

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

ROBERT W. OTTO, et al.,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	INJUNCTIVE RELIEF SOUGHT
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
et al.,)	
)	
Defendants.)	

**JOINT DISCOVERY MEMORANDUM
FOR AUGUST 28, 2018 DISCOVERY HEARING**

Plaintiffs and Defendant County of Palm Beach, Florida, pursuant to the Court’s Paperless Order of August 23, 2018 (DE 61), jointly submit this join discovery memorandum.

POSITION OF DEFENDANT PALM BEACH COUNTY

On August 20, 2018, Plaintiffs Julie Hamilton and Robert Otto served their objections and responses to Palm Beach County’s (“County”) preliminary injunction interrogatories. Attached as Exhibit “A” is Plaintiff Julie H. Hamilton’s, PH.D., LMFT’s Objections and Responses to the Preliminary Injunction Interrogatories of Defendant Palm Beach County. Attached as Exhibit “B” is Plaintiff Robert W. Otto’s, PH.D., LMFT’s Objections and Responses to the Preliminary Injunction Interrogatories of Defendant Palm Beach County. The County takes issue with Plaintiffs’ responses and objections to the County’s interrogatories and states the following:

INTERROGATORIES # 3, 4, 11, 12, 19-22

Plaintiffs make identical improper objections to the County’s interrogatories 3, 4, 11, 12, 19-22 by invoking the Fifth Amendment privilege. Contrary to Plaintiffs’ assertion, violation of the County’s Ordinance 2017-046 (“Ordinance”) is not a violation of a crime. DE 1-5. Section 6 of the Ordinance states that a violation will be prosecuted in the same manner as a misdemeanor pursuant to section 125.69, Florida Statutes, but the Ordinance does not specify that the offender would be guilty of a misdemeanor. See Op. Att’y Gen. Fla. 1995-25 (April 6, 1995) (“while the prosecution of code violations may be carried out in the same manner as the prosecution of a misdemeanor, the Legislature no longer characterizes such a violation as a misdemeanor”); Lee v. Ferraro, 284 F.3d 1188 (11th Cir. 2002) (the prospect of *incarceration* makes violating an ordinance a crime); §775.08(4), Fla. Stat. (“The term “crime” shall mean a felony or

misdemeanor.”). Furthermore, the only penalty for violation of the Ordinance is a civil penalty fine of \$250.00 for the first violation and \$500.00 for each repeat violation without any possibility or threat of imprisonment. “[T]he Fifth Amendment's privilege against self-incrimination ‘permits a person not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future *criminal* proceedings.’” See Doe v. Epstein, 2009 U.S. Dist. LEXIS 139535, *9 (S.D. Fla. August 4, 2009) (Emphasis added). The privilege solely protects against giving testimony leading to the infliction of “penalties affixed to . . . *criminal* acts.” Kastigar v. U.S., 406 U.S. 441, 454 (1972) (Emphasis added). Invoking the Fifth Amendment privilege requires a demonstration that answering the discovery requests would realistically and necessarily furnish a link in the chain of evidence needed to prove a crime against him. Doe, 2009 U.S. Dist. LEXIS at *19. (party must show a substantial and real threat of criminal prosecution). Therefore, Plaintiffs cannot invoke the Fifth Amendment privilege for fear of violating the Ordinance when violation of the Ordinance is not a crime and there is no threat of criminal prosecution.

Additionally, for interrogatories 20 and 21, Plaintiffs assert psychotherapist-patient privilege and states that too much patient identifying information would be disclosed by responding to the interrogatories. However, the County informed Plaintiffs’ counsel via email and teleconference, on August 22, 2018, that the County would accept “Doe #” as a substitute for patient’s initials; similar to Plaintiffs’ responses in interrogatory 22, but Plaintiffs refused. Plaintiffs should provide the requested information with the “Doe #” substitute and any claims of privilege has been waived per Plaintiffs’ response with “Doe #” information for interrogatory 22.

INTERROGATORY # 19

Plaintiffs object to interrogatory 19 on the basis that it is premature and not directed toward the harm that must be shown at the preliminary injunction hearing, irreparable harm. Plaintiffs claim that irreparable harm is established if they show a substantial likelihood of success on the merits of their First Amendment claims. The County takes two issues with this analysis. First, irreparable harm is only presumed with respect to a First Amendment violation if Plaintiffs establish “an imminent likelihood that pure speech will be chilled or prevented altogether.” See Siegel v. LePore, 234 F.3d 1163, 1178 (11th Cir. 2000). Interrogatories 19-21 seek to determine whether the passage of the Ordinance in fact chilled or prevented Plaintiffs from engaging in

practices prohibited by the Ordinance. The County must be permitted to attempt to rebut Plaintiffs' claim of a presumptive irreparable harm.

Second, although Plaintiffs assert in their answers to interrogatory 19 that the alleged constitutional violation is the primary harm the lawsuit seeks to redress, they seek actual damages (DE 1, p. 58) and base their motion for preliminary injunction not only on the First Amendment but also on Florida statutes (DE 8, p. 17). Should this Court find no substantial likelihood of success on the merits of Plaintiffs' First Amendment Claims, but on other claims, a preliminary injunction still should not issue if the Court determines that Plaintiffs' harm is reparable. Interrogatory 19 aims to discover the Ordinance's financial impact upon Plaintiffs. The calculability of this impact, if any, and the "possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." See Sampson v. Murray, 415 U.S. 61, 90 (1974).

PLAINTIFFS' POSITION

INTERROGATORIES # 3, 4, 11, 12, 19-22

Plaintiffs' invocation of the Fifth Amendment privilege is necessary and appropriate because a violation of the Ordinance is in the nature of a crime, and the consequence of a violation is punitive. "[T]he question whether a particular statutorily defined penalty is civil or criminal is a matter of statutory construction." *United States v. Ward*, 448 U.S. 242, 248 (1980). This is a two-step inquiry. First, a court must determine whether the legislative body "in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." *Id.* Second, even where the legislative body "has indicated an intention to establish a civil penalty," a court must put form over substance and determine whether the law is punitive. *Id.* at 248-49. Under either inquiry, the Ordinance is in the nature of a crime.

The County enacted the Ordinance expressly to be "prosecuted in the same manner as misdemeanors are prosecuted." (DE 1-5 at 6.) Moreover, violations are to be "punished" by monetary fines. (*Id.*) The County, by the Ordinance's plain language, has expressly "indicated . . . a preference" for a criminal label. Furthermore, even if the "misdemeanor" and "punish[]" language were ambiguous, the Ordinance provides no remedial or other purpose for collection of the monetary penalties which could evidence a purely civil intent.

