise knowledgeable about ethical or recommended therapeutic practices. (DE 121-9 (Hvizd Dep.), pg. 208, lines 3–15, pg. 214, line 18–pg. 215, line 8; DE 126-41 (Woika Dep.), pg. 67, line 10–pg. 69, line 12.) In each case, an untrained code official would make an initial determination as to whether a complained of therapy violates the applicable Ordinance, and then issue a notice of violation if so. (DE 126-41 (Woika Dep.), pg. 90, line 12–pg. 91, line 1.) In any case prosecuted before a special master, the special master acts as the finder of fact, and would be allowed or required to question witnesses, including children seeking mental health therapy and their licensed mental health professionals. (DE 121-9 (Hvizd Dep.), pg. 264, line 13–pg. 266, line 13.)

72. According to an unwritten, internal policy, the County's Ordinance will be enforced by any of five senior code enforcement officers. (DE 121-9 (Hvizd Dep.), pg. 219, line 20–pg. 221, line 18.) The only educational requirement for senior code enforcement officers is a high school diploma or equivalent, and there is no evidence that any of the County's current five have more, or hold any professional licenses. (DE 121-9 (Hvizd Dep.), pg. 223, line 21–pg. 225, line 14; DE 126-18 (Pls.' Ex. 18).) None of the code officials has been trained on enforcing the Ordinance in the ten months since enactment; no training materials have been developed, and there is no plan to develop any. (DE 121-9 (Hvizd Dep.), pg. 225, line 15–pg. 228, line 9.) These code officials would not only determine whether to issue notice of a violation of the County Ordinance but would also prosecute any noticed violations in front of the special master. (DE 126-18 (Pls.' Ex. 18).) There is no evidence that any of the five senior code officials has any experience enforcing regulations of licensed mental health professionals. (DE 121-9 (Hvizd Dep.), pg. 232, line 3–pg. 233, line 11.) To be sure, at the preliminary injunction hearing the County admitted it **still—nearly a year since enactment—has no procedure to handle a complaint under its Ordinance.** (Hrg. Tr. pg. 184, lines 13–20 ("There is not a firm procedure in place yet, we are working with our Code Enforcement to have a procedure in place, but it is not—there is not one that has been officially approved yet.").)

73. City Code officials likewise only need a high school diploma or equivalent. (DE 126-41 (Woika Dep.), pg. 72, line 3–pg. 73, line 4.) And like the County, the City has no written policies or procedures for enforcing its Ordinance, and no plans for any. (DE 126-41 (Woika Dep.), pg. 74, line 19–pg. 75, line 9, pg. 78, lines 2–5.) No current City code compliance officials have experience enforcing ordinances against licensed professionals concerning their professional standards. (DE 126-41 (Woika Dep.), pg. 110, line 5–pg. 111, line 8.)

G. Defendants' Knew Their Ordinances Regulated a Field Preempted to the State.

74. Palm Beach County Attorney, Denise Marie Nieman, stated unequivocally to the Ordinance originator Hoch in an August 26, 2016 e-mail that the State of Florida had preempted the entire field of therapy regulation. (DE 121-9 (Hvizd Dep.), pg. 111, line 25–pg. 115, line 6; DE. 126-9 (Pls.' Ex. 9), pg. 1 ("On a very basic level, how can we say [conversion therapy] is a local issue?") ("This is a classic non-localized issue in my view.").) In a subsequent e-mail to Hoch

from Hvizd on August 29, 2016, Hvizd endorsed Nieman's preemption position with a more formal analysis:

> In follow-up to your email of Friday, I offer the following synopsis of legal research conducted on the question of whether a County may enact a conversion therapy ban. The dual considerations a local government must address when determining whether it is able to enact legislation in a particular area are preemption and conflict. **The Florida Legislature's scheme of licensing and regulating businesses and professions is pervasive . . . evidencing an intent that this area be preserved to the Legislature. Neither county nor municipal governments license counselors, and there is no support in the law for a conclusion that regulating counselors is a "local issue" as addressed in *Browning*. To the contrary, every indication is that regulation of businesses and professions, including counselors, is a state issue.**
>
> **As to conflict, a local ordinance regulating the treatment available to patients would conflict with Florida's broad Patients' Bill of Rights**, section 38 I .026(4)(d), and section 456.41 of the Florida Statutes. Counties are prohibited from enacting an ordinance that conflicts with general law.
>
> The Federal Courts addressing conversion therapy bans in California and New Jersey have examined state statutes, and upheld them, in part, on the basis that those laws were rationally related to a legitimate state interest. **The state is charged with regulating and licensing businesses and professions, including counselors**, thus they are more readily able to satisfy this test than the County would be. **The County plays no part in regulating counselors.**

(DE 121-9 (Hvizd Dep.), pg. 126, line 4–pg. 127, line 12; DE 126-11 (Pls.' Ex. 11), pg. 1 (emphasis added).) Nieman adopted Hvizd's analysis without reservation: "Rand, that sums it up." (DE 126-11 (Pls.' Ex. 11), pg. 1.)

75. Anticipating issuing an adverse legal opinion against the proposed County Ordinance, based on preemption, Nieman advised Hoch in a March 5, 2017 e-mail, "We'll keep it in 'still researching' mode, but know that **nothing will change just because more cities enact ordinances, unless one is tested and upheld on issues of concern to us**." (DE 121-9 (Hvizd Dep.), pg. 147, lines 5–15, pg.156, line 22–pg. 157, line 19; DE 126-13 (Pls.' Ex. 13), pg. 1 (emphasis added).) Nieman repeated this point emphatically in an April 12, 2017 e-mail to Hoch: "Let me know when you want [the opinion] to go, keeping in mind that **nothing that happens with cities holds much persuasive value unless a court rules on the exact issues I'm concerned**

about." (DE 121-9 (Hvizd Dep.), pg. 158, line 21–pg. 159, line 6, pg. 163, lines 3–9; DE 126-14 (Pls.' Ex. 14), pg.1 (emphasis added).)

76. In an August 28, 2017 e-mail, Hoch asked Nieman to proceed with issuing a legal opinion to the County Commissioners on the proposed County Ordinance. (DE 121-9 (Hvizd Dep.), pg. 164, line 25–pg. 165, line 12; DE 126-15 (Pls.' Ex. 15), pg. 3.) On September 7, 2017, Nieman sent her definite-no-to-maybe e-mail to the County Commissioners expressing several legal concerns with enacting a County therapy ban, specifically highlighting the preemption and conflict issues: "**We strongly believe that this area should be regulated by the state since it is the state who licenses and otherwise governs therapists**." (DE 121-9 (Hvizd Dep.), pg. 177, line 16–pg. 178, line 19; DE 126-16 (Pls.' Ex. 16), pg. 1 (emphasis added) "[W]e still have legal concerns including, but not limited to, **implied preemption, the Florida Patients' Bill of Rights** . . . ." (*Id.*)

77. Despite the County Attorney's steadfast opinion that the field of therapist regulation is preempted to the state, and repeated admonitions that the passage of ordinances by other cities would not change that opinion, the only thing that changed legally between her last such admonition to Hoch on April 12, 2017, and her definite-no-to-maybe e-mail to the Commissioners on September 7, 2017, was the passage of ordinances in other cities. (DE 126-16 (Pls.' Ex. 16), pg. 1 ("As Mr. Hoch pointed out in his recent email, a number of cities did adopt ordinances.").) Without any change in the law that could have changed Nieman's opinion (DE 121-9 (Hvizd Dep.), pg. 185, line 17–pg. 196, line 6)—the one condition Nieman had imposed—only a change in the political calculus can account for the change of opinion, apparently prompted by Hoch's August 28 e-mail. (DE 126-15 (Pls.' Ex. 15), pg. 3 ("On behalf of . . . PBCHRC, I want to thank you for delaying moving forward . . . . At this time, PBCHRC would like you to move forward with providing your office's opinion . . . .").)

78. Like the Palm Beach County Attorney, Boca Raton's City Attorney raised the preemption issue in her first communication to the City Council introducing the draft City Ordinance on August 17, 2017:

> It is worth noting that although regulation of health professions occurs through licensure at the state level, there is no express statutory preemption regarding the state's regulation of licensed health professions . . . . However, **given the extensive regulation of health professions by the state, it is possible a court may, in the**

> **future, find the regulatory field has been impliedly preempted to the state (thereby prohibiting local regulation)**.

(DE 126-23 (Pls.' Ex. 23), pg. 2 (emphasis added).)

II. CONCLUSIONS OF LAW.

A. Plaintiffs have Standing to Challenge the Ordinances.

79. To demonstrate standing,

> the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992) (alterations in original) (citations omitted). Plaintiffs easily satisfy this standard.

1. Dr. Otto Wants to Provide SOCE Talk Therapy That the Ordinances Prohibit.

80. The City and County both contend that Otto does not have standing to challenge their Ordinances because he does not practice "conversion therapy," because he does not "'attempt to change a client's sexual orientation.'" (DE 83 (City Opp'n Pls.' Mot. Prelim. Inj.), pgs. 15–16; DE 85 (Cnty. Opp'n Pls.' Mot. Prelim. Inj.), pg. 2.) These contentions have no merit.

81. As shown in the Court's Findings of Fact, Dr. Otto does not believe that he can himself change any person's sexual orientation. (*See supra* Part I.A.1.) But Dr. Otto does believe that, through therapy, minors can make their own changes to reduce or eliminate unwanted same-sex attractions, behaviors, or identity; and Dr. Otto can and does assist minor clients with their own change goals. (*See supra* Part I.A.1.) As also shown in the Court's Findings of Fact, both the City and the County interpret their Ordinances to prohibit talk therapy where the goal or intent to change belongs to the minor client alone, and the therapist merely assists the minor with the minor's goals, regardless of the therapist's intent. (*See supra* Part I.B.)

