UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO.: 9:18-CV-80771-ROSENBERG/REINHART

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

Plaintiffs,

v.

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

Defendants.
_____/

DEFENDANT PALM BEACH COUNTY'S MOTION TO DISMISS
PLAINTIFFS' VERIFIED COMPLAINT, DE 1

I. Introduction

On December 19, 2017, the Palm Beach County Board of County Commissioners ("County") passed Ordinance 2017-046 ("Ordinance"), banning providers from engaging in the practice of seeking to change the sexual orientation or gender identity ("conversion therapy," "sexual orientation change efforts" or "SOCE") of a minor. Two federal circuits have considered and upheld the constitutionality of similar bans, rejecting free speech, free exercise, vagueness, and overbreadth challenges like those brought here. *See Welch v. Brown*, No. 15-16598, 2016 U.S. App. LEXIS 17867, at *13 (9th Cir. Oct. 3, 2016) *superseding* 834 F.3d 1041, 1047 (9th Cir. 2016) *cert. denied* 137 S. Ct. 2093 (2017); *King v. Gov. of N.J.*, 767 F.3d 216 (3d Cir. 2014) *cert. denied*, 135 S. Ct. 2048 (2015); *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014) *cert. denied*, 134 S. Ct. 2871 (2014).[1] The Ordinance is a neutral, generally-applicable regulation of professional conduct that is rationally related to a legitimate governmental interest. Even if this Court disagrees that lesser scrutiny applies, the Ordinance withstands strict scrutiny.

Upon the persuasive authority of *Welch*, *Pickup*, *King*, and others cited herein, and upon the analysis that follows, the County asks this Court to dismiss Plaintiffs' Complaint [DE 1] for flack of standing and failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(1), 12(b)(6). The County structures its arguments in three sections. Section I explains the standing issues in the case. Section II elucidates the constitutionality of the Ordinance. And, Section III addresses the failures of Plaintiffs' Florida state law claims. In support of this motion, the County asks this Court to take judicial notice of and incorporates by reference its charter and the videos and transcripts of the two County Board meetings during which the Ordinance was publicly debated.[2]

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[1] As discussed in greater detail herein, the United States Supreme Court questioned the *King* and *Pickup* analysis of "professional speech" as a separate category of speech, explaining that Supreme Court precedent had not recognized such a category. *See Nat'l Inst. of Fam. & Life Advocates v. Becerra*, ("*NIFLA*"), 138 S. Ct. 2361, 2371 (2018). The *NIFLA* Court reaffirmed its precedents recognizing two circumstances in which "professional speech" was afforded less protection: "commercial speech" and "professional conduct." *Id*. at 2372. However, *NIFLA* did not foreclose the possibility that a rationale existed for treating "professional speech" uniquely. *Id*. at 2375. Nor did it abrogate or call into question the Third and Ninth Circuit holdings concerning professional conduct, free exercise, vagueness and overbreadth.

[2] *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) ("[T]he court may consider a document attached to a motion to dismiss without converting the motion into one for summary judgment if the attached document is (1) central to the plaintiff's claim and (2) undisputed.") (citation omitted);

II. Issues with Standing

A. Plaintiff, Dr. Otto, Lacks Standing to Challenge the County's Ordinance

Plaintiff, Dr. Otto, lacks standing to sue the County because the Ordinance does not apply in Boca Raton where he practices. Standing "'is the threshold question in every federal case' . . . [and] '[i]n the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's [arguments].'" *In re Checking Account Overdraft Litigation*, 780 F.3d 1031, 1038 (11th Cir. 2015) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975); *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005))). For a Plaintiff to have standing to bring suit in federal court, "there must be a causal connection between the injury and the conduct complained of - the injury has to be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Doe v. Pryor*, 344 F. 3d 1282, 1285 (11th Cir. 2003) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Dr. Otto fails this standing test because there is no causal connection between his alleged injury and the County's Ordinance in that the County Ordinance does not apply in the City of Boca Raton where Dr. Otto practices. Dr. Otto "maintains a counseling practice in the City of Boca Raton at Spanish River Counseling Center." DE 1, ¶ 125. The Ordinance applies "within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance in conflict." DE 1-5, 12:27-30.[3]

The City of Boca Raton's "Prohibition of Conversion Therapy on Minors" ordinance (City Ordinance) conflicts with the County Ordinance in that the penalties are different. The City Ordinance provides that "[a]ny person that violates any provision of this article shall be subject to the civil penalty prescribed in section 1-16 [of the Boca Raton Code]. . . ." Section 1-16 of the Boca Raton Code provides for a fine "not exceeding $500.00." The County Ordinance, in contrast, penalizes a first violation of the Ordinance with a fine of $250.00 and a second violation with a fine of $500.00. DE 1-5, 13:26-28. Because of this conflict as to the penalties imposed by the two ordinances, the City Ordinance is in conflict with the County Ordinance, and thus by the terms of the County Ordinance, it does not apply in Boca Raton.

Stahl v. U.S. Dep't of Agric., 327 F.3d 697, 700 (8th Cir. 2003) ("The district court may take judicial notice of public records and may thus consider them on a motion to dismiss.").

[3] Citations to docket entries will cite the page number printed at the top of the document.

In summary, Dr. Otto lacks standing to sue Palm Beach County, on behalf of himself and his minor patients, because there is no causal connection between Dr. Otto's alleged injury and the County Ordinance. Accordingly, Dr. Otto's complaint should be dismissed against the County.