The County's citation of *Op. Att'y Gen. Fla. 1995-25* (April 6, 1995) (copy attached hereto as Exhibit "C") is surprising, and borderline dishonest. Contrary to the County's argument, the

opinion actually provides that counties **may** elect to invoke Fla. Stat. § 162.21 and designate certain ordinance violations as civil infractions with civil penalties, but it also provides that Fla. Stat. § 125.69 otherwise requires ordinance violations to be prosecuted in the same manner as misdemeanors. The County retained the misdemeanor language of Fla. Stat. § 125.69 in the Ordinance, and even cited to the statute as authority for its Code Enforcement Officers to enforce the Ordinance. (DE 1-5 at 6.) The County cannot now come to this Court and claim the Ordinance is civil when the County utterly failed to designate it as such to invoke the option of Fla. Stat. § 162.21.

INTERROGATORY # 19

The County's discovery requests are each designated as "Preliminary Injunction" requests. Accordingly, only discovery relating to Plaintiffs' and the County's respective preliminary injunction burdens is in view. While Plaintiffs have the burden of demonstrating irreparable harm at the preliminary injunction stage, Plaintiffs have no burden to demonstrate the absence of reparable or compensable harm. Moreover, Plaintiffs cannot negate the presence of irreparable harm by proving the existence of reparable or compensable harm. Accordingly, the County's monetary damage discovery requests are premature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this August 27, 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

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,)	INJUNCTIVE RELIEF SOUGHT
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
and COUNTY OF PALM BEACH,)	
FLORIDA,)	
)	
Defendants)	

**PLAINTIFF JULIE H. HAMILTON, PH.D., LMFT’S OBJECTIONS AND RESPONSES
TO THE PRELIMINARY INJUNCTION INTERROGATORIES OF
DEFENDANT PALM BEACH COUNTY**

Pursuant to Fed. R. Civ. P. 26 and 33, and Local Rule 26.1, Plaintiff Julie H. Hamilton, Ph.D., LMFT (“Hamilton”), by and through counsel, hereby provides the following responses and objections to Defendant County of Palm Beach’s Preliminary Injunction Interrogatories. Hamilton hereby reserves all objections to the relevance, use or admissibility of any of these Interrogatories and responses. Subject to the foregoing, Hamilton objects and otherwise responds as follows:

1. Please state the name and address of the person or persons answering these interrogatories and if applicable the official position or relationship with the party to whom the interrogatories are directed.

RESPONSE: The person providing the substantive information disclosed in these interrogatory responses, and verifying them under oath, is Plaintiff Julie H. Hamilton, who may be contacted through her undersigned counsel. The objections to these interrogatories are made by the undersigned counsel.

2. Explain the legal basis for your assertion that a minor can legally undergo gender reassignment surgery and breast augmentation without the consent of a parent or legal guardian.

OBJECTION: Hamilton objects to this Interrogatory because it misstates Hamilton's positions. Hamilton further objects to this interrogatory because it expressly calls for a legal conclusion. Hamilton is not a lawyer. The "legal basis" for her positions is provided by her counsel in briefs, and is not a proper subject of interrogatories to Hamilton.

3. Describe in detail everything you included when you sought the informed consent of a minor to conduct any therapeutic practice that seeks to change the minor's sexual orientation or gender identity.

OBJECTIONS: Hamilton objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Hamilton's speech or conduct after the enactment of the Ordinance in suit, Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance. Hamilton will therefore respond to the Interrogatory as if limited to her speech or conduct prior to the enactment of the Ordinance.

Hamilton further objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to "describe in detail everything" she says or does on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to what Hamilton generally says or does, or wishes to say or do, on the requested topic. To the extent Hamilton provides examples, they are not exhaustive or inclusive of "everything" Hamilton says or does, or wishes to say or do, in every context. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Hamilton does not "conduct any therapeutic practice" as if it is something "done" to a client. Hamilton's practice involves only 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.

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, Hamilton discusses the reasons why the client desires such counseling. Hamilton explains that there are no absolute guarantees in mental health counseling. Hamilton explains that behavior and thoughts are changeable, but that there is no guarantee feelings or attractions will always change. 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.

4. Describe in detail everything you included when you sought the informed consent of a minor to conduct any therapeutic practice that seeks to reduce or eliminate “unwanted same-sex attractions or behaviors.”

OBJECTIONS: Hamilton objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Hamilton’s speech or conduct after the enactment of the Ordinance in suit, Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance. Hamilton will therefore respond to the Interrogatory as if limited to her speech or conduct prior to the enactment of the Ordinance.

Hamilton further objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to “describe in detail everything” she says or does on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to what Hamilton generally says or does, or wishes to say or do, on the requested topic. To the extent Hamilton provides examples, they are not exhaustive or inclusive of “everything” Hamilton says or does, or wishes to say or do, in every context. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Hamilton does not “conduct any therapeutic practice” as if it is something “done” to a client. Hamilton’s practice involves only 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.

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, Hamilton discusses the reasons why the client desires such counseling. Hamilton explains that there are no absolute guarantees in mental health counseling. Hamilton explains that behavior and thoughts are changeable, but that there is no guarantee feelings or attractions will always change. 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.

5. Describe in detail everything you wish to be able to say outside of a therapy session that you contend is prohibited by the County's ordinance.

OBJECTIONS: Hamilton objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to "describe in detail everything" she wishes to say or do on the requested subject. This is impossible to do in an interrogatory response, particularly where the Interrogatory purports to ask about every situation "outside of a therapy session" that Hamilton would ever find herself in, or every speech, communication, presentation or interaction "outside of a therapy session" that Hamilton would ever participate in. Hamilton will therefore respond to the Interrogatory as if limited to what Hamilton generally might wish to say in some instances outside of a formal therapy session. To the extent Hamilton provides examples, they are not exhaustive or inclusive of "everything" Hamilton wishes to say in every context. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

Hamilton further objects to this Interrogatory because it calls for a legal conclusion. Hamilton is not a lawyer, but will provide her understanding of how the Ordinance, which is vague and ambiguous, appears to work in some instances.

RESPONSE: Hamilton notes that, according to the Ordinance, so-called "conversion therapy" – which Hamilton has never used to describe her practice and knows of no other licensed mental health professional who employs such term – means "the practice of seeking to change an individual's sexual orientation or gender identity, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex." Hamilton notes that the Ordinance also states 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."

Hamilton is left to guess at any number of situations in which these provisions would prohibit her from discussing certain issues outside of a formal therapy session. Based on the Ordinance, as a licensed provider, Hamilton is not permitted to attempt to help a minor with changes the minor wishes to make, even if she is not getting paid. Even if Hamilton

is outside of her counseling office, and merely talking to or trying to help a friend's son or daughter address their unwanted same-sex attractions, behaviors, identity, or gender confusion, the Ordinance would prohibit that kind of speech. Under the Ordinance, Hamilton also notes that such a restriction would apply to conversations she would have with her own children or with other children in her extended family.