82. Thus, Otto faces an actual, imminent risk of violating the Ordinances by assisting minor clients who want to change their sexual orientation, even if Otto himself has no intent or

ability to change them, and can only assist them with changes they want to make. Otto's desire to engage in counseling that helps minors achieve their change goals with respect to sexual orientation provides him sufficient standing to challenge the Ordinances.

2. Dr. Otto Wants to and Does Practice in Unincorporated Palm Beach County.

83. The County contends that Dr. Otto does not have standing to challenge the County Ordinance because he only practice in the City of Boca Raton, where he is subject only to the City Ordinance. (DE 85 (Cnty. Opp'n Pls.' Mot. Prelim. Inj.), pgs. 1–2.) The County is wrong, however, because the undisputed record facts demonstrate that Dr. Otto keeps ongoing, regular client appointments in unincorporated Palm Beach County where the County Ordinance applies. (*See supra* Part I.A.1.)

3. Dr. Hamilton Wants to and Does Practice in the City of Boca Raton.

84. The City contends that Dr. Hamilton does not have standing to challenge the City Ordinance because the threat of prosecution of Dr. Hamilton for violating the City Ordinance is too speculative. (DE 83 (City Opp'n Pls.' Mot. Prelim. Inj.), pgs. 14–15.) The City is wrong for two reasons. First, as shown in the Court's Findings of Fact, Dr. Hamilton wants to be able to see adult and minor clients in Boca Raton, has made arrangements for office space to do so, and even has a minor client whom she would see in Boca Raton but for the City Ordinance. (*See supra* Part I.A.2.) Hamilton has also paid the City of Boca Raton business tax for the annual periods ending September 30, 2018, and September 30, 2019, and has provided in-person counseling in the City of Boca Raton since this lawsuit was filed. (*See supra* Part I.A.2.) Hamilton's practice and desired practice in Boca Raton are more than sufficient to provide her standing to challenge the City Ordinance.

4. Plaintiffs Have Standing to Challenge the Ordinances on Behalf of Their Minor Clients.

85. Defendants also contend Plaintiffs do not have standing to challenge the Ordinances on behalf of Plaintiffs' minor clients. (DE 83 (City Opp'n Pls.' Mot. Prelim. Inj.), pgs. 16–17; DE 85 (Cnty. Opp'n Pls.' Mot. Prelim. Inj.), pg. 2.) Defendants are wrong again.

86. The Supreme Court and Eleventh Circuit have long recognized the rights of doctors and mental health professionals to bring constitutional challenges on behalf of their clients. *See, e.g.*, *Singleton v. Wulff*, 428 U.S. 106 (1976); *Doe v. Bolton*, 410 U.S. 179 (1973); *Planned*

Parenthood Ass'n of Atlanta Area, Inc. v. Miller, 934 F.2d 1462, 1465 n.2 (11th Cir. 1991); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328 (5th Cir. 1981). Plaintiffs' assertion of their clients' constitutional rights is consistent with Article III standing requirements because their clients' "enjoyment of the right [to receive the SOCE counseling they seek] is inextricably bound up with the activity the litigant wishes to pursue." *Singleton*, 428 U.S. at 114-15. As such, "the relationship between the litigant and the third party [is] such that the former is fully, or very nearly, as effective a proponent of the right as the latter." *Id.* at 115. The Eleventh Circuit has noted that doctors or mental health professionals have standing to bring claims on behalf of their clients when (1) the professional has suffered concrete injury, (2) the professional and the clients have a close relationship, and (3) the clients face some obstacles to asserting their own rights. *See Miller*, 934 F.2d at 1465 n.2. The Court addresses the third element only, as Defendants have not challenged the first two. (DE 83 (City Opp'n Pls.' Mot. Prelim. Inj.), pgs. 16–17; DE 85 (Cnty. Opp'n Pls.' Mot. Prelim. Inj.), pg. 2.)

87. Plaintiffs' clients face substantial obstacles to bringing these claims. "For one thing, [they] may be chilled from such assertion by a desire to protect the very privacy of [their] decision from the publicity of a court suit." *Singleton*, 428 U.S. at 117. "[T]he psychotherapist-patient privilege is rooted in the imperative need for confidence and trust." *Jaffree v. Redmond*, 518 U.S. 1, 10 (1996). "[D]isclosure of confidential communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment." *Id.*

88. To be sure, "[t]he stigma associated with receiving mental health services presents a considerable deterrent to litigation." *Penn. Psychiatric Soc'y v. Green Spring Health Services, Inc.*, 280 F.3d 278, 290 (3d Cir. 2002) (citing *Parham v. J.R.*, 442 U.S. 584 (1979) (Stewart, J., concurring)). This consideration is only increased when counseling involves intimate details concerning a minor's development, growth, and sexuality. Just the fear of stigmatization associated with bringing claims in a public forum "operates as a powerful deterrent to bringing suit." *Id.* As the Tenth Circuit has held, "**adolescents seeking health care related to sexuality or mental health care may be chilled from asserting their own rights by a desire to protect the very privacy of the care they seek from the publicity of a court suit**." *Aid for Women v. Foulston*, 441 F.3d 1101, 1114 (10th Cir. 1990) (emphasis added).

89. The desire to keep private the intimate details associated with SOCE counseling are clearly obstacles for Plaintiffs' clients and constituents to bring their claims publicly in court. The mere fact that Defendants passed the Ordinances is *ipso facto* proof that Plaintiffs' clients are likely to be stigmatized and subjected to opprobrium for seeking the kind of counseling that offends Defendants' sensibilities. The status of Plaintiffs' clients as minors compounds these obstacles to litigation. Thus, Plaintiffs have third party standing to challenge the Ordinances on behalf of their minor clients.

B. Plaintiffs Have Made a Sufficient Facial Challenge to the Ordinances Under the First Amendment.

90. As a threshold issue, the Ordinances are subject to a facial First Amendment challenge.

> In evaluating a facial challenge [the Court] must look beyond the application of an ordinance in the specific case before [it]. To ultimately succeed on the merits, a plaintiff theoretically has to establish that no set of circumstances exists under which [the Ordinances] would be valid, or that the [Ordinances lack] any plainly legitimate sweep. In the First Amendment context, the Supreme Court has softened that daunting standard somewhat, saying that a law may also be invalidated on its face if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.

Bruni v. City of Pittsburgh, 824 F.3d 353, 362 (3d Cir. 2016) (citations and internal quotation marks omitted) (quoting *United States v. Stevens*, 559 U.S. 460, 472–473, (2010) Thus, "[t]he [Supreme] Court has often considered facial challenges simply by applying the relevant constitutional test to the challenged statute, without trying to dream up whether or not there exists some hypothetical situation in which application of the statute might be valid." *Id*. at 363 "[W]here a statute fails the relevant constitutional test (such as strict scrutiny . . . or reasonableness review), it can no longer be constitutionally applied to anyone—and thus there is no set of circumstances in which the statute would be valid." *Id*. (alterations in original) (internal quotation marks omitted). Therefore, the Court will evaluate the Ordinances facially for viewpoint discrimination (*see infra* Part II.E) and otherwise for constitutionality under strict scrutiny (*see infra* Parts II.G, H).

91. Moreover, prior restraints against constitutionally protected expression are highly suspect and disfavored. *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). In fact, "any system of prior restraints comes to this Court bearing the heavy presumption against its

constitutional validity." *Bantham Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). This is why "[t]he Supreme Court and [the Eleventh Circuit] consistently have permitted facial challenges to prior restraints without requiring a plaintiff to show that there are no conceivable set of facts where the application of the particular government regulation might or would be constitutional." *United States v. Frandsen*, 212 F.3d 1231, 1236 (11th Cir. 2000); *Horton v. City of St. Augustine*, 272 F.3d 1318, 1331-32 (11th Cir. 2001) ("the Supreme Court itself in *Salerno* acknowledged [that prior restraints are the] exception to the 'unconstitutional-in-every-conceivable-application' rule" (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

92. Total prohibitions, such as the Ordinances here, constitute prior restraints. *See, e.g.*, *Howard v. City of Jacksonville*, 109 F. Supp. 2d 1360, 1364 (M.D. Fla. 2000) ("This Court also finds that . . . moratoria are governed by prior restraint analysis in the same manners as permitting schemes."); *D'Ambra v. City of Providence*, 21 F. Supp. 2d 106, 113-14 (D.R.I. 1998) (same); *ASF, Inc. v. City of Seattle*, 408 F. Supp. 2d 1102, 1108 (W.D. Wash. 2005) (total prohibitions on protected expression fail prior restraint analysis).

93. Here, as in *ASF*, the Ordinances go "a step further in suppressing protected speech." *Id.* The Ordinances completely prohibit SOCE counseling, even voluntary counseling, with minors in the City and County. There is no exception to the Ordinances' perpetual prohibition on protected expression. As the court held in *Howard*, such bans are subject to prior restraint analysis. *Howard*, 109 F. Supp. 2d at 1364. The Ordinances fail that analysis.

94. Given the foregoing authorities, the Court rejects the County's argument that Plaintiffs gave up their facial challenge to the Ordinances with the mere observation that, "If the Defendants had banned only aversive therapy, your Honor, we wouldn't be here this morning." (Hrg. Tr., pg. 12, lines 18–19, pg. 121, line 25–pg. 122, line 13.) It is obvious that Plaintiffs would not have needed to sue Defendants if they had enacted bans of only aversive treatments because Plaintiffs' talk therapy practices do not include those treatments. (*See supra* Part I.A.) This observation by Plaintiffs' is not an admission that Defendants could have constitutionally banned some forms of "conversion therapy," nor is it an admission that Defendants even have authority to legislate in this arena under state law.