B. Plaintiffs Lack Standing to Bring Claims on Behalf of Patients

Plaintiffs lack standing to bring claims on behalf of their patients because third-party standing will not lie where the ability of the purported patient to protect his or her own interests is not hindered. "The fundamental prerequisite for standing is that the claimant have 'a personal stake in the outcome of the controversy [such] as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf.'" *Larsen*, 780 F.3d at 1038 (quoting *Warth*, 422 U.S. at 498-99 (quotation marks omitted)). A party "'generally must assert his *own* legal rights and interest, and cannot rest his claim to relief on the legal rights or interest of third parties.'" *Id.* at 1038 (quoting *Warth*, 422 U.S. at 499 (emphasis in original)). An exception to this general rule allows for the grant of third party standing "if the party asserting the right has a close relationship with the person who actually possesses the right, and if the possessor of the right is somehow hindered in his ability to protect his own interests . . . ." *Id.* at 1038-39 (citing *Kowalski v. Tesmer*, 543 U.S. 125, 129-30 (2004)).

Plaintiffs fail to allege that their purported patients are in any way hindered in their ability to protect their own interests. The complaint is devoid of even a single allegation concerning their patients' ability to protect their own interests. Moreover, as the *King* court noted, "the fact that minor clients have previously filed suit [to challenge similar laws] bolsters our conclusion that they are not sufficiently hindered in their ability to protect their own interest." *King*, 767 F. 3d 216, 244 (3d Cir. 2014). Counts II, III, V, VII and VIII should be dismissed in so far as they assert claims on behalf of Plaintiffs' patients.

III. The Ordinance is Constitutional

Plaintiffs' constitutional claims, Counts I through V should be dismissed for failure to state a claim upon which relief may be granted. Section III. A., below, addresses Plaintiffs' free speech claims; section III. B., free exercise; and section III. C., over-breadth and vagueness.

A. The Ordinance Does Not Unconstitutionally Abridge Plaintiffs' Freedom of Speech

Counts I (First Amendment right to free speech), II (First Amendment right to receive information), and IV (Florida Constitutional right to liberty of speech) are analyzed together because "[t]he listener's right to receive information is reciprocal to the speaker's right to speak,"

Doe v. Gov. of N.J., 783 F.3d 150, 155 (3d Cir. 2015), and because "Florida courts have generally construed their state constitutional guarantees to be coextensive with their federal counterparts," *Warner v. City of Boca Raton*, 64 F. Supp. 2d 1272, 1295 (S.D. Fla. 1999).

1. The Ordinance Is a Constitutional Regulation of a Professional Practice

"There is no right to practice medicine which is not subordinate to the police power." *Lambert v. Yellowley*, 272 U.S. 581, 587 (1926). "A statute that governs the practice of an occupation is not unconstitutional as an abridgement of the right to free speech, so long as any inhibition of that right is merely the incidental effect of observing an otherwise legitimate regulation." *Locke v. Shore*, 634 F.3d 1185, 1191 (11th Cir. 2011) (citations omitted).[4] The Supreme Court recently reaffirmed this doctrine, stating, "under our precedents, States may regulate professional conduct, even though that conduct incidentally involves speech." *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, ("*NIFLA*"), 138 S. Ct. 2361 (June 26, 2018) (citing *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 456 (1978); *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 884 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ.)).

Analyzing California's SOCE ban, the Ninth Circuit held that the ban was a valid regulation of "professional conduct." *Pickup v. Brown*, 740 F.3d 1208, 1225-1231 (9th Cir. 2014).[5] In so holding, the court reasoned that "the key component of psychoanalysis was the treatment of emotional suffering and depression, *not* speech." *Id.* at 1226 (emphasis original, citation omitted). The *Pickup* Court noted that "[m]ost, if not all, medical and mental health treatments require speech, but that fact does not give rise to a First Amendment claim when the state bans a particular

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[4] *See also Gonzales v. Carhart*, 550 U.S. 124, 158 (2007) ("Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.") (discussing government's restriction of particular method of performing an abortion); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) ("[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.").

[5] Though the Eleventh Circuit in *Wollschlaeger v. Governor*, 848 F.3d 1293, 1309 (11th Cir. 2017) expressed "serious doubts about whether *Pickup* was correctly decided" and noted that "characterizing speech as conduct is a dubious constitutional enterprise," 848 F.3d at 1309, the United States Supreme Court embraced that enterprise as proper constitutional analysis: "[w]hile drawing the line between speech and conduct can be difficult, this Court's precedents have long drawn it and the line is long familiar to the bar," *NIFLA*, 138 S. Ct. 2361 (citations omitted).

treatment." *Id*. at 1229. Otherwise, "any prohibition of a particular medical treatment would raise First Amendment concerns" and that would "restrict unduly the states' power to regulate licensed professionals and would be inconsistent with the principle" that regulating conduct does not abridge free speech "merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Id.* (citing *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949)). The fact that the "treatment may be performed through speech alone" did not alter the conclusion that the therapy is "*treatment ... not* speech." *Id.* at 1230-31 (emphasis original). The *Pickup* Court found that California's SOCE ban regulated "therapeutic treatment," which was not "symbolic" or "expressive speech" and that the ban did not restrain the plaintiffs from "communicating a message," "imparting information or disseminating opinions." *Id*. at 1229-30. Because the ban "regulates a professional practice that is not inherently expressive, it does not implicate the First Amendment." *Id.*[6] Accordingly, the *Pickup* Court applied the same "deferential review" received by "other regulations of the practice of medicine." *Id.* at 1231.

The Ordinance here is a valid regulation of professional conduct, notwithstanding that the covered providers may use speech as part of treatment. The Ordinance provides that it "shall be unlawful for any Provider to **engage** in conversion therapy on any minor regardless of whether the Provider receives monetary compensation in exchange for such services." DE 1-5, 13:21-23 (emphasis added). A "Provider" encompasses **licensed** medical and osteopathic practitioners, psychologists, psychotherapists, social workers, marriage and family therapists, and licensed counselors, as well as those performing counseling as part of their professional training for any of the listed licensed professions. *Id.* at 13:11-16. "Conversion therapy" means "the **practice** of seeking to change an individual's sexual orientation or gender identity ..." *Id.* at 13:1-2.