The Ordinance prohibits "the practice of seeking to change," which in Hamilton's field consists of conversations between her and those whom she is trying to help. Therefore, the Ordinance prohibits Hamilton from even having conversations that would seek to help minors with changes they wish to make in the areas prohibited by the Ordinance, even if she is outside the office, not getting paid for such help. Hamilton also notes that such a broad prohibition may even apply to her giving lectures, speeches, or lessons at a church or local organization that desires to assist parents and children who are struggling with such issues.

Hamilton would also like to be able to advertise her services to minors who seek to reduce or eliminate their unwanted same-sex attractions, behaviors, identity, or gender confusion (and their parents). Hamilton would like to be able to advertise on websites, through radio, in published print, in brochures, through verbal communications, and via other mechanisms to offer her services in this area. Because of the Ordinance, however, Hamilton is prohibited from distributing such advertisements because she cannot advertise something that she is not legally permitted to offer.

6. Describe in detail everything you wish to be able to say in therapy to a minor patient that you contend is prohibited by the County's ordinance.

OBJECTIONS: Hamilton objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to "describe in detail everything" she wishes to say or do on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to what Hamilton generally might wish to say in some instances in a therapy session with a minor. To the extent Hamilton provides examples, they are not exhaustive or inclusive of "everything" Hamilton wishes to say in every context. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

Hamilton further objects to this Interrogatory because it calls for a legal conclusion. Hamilton is not a lawyer, but will provide her understanding of how the Ordinance, which is vague and ambiguous, appears to work in some instances.

RESPONSE: Hamilton contends that the Ordinance is prohibiting her from saying anything that might possibly be construed, understood, or inferred to be seeking to help a minor reduce or eliminate unwanted same-sex attractions, behaviors, or identity or gender confusion, even when such statements are not uttered with the express aim of changing a

minor's sexual orientation or gender identity. Hamilton notes that she does not engage in therapy where her goal is to change any client's sexual orientation or gender identity, but that she seeks to help clients achieve the goals that the clients themselves determine are appropriate for them. Under the Ordinance, not only is Hamilton prohibited from engaging in such talk therapy with her clients, but her clients are prohibited from even having certain goals in the therapeutic alliance, even when those goals are necessary for the clients to live consistently with their sincerely held religious beliefs, values, and concept of self.

Hamilton cannot possibly describe in this response every potential issue or statement that she might like to address in a therapeutic setting because her talk therapy practice is never the same for every client. Hamilton'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.

As it relates to potential clients who present with unwanted same-sex attractions, behaviors, or identity, Hamilton in some instances would like to ask questions such as: "Since you are distressed about being in a relationship with a boy [or girl, for female clients], would you like to talk about ways you can get out of that relationship? What ideas have you thought of so far? What have you tried? What steps would you like to take? What purpose is that relationship filling in your life?" Hamilton might also discuss things related to identifying and addressing underlying issues, such as sexual abuse, pornography exposure, or familial relationship issues. The Ordinance prohibits these kinds of discussions because they may lead to change or may be construed as "efforts to change."

If a client appears to be adopting a sexual identity label for external reasons (such as to fit in, to anger the parents, or due to confusion inflicted by cultural messages) rather than having a true internal sense of that identity, Hamilton is not permitted to explore any changes to that "identity" – even if that "identity" does not conform with the individual's true concept of self.

As it relates to potential biological male clients who present with gender confusion or gender identity issues, Hamilton in some instances would like to ask questions such as: "What do you like/not like about boys? What do you like/not like about girls? At what times or in what circumstances do you feel more confident as a boy? When do you enjoy being a boy?" The Ordinance prohibits these kinds of discussions because they may lead to change or may be construed as "efforts to change."

7. Describe in detail what "talk therapy" practices you employed, prior to the passage of the County's ordinance, to reduce or eliminate same-sex attractions. Specify what concepts and information you communicated as "truth," what advice was generally given, and what tools you generally recommended the minor employ.

OBJECTIONS: Hamilton objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to “describe in detail” the therapy she provided and advice she gave to every SOCE counseling client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to Hamilton’s general approach to talk therapy with same-sex attracted clients prior to the enactment of the Ordinance. To the extent Hamilton provides examples, they are not exhaustive or inclusive of everything Hamilton said or did in such therapy sessions. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Hamilton notes that she 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 issues. 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.

With regard to Hamilton’s approach, she 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. 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. Hamilton also searches for client strengths and builds on those strengths. In addition, 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.

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.

The tools that Hamilton typically deploys are primarily ideas that she can elicit from the client. She believes in client-centered therapy, and that the most effective ideas are those that the client brings up. In addition, Hamilton asks questions, listens, empathizes, seeks to expand options for the client, introduces possible explanations, such as sharing theories of attachment and the role of early parental nurture, and explores whether or not such theories fit for the client.

Hamilton incorporates her response to Interrogatory 6 for additional illustrations of her talk therapy sessions with same-sex attracted clients prior to the enactment of the Ordinance.

8. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the efficacy of the therapy you describe in your answer to interrogatory number 7 above.

OBJECTION/RESPONSE: Hamilton objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and impracticable, as it would call for a virtually endless production of every possible article, research paper, report, etc. that supports the use of client-centered therapy. Construing this Interrogatory as limited to those articles, research papers, and reports that Hamilton has reviewed, gained some personal insight from, and recalls as of the time of this response, Hamilton provides the following response: See PLJoint 081-793 produced in response to the County's Requests for Production. In addition, see:

de Shazer, S. (1985). *Keys to solution in brief therapy*. New York: W. W. Norton.

Duncan, B. L., Hubble, M. A., & Miller, S. D. (1997). *Psychotherapy with impossible cases: Efficient treatment of therapy veterans*. New York: W. W. Norton.

Duncan, B. L., Hubble, M. A., & Miller, S. D. (1997, July/August). Stepping off the throne. *Family Therapy Networker*, 22-33.

Duncan, B. L., Hubble, M. A., Rusk, G. (1994). To intervene or not to intervene? That is not the question. *Journal of Systemic therapies*, 13, (4), 22-30.

Duncan, B. L., & Miller, S. D. (2000) *The heroic client: Doing client-directed, outcome-informed therapy*. San Francisco: Jossey-Bass.

Hubble, M. A., Miller, S. D., & Duncan, B. L. (Eds.). (1999). *The heart and soul of change: What works in therapy*. American Psychological Association.