C. Though Plaintiffs Must Show the Preliminary Injunction Prerequisites, Defendants Have the Burden of Proof on the Constitutionality of Their Ordinances Under the First Amendment.

1. Plaintiffs' "Substantial Likelihood" of Success on the Merits Showing Requires Only a Probability That They Will Prevail.

95. "The grant or denial of a preliminary injunction rests within the sound discretion of the district court and is reversible on appeal only for an abuse of that discretion . . . ." *Shatel Corp. v. Mao Ta Lumber & Yacht Corp.*, 697 F.2d 1352, 1354 (11th Cir. 1983). The four prerequisites a movant must show for preliminary injunctive relief are well known:

> (1) a substantial likelihood that the movant will ultimately prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.

Id. at 1354–55.

96. Plaintiffs' "substantial likelihood" of success on the merits showing requires only that Plaintiffs show a probability of prevailing:

> [Defendant] argues . . . that a *substantial* likelihood is required in this Circuit. But "substantial" means real, valuable, material, or of substance. Black's Law Dictionary 1280 (rev. 5th ed. 1979). **In our opinion the word "substantial" does not add to the quantum of proof required to show a likelihood of success on the merits.** The requirement of a substantial likelihood of success was established in the Fifth Circuit in *Buchanan v. United States Postal Service*, 508 F.2d 259, 266 (5th Cir.1975). . . . Fifth Circuit precedent handed down before September 30, 1981, is binding on this Court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc). *Buchanan* supports its requirement of a substantial likelihood of success by citing Wright and Miller, *Federal Practice and Procedure*, § 2948, which requires plaintiff to show "the probability that plaintiff will succeed on the merits." **The word likelihood is synonymous with probability.**

Id. at 1355 n.2 (bold emphasis added).[13] "[T]he definition most often applied in this Circuit's precedent is the 'more likely than not' standard." *In re Terazosin Hydrocholride Antitrust Litig.*, 352 F. Supp. 2d 1279, 1301 (S.D. Fla. 2005).[14]

2. Defendants Have the Burden of Proving the Constitutionality of Their Ordinances Under the Strict Scrutiny Standard.

97. Defendants face a much higher burden to prove the Constitutionality of their Ordinances under the applicable constitutional standards. (*See infra* Parts II.F–G.) Defendants bear the burden of demonstrating that the Ordinance satisfies strict scrutiny. As the Supreme Court has held: "the burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). As such, on a preliminary injunction motion, **the government**—not the movant—bears the burden of proof on narrow tailoring, because **the government** bears that burden at trial. *Ashcroft v. ACLU*, 542 U.S. 656, 665 (2004) (holding, on preliminary injunction motion, "**the burden is on the government**

---

[13] This Court has cited *Shatel Corp.* on this point numerous times. *See, e.g.*, *3903427 Canada, Inc. v. Milos Rest., Inc.*, No. 08-80354-Civ-Ryskamp/Vitunac, 2008 WL 11333657, *4 (S.D. Fla. June 6, 2008) ("Under the likelihood of success on the merits inquiry the Court has followed Eleventh Circuit precedent holding that the word 'substantial' does not add to the 'quantum of proof' required, rather the appropriate standard is if it is 'probable' or 'likely' that the movant will succeed on the merits." (quoting *Shatel Corp.*)); *Bronestein v. Bronstein*, No. 06-80656-CIV, 2007 WL 646965, *6 (S.D. Fla. Feb. 27, 2007) (same); *Lennar Pac. Prop. Mgmt., Inc. v. Morgan*, 2007 WL 9702467, *7 (S.D. Fla. July 20, 2007) ("The 11th Circuit interprets the 'substantial likelihood of success on the merits standard' to merely mean the plaintiff is required to show that its success on the merits is probable." (citing *Shatel Corp.*)); *Terazosin Hydrocholride*, 352 F. Supp. 2d at 1301 ("'[T]he word likelihood is synonymous with probability.'" (quoting *Shatel Corp.*)). Given the repeated and relatively recent reliance by this Court on the *Shatel Corp.* standard, the Court rejects the alternative, more burdensome standard proposed by the County at the preliminary injunction hearing in reliance on *Barnes v. Burger King Corp.*, 1994 U.S. Dist. LEXIS 21005, No. 94-889-CIV-UNGARO-BENAGES (S.D. Fla. July 31, 1994). (Hrg., at 106:13–107:4.) The *Barnes* report and recommendation cites to no Eleventh Circuit or other case precedent for its novel "more than a probability of success or even a preponderance of evidence" standard, and this Court declines to follow *Barnes* in its unsanctioned innovation.

[14] The standard may be even more lenient. *See, e.g.*, *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) ("Accordingly, we follow our precedent that a movant for preliminary equitable relief must meet the threshold for the first two 'most critical' factors: it must demonstrate that it can win on the merits (which requires a showing **significantly better than negligible but not necessarily more likely than not**) and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief." (emphasis added)).

to prove that the proposed alternatives will not be as effective as the challenged statute." (emphasis added)). Defendants indisputably bear the burden of proving narrow tailoring at trial. *See, e.g.*, *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *id.* at 2540 ("To meet the requirement of narrow tailoring, **the government must demonstrate** that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier" (emphasis added)). Thus, Defendants also bear—and fall woefully short of meeting (*see infra* Parts II.G, H)—the burden of proving narrow tailoring here. *Gonzales*, 546 U.S. at 429; *Ashcroft*, 542 U.S. at 665.

D. Plaintiffs' Talk Therapy is Protected Speech.

1. Speech is Speech.

98. Plaintiffs' talk therapy, whether or not it involves SOCE, is speech. The government cannot label the **speech** of professionals as **conduct** in order to restrain it without scrutiny. *See, e.g.*, *Nat'l Inst. for Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371–72 (2018) (hereinafter, "*NIFLA*") ("[T]his Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by professionals."); *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2229 (2015) (same); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27 (2010) (holding government may not apply alternative label to protected speech to evade First Amendment review, when only "conduct" at issue is speech); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001) (same); *NAACP v. Button*, 371 U.S. 415, 438 (1963) ("[A] state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.").

99. Indeed, as the *NIFLA* Court recently reiterated, permitting the government to label a professional's speech as unprotected conduct would eviscerate the protections afforded to doctors, lawyers, nurses, mental health professionals, and many others:

> All that is required to make something a profession . . . is that it involves personalized services and requires a professional license from the State. But that gives the States unfettered power to reduce a group's First Amendment rights by simply imposing a licensing requirement. **States cannot choose the protection that speech receives under the First Amendment**, as that would give them a powerful tool to impose invidious discrimination on disfavored subjects.

NIFLA, 138 S. Ct. at 2372.

100. The en banc Eleventh Circuit decision in *Wollschlaeger v. Florida* also compels the conclusion that the Ordinances ban speech. There, the entire Eleventh Circuit rejected, **word-for-word**, what Defendants proffer here, because "**characterizing speech as conduct is a dubious constitutional enterprise**." 848 F.3d 1293, 1309 (11th Cir. 2017) (en banc) (emphasis added). Defendants' arguments entirely ignore this development, and continue instead their rote reliance on the contrary holding of *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), even though, in the same breath, the en banc Eleventh Circuit relegated *Pickup* to the dustbin of constitutional history: "There are serious doubts about whether *Pickup* was correctly decided." *Wollschlaeger*, 848 F.3d at 1309.

2. Neither of *NIFLA*'s Carve-Outs for Commercial Speech and Conduct Applies to the Ordinances.

a. The Talk Therapy Prohibited by the Ordinances Is Not Commercial Speech.

101. *NIFLA* carved out two possible categories of speech with less protection, neither of which applies here:

> This Court's precedents do not recognize such a tradition for a category called "professional speech." This Court has afforded less protection for professional speech **in two circumstances—neither of which turned on the fact that professionals were speaking**. First, our precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their "commercial speech." [citations omitted] Second, under our precedents, States may regulate professional conduct, even though that conduct incidentally involves speech. See, *e.g.*, *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 884, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (opinion of O'Connor, KENNEDY, and Souter, JJ.). But neither line of precedents is implicated here.

NIFLA, 138 S. Ct. at 2372 (emphasis added).

102. The talk therapy prohibited by the Ordinances cannot be excepted from First Amendment protection as commercial speech under *NIFLA*. Commercial speech is that speech which "does no more than propose a commercial transaction." *Va. St. Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976); *see also Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983) (commercial speech is that which can be "characterized merely as proposals

to engage in commercial transaction"); *Dana's R.R. Supply v. Attorney General*, 807 F.3d 1235, 1246 (11th Cir. 2015) (same).

> Athough a professional may be viewed as engaged in the transaction of selling his professional advice, **one must, of course, distinguish between the offer and the actual presentation of professional advice, which is no more a commercial transaction that is the actual writing or reading of a book or newspaper that is available for sale.**

Wollschlaeger, 848 F.3d at 1309 n.4 (quoting Daniel Halberrtson, *Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions*, 147 U. Pa. L. Rev. 771, 840-841 (1999)) (emphasis added).

b. The Talk Therapy Prohibited by the Ordinances Is Not Mere Professional Conduct.

103. The talk therapy prohibited by the Ordinances cannot be excepted from First Amendment protection as mere professional conduct under *NIFLA*.