The Ordinance continues with a list of examples prefaced by "including" – but that list cannot be divorced from the core definition of "conversion therapy," which is the practice of **seeking to change** an individual's sexual orientation or gender identity. *See Massachusetts v. EPA*, 549 U.S. 497, 557 (2007) (discussing the meaning of "including") ("Often, however, the examples standing alone are broader than the general category, and must be viewed as limited in light of that category."). For example, the Ordinance is not a blanket ban on any "efforts to change behaviors."

[6] This conclusion was rejected by *King v. Gov. of N.J.*, 767 F.3d 216, 233 (3d Cir. 2014), which found that conversion therapy was subject to less protection because it was "professional speech." *King*, though it did not have the benefit of *NIFLA*, still reached the right result.

No, "efforts to change behaviors" are only banned if those efforts are "seeking to change an individual's sexual orientation or gender identity." The general principle of "conversion therapy" as a practice that seeks to change an individual is carried forward to the list of examples and limits them accordingly. *See id*. A more expansive reading of the Ordinance, the one Plaintiffs have alleged, *see* DE 1, ¶¶ 4-6, 73-77, 81-82, 99, 105, 107-108, 216, 225, 253 and 262, ignores both the word "including" and the intent of the Ordinance.

The Ordinance is limited in reach. It **does not prohibit**:

- Any non-provider, including religious leaders and clergy, from engaging in any practice that seeks to change a minor's sexual orientation or gender identity,
- Minors from seeking conversion therapy from providers outside of Palm Beach County,
- Any person, including providers, from:
    - speaking to the public about conversion therapy,
    - expressing their views to patients,
    - advertising their practice of conversion therapy,[7]
    - recommending conversion therapy to patients,
    - referring minors to unlicensed counselors, such as religious leaders,
    - providing conversion therapy to persons 18 years of age and older,
    - providing counseling that provides support and assistance to a person undergoing gender transition,
    - providing counseling that provides acceptance, support and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices and does not seek to change an individual's sexual orientation or gender identity.

Plaintiffs may express their views about conversion therapy, including recommending it, to the public and to their patients, even minors. No topic of *discussion* is prohibited. *Pickup*, 740 F.3d at 1231 ("[M]ental health providers free to discuss and recommend ... SOCE... .").

[7] Plaintiffs' claims in paragraphs 166 and 169, that the Ordinance proscribes advertising, is not supported by the text of the ban, which only prohibits the practice of conversion therapy on minors.

Practicing psychotherapy is unlike wearing a black armband or burning an American flag. The practice of psychotherapy is not and should not be inherently expressive for the practitioner. *See Pickup*, 740 F.3d at 1230 ("[T]he administration of psychotherapy is not 'inherently expressive.'"); *see also* Transcript of 12/05/17 Meeting, 49: 22-25, 50:1 ("Ethical clinicians maintain and complete continuing education and consultation to ensure that their political, personal, and religious views are not impressed on to their clients as this impacts their ability to remain objective.") 60:11-14 ("We're trained and we're retrained not to take control, not to impose our personal beliefs on any client. That would be inappropriate."). Plaintiffs' participation in political processes, contribution and access to the marketplace of ideas, and ability to express themselves remains untouched; **only** their therapy **practices** on **minors** are restricted.

The Ordinance bans a type of professional conduct. It prohibits aversive therapy practices, such as providing electric shocks, inducing nausea, and snapping a rubber band on a patient's wrist. It also bans "talk therapy," which Plaintiffs describe as a "tool" they use in their profession. *See* DE 1, ¶¶ 74, 76. Unlike the speech at issue in *NIFLA*, which was "not tied to a procedure at all," here, the provider's words are inextricably tied to the procedure – they are the procedure. Whatever expression Plaintiffs accomplished through performing conversion therapy on minors was merely incidental to the treatment they provide. *See Pickup*, 740 F.3d at 1231 (concluding that "any effect [the SOCE ban] may have on free speech interests is merely incidental."). Because Plaintiffs' speech rights in practicing conversion therapy are implicated "only as part of the practice of medicine," Plaintiffs are "subject to reasonable licensing and regulation" by their local government, the County. *See Casey*, 505 U.S. at 884. The Ordinance is rationally related to a legitimate governmental interest. *See* Section 2. ii., *supra*. (applying strict scrutiny). Accordingly, Counts I, II, and IV should be dismissed for failure to state a cause of action.

2. Even if a Regulation of Speech, the Ordinance Withstands Scrutiny

Though the County maintains that even "talk therapy" is conduct, if this Court determines that the Ordinance does more than incidentally burden protected expression, the appropriate level of scrutiny must be determined. Generally, content-neutral regulations are subject to intermediate scrutiny, while content-based regulations are subject to strict scrutiny. *See Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642 (1994). Below, the County explains (i.) why intermediate scrutiny applies, but then also (ii.) applies strict scrutiny to show that the Ordinance withstands all levels of scrutiny and that Counts I, II, and IV should be dismissed.

i. Intermediate scrutiny applies to the content and viewpoint-neutral Ordinance.