Miller, S. D., Hubble, M. A., & Duncan, B. L. (Eds.) (1996) *Handbook of solution-focused brief therapy*. San Francisco: Jossey-Bass.

Selekman, M. D. (1997). *Solution-Focused Therapy with children: Harnessing the strengths for systemic change*. New York: Guilford Press.

Walter, J. L., & Peller, J. E. (1992). *Becoming solution-focused in brief therapy*. New York: Brunner/Mazel.

9. Describe in detail what “talk therapy” practices you employed, prior to the passage of the County’s ordinance, to seek to change a minor’s sexual orientation or gender identity. Specify what concepts and information you communicated as “truth,” what advice was generally given, and what tools you generally recommended the minor employ.

OBJECTIONS: Hamilton objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to “describe in detail” the therapy she provided and advice she gave to every SOCE counseling client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to Hamilton’s general approach to talk therapy with same-sex attracted clients or gender confused clients prior to the enactment of the Ordinance. To the extent Hamilton provides examples, they are not exhaustive or inclusive of everything Hamilton said or did in such therapy sessions. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Hamilton notes that she does not try to change her clients’ sexual orientation or gender identity. 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.

With regard to Hamilton’s approach, she 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. 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. Hamilton also searches for client strengths and builds on those strengths. In addition, 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.

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.

The tools that Hamilton typically deploys are primarily ideas that she can elicit from the client. She believes in client-centered therapy, and that the most effective ideas are those that the client brings up. In addition, Hamilton asks questions, listens, empathizes, seeks to expand options for the client, introduces possible explanations, such as sharing theories of attachment and the role of early parental nurture, and explores whether or not such theories fit for the client.

Hamilton incorporates her response to Interrogatory 6 for additional illustrations of her talk therapy sessions with same-sex attracted clients prior to the enactment of the Ordinance.

10. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the efficacy of the therapy you describe in your answer to interrogatory number 9 above.

OBJECTION/RESPONSE: Hamilton incorporates by reference, as if fully restated herein, her Objection/Response to Interrogatory 8.

11. Describe in detail what you tell minors in therapy, as part of your therapeutic practice, are the root causes of their “unwanted same-sex attractions, behaviors, and identity.”

OBJECTIONS: Hamilton objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Hamilton’s speech or conduct after the enactment of the Ordinance in suit, Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance. Hamilton will therefore respond to the Interrogatory as if limited to her speech or conduct prior to the enactment of the Ordinance.

Hamilton further objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to “describe in detail” what she has told every SOCE counseling minor client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to Hamilton’s general approach to talk therapy with same-sex attracted clients and gender confused clients prior to the enactment of the Ordinance. To the extent Hamilton provides examples, they are not exhaustive or inclusive of everything Hamilton said or did in such therapy sessions. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: According to the research, there is no conclusive information about the root causes of unwanted same-sex attractions, behaviors, and identity. According to the APA, both nature and nurture play a role. According to the APA Handbook on Sexuality and Psychology (2014), there may be a link between lack of a same-sex parent and later

homosexuality. The authors of various studies have also described a possible correlation between sexual abuse and homosexuality.

In her client-centered therapy, Hamilton does not present theories as facts, but rather as theories. Hamilton asks clients if they would like to hear possible explanations for homosexual attractions and asks if those explanations fit for them or not. In many cases, Hamilton first listens to clients' own experiences and then explains theories that match those experiences. Examples of some contributing factors might include: a sensitive temperament (nature); insecure sense of gender identity in childhood; lack of attachment to the same-sex parent; lack of attachment to same-sex peers; parental rejection; peer rejection; over-identification with the opposite-sex parent in early childhood; over-identification with opposite-sex peers in early childhood; sexual abuse or early sexual exposure, such as through pornography; cultural influences; and so forth. Every person is different. Hamilton believes there are many pathways into and out of homosexuality. Therefore, Hamilton does not impose narrow explanations on individuals but instead explores with each client if and how developmental explanations might fit with their specific experiences.

12. Describe in detail what you tell minors in therapy, as part of your therapeutic practice, about gender roles and identities.

OBJECTION: Hamilton objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Hamilton's speech or conduct after the enactment of the Ordinance in suit, Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance. Hamilton will therefore respond to the Interrogatory as if limited to her speech or conduct prior to the enactment of the Ordinance.

Hamilton further objects to this Interrogatory because it inappropriately calls for a narrative response and requires her to "describe in detail" what she has told every SOCE counseling minor client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy she practices, where no two interactions are exactly alike. Hamilton will therefore respond to the Interrogatory as if limited to Hamilton's general approach to talk therapy with same-sex attracted clients and gender confused clients prior to the enactment of the Ordinance. To the extent Hamilton provides examples, they are not exhaustive or inclusive of everything Hamilton said or did in such therapy sessions. Hamilton is prepared to supplement her response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Hamilton does not currently recall a specific conversation with a minor concerning gender roles prior to the enactment of the Ordinance. However, if a minor asked for information about gender differences or identities, Hamilton would talk about gender from the point of view that all people are either male or female (unless born with an intersex condition) and that there are wonderful differences between males and females. Hamilton would discuss that we each have a purpose and that we find the most peace in embracing who we were born to be.

13. Describe the principles and methods of the “talk therapy” practices you wish to use but claim that you cannot because of the passage of the County’s ordinance.

OBJECTION/RESPONSE: Hamilton incorporates by reference, as if fully restated herein, her Objections and Responses to Interrogatories 6, 7 and 9.

In addition, Hamilton states that, because the Ordinance is vague and ambiguous, she does not know how the County is interpreting and applying it, and she does not know the full extent of what the Ordinance prohibits. In essence, the Ordinance prohibits Hamilton from assisting her minor clients in accomplishing the goals they have for their lives, many of which arise because of their sincerely held religious beliefs, values, and concept of self. Some of her clients’ goals are no longer permissible under the Ordinance. The County has taken away the fundamental right of certain clients to self-determination in that they cannot have the goals of changing homosexual behaviors, seeking to understand and thereby diminish, if possible, homosexual attractions; and becoming more secure in their biological sex when their gender identity does not match their biological sex.

14. Describe the principles and methods of the “talk therapy” practices that can reduce or eliminate same-sex attractions.

OBJECTION/RESPONSE: Hamilton incorporates by reference, as if fully restated herein, her Objections and Responses to Interrogatories 6, 7 and 9.

In addition, therapy for clients who present with sincerely held religious beliefs, values, goals, or desires to address issues relating to reducing unwanted same-sex attractions is similar to therapy for other issues. There are many mainstream methods that have been found to be useful, such as Interpersonal Therapy, Psychodynamic Therapy, Cognitive Therapy, etc. Hamilton’s personal approach is a client-directed, solution-focused approach that also includes Family Therapy, Attachment Theory, and Psycho-education.

