

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO and JULIE H.
HAMILTON,

Plaintiff,

v.

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

Defendants.

MOTION FOR EXTENSION OF TIME AND FOR PROTECTIVE ORDER

The Defendant, City of Boca Raton (“City”), through undersigned counsel and pursuant to Fed.R.Civ.P. 26(c) and Local Rule 7.1, files this its motion for extension of time to respond to discovery and motion for protective order¹, and states:

1. Pursuant to Court order (ECF 16), the parties agreed to a proposed joint discovery plan in connection with Plaintiffs’ Motion for Preliminary Injunction. Consistent with that proposed plan, the Court imposed a joint discovery plan (ECF 25) that calls for expedited service and responses to discovery related to the Motion for Preliminary Injunction.

2. The City agreed to the expedited discovery schedule as reflected in the proposed joint discovery plan by analyzing the anticipated time that the City and its attorneys had

¹ In connection with codefendant Palm Beach County’s objections to similar untimely discovery requests, Plaintiffs argued that **“The City Defendant has made no such absurd objection.”** (ECF 27 at p. 1; emphasis in original). That representation, made only 5 days after Plaintiffs served the untimely discovery on the City, was obviously premature.

reasonably available to conduct the discovery efforts and prepare for the hearing on the Motion for Preliminary Injunction.

3. Consistent with the Joint Discovery Plan, Plaintiff propounded written discovery on the City on July 17, 2018.

4. However, on July 21, 2018, Plaintiffs propounded substantial, additional written discovery (interrogatories and requests for production) upon the City. A copy of Plaintiffs' "Second Set of Discovery Requests" is attached hereto as Exhibit "A."

5. The City and its attorneys are devoting their available resources to the Motion for Preliminary Injunction and the discovery schedule in connection therewith. The City therefore, by this motion, seeks an extension of time, up through October 20 (15 days after the preliminary injunction hearing) to respond to Plaintiffs' Second Set of Discovery Requests.

6. Plaintiffs will not be prejudiced by the granting of the relief sought herein. Since the written discovery was not issued consistent with the discovery schedule for the Motion for Preliminary Injunction,² it was not served for use at the hearing. There is simply no reason to, at this time, engage in voluminous discovery unrelated to the Motion for Preliminary Injunction.

7. Additionally, pursuant to the Joint Discovery Plan (ECF 25), Plaintiffs were required to serve the City with "topics for Rule 30(b)(6) depositions" by July 17, 2018.

² Notwithstanding Plaintiffs' argument that the additional written discovery was permissible as discovery unrelated to the Motion for Preliminary Injunction schedule, the correspondence that accompanied the Second Set of Discovery Requests belies the contention. *See* Exhibit "A" ("While we do not request or expect responses and document production by the August 10 date in the PI Scheduling Order, we do request and expect responses and document production within the 30 days provided under the applicable rules that is on or before **August 20, 2018**. It is important that we receive these timely, so that we have them in time for Defendants' depositions.") (bold in original; underling supplied).

8. Consistent with the requirements described in Paragraph 7, above, Plaintiffs did, in fact, serve a timely list of 30(b)(6) topics. However, on July 21, 2018, Plaintiffs purported to serve a “First Amended Notice of Taking Depositions, which substantially expanded the list of 30(b)(6) topics. A copy of the Amended Notice is attached hereto as Exhibit “B.” Plaintiffs did not move for relief from the Joint Discovery Plan, or ask the City if it would agree to the untimely action. Instead, Plaintiffs simply chose to ignore the Court’s order (ECF 25). As a result, the City respectfully seeks a protective order, limiting Plaintiffs to the deposition topics timely disclosed (at least until after the hearing on the Motion for Preliminary Injunction).

9. Consistent with the requirements of Local Rule 7.1(a)(3), undersigned counsel certifies that he has conferred with counsel for Plaintiffs in a good faith effort to resolve the issues raised in this motion. Plaintiffs object to the relief sought herein.

WHEREFORE, for the reasons above-stated, the City respectfully requests (1) that it be granted an extension of time until October 20, 2018, to respond to the Request for admissions, interrogatories and requests for production served by the Plaintiffs on July 21, 2018, and (2) that Plaintiffs be limited to the topics for the 30(b)(6) deposition of the City’s representative that were timely served pursuant to this Court’s joint discovery plan.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 30, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing

generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 18-CIV-80771-RLR**

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Patricia Grotto

To: Patricia Grotto
Subject: FW: Otto - Second Set of Discovery Requests & First Amended Notice of Defendants' Depositions
Attachments: Discovery - Second Set Otto to City.pdf; Discovery - Second Set Otto to County.pdf; Notice - First Amended 30(b)(6) Depositions of Defendants.pdf
Importance: High

From: Horatio Mihet <hmihet@lc.org>
Sent: Saturday, July 21, 2018 10:58 AM
To: Anne Flanigan <Aflanigan@wsh-law.com>; Rachel Fahey <RFahey@pbcgov.org>
Cc: Patricia Grotto <PGrotto@wsh-law.com>; Daniel L. Abbott <DAbbott@wsh-law.com>; Jamie Alan Cole <JCole@wsh-law.com>; Monique Sarraff-Ravelo <msarraff@wsh-law.com>; Denise Fishel <DFishel@pbcgov.org>; Melanie Cullen J. <MJCullen@pbcgov.org>; Kim Phan <KPhan@pbcgov.org>; Roger Gannam <rgannam@lc.org>; Lauren Dennis <LDennis@pbcgov.org>
Subject: Otto - Second Set of Discovery Requests & First Amended Notice of Defendants' Depositions
Importance: High

Anne and Rachel:

Please find attached Plaintiffs' First Amended Notice of Taking Depositions of Defendants. For ease of reference, we have bolded the amendments to Topics 9, 10, 11 and 12, and the addition of Topic 13.