"Government regulation of speech is content based if a law applies to particular speech **because of** the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) (emphasis added). The County's Ordinance bans practices that **seek to change** a minor's gender identity or sexual orientation regardless of the content of the speech implicated by the practices or the provider's ideological basis for those practices. Compare *Virginia v. Black*, 538 U.S. 343 (2003) (ban on cross burning with the intent to intimidate found to be content-neutral because it did "not single out for opprobrium only that speech directed toward 'one of the specified disfavored topics'") with *R. A. V. v. St. Paul*, 505 U.S. 377 (1992) (ban on cross burning with intent to intimidate "**on the basis of** race, color, creed, religion or gender" found to be content-based) (emphasis added) and *Wollschlaeger v. Governor*, 848 F.3d 1293, 1307 (11th Cir. 2017) (ban on discrimination and harassment **based on** gun ownership or possession found to be content based). The Ordinance bans a practice – no matter the **basis** of the practice. As long as providers do not employ a practice that seeks to change a minor's sexual orientation or gender identity, the Ordinance does not prohibit providers from discussing their views on religion, sexuality, gender, and conversion therapy with anyone. Content is not regulated; thus, the Ordinance is content neutral. *See Pickup v. Brown*, 740 F.3d 1208, 1231 (9th Cir. 2014) (finding that the California SOCE ban "did not discriminate on the basis of content or viewpoint").[8]

Furthermore, the Ordinance is viewpoint neutral. *See id.* at 1231. Whether the provider's viewpoint is that heterosexuality or non-heterosexuality is preferable, whether the provider views gender as anatomically determined or not, the Ordinance bans all providers from practices that seek to change a minor's sexual orientation or gender identity, whatever the minor's orientation or identity may be. Unlike the federal regulation prohibiting medical providers from recommending marijuana and expressing the view that marijuana may be helpful, *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002), here, the Ordinance specifies that "Palm Beach County **does not** intend to prevent mental health providers from ... expressing their views to patients [or] recommending SOCE to patients... ." DE 1-5, 11:18-21 (emphasis added). Much like a university's code of ethics prohibiting a counseling student from imposing upon her patients her religious values, including

[8] Alternatively, the Court could find that the ban discriminates "in a way that does not trigger strict scrutiny" because the basis of the content discrimination "is the very reason the entire class of speech at issue is proscribable." *See King v. Gov. of N.J.*, 767 F.3d 216, 236 (3d Cir. 2014).

those regarding the morality of homosexuality, *see Keeton v. Anderson-Wiley*, 664 F.3d 865, 875 (11th Cir. 2011), the Ordinance does not discriminate based on the viewpoint of the provider but prohibits all providers from specified practices. "The prohibition of this method of communicating a particular viewpoint, however, is not the type of viewpoint discrimination with which the First Amendment is concerned." *See King v. Gov. of N.J.*, 767 F.3d 216, 237 (3d Cir. 2014).

As a content and viewpoint-neutral regulation, the Ordinance is entitled to intermediate scrutiny. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017). Just as the Third Circuit found the New Jersey conversion therapy ban to be "sufficiently tailored to survive intermediate scrutiny," this Court should find that the County's Ordinance, which is nearly identical to the New Jersey ban, also withstands such scrutiny. *See King*, 767 F.3d at 240. However, the County applies, without conceding the applicability of, strict scrutiny in the section below, to demonstrate that the Ordinance withstands all levels of constitutional scrutiny.

ii. The Ordinance is narrowly tailored to achieve a compelling governmental interest.

Strict scrutiny requires the County to prove that the Ordinance "furthers a compelling interest and is narrowly tailored to achieve that interest." *See Reed*, 135 S. Ct. at 2231 (citation omitted). The County's charter states that, "[i]t shall be the policy of the County to protect the health, safety and general welfare of all the residents of Palm Beach County. The Board of County Commissioners may adopt appropriate ordinances to accomplish these purposes." *See* Palm Beach County Ordinance 84-8, Charter Art. 3 § 3 (1984). Here, the Ordinance states, "Palm Beach County has a compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and questioning youth, and in protecting minors against exposure to serious harms caused by sexual orientation and gender identity change efforts." DE 1-5, 11:25-28; *see also id.* at 12:15-20. "It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'" *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (citation omitted).

The County found that "conversion therapy" presented an actual problem. The "whereas" clauses of the Ordinance summarize the condemnation of conversion therapy by a number of well-known, reputable professional and scientific organizations, including, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychoanalytic Association, and the American Psychological Association ("APA"). In 2009 an APA task force reported that:

> [they] found no empirical evidence that providing any type of therapy in childhood can alter adult same-sex orientation ... [and] the theories that such efforts are based on have not been corroborated by scientific evidence or evaluated for harm. ... SOCE that focus on negative representations of homosexuality and lack a theoretical or evidence base provide no documented benefits and can pose serious harm through increasing sexual stigma and providing inaccurate information.

DE 1-6, pg 88. This record alone constitutes substantial evidence of the problem. *See King*, 767 F.3d at 238 ("Legislatures are entitled to rely on the empirical judgments of independent professional organizations that possess specialized knowledge and experience concerning the professional practice under review ... ."). But the record does not end there.

At the Board's first meeting on the Ordinance, to expose the lack of a scientific basis for conversion therapy, Rand Hoch advised the Board of a federal case wherein the court would not allow a witness to testify as an expert on conversion therapy. Transcript of 12/05/17 Meeting, 66:11-15; *see also Ferguson v. JONAH*, 2015 N.J. Super. Unpub. LEXIS 236, *31. Commissioner Valeche also read to the Board a statement of the ACLU: "Available research does not support the use of conversion therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons." Transcript of 12/05/17 Meeting, 79:16-22.

At the Board Meetings, practitioners in the field of mental health explained the history, lack of efficacy, and harms of conversion therapy, which included anxiety, distress, confusion, guilt, shame, helplessness, hopelessness, depression, substance abuse, social withdrawal, and self-harm, including suicide. *See id.* at 12:8—14:20, 17:6-17. 50:7-12, 77:8-9; Transcript of 12/19/17 Meeting, 15:5-17:10, 23:3—25:5, 41:8—44:12.[9]

The APA Report summarizes one study in which 50% of the 16 participants receiving conversion therapy reported negative outcomes, including treatment-related anxiety, suicidal ideation, depression, impotence, and relationship dysfunction. DE 1-6, pg. 50-51. The APA Report acknowledges that some individuals perceive that they have been harmed by conversion therapy and others perceive that they have benefitted, with many of the participants from two studies reporting positive experiences first and then acknowledging or experiencing negative effects later. *Id.* at 51. However,

[9] Plaintiff Otto even informs his clients about the "potential benefits and **risks** associated with SOCE counseling." DE 1, ¶ 128 (emphasis added).