104. In *Wollschlaeger*, much like Defendants here, the government argued that "the First Amendment is not implicated because any effect on speech is merely incidental to the regulation of professional conduct." 848 F.3d at 1308. But, as do the Ordinances here, the law in question "expressly limit[ed] the ability of certain speakers—doctors and medical professionals—to write and speak about a certain topic—the ownership of firearms—and thereby restrict[ed] their ability to communicate and/or convey a message." *Id.* The Eleventh Circuit had no doubt these restrictions "trigger First Amendment scrutiny. '**[S]peech is speech, and it must be analyzed as such for the purposes of the First Amendment**.'" *Id.* (emphasis added) (quoting *King v. Governor of New Jersey*, 767 F.3d 216, 229 (3d Cir. 2014)). Indeed, "[w]hat the Supreme Court said in concluding its analysis in *Button* seems to **fit like a glove here**: A state may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." *Id.* (quoting *Button*, 372 U.S. at 439 (emphasis added)). "Saying that restrictions on writing and speaking are merely incidental to speech is like saying that limitations on walking and running are merely incidental to ambulation." *Id.* at 1308 "As noted earlier, characterizing speech as conduct is a dubious constitutional enterprise." *Id.* at 1309. As was true in *NIFLA* and *Wollschlaeger*, Plaintiffs here have demonstrated that their practices involve only speech.

105. The City's argument that Plaintiffs' talk therapy should be considered mere professional conduct, akin to applying leeches to treat blood disorders, cannot be taken seriously.

(Hrg. Tr., pg. 197, lines 3–13.) The *King* court considered the same argument: "The parties agree that modern-day SOCE therapy, and that practiced by Plaintiffs in this case, is 'talk therapy' that is administered wholly through verbal communication. Though verbal communication is the quintessential form of 'speech' as that term is commonly understood, Defendants argue that these particular communications are 'conduct' and not 'speech' for purposes of the First Amendment because they are merely the 'tool' employed by therapists to administer treatment. Thus, the question we confront is whether verbal communications become 'conduct' when they are used as a vehicle for mental health treatment." *King v. Governor*, 767 F.3d 216, 224 (3d Cir. 2014), *abrogated by Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018). And the *King* court rejected the idea: "**We hold that these communications are 'speech' for purposes of the First Amendment**. Defendants have not directed us to any authority from the Supreme Court or this circuit that have characterized verbal or written communications as 'conduct' based on the function these communications serve. Indeed, the Supreme Court rejected this very proposition in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 130 S. Ct. 2705, 177 L.Ed.2d 355 (2010)." 767 F.3d at 224–25 (emphasis added).

106. "Given that the Supreme Court had no difficulty characterizing legal counseling as 'speech,' we see no reason here to reach the counter-intuitive conclusion that the verbal communications that occur during SOCE counseling are 'conduct.'" *King*, 767 F.3d at 225.

107. "To classify some communications as 'speech' and others as 'conduct' is to engage in nothing more than a 'labeling game.'" *King*, 767 F.3d at 228. "Simply put, speech is speech, and it must be analyzed as such for purposes of the First Amendment." *Id.* at 228–29. "Thus, we conclude that the verbal communications that occur during SOCE counseling are not 'conduct,' but rather 'speech' for purposes of the First Amendment." *Id.* at 229.

3. The County's Argument That Plaintiffs' Speech Is Not Protected Because It Is Not Expressive Is Wrong as a Matter of Fact and Law.

108. The Court rejects the County's argument that Plaintiffs' talk therapy is not protected speech because it is not "expressive," as a matter of both fact and law.

109. First, as shown in the Court's Findings of Fact, the content of Plaintiffs' talk therapy sessions sometimes includes Biblical and other viewpoints on the creation and purpose of men, women, and sex. (*See supra* Part I.A.) These sessions also include at times discussions of Biblical values regarding sexuality, and clients' desires to conform their identities, concepts of self,

attractions, and behaviors to their sincerely held religious beliefs. (*See supra* Part I.A.) All of these discussions are inherently expressive as a matter of fact.

110. Second, all pure speech is inherently expressive. This is why there is a long-recognized distinction between pure speech and expressive **conduct**. *See, e.g.*, *One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1285 (11th Cir. 1999) (noting First Amendment protection applies to three distinct categories: "pure speech, expressive conduct, or the use of various media that facilitate the communication of ideas"); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018) (noting speech technically means "spoken or written word" but that First Amendment protection extends to "acts qualifying as signs with expressive meaning"); *Geaneas v. Willets*, 911 F.2d 579, 584 (11th Cir. 1990) (noting First Amendment's protection clearly applies to "pure speech" but that its application is different from expressive conduct"); *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (same).

111. The distinction between speech and express conduct is critical because "[t]he government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word," *Texas v. Johnson*, 491 U.S. 397, 406 (1989), and the test for determining the application of the First Amendment is different between speech and conduct. *Fort Lauderdale*, 901 F.3d at 1240. Thus, the only circumstance in which the application of the First Amendment hinges on whether something is inherently expressive involves **conduct**. *See, e.g.*, *Johnson*, 491 U.S. at 404 (noting that only conduct is subject to the test of whether it is sufficiently expressive to warrant First Amendment protection); *Spence v. Washington*, 418 U.S. 405, 410 (1974) (noting only "expression of an idea through **activity**" is subject to requirement that it be intended "to convey a particularized message" (emphasis added)); *Barnes v. Glenn Theatre, Inc.*, 501 U.S. 560 (1991) (determining First Amendment protection by determining whether nude dancing was inherently expressive); *United States v. O'Brien*, 391 U.S. 367 (1968) (burning draft cards); *Fort Lauderdale*, 901 F.3d at 1240 (noting Supreme Court "formulated a two-part inquiry to determine whether the **conduct** is sufficiently expressive"); *Holloman*, 370 F.3d at 1270 ("to determine whether a particular **act** counts as expressive **conduct**, a court must determine whether an intent to convey a particularized message is present" (emphasis added)); *Burns v. Town of Palm Beach*, No. 17-CV-81152-BLOOM/REINHARDT, 2018 WL 4868710, *14 (S.D. Fla. July 13,

2018) ("delineating which expressive **conduct** receives First Amendment protection" depends on "whether it is sufficiently imbued with elements of communication" (emphasis added)).

112. Thus, as a matter of law, the talk therapy prohibited by the Ordinances is protected speech because it is speech, and no additional inquiry as to whether it is also expressive is warranted.

E. The Ordinances Are Viewpoint-Based Restrictions on Speech and Therefore Unconstitutional as a Matter of Law.

113. A viewpoint-based restriction on private speech has never been upheld by the Supreme Court or any court. Indeed, a finding of viewpoint discrimination is dispositive. *See Sorrell v. IMS Health*, 131 S. Ct. 2653, 2667 (2011). "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). "When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Id.* at 829. In fact, **viewpoint-based regulations are always unconstitutional**. *See, e.g.*, *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) ("'the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others'") (quoting *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984)); *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985) ("the government violates the First Amendment when it denies access to a speaker solely to suppress the point of view he espouses"); *see also Searcy v. Harris*, 888 F.2d 1314, 1324 (11th Cir. 1989) (the government "may not discriminate between speakers who will speak on the topic merely because it disagrees with their views"), *id.* at 1325 ("**The prohibition against viewpoint discrimination is firmly embedded in first amendment analysis**." (emphasis added)); Elena Kagan, *Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*, 63 U. Chi. L. Rev. 413, 444 ("the Court almost always rigorously reviews and then invalidates regulations based on viewpoint").

114. The Ordinances are textbook examples of viewpoint discrimination. On their face, the Ordinances purport to allow licensed therapists to discuss the subject of sexual orientation, but explicitly prohibit only one particular viewpoint on that subject, namely that unwanted SSA can be reduced or eliminated to the benefit of the client, if the client so desires. The Ordinances define "conversion therapy" in such a way that it is clear that Defendants are targeting only one viewpoint,

i.e., SOCE that seeks to "eliminate or reduce sexual or romantic attractions or feelings **toward individuals of the same gender or sex**." (DE 126-20 (Cnty. Ord.), pg. 12 (emphasis added); DE 126-27 (City Ord.), pg. 7 (same).). Similarly, the Ordinances permit counselors to accept and facilitate same-sex attraction, even if their minor clients are merely questioning such feelings, but prohibit counselors from counseling minor clients to change unwanted same-sex attractions, even when the minor clients themselves request and seek that outcome. (*Id.*).

115. The Ordinances also purport to prohibit licensed counselors from engaging in any practice that seeks to change behaviors, gender identity, or gender expression. (*Id.*) But the plain text of the Ordinances demonstrates that they only prohibit such counseling for minor clients who wish to reduce or eliminate behaviors, identity, or expressions that differ from their biological sex. (*Id.*) That this is true cannot be questioned because the Ordinances specifically exempt counseling that "provides support and assistance to a person undergoing gender transition." (*Id.*). To undergo "gender transition," one has to be—at minimum—seeking to change from one gender to the other. **Change is the definition of transition**. *See* Dictionary.com Unabridged, https://www.dictionary.com/browse/transition?s=t (last visited Nov. 13, 2018) ("movement, passage, or **change** from one position, state, stage, subject, concept, etc., to another; **change**" (emphasis added).) So, under the Ordinances, if a minor client wants to undergo radical surgery to alter his appearance or genitalia, Defendants have no problem with a counselor providing counseling to assist in **that** change. But, if a minor client merely wants to speak with a counselor about unwanted feelings concerning her gender identity or expression, the counselor is absolutely prohibited from engaging in such counseling if it aids the minor in reducing unwanted cross-gender identity, behaviors, or expressions. There can be no question that this is viewpoint discrimination.