Please also find attached Plaintiff Otto's Second Set of Discovery Requests to each of County and City. While we do not request or expect responses and document production by the August 10 date in the PI Scheduling Order, we do request and expect responses and document production within the 30 days provided under the applicable rules, that is on or before **August 20, 2018**. It is important that we receive these timely, so that we have them in time for Defendants' depositions.

Kindly confirm your receipt of this email and attachments.

Finally, per my telephone discussion with Rachel on Friday, we are working to provide suggested search terms and document custodians early in the coming week, hopefully Monday or Tuesday.

I trust you're having an enjoyable weekend,

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*Vice President of Legal Affairs &
Chief Litigation Counsel*
Liberty Counsel
407-875-1776 phone
407-875-0770 fax
www.LC.org ▪ hmihet@LC.org

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

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

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

Plaintiffs,)

v.)

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

Defendants.)

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

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

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

ADDITIONAL INTERROGATORIES

INTERROGATORY 10:

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

RESPONSE:

INTERROGATORY 11:

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

RESPONSE:

INTERROGATORY 12:

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

RESPONSE:

INTERROGATORY 13:

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

RESPONSE:

INTERROGATORY 14:

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

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

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

RESPONSE:

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 25:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 25:

REQUEST FOR PRODUCTION 26:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 26:

REQUEST FOR PRODUCTION 27:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 27:

REQUEST FOR PRODUCTION 28:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 28:

REQUEST FOR PRODUCTION 29:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 29:

REQUEST FOR PRODUCTION 30:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 30:

REQUEST FOR PRODUCTION 31:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 31:

REQUEST FOR PRODUCTION 32:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 32:

REQUEST FOR PRODUCTION 33:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 33:

REQUEST FOR PRODUCTION 34:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 34:

REQUEST FOR PRODUCTION 35:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 35:

REQUEST FOR PRODUCTION 36:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 36:

REQUEST FOR PRODUCTION 37:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 37:

REQUEST FOR PRODUCTION 38:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 38:

REQUEST FOR PRODUCTION 39:

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

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 39:

Respectfully submitted,

/s/ Horatio G. Mihet

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs

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

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

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

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, and the Court's Joint Discovery Plan for Preliminary Injunction Motion ("Joint Discovery Plan") (dkt. 25), Plaintiffs will take the following depositions upon oral examination before a court reporter or some other officer duly authorized by law to take depositions, at the dates, times, and locations shown for the witnesses (or at such other date(s), time(s), and location(s) as to which the parties may mutually agree), for the purpose of discovery or as evidence in this action, which depositions will be recorded by stenographic and audiovisual means:

WITNESS	DATE, TIME	LOCATION
COUNTY OF PALM BEACH, FLORIDA	August 30, 2018 9:00 A.M.	TBD
CITY OF BOCA RATON, FLORIDA	August 31, 2018 9:00 A.M.	TBD

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

DESCRIPTION OF MATTERS FOR EXAMINATION

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

DEFINITIONS

The following definitions apply to the matters for examination below:

- A. “**Minor**” means an individual under eighteen (18) years of age.
- B. As directed to Defendant City of Boca Raton, Florida, the “**Ordinance**” means City of Boca Raton Ordinance 5407, adopted by the City Council of the City of Boca Raton, Florida on October 10, 2017.
- C. As directed to Defendant County of Palm Beach, Florida, the “**Ordinance**” means Palm Beach County Ordinance No. 2017-046, adopted by the Board of County Commissioners of Palm Beach County, Florida on December 19, 2017.
- D. “**SOCE**” means sexual orientation change efforts, including without limitation any counseling, practice, or treatment that assists an individual in changing his or her sexual orientation or gender identity, and further including without limitation any efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex.

MATERS FOR EXAMINATION

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

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

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

4. Any evidence of alleged harm caused by voluntary SOCE counseling for minors within Defendant's jurisdiction who desired, requested, or willingly consented to SOCE counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

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

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

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

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

9. The factual matters disclosed in Defendant's Initial Disclosures, **Defendant's response to Plaintiffs' Complaint (whether by answer, motion or otherwise), and**

Defendant's response to Plaintiffs' Motion for Preliminary Injunction, together with any supporting materials or exhibits thereto.

10. Each subject covered by each Request for Admission, Interrogatory, or Request for Production within Plaintiff Otto's First **and Second** Sets of Discovery Requests to Defendant, served on July 17, 2018 **and July 21, 2018, respectively.**

11. The factual matters disclosed or asserted in Defendant's written responses to Plaintiff Otto's First **and Second** Sets of Discovery Requests to Defendant.

12. Documents produced by Defendant in its Initial Disclosures or in response to Plaintiff Otto's First **or Second** Sets of Discovery Requests to Defendant.

13. The extent to which Defendant regulates: (a) any other clinical practice methods besides SOCE counseling; (b) any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any other professions, professionals or professional conduct, besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d).

/s/ Horatio G. Mihet

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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Attorneys for Defendant City of Boca Raton, Florida

/s/ Horatio G. Mihet

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Attorney for Plaintiffs