> The positive experiences clients report in SOCE are not unique. Rather, they are benefits that have been found in studies of therapeutic relationships and support groups in a number of different contexts. Thus, the benefits reported by participants in SOCE may be achieved through treatment approaches that do not attempt to change sexual orientation.

DE 1-6, pg. 77 (internal citation omitted).

Many of those who spoke at the Board Meetings and described a change in their own or others' sexual orientation credited their religion, religious beliefs, prayer, or God. *See* Transcript of 12/05/19 Meeting, 64:3-6; Transcript of 12/19/17 Meeting, 32:16-25, 36:18-22, 47:13-16, 48:48—49:5. The APA task force reported that, "[g]iven the limited amount of methodologically sound research, claims that recent SOCE is effective are not supported." *See* DE 1-6, pg. 11.

Plaintiffs cite certain statements in the APA Report to attack the County's conclusions about conversion therapy. *See* DE 1, ¶¶ 38-48. But, the law does not require scientific unanimity or conclusive proof to authorize government regulation. *See Collins v. Texas*, 223 U.S. 288, 297-98 (1912) (recognizing the "right of the State to adopt a policy even upon medical matters concerning which there is difference of opinion and dispute"); *King*, 767 F.3d at 239 (3d Cir. 2014) ("[A] state legislature is not constitutionally required to wait for conclusive scientific evidence before acting to protect its citizens from serious threats of harm.").

Here, the government learned of a serious, non-hypothetical threat. Local providers were engaging in "conversion therapy" on minors. *See* Transcript of 12/05/17 Meeting, 17:23—18:2; Transcript of 12/19/17 Meeting, 8:23-25, 46:10-16, 47:13-17, 48:22—49:5. Despite the many reputable organizations' condemnation of the therapy and the harms associated with it, there were no sanctions or penalties for those who continued to practice it. *See* Transcript of 12/05/17 Meeting, 15:12-21. And, the County was advised of two complaints of children regarding conversion therapy. *See id*. at 65:15-21; Transcript of 12/19/17 Meeting, 64:22-25, 79:23-80:25.

The possible under-representativeness of these two complaints was acknowledged. Commissioner Berger shared an example she read in an article wherein it took four years for a 19 year old to speak out about what happened to him in conversion therapy. *See* Transcript of 12/19/17 Meeting 86:20-25. Commissioner Berger explained her "strong feeling" that "there's a young man or young lady who **wants** to come forward with a complaint." *See id.* at, 87:3-8 (emphasis added). Stating that such a young man or lady "should be able to" come forward with a complaint, Commissioner Berger supported the County's ban of conversion therapy. *Id*. at 87:4-13.

Given the lack of a scientific basis for conversion therapy; the number of national mental-health associations condemning conversion therapy; the lack of empirical support for the claims of conversion-therapy benefits; the possibility that the benefits, if any, may be achieved through treatment approaches that do not attempt to change sexual orientation; the fact that conversion therapy on minors, at best, has not been evaluated for harm and, at worst, can cause significant physical and psychological harm; the time it takes some psychological harms to manifest or be reported; the vulnerability and susceptibility of minors to social and familial pressures to conform with the desires of authority figures; the inappropriateness of therapists imposing their beliefs on patients; the number of local practitioners who told the Board that the conversion therapy ban would restrict their practices; the existence of two Palm Beach County children who were being subjected to conversion therapy; and the threat of harm licensed practitioners may be inflicting on minors who may not now know what damage is being done to them justifies the County's narrow curtailment of speech by licensed professionals practicing "talk [conversion] therapy."

The Ordinance is narrowly tailored to prohibit only:

- the **practice**, as opposed to any discussion or recommendation,
- of **conversion therapy**, which seeks to change (not, "discusses" or "touches upon") an individual's sexual orientation or gender identity,
- by **licensed providers**, who would be the only ones able to hold themselves out as practitioners of a scientific method licensed by the State of Florida,
- on **minors**, "whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely."[10]

Rather than banning conversion therapy on minors altogether, Plaintiffs argue that the County should have instead compelled certain informed-consent disclosures. *See* DE 1, ¶¶ 191, 237.[11] Compelling providers to tell clients, for example, that the therapy they will receive has been condemned and questioned, lacks scientific efficacy, and may cause them significant harm might sufficiently inform an adult's consent. But, minors are not yet adults.

[10] *See Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990).
[11] Informed consent, Plaintiffs admit, is already required. *See id*. at ¶ 92.

As Shannon Otto put it:

> We have an age of consent law in our state because we, as adults, know that children do not have mental capacity to consistently make wise choices about sexual practices with lifelong consequences. That fact is grounded in science of brain development, specifically the development of the prefrontal cortex which gives us the ability to reason.

Transcript of 12/05/17 Meeting, 23:6-13. "Children and adolescents are often unable to anticipate the future consequences of a course of action and are emotionally and financially dependent on adults." DE 1-6, pg 86. Additionally, "hostile social and family attitudes" are among the reasons some seek conversion therapy. *Id*. at 17. In light of the immaturity, inexperience, lack of judgment, and emotional and financial dependence of minors, the County's concern about the competence of the minor and the voluntariness of the consent cannot be addressed by a mandatory-disclosure requirement, no matter how informative. Nor would such disclosure requirements address the County's interest in preventing minors from being harmed by conversion therapy. *See King v. Gov. of N.J.*, 767 F.3d 216, 240 (3d Cir. 2014) (finding that "an informed consent requirement could not adequately ensure that only those minors that could benefit would agree to move forward").