116. The Supreme Court and several other courts have invalidated regulations of professional speech as unconstitutional viewpoint discrimination. *See Sorrell*, 131 S. Ct. 2653 (2011); *Legal Servs. Corp. v. Valazquez*, 531 U.S. 533 (2001); *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002). In these cases, the courts recognized the axiomatic truth that the government is not permitted to impose its viewpoint on speakers, even professional speakers subject to licensing requirements and regulation.

117. In *Velazquez*, the Court addressed a federal funding limitation on legal aid attorneys that operated in the same viewpoint-based manner as the Ordinances. *Velazquez*, 531 U.S. at 537–38. The law provided that attorneys could not receive funds if they challenged welfare laws. The

Court invalidated the law as viewpoint discriminatory, because it had the effect of prohibiting "advice or argumentation that existing welfare laws are unconstitutional or unlawful," and thereby excluded certain "vital theories and ideas" from the lawyers' representation. *Id.* at 547–49.

118. In *Conant*, the Ninth Circuit invalidated a federal policy that punished physicians for communicating with their patients about the benefits or options of marijuana as a potential treatment. *Conant*, 309 F.3d at 633. The Ninth Circuit noted that the doctor-patient relationship is entitled to robust First Amendment protection:

> An integral component of the practice of medicine is the communication between a doctor and a patient. **Physicians must be able to speak frankly and openly to patients**. That need has been recognized by courts through the application of the common law doctor-patient privilege.

Id. at 636 (emphasis added). Far from being a First Amendment orphan, such professional speech "may be entitled to the strongest protection our Constitution has to offer." *Id.* at 637 (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 634 (1995)). The ban impermissibly regulated physician speech based on viewpoint:

> The government's policy in this case seeks to punish physicians on the basis of the content of doctor-patient communications. Only doctor-patient conversations that include discussions of the medical use of marijuana trigger the policy. Moreover, the **policy does not merely prohibit the** discussion **of marijuana; it condemns expression of a particular viewpoint, i.e., that medical marijuana would likely help a specific patient**. Such condemnation of particular views is especially troubling in the First Amendment context.

Id. at 637–38 (emphasis added). The court rejected as inadequate the government's justification that the policy prevented clients from engaging in harmful behavior, and permanently enjoined enforcement of the policy. *Id.* at 638–39.

119. The Ordinances here operate almost identically to the federal policy enjoined in *Conant*. Just as the policy in *Conant* prohibited physicians from speaking about the benefits of marijuana to a suffering patient, so do the Ordinances prohibit counselors from speaking about the potential for reduction or elimination of unwanted same-sex attractions, or desires to "transition to another gender," that might benefit a client distressed by the unwanted desires. In both cases, the laws express a preference for the message the government approves and disdain attached to

punishment for the viewpoint the government abhors. As was true of the law in *Conant*, the Ordinances here should be invalidated as unconstitutional viewpoint discrimination.

120. If a minor client presents to Dr. Otto with the desire to change his same-sex attractions and behavior to conform to his Christian beliefs on homosexuality, and Dr. Otto proceeds with talk therapy in which Dr. Otto affirms the client's *beliefs*, while leaving any decisions about change to the client, then the City and County would both interpret that therapy as a violation of their Ordinances because Dr. Otto would have facilitated the client's goal to change sexual orientation.[15] By this interpretation—which neither Defendant has attempted to walk

---

[15] This hypothetical encounter is drawn directly from Dr. Otto's unrefuted testimony in response to questioning by the County:

> Q Okay. So you state here or the response states that "Otto focuses on the issues that the client wants to address, including those situations where clients seek assistance in conforming their identity and attractions to their sincerely held religious beliefs, values, and concepts of self."
>
> My question to you is: How do you do that? How do you reconcile when there's a conflict between the client's unwanted sexual attraction, sexual orientation with their religious beliefs if there's a conflict?
>
> . . . .
>
> THE WITNESS: Okay. So if a client comes in and says, "Hey, this is what I'm feeling, but this is what I believe," there's a conflict there. So there are three choices: You change one, you change the other, or you learn to live with that conflict in place. And we'll talk about where their priorities are. We'll talk about which one of those is most important to them. We'll talk about maybe the root causes of some of these issues that they're feeling, what they think the root causes are, how much—to what degree the discomfort is there. Is it just a minor nuisance or is it a significant issue for them?
>
> And we'll have conversations. We'll speak about those kinds of things. And as they gain an understanding of their—as they're able to talk through their feelings and articulate their feelings, oftentimes they're able to come to some resolution about what they think they should do on

back—the Ordinances discriminate against Dr. Otto's Christian viewpoint that voluntary change is possible and good, which viewpoint he expressed by accepting the client's goals and affirming the client's beliefs. By contrast, if presented with the same minor client desiring to conform attractions and behaviors to the client's Christian beliefs, a therapist who expresses beliefs contrary to the client's in order to effect the desired conformity—*i.e.*, by changing the client's beliefs instead of the client's attractions or behavior—would not violate the Ordinances under Defendants' interpretation because the therapist would not have facilitated the client's goal of changing sexual orientation. But the only substantive difference between the therapies offered by Dr. Otto and the hypothetical therapist was the viewpoint expressed regarding the client's beliefs.

121. The record leaves little doubt that it is "conversion therapy" from a religious viewpoint that the County had in view when the Ordinances were passed. (DE 126-16 (Pls.' Ex. 16), pg. 1 ("Most of the universal complaints seem to be about religious organizations . . . .").) It is also clear from the Sources relied on by Defendants that counselors and clients with strong religious beliefs about the efficacy of SOCE are disproportionately affected by the bans because this category of clients perceive the most benefit from SOCE. (*See supra* Part I.C.5.)

122. It is not enough that the Ordinances purport to protect a therapist's right to recommend or refer clients out for "conversion therapy." (DE 126-20 (Cnty. Ord.), pg. 10 ("County does not intend to prevent mental health providers from . . . expressing their views to patients; recommending SOCE to patients; . . . or referring minors to unlicensed counselors . . . ."); DE 126-27 (City Ord.), pg. 5 (same).) In reality, as soon as a therapist informs a client that the talk therapy recommended by the therapist as beneficial and good is nonetheless illegal, the

---

> what things they think they should change or what boundaries they think they should put up or what relationships they think they should modify.
>
> And, again, that's all client-driven. That's all directed by what the clients' priorities are and how they bring the issues to the table.

(DE 121-7 (Otto Dep.), pg. 155, line 9–pg. 156, line 20; DE 121-28 (Otto Interrog. Resps.), pg. 2; *see also supra* Part I.A.1, ¶ 7 ("Dr. Otto shares those [Christian] beliefs, and therapy sessions sometimes include discussion of Biblical viewpoints . . . ."); DE 121-7 (Otto Dep.), pg. 158, line 7–pg. 159, line 8 ("There are a lot of biblical truths that would come out in the counseling . . . .").)

credibility of the therapist's viewpoint is immediately undermined, to the injury of the therapist's reputation and the therapeutic alliance. To be sure, this undermining of the therapist's viewpoint is intended, and intentionally discriminatory.

123. The County contends that *R.A.V. v. City of St. Paul*, gives the government license to discriminate on the basis of content and viewpoint in this context. (Hrg. Tr., pg. 109, line 17–pg. 110, line 24.) But *R.A.V.* provides no such refuge. There, the Supreme Court noted that "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." 505 U.S. 377, 387 (1992). What the County failed to grasp, however, is that such categories of so-called "unprotected speech" are severely limited by Supreme Court precedent to certain "well-defined and narrowly limited classes of speech," including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *See United States v. Stevens*, 559 U.S. 460, 468–69 (2010). The reason such categories, though content-based, can be more easily restricted is because their "prevention and punishment [has] never been thought to raise any Constitutional problem." *Id.* at 469 (citing *Chaplinski v. New Hampshire*, 315 U.S. 568, 571 (1942)).

124. Not only is the talk therapy speech of licensed professionals glaringly absent from the severely restricted list, but the Supreme Court's recent precedents prove it has been explicitly excluded from the list of proscribable categories. *See NIFLA*, 138 S. Ct. at 2372 ("Speech is not unprotected merely because it is uttered by professionals."); *Reed*, 135 S. Ct. at 2229 (noting that professional speech is protected, and not one of the proscribable categories of speech). Thus, even if the First Amendment did not stand against all "freewheeling authority to declare new categories of speech outside the scope of the First Amendment," *Stevens*, 559 U.S. at 472, this Court would still be bound by *NIFLA* and *Reed* to reject Defendants' contentions that Plaintiffs' speech is akin to the long-recognized categories of unprotected speech discussed in *R.A.V.* Plaintiffs' speech does not fall within the narrowly limited classes of speech for which this Court can disregard the traditional strictures of the First Amendment.

F. Even If Not Viewpoint-Based Restrictions, the Ordinances Are Content-Based Restrictions on Speech That Must Satisfy Strict Scrutiny.

125. As was true in *King*, the Ordinances here ban speech on the basis of content. Like the Third Circuit, this Court has "little doubt" in concluding that the Ordinances ban speech on the basis of content. *See* 767 F.3d at 236 n.20. Indeed, like the statute in *King*, the Ordinances "on

[their] face, prohibit[] licensed counselors from speaking words with a particular content; *i.e.* words that 'seek[] to change a person's sexual orientation.'" *Id.* (final alteration in original). (DE 126-20 (Cnty. Ord.), pg. 12; DE 126-27 (City Ord.), pg. 7.). "Thus . . . 'Plaintiffs want to speak to [minor clients], and whether they may do so under [the Ordinances] depends on what they say.'" *Id.* (first alteration in original). That is textbook content discrimination.