15. Describe the principles and methods of the “talk therapy” practices that can change a minor’s sexual orientation or gender identity.

OBJECTION/RESPONSE: Hamilton incorporates by reference, as if fully restated herein, her Objections and Responses to Interrogatories 6, 7, 9 and 14.

In addition, Hamilton works with parents to help them relate in more effective ways. For younger children, Hamilton spends more time with the parents and less time with the child. For older children, Hamilton might spend equal time with parent and child. For teenagers, Hamilton might spend more time with the teen and less time with the parent, depending on the specific situation.

16. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the conclusion that unwanted same-sex attractions result from trauma.

OBJECTION/RESPONSE: Hamilton objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and impracticable, as it would call for a virtually endless production of every possible article, research paper, report, etc. that supports the correlation between unwanted same-sex attractions and sexual abuse or trauma. Construing this Interrogatory as limited to those articles, research papers, and reports that Hamilton has reviewed, gained some personal insight from, and recalls as of the time of this response, Hamilton provides the following response:

According to research studies, there is a correlation between sexual abuse and later homosexual relationships. However, not all homosexuals were sexually abused. Another traumatic factor identified by researchers is lack of a same-sex parent.

The APA Handbook on Sexuality and Psychology (2014) states:

“Much has been written about the association between childhood sexual abuse and subsequent homosexuality. Indeed, studies using varying methodologies have reported a correlation between different types of child abuse and varying components of a homosexual sexual orientation, including data from clinical samples and case studies, surveys of MSM, and cross-sectional surveys (reviewed in Purcell, Patterson, & Spikes, 2007; H. W. Wilson & Widom, 2010). Not all studies, however, have found this pattern of results. Furthermore, some evidence suggests that the relationship may be stronger among men than women. The largest reviews of the literature in this area indicated that MSM report rates of childhood sexual abuse that are approximately three times higher than that of the general male population (Purcell, Malow, Dolezal, & Carballo-Diequez, 2004). One of the most methodologically rigorous studies in this area used a prospective longitudinal case-control design that involved following abused and matched non-abused children

into adulthood 30 years later. It found that men with documented histories of childhood sexual abuse had 6.75 times greater odds than controls of reporting ever having same-sex sexual partners (H. W. Wilson & Widom, 2010). To help control for possible confounding factors, the authors conducted post hoc analyses controlling for number of lifetime sexual partners and sex work, but the association remained. The effect in women was smaller (odds ratio = 2.11) and a statistical trend ($p = .09$).”

Hamilton also notes the following articles:

Mustanski, B., Kuper, L., and Geene, G. (2014) Chapter 19: Development of sexual orientation and identity. In Tolman, D., & Diamond, L., Co-Editors-in-Chief, *APA Handbook of Sexuality and Psychology*, Washington D.C.: American Psychological Association, 1: 609.

Frisch, M. and Hviid, A. (2006). Childhood family correlates of heterosexual and homosexual marriages: A national cohort study of two million Danes. *Archives of Sexual Behavior*, 35:533-547.

Udry, J.R., & Chantala, K. (2005). Risk factors differ according to same- sex and opposite-sex interest. *Journal of Biosocial Science*, 37, 481–497. <http://dx.doi.org/10.1017/S0021932004006765> p. 487.

Francis, A. M. (2008). Family and sexual orientation: The family-demographic correlates of homosexuality in men and women. *Journal of Sex Research*, 45 (4), 371-377. DOI:10.1080/00224490802398357, p. 376.

17. Have you ever counseled a minor to assist them in coping with wanted same-sex attractions? If so, please identify how many minors you have so helped in the last 5 years.

RESPONSE: If a minor has “wanted same-sex attractions,” they typically do not need assistance in coping with those attractions. Thus, Hamilton has not encountered clients who identify as homosexual and desire to live according to that identity, and who need assistance coping with their attractions. Hamilton has had clients who did not want to seek change of attractions, behavior, or gender identity even though their parents hoped they would seek such change. In those cases, Hamilton usually asked the minor if there was a different goal that she could help them accomplish. Some minors said, “no” and other minors identified a different goal. The most common goal of those minors was for Hamilton to help them communicate with their parents or to improve family relationships. Hamilton assisted with those goals.

In the last 5 years, Hamilton has met with 7 minors who wanted their same-sex attractions or transgender identity. Out of the 7 that wanted their same-sex attractions or transgender identities, 4 wanted to return beyond the initial visit to work on another goal, such as family relationships. In those cases, Hamilton helped them work towards their goals, as she always

does in her client-centered and client-directed marriage and family therapy practice.

18. In the year prior to the passage of the County's ordinance at issue, what percentage of your practice involved counseling that sought to change a minor's gender identity of [*sic*] sexual orientation and what percentage of your counseling sought to assist a minor in embracing or coping with a non-heterosexual orientation or a gender identity that differed from their anatomical sex?

RESPONSE: As stated in response to Interrogatory No. 17, Hamilton has not had clients who sought assistance in coping with wanted same-sex attractions or wanted gender identity that is different from anatomical sex, because the clients, who were not seeking change, stated that they were already embracing a non-heterosexual identity or transgender identity. As such, Hamilton was not presented with a client who stated that his or her goal was to be able cope with an attraction or identity that differed from their own concept of self.

Prior to the passage of the Ordinance, Hamilton had 13 minors who sought help with changing their unwanted same-sex attractions, behaviors, or gender identity, and 19 minors who did not want to change their same-sex attractions, behaviors, or gender identity. Hamilton was always willing to work with all of the minors that came to her for therapy, including the clients who were not seeking change, as explained in her response to Interrogatory 17.

19. Explain with specificity and in detail (a) the decline in profit your practice has sustained since or as a result of the passage of the County's conversion-therapy ban ordinance at issue; (b) identify the actual dollar amount of the decline in profit; (c) and identify the specific methodology you utilized to compute (a) and (b) above.

OBJECTION: Hamilton objects to this Interrogatory on the grounds that it is premature. The Preliminary Injunction Hearing is concerned exclusively with the irreparable and incalculable harm that the unconstitutional Ordinance is imposing on Hamilton and her clients each and every day it remains in effect, by virtue of its indiscriminate ban on constitutionally protected speech, and its violation of other constitutional liberties. This is the primary harm this lawsuit seeks to redress. Accordingly, it is not proper for "Preliminary Injunction Interrogatories" to request a calculation of money damages. Hamilton does not seek money damages at the Preliminary Injunction Hearing.