Because the County's Ordinance withstands intermediate and strict scrutiny, Counts I, II, and VI should be dismissed with prejudice.[12]

B. The Ordinance Does Not Infringe on Plaintiffs' Rights to Freely Exercise Religion

Counts III (First Amendment right to free exercise of religion) and V (Florida Constitutional right to free exercise and enjoyment of religion) are analyzed together because Florida's "state constitutional guarantees" are generally "coextensive with their federal counterparts." *Warner v. City of Boca Raton*, 64 F. Supp. 2d 1272, 1295 (S.D. Fla. 1999); *see also Warner v. City of Boca Raton*, 267 F.3d 1223, 1226 n.3 (11th Cir. 2001) (noting that the Florida Constitution "suggests that it affords less absolute protection"). Counts III and V fail to state a claim upon which relief may be granted and should be dismissed. *See Welch v. Brown*, No. 15-16598, 2016 U.S. App. LEXIS 17867, at *13 (9th Cir. Oct. 3, 2016) (finding SOCE ban did not

[12] Plaintiffs' "prior restraint" claims, in paragraphs 185 and 231, are unsupported by factual allegations to show that the "peaceful enjoyment" of their alleged First Amendment freedoms are "contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official." *See Staub v. City of Baxley*, 355 U.S. 313, 322 (1958). No such permit or license scheme exists here. Plaintiffs' "prior restraint" claims thus warrant no further analysis and should be dismissed.

violate free exercise clause); *King*, 767 F.3d at 243 (same).

> '[T]he threshold questions in analyzing a law challenged under the Free Exercise Clause are (1) is the law neutral, and (2) is the law of general applicability?' The neutrality inquiry asks whether 'the object of a law is to infringe upon or restrict practices because of their religious motivation.' The general applicability prong asks whether the government has 'in a selective manner impose[d] burdens only on conduct motivated by religious belief.' '[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.' Rather, it needs only to survive rational basis review, under which ... it is presumed constitutional and the burden is on the plaintiff to prove that it is not rationally related to a legitimate government interest.

Keeton v. Anderson-Wiley, 664 F.3d 865, 879-80 (11th Cir. 2011) (internal citations omitted).

The Ordinance is facially neutral. It makes no explicit reference to any religion or religious beliefs. The object of the Ordinance is also religiously neutral: to prevent harm to minors, caused by licensed practitioners. Examining the exceptions of the Ordinance does not reveal a "religious gerrymander." *See King v. Gov. of N.J.*, 767 F.3d 216, 242 (3d Cir. 2014) ("None of these five 'exemptions,' however, demonstrate that [the SOCE ban] covertly targets religiously motivated conduct."). The affirmative practices permitted by the Ordinance are recommended by the APA. *See* DE 1-6, pg. 95-96. There is no indication that the practices exempted from the Ordinance present the same harms to minors. Moreover, the exception allowing non-providers, including religious leaders and clergy, to provide conversion therapy to minors disproves any notion that the Ordinance targets religiously-motivated conduct.

The Ordinance is also generally applicable. It proscribes the same conduct of all providers, regardless of the motivation of the provider or client. *See* Section III. A. 2. i., *supra*. The record indicated that some may be motivated to receive conversion therapy due to culture, *see* Transcript of 12/05/17 Meeting, 34:2-11, or "hostile social and family attitudes," DE 1-6, pg 17. That religious beliefs may be a reason others, even a majority, seek to receive or provide conversion therapy is not determinative. "The Free Exercise Clause is not violated even if a particular group, motivated by religion, may be more likely to engage in the proscribed conduct." *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1077 (9th Cir. 2015) (citation omitted).

Plaintiffs allege that the Ordinance prevents them from "offering, referring, and receiving counseling that is consistent with their religious beliefs." *See* DE 1, ¶ 216. These allegations are contradicted by the Ordinance. Plaintiffs may offer conversion therapy to anyone who is 18 years

of age or older. Plaintiffs may recommend "conversion therapy" to anyone and may refer minors to unlicensed counselors, such as religious leaders, who may provide conversion therapy. Also, Plaintiffs, being adults, may receive conversion therapy in Palm Beach County. Burdening Plaintiffs' religion is not the object of the Ordinance, but merely, if anything, the incidental effect of an otherwise neutral, generally applicable, and valid law.

Plaintiffs believe that they should counsel clients on the subject of same-sex attractions that aligns with their and their clients' religious beliefs.[13] *Id*. at ¶ 215. Whether motivated by religion or otherwise, patients do not have a right to receive a specific type of treatment, or to receive a treatment from a specific type of provider. *See Connecticut v. Menillo*, 423 U.S. 9, 11 (1975) (finding no right to an abortion by a non-physician); *Mitchell v. Clayton*, 995 F.2d 772, 775 (7th Cir. 1993) ("[M]ost federal courts have held that a patient does not have a constitutional right to obtain a particular type of treatment or to obtain treatment from a particular provider if the government has reasonably prohibited that type of treatment or provider."). Plaintiffs' right to provide licensed counseling or therapy is not free from government regulation. Just as the government may limit entry into the field of professional counseling altogether without unconstitutionally burdening First Amendment rights, the government may also regulate professional conduct so long as it has a rational basis to do so. *See* Section III. A. 1., *supra*.

Because it is neutral and generally applicable, the Ordinance should be upheld as satisfying rational basis review. Assuming *arguendo* that strict scrutiny applied, the Ordinance also passes such muster. *See* Section III. A. 2. i., *supra*. Accordingly, Counts III and V should be dismissed for failing to state a violation of Plaintiffs' right to freely exercise their religion.