126. Because this Court finds that the Ordinances ban speech on the basis of content, unequivocal Supreme Court precedent requires the Ordinances to survive strict scrutiny to be upheld. Indeed, in *Reed*, the Supreme Court issued its firm rule: all content-based restrictions on speech must receive strict scrutiny. 135 S. Ct. at 227 ("[A] law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus towards the ideas contained in the regulated speech."). In handing down that firm rule, the Supreme Court unequivocally stated that it applied equally to any content-based regulation of the speech of licensed professionals. *Id.* at 2229 ("it is no answer to say that the purpose of these regulations was merely to insure high professional standards").

127. *NIFLA* also confirmed that regulations on the speech of licensed professionals is no exception to this rule. In *NIFLA*, the Supreme Court affirmed *Reed*'s firm rule mandating strict scrutiny for all content-based restrictions on speech, expressly abrogated *King*'s and *Pickup*'s erroneous conclusion that content-based regulations of so-called professional speech do not receive strict scrutiny, and condemned the invidious discrimination inherent in bans on the speech of licensed professionals. *NIFLA*, 138 S. Ct. at 2371 (all content-based restrictions on speech receive strict scrutiny). Indeed, gutting *King* and *Pickup* by name, *NIFLA* stated that "[s]o defined, these courts except professional speech from the rule that content-based regulations of speech are subject to strict scrutiny . . . . But, this Court has not recognized professional speech as a separate category of speech. Speech is not unprotected merely because it is uttered by professionals." *Id.* at 2371–72 (emphasis added). And, confirming that content-based restrictions on the speech of licensed professionals receive strict scrutiny, *NIFLA* held that "States cannot choose the protection that speech receives under the First Amendment, as that would give them a powerful tool to impose invidious discrimination of disfavored subjects," *id.* at 2375, such as any counseling that seeks to help a minor reduce or eliminate their unwanted same-sex attractions, behaviors, and identity. Thus, binding precedent requires this Court to subject the Ordinances to strict scrutiny.

G. Defendants Have the Burden of Proof on Strict Scrutiny.

1. Defendants Must Show Empirical or Concrete Evidence of Harm.

128. As show above, Defendants have the burden of proving the constitutionality of their Ordinances under the strict scrutiny standard. And in this First Amendment context, the government is not entitled to deference in making speech-restrictive determinations. When "[a] speech-restrictive law with widespread impact" is at issue, "the government must shoulder a correspondingly heavier burden and is entitled to considerably less deference in its assessment that a predicted harm justifies a particular impingement on First Amendment rights." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2472 (2018) (emphasis added). Here, because the Ordinances infringe upon the free speech rights of licensed medical professionals, the government "must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994); *see also Edenfield v. Fane*, 507 U.S. 761, 770 (1993) (regulation of professional speech must still demonstrate that the alleged harm is not "mere speculation or conjecture"); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 841 (1978) (same). This is so because "[d]eference to legislative findings cannot limit judicial inquiry when First Amendment rights are at stake." *Landmark Commc'ns*, 435 U.S. 843.

129. Courts have not hesitated to invalidate ordinances that impose restrictions on speech based on supposition and conjecture, rather than empirical evidence. In *Edenfield*, where the government sought to restrict the speech of licensed accountants, the government "presented no studies" and relied upon a record that "contain[ed] nothing more than a series of conclusory statements that add little if anything" to the government's effort to regulate certain speech. 507 U.S. at 771. Also, the government relied upon a report of an independent organization to bolster its claims of harm, but—exactly as the APA Report does in this case—the report there admitted that it was "unaware of the existence of **any empirical data supporting the theories**" of alleged harm. *Id.* at 772 (emphasis added). Because of the lack of evidence of harm, the Supreme Court invalidated the restriction as a violation of the accountants' First Amendment rights. In *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115 (1989), the Supreme Court again confronted a record (like here) where there was nothing more than anecdote and suspicion of harm behind a total prohibition on the targeted speech. 492 U.S. at 129. There was no record evidence "aside from

conclusory statements during the debates by proponents of the bill" and the record "contain[ed] no evidence" concerning the alleged effectiveness of other alternatives. *Id.* Because of that failure, the Supreme Court invalidated the ban. *Id.*

130. The Eleventh Circuit, too, has invalidated laws regulating professional speech when the alleged harm purportedly being addressed was unsupported by concrete evidence. In *Mason v. Florida Bar*, 208 F.3d 952 (11th Cir. 2000), the government attempted to regulate the speech of attorneys, but "presented no studies, nor empirical evidence of any sort to suggest" that the harm they were positing was real, rather than merely conjectural. *Id*. at 957 (emphasis added). The Eleventh Circuit held that, to survive scrutiny, the government "has the burden . . . of producing **concrete evidence**" of the alleged harm prior to restricting the protected speech of licensed professionals. *Id.* at 958 (emphasis added). Indeed, it held that when there are "**glaring omissions in the record of identifiable harm**," the government has not satisfied "its burden to identify a genuine threat of danger." *Id.* (emphasis added)

2. Defendants Must Show That the Ordinances Were the Least Restrictive Means Available at the Time of Enactment.

131. Under strict scrutiny, Defendants must also demonstrate that the Ordinances are the least restrictive means of remedying their claimed governmental interests. *See Boos v. Berry*, 485 U.S. 312, 329 (1988) (when content-based restrictions on speech are analyzed under strict scrutiny, an ordinance "is not narrowly tailored [where] a less restrictive alternative is readily available"); *Ward v. Rock Against Racism*, 491 U.S. 781, 798 n.6 (1989) (noting that under "the most exacting scrutiny" applicable to content-based restrictions on speech, the government must employ the least restrictive alternative to pass narrow tailoring). Plaintiffs "must be deemed likely to prevail unless the government has shown that [Plaintiffs'] proposed less restrictive alternatives are less effective than enforcing the act." *Ashcroft*, 542 U.S. at 666 (emphasis added).

132. The government must demonstrate that it "seriously undertook" efforts to address the problem "with less intrusive tools available to it." *McCullen v. Coakley*, 134 S. Ct. 2518, 2539 (2014). In *McCullen*, the government even identified numerous other statutes already on the books that could have theoretically accomplished the government's objective, but it argued that such means were ineffective. *Id.* at 2540. The Supreme Court said that even identifying and considering those existing laws was insufficient to satisfy intermediate scrutiny because the government had not identified "a single prosecution brought under those laws" and could not identify any attempted

use of those statutes to accomplish the objective without unnecessarily restricting speech. *Id.* at 2539. The Supreme Court's requirement that the government actually attempt to use existing laws **prior to** enacting the challenged speech prohibition necessarily means that the government cannot identify other alternatives after the enactment of the speech restriction and then offer post-hoc rationalizations as to why they are ineffective.

133. In *Bruni*, the Third Circuit stated that to meet the *McCullen* burden of showing that it seriously undertook to consider less speech restrictive alternatives, the government must put forward "**a meaningful record** demonstrating that those options would fail to alleviate the problems meant to be addressed." 824 F.3d at 371 (emphasis added). In fact, the concurrence highlights the majority's application of *McCullen*: "The majority opinion [requires that] a municipality **must now also prove that*, before adopting a regulation that significantly burdens speech*, it either attempted or seriously considered and reasonably rejected less intrusive alternatives**." *Id.* at 379 (Fuentes, J., concurring) (emphasis added).

134. The McCullen Court expressly rejected the government's convenience as a justification for skipping the narrow tailoring step:

> The government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience. Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily "sacrific[ing] speech for efficiency."

134 S. Ct. at 2534. "To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *Id.* at 2540. In *Alford v. Walton County*, No. 3:16cv362/MCR/CJK, 2017 WL 8785115 (N.D. Fla. Nov. 22, 2017), the district court held that the government cannot meet its burden under *McCullen* when the "record reflects that the County admittedly failed to consider any less restrictive alternatives," and instead favored a total ban because it was "cleaner and easier." *Id.* at *8.

H. Defendants' Ordinances Are Unconstitutional Because They Fail Strict Scrutiny.

1. Defendants Have No Compelling or Other Sufficient Governmental Interest to Ban Voluntary SOCE Talk Therapy.

135. As shown in the Court's findings of fact above, Defendants never received or considered any evidence that any person was harmed, or complained of harm by any SOCE counseling in their respective jurisdictions, let alone voluntary SOCE counseling that minors request and want to receive. Moreover, despite claiming "overwhelming research" justifying their Ordinances, the "research" cited by Defendants justifies no conclusions regarding harmful outcomes from SOCE. Thus, like in *Mason* and *Edenfield*, Defendants have conducted no independent inquiry into the alleged harm and have proffered no substantial or concrete evidence demonstrating that the actual harm exists. Because of their failures, the Ordinances fail strict scrutiny. *See, e.g.*, *Comcast Cablevision of Broward Cnty., Inc. v. Broward Cnty.*, 124 F. Supp. 2d 685, 697-98 (S.D. Fla. 2000) (providing where government's alleged harm "appears to be non-existent," where government "conducted no inquiry" and "proffered no substantial evidence demonstrating that actual harm exists," government fails its burden and regulation of speech cannot survive First Amendment scrutiny). Defendants cannot satisfy strict scrutiny by pointing to empirical or concrete evidence of harm justifying their Ordinances.

136. Furthermore, Defendants' Ordinances undermine several specific admonitions from the APA Report and related Sources, such as the APA imperative that minors be allowed to return to their biological gender, even after identifying as the other gender for a period of time. The Ordinances also require therapists such as Plaintiffs to cut off counseling with clients who express a desire to change their sexual orientation or gender identity, which directly contradicts the APA Report's admonition to explore a client's identity issues instead of declining them outright. Thus, the Ordinances prohibit therapists from assisting minors with change decisions the APA expressly endorses, and otherwise create harm identified by the APA rather than reducing any.