In the subsequent merits and damages phase of discovery following the Preliminary Injunction Hearing, Hamilton will attempt to calculate her lost revenues and profits from the clients she has had to turn away following enactment of the Ordinance, and will provide same to Defendants, provided Defendants stipulate that such disclosure does not amount

to any waiver of Hamilton's Fifth Amendment Privilege with respect to any other information. To the extent lost revenues and profits from clients turned away on account of the Ordinance can be calculated, they would constitute only a portion of the harm suffered by Hamilton and her clients, and they could not make Hamilton or her clients whole for the irreparable harm imposed by the Ordinance.

20. Identify by first and last initial and age only all minor clients with whom you completely terminated your professional relationship because of the passage of the County's ordinance at issue and the date of the termination.

OBJECTION: Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance.

Hamilton further objects to this interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks her to divulge too much identifying information regarding her clients.

Hamilton is willing to provide the number of "Doe" clients or potential clients, and their ages, whom she has had to turn away, or for whom she has had to alter the scope of therapy on account of the Ordinance, but only if Defendants stipulate that such disclosure does not amount to any waiver of Hamilton's Fifth Amendment Privilege, or the psychotherapist-patient privilege, with respect to any other information.

21. Identify by first and last initial and age only all minor clients with whom you substantially changed your professional relationship because of the passage of the County's ordinance at issue.

OBJECTION: Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance.

Hamilton further objects to this interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks her to divulge too much identifying information regarding her clients.

Hamilton is willing to provide the number of "Doe" clients or potential clients, and their ages, whom she has had to turn away, or for whom she has had to alter the scope of therapy on account of the Ordinance, but only if Defendants stipulate that such disclosure does not amount to any waiver of Hamilton's Fifth Amendment Privilege, or the psychotherapist-patient privilege, with respect to any other information.

22. Identify by first and last initial and age only all clients whom were minors (under age 18) when they initially engaged your counseling services that are or were experiencing unwanted same-sex attractions and wanted to reduce or eliminate the unwanted desire within the last ten years.

OBJECTION: To the extent the Interrogatory purports to request information about Hamilton's minor clients after the enactment of the Ordinance in suit, Hamilton objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Hamilton has been forced to alter her speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Hamilton notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Hamilton does not wish to provide the County with any information upon which to prosecute her for any unknowing violations of the Ordinance. Hamilton will therefore respond to the Interrogatory as if limited to the nine (9) years prior to the enactment of the Ordinance.

Hamilton further objects to this Interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks her to divulge too much identifying information in relation to these clients. Hamilton construes this Interrogatory to only request the number and respective ages of clients seeking help for unwanted same-sex attractions or gender identity confusion.

RESPONSE: Hamilton does not have clients whose only goal is to reduce or eliminate unwanted desires, as stated in the Interrogatory. Hamilton makes sure that her clients understand that change of attraction might happen as they work on root issues, but there is no guarantee that desires will change. Her clients' goals usually include wanting to change behaviors, wanting to understand their attractions, and wanting to reduce their attractions if possible. Hamilton also notes that, particularly with minors, goals may change throughout the course of therapy due to the nature of adolescence. Some may not have started with the goal of changing, but may have expressed a desire to change at some point during the course of therapy, and others may have started with the goal of changing and then altered the goal throughout the course of therapy.

In the nine (9) years prior to the enactment of the Ordinance, Hamilton had the following minor clients who sought help with unwanted same-sex attractions or gender identity confusion:

Doe 1 (age 6): gender identity confusion
Doe 2 (age 12): unwanted same-sex attractions or behaviors
Doe 3 (age 16): unwanted same-sex attractions or behaviors
Doe 4 (age 15): unwanted same-sex attractions or behaviors
Doe 5 (age 10): gender identity confusion
Doe 6 (age 17): unwanted same-sex attractions or behaviors
Doe 7 (age 13): unwanted same-sex attractions or behaviors
Doe 8 (age 14): unwanted same-sex attractions or behaviors
Doe 9 (age 17): unwanted same-sex attractions or behaviors
Doe 10 (age 16): unwanted same-sex attractions or behaviors
Doe 11 (age 16): unwanted same-sex attractions or behaviors

23. Do you admit that therapy you wish to provide is a mental health treatment? If not, please explain why.

RESPONSE: Hamilton admits that the SOCE counseling she wishes to provide to the minor clients who seek and desire it is a form of treatment carried out solely through speech, and agrees with the Eleventh Circuit Court of Appeals that characterizing speech as treatment or procedure in an effort to afford it less First Amendment protection is a dubious constitutional enterprise.

24. Do you admit that therapy you wish to provide is professional conduct? If not, please explain why.

RESPONSE: Hamilton denies that the SOCE counseling she wishes to provide to the minor clients who seek and desire it is professional conduct, and agrees with the Eleventh Circuit Court of Appeals that characterizing speech as conduct in an effort to afford it less First Amendment protection is a dubious constitutional enterprise.

As to Objections:

/s/ Horatio G. Mihet
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VERIFICATION

I, Julie H. Hamilton, Ph.D., LMFT, declare under penalty of perjury under the laws of the United States of America that the foregoing interrogatory responses are true and correct.

/s/ Julie H. Hamilton

Julie H. Hamilton, Ph.D., LMFT

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2018, a true and correct copy of the foregoing was served on all counsel of record via electronic mail, including:

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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,)	INJUNCTIVE RELIEF SOUGHT
v.)	
)	
CITY OF BOCA RATON, FLORIDA,)	
and COUNTY OF PALM BEACH,)	
FLORIDA,)	
)	
Defendants)	

**PLAINTIFF ROBERT W. OTTO, PH.D., LMFT’S OBJECTIONS AND RESPONSES
TO THE PRELIMINARY INJUNCTION INTERROGATORIES
OF DEFENDANT PALM BEACH COUNTY**

Pursuant to Fed. R. Civ. P. 26 and 33, and Local Rule 26.1, Plaintiff Robert W. Otto, Ph.D., LMFT (“Otto”), by and through counsel, hereby provides the following responses and objections to Defendant County of Palm Beach’s Preliminary Injunction Interrogatories. Otto hereby reserves all objections to the relevance, use or admissibility of any of these Interrogatories and responses. Subject to the foregoing, Otto objects and otherwise responds as follows:

1. Please state the name and address of the person or persons answering these interrogatories and if applicable the official position or relationship with the party to whom the interrogatories are directed.

RESPONSE: The person providing the substantive information disclosed in these interrogatory responses, and verifying them under oath, is Plaintiff Robert W. Otto, who may be contacted through his undersigned counsel. The objections to these interrogatories are made by the undersigned counsel.

2. Explain the legal basis for your assertion that a minor can legally undergo gender reassignment surgery and breast augmentation without the consent of a parent or legal guardian.