C. The Ordinance Is neither Vague nor Overly Broad

1. The Ordinance Is Not Void for Vagueness

In paragraphs 96 through 110, Plaintiffs identify their "vagueness problems" with the Ordinance. The confusion described in these paragraphs, particularly 108 and 110, can be answered by reading the Ordinance: only practices seeking to change the minor's sexual orientation or gender identity are banned. The difficulty of measuring or defining sexual

[13] Plaintiffs only state that their beliefs are informed by the Bible. Complaint, ¶¶ 216, 253. They do not explicitly state what those beliefs are. Plaintiffs state that some of their clients believe that same sex attractions are wrong, but Plaintiffs do not state that they share that belief in their constitutional counts. *Id*. at ¶ 214. Plaintiffs make that allegation in Count VII. *See id*. at ¶ 302.

orientation or gender identity presents no problem to a provider who is not seeking to change orientation or identity. *See also Pickup v. Brown*, 740 F.3d 1208, 1234 (9th Cir. 2014) ("Moreover, courts have repeatedly rejected vagueness challenges that rest on the term 'sexual orientation.'") (citations omitted). The Ordinance does not prohibit the counseling of minors who are seeking to change; nor does the Ordinance prohibit a minor from changing. The Ordinance disallows providers from engaging in practices that seek to change a minor's gender identity or sexual orientation. Providers may still provide acceptance, support, and understanding of any minor so long as the practice is not seeking to change the minor's sexual orientation or gender identity.

Both Plaintiffs know what practices of theirs would violate the Ordinance. Dr. Hamilton alleges that the Ordinance makes "a portion of [her] practice illegal ... ." DE 1, ¶ 161; *see also id.* at ¶ 162-164, 168, 170-171. Dr. Otto alleged that his "practice includes voluntary SOCE counseling of minors..." *Id.* at ¶ 126; *see also id.* at ¶¶ 127-130, 162-164, 168, 170-171. Dr. Otto provides his clients with an "informed consent form [that] outlines the nature of SOCE counseling, explains the controversial nature of SOCE counseling, ... and informs the client of the potential benefits and risks associated with SOCE counseling." *Id.* at 128. The attachments to the complaint, DE 1-6, 1-7, and 1-8, demonstrate that SOCE is a discrete practice in Plaintiffs' field.

The Third Circuit analyzed a nearly identical ban of conversion therapy in *King* and rejected the plaintiffs' argument that the banned practice was unconstitutionally vague. *King*, 767 F.3d at 240. Here, as in *King*, the banned conduct is sufficiently clear to pass constitutional muster where the therapy is a discrete practice within the profession, has been the target of public statements by professional organizations, and is both familiar to and practiced by Plaintiffs. *Id.* at 240-41. Accordingly, the Court should dismiss Plaintiffs' vagueness claims in Counts I and IV. *See id.*; *see also Pickup*, 740 F.3d at 1233 ("SB 1172 is not void for vagueness.").

2. The Ordinance Is Not Unconstitutionally Overbroad

Plaintiffs' overbreadth argument rests on the claim that the Ordinance bans therapy that has "the potential to help minors reduce or eliminate their unwanted same-sex attractions, behaviors, or identity." DE 1, ¶ 246; *see also id.* at ¶ 200. "This argument, however, is nothing more than a disagreement with [the County's] empirical judgments regarding the effect of SOCE counseling on minors." *See King*, 767 F.3d at 241. As discussed in Section III. A. 1., *supra*, several avenues of communication and expression about conversion therapy remain open to Plaintiffs; Plaintiffs are only banned from engaging in conversion therapy on minors. The Ordinance, which

regulates conduct of licensed practitioners and is narrowly tailored to advance a compelling governmental interest, is not overbroad. *See id*.; *Pickup*, 740 F.3d at 1235. Plaintiffs' claims of overbreadth in Counts I and VI should be dismissed.

IV. Florida State Law Claims

A. Preemption

Count VI of Plaintiffs' complaint should be dismissed because the Florida Legislature has neither expressly nor impliedly preempted the County from legislating in the area of regulation of mental health care providers. To the contrary, the United States Supreme Court and the Florida Legislature recognize the role of local government in protecting the health, safety, and welfare of the public, including minors. "[T]he regulation of health and safety matters is primarily, and historically, a matter of local concern." *Hillsborough Cty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985).

The Florida Legislature has not expressly preempted counties from regulating in the area of mental health care providers. Express preemption requires a specific legislative statement that cannot be implied or inferred, and must be accomplished by clear language stating an intended preemption. *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (citing *City of Hollywood v. Mulligan*, 935 So. 2d 1238, 1243 (Fla. 2006)). Plaintiffs do not allege a specific legislative statement or clear language stating a preemption of local governments in the area of regulation of mental health care providers, nor can they. No such statement exists.

Florida's implied preemption doctrine is "severely restricted and strongly disfavored . . . ." *Exile v. Miami-Dade County*, 35 So. 3d 118, 119 (Fla. 3d DCA 2010). Courts "must be careful and mindful in attempting to impute intent to the Legislature to preclude a local elected governing body from exercising is home rule powers." *D'Agastino v. City of Miami*, 220 So. 3d 410, 421 (Fla. 2017) (citing *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996). "The test for implied preemption requires [courts] look 'to the provisions of the whole law, and to its object and policy.'" *D'Agastino,* 220 So. 3d at 421 (quoting *Browning*, 28 So. 3d at 886).

Examination of the "whole law" regarding regulation of health care providers reveals that the Florida Legislature expressly recognized that local governments will legislate in the area of regulating mental health care providers. Section 456.003(2)(b), Florida Statutes (2017), expresses the legislature's intent to allow the Florida Department of Health to enact regulations applicable

to marriage and family therapists "for the preservation of the health, safety, and welfare of the public under the police powers of the state . . . when . . . *[t]he public is not effectively protected by other means, including, but not limited to,* other state statutes, *local ordinances*, or federal legislation." § 456.003(2)(b), Fla. Stat. (2017) (emphasis supplied). Given the Legislature's express recognition that local governments may enact ordinances to protect the health of their citizens by regulating marriage and family therapists, there is no support for Plaintiffs' claimed implied preemption by the Florida Legislature in this case. Count VI of Plaintiffs' complaint should be dismissed.