2. Defendants' Ordinances Are Not the Least Restrictive Means or Otherwise Narrowly Tailored.

137. Under strict scrutiny, Defendants are required to demonstrate that the Ordinances are the least restrictive means available. *See Boos*, 485 U.S. at 329 (when content-based restrictions

on speech are analyzed under strict scrutiny, an ordinance "is not narrowly tailored [where] a less restrictive alternative is readily available"); *Ward*, 491 U.S. at 798 n.6 (noting that under "the most exacting scrutiny" applicable to content-based restrictions on speech, the government must employ the least restrictive alternative to pass narrow tailoring). Plaintiffs "must be deemed likely to prevail unless the government has shown that [Plaintiffs'] proposed less restrictive alternatives are less effective than enforcing the act." *Ashcroft*, 542 U.S. at 666. Defendants cannot do so.

138. To satisfy the narrow tailoring prong of their strict scrutiny burden, Defendants must show that they "**seriously** undertook to address the problem with less intrusive tools readily available to [them]." *McCullen*, 134 S. Ct. at 2539 (emphasis added). "To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *Id.* at 2540. Thus, Defendants "would have to show either that **substantially less-restrictive alternatives were tried and failed**, or that the **alternatives were closely examined and ruled out for good reason**." *Bruni*, 824 F.3d at 370 (emphasis added); *see also Reynolds v. Middleton*, 779 F.3d 222, 231 (4th Cir. 2015) ("As the Court explained in *McCullen*, however, the burden of proving narrow tailoring requires the County to *prove* that it actually *tried* other methods to address the problem.") Defendants neither tried nor closely examined any alternatives to their outright bans.

139. As shown in the Court's findings of fact, Defendants failed to try, discuss, or even consider any less restrictive alternatives to their blanket therapy bans. Even the anecdotal hearsay brought to Defendants by the Ordinances' chief advocate, Rand Hoch, complained of alleged "aversive" and "coercive" therapies, happening to someone somewhere, and not voluntary SOCE as practiced by Plaintiffs; but Defendants did not consider banning only aversive or coercive therapies, or even imposing specific informed consent requirements consistent with the APA Report's recommendations. Instead, Defendants acted contrary to the APA Report recommendations and banned SOCE outright, foreclosing the further development of the scientific record on SOCE sought by the APA, and usurping for politicians and activists the discretionary judgment that the APA deemed appropriate for licensed mental health professionals. Defendants' failure to consider any alternatives cannot satisfy the demanding narrow tailoring burden placed upon them by the Supreme Court in *McCullen*.

140. Remarkably, despite *McCullen's* clear rejection of the government's convenience as a justification to skip narrow tailoring, the County one-upped the Commonwealth of Massachusetts and argued its **ignorance** as justification at the preliminary injunction hearing:

> As I will show you in the . . . APA report, your Honor, **there have been no factors discovered about what types of therapy cause harm** and what types of therapies are going to lead to a benefit.
>
> **Because we don't know** the identifying factors of what about this person makes the therapy beneficial, **we don't know.**

(Hrg. Tr., pg. 124:3–8 (emphasis added).) Though worse than the Commonwealth's convenience argument in *McCullen*, the County's "we don't know" plea is sufficiently similar that there can be little doubt it, too, should be rejected. *See McCullen*, 134 S. Ct. at 2540 ("To meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier.').

141. Likewise to be rejected is the County's hearing argument that the Ordinances are working. (Hrg. Tr., pg. 150, line 24–pg. 151, line 8.) This argument proves far too much—claiming that the Ordinances' burdens on speech are effective at restricting the speech Defendants want to restrict begs the question of whether Defendants could have restricted less, which is precisely the burden Defendants have failed to carry.

142. Defendants also fail narrow tailoring because their Ordinances cannot, as a practical matter, be enforced to remedy any purported harms Defendants claim to have in view. As the Supreme Court taught in *McCullen*, the First Amendment "demand[s] a close fit between ends and means." 134 S. Ct. at 2534. The inability to enforce the Ordinances through their respective code officials, which is admitted by both City and County senior officials in their unfiltered pre-Ordinance correspondence, forecloses the required fit between the Ordinances and Defendants' purported interests in enacting them. Defendants' code officials are objectively ill-equipped to investigate and make determinations about appropriate mental health therapeutic practices. For example, the City's Rule 30(b)(6) witness on enforcement of the City Ordinance candidly admitted it would take a clinician or therapist to determine whether a minor's affinity or movement towards a particular gender identity constituted a change of gender identity under the Ordinance. (*See supra* Part I.F.) And at the hearing, the County admitted it **still—nearly a year since enactment—has no procedure to handle a complaint under its Ordinance**. (Hrg. Tr. pg. 184, lines 13–20 ("There

is not a firm procedure in place yet, we are working with our Code Enforcement to have a procedure in place, but it is not—there is not one that has been officially approved yet.").) Moreover, there is no evidence of any trained or qualified professional upstream from code enforcement personnel to preside over a final determination, such as a board of professional standards,[16] or even a single reviewing professional with appropriate training or licensure. Such a fatally flawed process could never satisfy the constitutional "fit" requirement of narrow tailoring.

143. Furthermore, if the purpose of the Ordinances is to protect children and youth from the purported harms of SOCE counseling, they are "'wildly underinclusive,'" further undermining any notion of narrow tailoring. *See NIFLA*, 138 S. Ct. at 2376 (quoting *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, 802 (2011)). Both ordinances regulate only licensed professionals, and expressly exclude conversion therapy offered by unlicensed religious counselors and clergy. (DE 126-27 (City Ord.), DE 1-4, at 6:26–7:3; DE 126-20 (Cnty. Ord.), DE 1-5, at ECF 13:16–19.) The Palm Beach County Attorney, however, expressly advised the County Commissioners that "[m]ost of the universal complaints seem to be about religious organizations that the ordinance would not legally be able to address." (Pls.' Ex. 16 at PBC 008000.) If Defendants genuinely believe all "conversion therapy" is harmful to minors, then exempting unlicensed religious counselors and clergy from regulation makes no sense, especially if they are the source of the "universal complaints." Given the County's supposition of the prevalence of religious conversion therapy perpetrators, its 30(b)(6) witness could offer no justification for exempting religious persons where the ostensible government interest is regulating harmful conduct directed at children. (DE 121-9 (Hvizd Dep.), 200:14–18, 202:5–9.) The City likewise has the authority to regulate behavior by adults that is considered harmful to children, whether or not those adults are religious or part of a religious institution, but did not consider doing so in its Ordinance. (DE 126-41 (Woika Dep.), 48:7–49:8.) The APA Report is also relevant here because, not only does it fail to present empirical evidence of harm from **any** kind of SOCE counselling, its non-empirical,

---

[16] *See infra* Part II.I; *see also supra* Part I.F, ¶ 68 ("[W]e do not have a specific enforcement mechanism and **I don't have any clear idea how we could train either our Code Enforcement staff of [sic] law enforcement staff to actually enforce it.** If we receive a complaint will deal with it individually and **most likely referee [sic] it to one for the state governing bodies. The M.D.'s, D.O.'s and clinicians all have their own state boards.**" (quoting DE 126-26 (Pls.' Ex. 26), pg. 1)).

anecdotal reporting of harm does not differentiate between SOCE from licensed professionals and SOCE from religious organizations or persons. Thus, Defendants cannot justify the underinclusivity of their Ordinances on any claimed difference in harm between licensed SOCE and unlicensed religious SOCE, still further undermining any notion of narrow tailoring.

I. Defendants' Ordinances Are *Ultra Vires* Because They Purport to Regulate a Field Preempted to the State.

1. The State's Legislative Scheme Regulating Licensed Mental Health Providers Is so Pervasive as to Evidence an Intent to Preempt the Area.

144. As shown above, Defendants' most senior in-house lawyers sounded the alarm on preemption to their respective legislative bodies prior to their enactment of the Ordinances. Defendants' lawyers were correct then, and nothing has changed legally to remove the State's preemption of the field of regulating the practices of licensed mental health professionals. Defendants Ordinances are *ultra vires* and unenforceable.

145. In determining whether the State's regulation impliedly preempts local governments from regulating mental health professionals licensed by the State, the court must look at the provisions of the policy as a whole, the nature of power exercised by the legislature, the object sought to be attained by the statute, and the character of the obligations imposed by the statute. *Classy Cycles, Inc. v. Bay Cnty.*, 201 So. 3d 779, 784 (Fla. 2016). "Preemption is implied when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (internal quotation marks omitted).

146. The proper pervasiveness inquiry is whether the State has "preempted **a particular subject area**," not one discrete form of counseling. *Sarasota Alliance*, 28 So. 3d at 886 (emphasis added). The subject area in this matter is regulation of mental health professionals, not one subset of an entire course of counseling for one subset of a particular issue relating to that course of counseling. Were the rule otherwise, a municipality would be empowered to enact any regulation it desires if the State has not passed discrete legislation prohibiting a specific act, regardless of whether the statutory scheme regulating a particular **area** is overwhelmingly pervasive.

147. Florida regulation of licensed mental health providers is pervasive. Florida Statutes Chapter 456 sets forth the general provisions related to the regulation and licensure of health

professions and occupations. Specifically, in Fla. Stat. § 456.003(2)(b) the Legislature identified the absence of local regulation as a justification for the State to authorize the **State** Department of Health to establish boards and regulatory bodies to ensure that such professions are regulated to protect the health, safety and welfare of the public:

> (2) The Legislature further believes that such **professions shall be regulated** only for the preservation of the health, safety, and welfare of the public **under the police powers of the state**. Such professions shall be regulated when:
>
> . . . .
>
> (b) **The public is not effectively protected by other means, including, but not limited to**, other state statutes, **local ordinances**, or federal legislation.