OBJECTION: Otto objects to this Interrogatory because it misstates Otto's positions. Otto further objects to this interrogatory because it expressly calls for a legal conclusion. Otto is not a lawyer. The "legal basis" for his positions is provided by his counsel in briefs, and is not a proper subject of interrogatories to Otto.

3. Describe in detail everything you included when you sought the informed consent of a minor to conduct any therapeutic practice that seeks to change the minor's sexual orientation or gender identity.

OBJECTIONS: Otto objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Otto's speech or conduct after the enactment of the Ordinance in suit, Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance. Otto will therefore respond to the Interrogatory as if limited to his speech or conduct prior to the enactment of the Ordinance.

Otto further objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail everything" he says or does on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to what Otto generally says or does, or wishes to say or do, on the requested topic. To the extent Otto provides examples, they are not exhaustive or inclusive of "everything" Otto says or does, or wishes to say or do, in every context. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Otto notes that the way this Interrogatory is worded implies that sexual orientation is a fixed concept that he is trying to change. Otto objects to that characterization as misleading and disagrees with the Interrogatory's premise, assumption and articulation of the issue. Otto notes that his marriage and family therapy practice is focused solely on helping a client achieve his or her stated goals, not a preconceived notion that he "seeks" to change behaviors, thoughts or feelings. 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 concept of self.

For the Informed Consent Form for Counseling Regarding Unwanted Same-Sex Attractions and Behaviors, which Otto has adopted for clients of his practice, SDG Counseling, LLC, see Otto 008-009, produced in response to the County's Requests for Production.

4. Describe in detail everything you included when you sought the informed consent of a minor to conduct any therapeutic practice that seeks to reduce or eliminate "unwanted same-sex attractions or behaviors."

OBJECTIONS: Otto objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Otto's speech or conduct after the enactment of the Ordinance in suit, Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance. Otto will therefore respond to the Interrogatory as if limited to his speech or conduct prior to the enactment of the Ordinance.

Otto further objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail everything" he says or does on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to what Otto generally says or does, or wishes to say or do, on the requested topic. To the extent Otto provides examples, they are not exhaustive or inclusive of "everything" Otto says or does, or wishes to say or do, in every context. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Otto notes that the way this Interrogatory is worded implies that sexual orientation is a fixed concept that he is trying to change. Otto objects to that characterization as misleading and disagrees with the Interrogatory's premise, assumption and articulation of the issue. Otto notes that his marriage and family therapy practice is focused solely on helping a client achieve his or her stated goals, not a preconceived notion that he "seeks" to change behaviors, thoughts or feelings. 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 concept of self.

For the Informed Consent Form for Counseling Regarding Unwanted Same-Sex Attractions and Behaviors, which Otto has adopted for clients of his practice, SDG

Counseling, LLC, see Otto 008-009, produced in response to the County's Requests for Production.

5. Describe in detail everything you wish to be able to say outside of a therapy session that you contend is prohibited by the County's ordinance.

OBJECTIONS: Otto objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail everything" he wishes to say or do on the requested subject. This is impossible to do in an interrogatory response, particularly where the Interrogatory purports to ask about every situation "outside of a therapy session" that Otto would ever find himself in, or every speech, communication, presentation or interaction "outside of a therapy session" that Otto would ever participate in. Otto will therefore respond to the Interrogatory as if limited to what Otto generally might wish to say in some instances outside of a formal therapy session. To the extent Otto provides examples, they are not exhaustive or inclusive of "everything" Otto wishes to say in every context. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

Otto further objects to this Interrogatory because it calls for a legal conclusion. Otto is not a lawyer, but will provide his understanding of how the Ordinance, which is vague and ambiguous, appears to work in some instances.

RESPONSE: Otto notes that, according to the Ordinance, so-called "conversion therapy" – which Otto has never used to describe his practice and knows of no other licensed mental health professional who employs such term – means "the practice of seeking to change an individual's sexual orientation or gender identity, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex." Otto notes that the Ordinance also states 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."

Otto is left to guess at any number of situations in which these provisions would prohibit him from discussing certain issues outside of a formal therapy session. Based on the Ordinance, as a licensed provider, Otto is not permitted to attempt to help a minor with changes the minor wishes to make, even if he is not getting paid. Even if Otto is outside of his counseling office, and merely talking to or trying to help a friend's son or daughter address their unwanted same-sex attractions, behaviors, identity, or gender confusion, the Ordinance would prohibit that kind of speech. Under the Ordinance, Otto also notes that such a restriction would apply to conversations he would have with his own grandchild or with other minors in his extended family or network of friends.

The Ordinance prohibits "the practice of seeking to change," which in Otto's field consists of conversations between him and those whom he is trying to help. Therefore, the Ordinance prohibits Otto from even having conversations that would seek to help minors

with changes they wish to make in the areas prohibited by the Ordinance, even if he is outside the office, not getting paid for such help. Otto also notes that such a broad prohibition may even apply to him giving lectures, speeches, or lessons at a church or local organization that desires to assist parents and children who are struggling with such issues.

Otto would also like to be able to advertise his services to minors who seek to reduce or eliminate their unwanted same-sex attractions, behaviors, identity, or gender confusion (and their parents). Otto would like to be able to advertise on websites, through radio, in published print, in brochures, through verbal communications, and via other mechanisms to offer his services in this area. Because of the Ordinance, however, Otto is prohibited from distributing such advertisements because he cannot advertise something that he is not legally permitted to offer.

6. Describe in detail everything you wish to be able to say in therapy to a minor patient that you contend is prohibited by the County's ordinance.

OBJECTIONS: Otto objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail everything" he wishes to say or do on the requested subject. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to what Otto generally might wish to say in some instances in a therapy session with a minor. To the extent Otto provides examples, they are not exhaustive or inclusive of "everything" Otto wishes to say in every context. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

Otto further objects to this Interrogatory because it calls for a legal conclusion. Otto is not a lawyer, but will provide his understanding of how the Ordinance, which is vague and ambiguous, appears to work in some instances.

RESPONSE: Otto contends that the Ordinance is prohibiting him from saying anything that might possibly be construed, understood, or inferred to be seeking to help a minor reduce or eliminate unwanted same-sex attractions, behaviors, or identity or gender confusion, even when such statements are not uttered with the express aim of changing a minor's sexual orientation or gender identity. 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. Under the Ordinance, not only is Otto prohibited from engaging in such talk therapy with his clients, but his clients are prohibited from even having certain goals in the therapeutic alliance, even when those goals are necessary for the clients to live consistently with their sincerely held religious beliefs, values, and concept of self.

Otto cannot possibly describe in this response 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. 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.