B. The Florida Patient's Bill of Rights and Responsibilities

In Count VII, Plaintiffs claim that the Ordinance violates their rights under the Florida Patient's Bill of Rights and Responsibilities (FPBRR), section 381.026, Florida Statutes. Plaintiffs specifically rely on subsections (4)(d)(1), "A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment," and (4)(d)(3):

> A patient has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments, in accordance with the provisions of s. 456.41.

§ 381.026(4)(d)(1), (3), Fla. Stat. (2017).[14]

Count VII should be dismissed for four reasons. First, the FPBRR recognizes rights of **patients**, which Plaintiffs are not. Second, even if Plaintiffs had standing to bring a claim on behalf of patients, which the County does not concede, the FPBRR does not create a private cause of action. § 381.026(3), Fla. Stat. (2017) ("This section shall not be used for any purpose in any civil ... action and neither expands nor limits any rights or remedies provided under any other law.").

Third, the FPBRR, section 381.026, Florida Statutes, including section (4),[15] pertains to a "health care provider," defined by the statute as "a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, or a podiatric physician licensed under chapter 461. Plaintiffs are licensed marriage and family therapists, DE 1, ¶¶ 14-15, 122, 140, who receive

[14] Interestingly, subsection (4)(d)(3) has no corollary in the "Summary of the Florida Patient's Bill of Rights and Responsibilities," though subsections (4)(d)(1) and (2) do. *See* § 381.026(6).

[15] Subsection (4) specifically states that "Each health care facility or provider shall observe the following standards:"

their licenses pursuant to chapter 491, and are not included in this definition.

Only subsection (4)(d)(3) includes a reference to a "health care practitioner." That singular reference cannot be read to expand the scope of the FPBRR to all "health care practitioners." The plain reading of section (4) is a requirement that health care facilities and providers, not Plaintiffs, respect certain patient rights. At the very least, the reference to "practitioners" in (4)(d)(3), is not incorporated by, and therefore does not apply to, any other subsection of the FPBRR.

Fourth, even if the definitions of section 456.41 were incorporated by reference in to subsection (4)(d)(3) of the FPBRR, the provisions of those sections do not apply to this case for two similar reasons. One, the provisions expressly apply to "complementary or alternative health care treatment," which is defined as "any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods associated with the services provided by a health care practitioner." § 456.41(2)(a), Fla. Stat. (2017). And, Plaintiffs do not allege that SOCE or conversion therapy **is** a "complementary or alternative health care treatment." *See* DE 1, ¶ 289. Two, the intent of the provision regarding complementary or alternative health care treatments is "that citizens be able to make informed choices for any type of health care they deem to be an effective option for treating human disease, pain, injury, deformity, or other physical or mental condition." § 456.41(1). And, Plaintiffs do not allege that sexual orientation or "unwanted same-sex attractions, behaviors, or identity" is a "human disease, pain, injury, deformity, or other physical or mental condition." *See, e.g.*, DE 1, ¶ 80 ("The presumption of the Ordinance that SOCE counseling and Plaintiffs view of homosexuality as an 'illness' does not reflect the truth of such counselling ... ."). Accordingly, Count VII should be dismissed with prejudice for failure to state a claim upon which relief may be granted.

C. Religious Freedom Restoration Act

Count VIII fails to state a claim under the Florida Religious Freedom Restoration Act ("FRFRA"), section 761.03, Florida Statutes, because Plaintiffs fail to allege a substantial burden on their religion. "[A] substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires." *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004). The inquiry is "whether a particular religious practice is obligatory or forbidden." *Id*.

Plaintiffs believe they "should" counsel minors "from a religious viewpoint that aligns with their religious beliefs and those of their clients." DE 1, ¶ 303. They claim they are prohibited

"from offering, referring, and receiving[16] counseling that is *consistent* with" – not "that is *required by*" – "their religious beliefs." *Id*. at 304 (emphasis added). Plaintiffs do not allege that their religion requires *licensed* practitioners to engage in practices that seek to change a *minor's* sexual orientation or gender identity. Moreover, the Ordinance only restricts when Plaintiffs may engage in conversion therapy (during the time of a client's minority) and only permits – it does not compel – affirmative therapy. Because Plaintiffs have not alleged a substantial burden on their religion, they have failed to state a FRFRA claim, and Count VIII should be dismissed. *See, generally, Freeman v. Dep't of High. Saf. & Motor Vehs.*, 924 So. 2d 48, 57 (Fla. 5th DCA 2006) (a plaintiff's veiling practice was "merely inconvenienced" by the DMV requirement that she take off her veil to take a photo for an ID card where her religion made such exceptions to the veiling practice); *McGlade v. State*, 982 So. 2d 736, 738 (Fla. 2d DCA 2008) (dealing with a FRFRA criminal defense) ("Although the McGlades offered proof that their involvement in the home birth was substantially motivated by their religious beliefs, they offered no evidence to demonstrate that the midwifery licensure law substantially burdened the exercise of their religion.").

Alternatively, to the extent the Court finds that Plaintiffs have stated a substantial burden on religion, the Court should dismiss Count VIII on the basis that the Ordinance is narrowly tailored to only prohibit providers from engaging in the practice of seeking to change a minor's sexual orientation or gender identity, which is the harm the County sought to remedy and satisfies strict scrutiny, *see* Section III. A. 2. ii., *supra*.

WHEREFORE, the County asks this Court to dismiss Plaintiffs' Complaint [DE 1] in its entirety for lack of standing failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(1), 12(b)(6). If this motion is denied, the County requests twenty-one (21) days from the date of the Court's order to answer the Complaint. The County seeks any and all other relief the Court deems just and proper.

[16] As discussed in Section III. B., *supra*, this allegation is overstated and contradicted by the ordinance. Plaintiffs are only prohibited in engaging in conversion therapy on minors.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 1, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to the authorized CM/ECF filers.

/s/ Rachel Fahey
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