Fla. Stat. § 456.003. This statement of legislative intent justifies the state's entry into, and occupation of, the field of health professional regulation, because no preexisting local ordinances were there to protect the public.

148. Florida Statutes Chapter 491 more specifically regulates professionals in clinical social work, marriage and family therapy, and mental health counseling. For example, Fla. Stat. § 491.003 defines the "'practice of marriage and family therapy,'" identifies who "[m]arriage and family therapy may be rendered to," and restricts the "use of specific methods, techniques, or modalities within the practice of marriage and family therapy . . . to marriage and family therapists appropriately trained in the use of such methods, techniques, or modalities." Fla. Stat. § 491.003(8). The section similarly regulates the practices of clinical social work and mental health counseling.

149. Section 491.004 creates within the State Department of Health the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (the "State Board") composed of nine members, six of which must be licensed professionals in the three practice fields. Fla. Stat. § 491.004(1), (2). The section also grants rulemaking authority to the Board to implement Chapter 491. Fla. Stat. § 491.004(5).

150. Section 491.005 imposes licensure requirements for clinical social work, marriage and family therapy, and mental health counseling professionals, including requirements for education, experience, passage of a "theory and practice examination," and "knowledge of the laws and rules governing the practice of clinical social work, marriage and family therapy, and mental health counseling." Fla. Stat. § 491.005(1), (3), (4).

151. Section 491.009 specifies grounds for discipline of licensed clinical social work, marriage and family therapy, and mental health counseling professionals, including "False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed," and "Failing to meet the minimum standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee, registered intern, or certificateholder is not qualified by training or experience." Fla. Stat. § 491.009(1)(d), (r).

152. Florida Administrative Code Subtitle 64b4 contains the rules implemented by the State Board to implement Fla. Stat. Ch. 491. For example, § 64B4-3.003 specifies the respective "theory and practice" licensure examinations to be administered to social work, marriage and family therapy, and mental health counseling professionals, such as the "examination developed by the Examination Advisory Committee of the Association of Marital and Family Therapy Regulatory Board (AMFTRB)" for marriage and family therapists. F.A.C. § 64B4-3.003(2)(c). Section 64B4-3.0035 additionally specifies how the three types of professionals "shall demonstrate knowledge of the laws and rules for licensure:"

> (1) An applicant shall complete an approved course consisting of a minimum of eight (8) hours which shall include the following subject areas:
>
> (a) Chapter 456, Part II, F.S., (Regulation of Professions and Occupations, General Provisions)
>
> (b) Chapter 90.503, F.S., (Psychotherapist-Patient Privilege)
>
> (c) Chapter 394, F.S., (Part I Florida Mental Health Act)
>
> (d) Chapter 397, F.S.
>
> (e) Chapters 415 and 39, F.S., (Protection from Abuse, Neglect and Exploitation)
>
> (f) Chapter 491, F.S., (Clinical, Counseling and Psychotherapy Services)
>
> (g) Chapter 64B4, F.A.C., (Rules of the Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling)
>
> (2) The laws and rules course must provide integration of the above subject areas into the competencies required for clinical practice and must include interactive discussion of clinical case examples

> applying the laws and rules that govern the appropriate clinical practice.

No local regulations are included.

153. Section 64B4-5.001 provides for the determination of violations and imposition of discipline on the grounds provided by Fla. Stat. § 491.009, such as "False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed," and "Failing to meet the MINIMUM standards of performance in professional activities when measured against generally prevailing peer performance, including the undertaking of activities for which the licensee is not qualified by training or experience." F.A.C. § 64B4-5.001(1)(d), (s). Such determinations of violations and imposition of discipline against licensed social work, marriage and family therapy, and mental health counseling professionals are made by the State Board, six members of which are licensed professionals in the respective fields.

154. The foregoing regulation of licensed health providers in general, and licensed mental health providers specifically, including education, experience, licensure, practice, and discipline, administered by a state board of licensed professionals, is pervasive, and implies an intent by the Florida Legislature to occupy the field to the exclusion of local regulation.

2. Strong Public Policy Reasons Exist for finding Regulation of Licensed Mental Health Providers to Be Preempted by the State.

155. In addition to the pervasive state regulation of licensed mental health providers, there are strong public policy reasons to reserve such regulation to the State. It is axiomatic that the regulation of licensed professionals, including medical and mental health professionals, has always been a matter of **state concern**. *See, e.g.*, *Watson v. Maryland*, 218 U.S. 173, 176 (1910) ("It is too well settled to require discussion at this day that the police power of the **states** extends to the regulation of certain trades and callings, particularly those which closely concern the public health." (emphasis added)); *Dent v. West Virginia*, 129 U.S. 114, 122 (1889) ("it has been the practice of different **states**, from time immemorial, to exact in many pursuits a certain degree of skill and learning" to practice a profession (emphasis added)); *McNaughton v. Johnson*, 242 U.S. 344, 348-49 (1917) ("It is established that **a state** may regulate the practice of medicine." (emphasis added); *see also Betancur v. Fla. Dep't of Health*, 296 F. App'x 761, 763 (11th Cir.

2008) ("**States** retain the police power to regulate professions, such as the practice of medicine." (emphasis added)).

156. Moreover, given that the Legislature has mandated that determinations of whether licensed professionals have met the "minimum" standards of their professions must be made by similarly licensed professionals on the State Board, it defies reason to assert that the Legislature intended to allow unlicensed city and county code enforcement officials to make highly specialized professional practice determinations regarding sexual orientation and gender identity therapies for which there are no empirical bases for measuring safety or efficacy.

157. Furthermore, the absence of **any** regulation of professions or professionals in general, and of mental health professions and professionals specifically, by either Defendant, especially when viewed in light of Defendants' purported compelling interests, confirms that Defendants heretofore have submitted to the state's "will to be the sole regulator" of mental health and similarly situated professionals. *See Lake Hamilton Lakeshore Owners Ass'n, Inc. v. Neidlinger*, 182 So. 3d 738, 743 (Fla. 2d DCA2015) (internal quotation marks omitted). This, complete absence of local regulation, coupled with the unanimous reaction by Defendants' senior legal and administrative officials in their unfiltered communications (*see supra* Part I.G), is persuasive evidence of a strong public policy against local regulation.

158. Finally, the Court is not persuaded by the City's argument that Plaintiffs' conceded Defendants' authority to regulate locally with the mere observation that, "If the Defendants had banned only aversive therapy, your Honor, we wouldn't be here this morning." (Hrg. Tr., pg. 12, lines 18–19, pg. 203, lines 12–20.) Quite obviously, Plaintiffs would not have needed to sue Defendants if they had enacted bans of only aversive treatments because Plaintiffs' talk therapy practices do not include those treatments. (*See supra* Part I.A.) This commonsense observation is by no means an admission that Defendants had the authority to enter the State's field of mental health provider regulation.

J. Plaintiffs Have Satisfied the Remaining Preliminary Injunction Elements.

1. Plaintiffs Have Demonstrated That They Are Suffering Irreparable Injury.

159. As shown above, Plaintiffs are likely to succeed on the merits of their constitutional and preemption challenges to the Ordinances. Given their likelihood of success on their First Amendment claims, the irreparable harm prong of the preliminary injunction standard is satisfied

as a matter of law: "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Indeed, First Amendment violations are **presumed** to impose irreparable injury. *See, e.g.*, *Awad v. Ziriax*, 670 F.3d 1111, 1125 (10th Cir. 2012); *see also* 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* §2948.1 (2d ed. 1995) ("When an alleged constitutional right is involved, most courts hold that **no further showing of irreparable injury is necessary**." (emphasis added)).

2. Plaintiffs Have Demonstrated That Defendants Suffer No Harm from Injunctive Relief and That the Public Interest Favors an Injunction.

160. A law that is like unconstitutional for preliminary injunction purposes is not only presumed to cause irreparable injury, but also *ipso facto* is not in the public interest. *See Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010). Indeed, the inability to punish Plaintiffs and other licensed counselors for engaging in an ethical form of counseling that is desired by their clients "does not outweigh the serious loss of first amendment freedoms." *ACLU of Fla., Inc. v. The Florida Bar*, 744 F. Supp. 1094, 1099 (N.D. Fla. 1990).

161. Defendants suffer no harm by being forced to comply with the dictates of the First Amendment. Importantly, Defendants have **never identified a single person being harmed** within their jurisdictions by any SOCE counseling, let alone voluntary SOCE counseling that the person requests and is willing to receive. Defendants have never received any complaints of any SOCE-related harm to their citizens. Accordingly, Defendants will not suffer any harm if their unconstitutional Ordinances are enjoined. Their citizens were not being harmed prior to the enactment of the Ordinances, and they will not be harmed while a preliminary injunction is in effect.

162. Moreover, as shown above, the Ordinances are unenforceable by Defendants' code officials in any event. Defendants cannot be harmed by an injunction against Ordinances that they lack the capacity or competency to enforce.

163. Protection of First Amendment rights is always in the public interest, while violating First Amendment rights at the whim of ideological opponents does not serve the public. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006).

CONCLUSION

THE COURT having made the foregoing findings of fact and conclusions of law, and being otherwise fully advised, it is hereby,

ORDERED:

164. Plaintiffs' Motion for Preliminary Injunction (DE 8) is GRANTED.

165. Defendants and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them, are hereby enjoined from enforcing the Ordinances during the pendency of this action, or until further order of the Court.

Respectfully submitted,

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

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this November 13, 2018, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Plaintiffs