Some examples of what Otto is prohibited from discussing in his practice include the following: talking about a minor client's unwanted, non-heterosexual sexual behaviors, thoughts, or feelings; conversations concerning the origins of the client's unwanted feelings; conversations concerning potential causes of such unwanted feelings, such as social information, experiences, and potential abuse; and conversations concerning the client's religious beliefs and how the client's unwanted attractions or feelings collide with those religious beliefs.

Otto would like to be able to discuss family and other support available to the client. He would talk about how the client has dealt with unwanted same-sex attractions or feelings to date, about setting up boundaries to assist the client make the choices the client wants to make, and about triggers. Otto would like to talk about what goals the client has for this area of life, including any changes to specific behaviors or thoughts that the client may see as problematic. Otto would like to talk about how adolescent brain development impacts a teen's ability to make rational decisions rather than emotional decisions. Otto would like to talk about different feelings that people may have but choose not to act upon. Otto would also like to talk about how people sometimes use sex, relationships and pornography to medicate or cope with uncomfortable feelings. Otto would also like to talk about neurochemistry and how that plays a part in sexuality.

Because of the Ordinance, Otto cannot discuss any of these issues or topics in therapy sessions with minors, because they may lead to change or may be construed as "efforts to change."

7. Describe in detail what "talk therapy" practices you employed, prior to the passage of the County's ordinance, to reduce or eliminate same-sex attractions. Specify what concepts and information you communicated as "truth," what advice was generally given, and what tools you generally recommended the minor employ.

OBJECTIONS: Otto objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail" the therapy he provided and advice he gave to every SOCE counseling client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to Otto's general approach to talk therapy with same-sex attracted clients prior to the enactment of the Ordinance. To the extent Otto provides examples, they are not exhaustive or inclusive of everything Otto said or did in such therapy sessions. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Otto incorporates his response to Interrogatory 6 to illustrate the general nature of his talk therapy sessions with same-sex attracted clients prior to the enactment of the Ordinance.

As to the question related to “truth,” Otto notes that approximately 90 percent of his clients profess to be Bible-believing Christians with sincerely held religious beliefs that the Bible is the source of all truth. Otto shares those beliefs and therapy sessions sometimes include discussion of Biblical truths, including that God created men and women, that they are distinctly different, and that their design was purposeful. Otto’s Christian, Jewish, and Muslim clients all hold the same sincerely held religious beliefs as Otto in this area.

Otto sometimes also conveys the biological truth that male and female bodies are different even down the individual cell level. Otto sometimes shares that every cell in man’s body has an X and a Y chromosome, and every cell in the female body has 2 X chromosomes (with the only exception being the sperm and egg cells which only have one chromosome). Otto sometimes discusses neuro-chemistry and its impact on human sexuality.

8. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the efficacy of the therapy you describe in your answer to interrogatory number 7 above.

OBJECTION/RESPONSE: Otto objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and impracticable, as it would call for a virtually endless production of every possible article, research paper, report, etc. that supports the use of client-centered therapy. Construing this Interrogatory as limited to those articles, research papers, and reports that Otto has reviewed, gained some personal insight from, and recalls as of the time of this response, Otto provides the following response: See PLJoint 081-793 produced in response to the County’s Requests for Production.

9. Describe in detail what “talk therapy” practices you employed, prior to the passage of the County’s ordinance, to seek to change a minor’s sexual orientation or gender identity. Specify what concepts and information you communicated as “truth,” what advice was generally given, and what tools you generally recommended the minor employ.

OBJECTIONS: Otto objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to “describe in detail” the therapy he provided and advice he gave to every SOCE counseling client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to Otto’s general approach to talk therapy with same-sex attracted clients and gender confused clients prior

to the enactment of the Ordinance. To the extent Otto provides examples, they are not exhaustive or inclusive of everything Otto said or did in such therapy sessions. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Otto incorporates his responses to Interrogatories 6 and 7 to illustrate the general nature of his talk therapy sessions with same-sex attracted clients prior to the enactment of the Ordinance.

Otto has not found it helpful to discuss sexual orientation as a concept in itself during therapy sessions. He notes that sexual orientation is not a behavior, thought, or feeling, and that labeling such behaviors, thoughts, and feelings with the “sexual orientation” label presupposes that such a trait is fixed and immutable, which the scientific literature does not support. Both the research Otto has reviewed and his own experience in his practice confirms that such a fixed and immutable description is not accurate.

Otto further responds that he has not yet had clients present issues related to gender identity or gender identity confusion.

10. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the efficacy of the therapy you describe in your answer to interrogatory number 9 above.

OBJECTION/RESPONSE: Otto incorporates by reference, as if fully restated herein, his Objection/Response to Interrogatory 8.

11. Describe in detail what you tell minors in therapy, as part of your therapeutic practice, are the root causes of their “unwanted same-sex attractions, behaviors, and identity.”

OBJECTIONS: Otto objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Otto’s speech or conduct after the enactment of the Ordinance in suit, Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance. Otto will therefore respond to the Interrogatory as if limited to his speech or conduct prior to the enactment of the Ordinance.

Otto further objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to “describe in detail” what he has told every SOCE counseling

minor client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to Otto's general approach to talk therapy with same-sex attracted clients and gender confused clients prior to the enactment of the Ordinance. To the extent Otto provides examples, they are not exhaustive or inclusive of everything Otto said or did in such therapy sessions. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: According to the research, there is no conclusive information about the root causes of unwanted same-sex attractions, behaviors, and identity. According to the APA, both nature and nurture play a role. According to the APA Handbook on Sexuality and Psychology (2014), there may be a link between lack of a same-sex parent and later homosexuality. The authors of various studies have also described a possible correlation between sexual abuse and homosexuality.

In his practice, depending on the needs of his individual clients, Otto generally discusses several things that can serve as contributing factors to a client's unwanted same-sex attractions, behaviors, and identity, such as societal influences, peers, peer influences, abuse, parenting issues, parent and child relationship issues, trauma, and curiosity. Otto discusses with his clients that there is no research that can point to one single "root cause" of an individual's unwanted same-sex attractions, behaviors, or identity, but notes that the research does not support the commonly proclaimed myth that people are "born gay."

12. Describe in detail what you tell minors in therapy, as part of your therapeutic practice, about gender roles and identities.

OBJECTIONS: Otto objects to this Interrogatory on the ground that it fails to specify a time period. To the extent the Interrogatory purports to request information about Otto's speech or conduct after the enactment of the Ordinance in suit, Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance. Otto will therefore respond to the Interrogatory as if limited to his speech or conduct prior to the enactment of the Ordinance.

Otto further objects to this Interrogatory because it inappropriately calls for a narrative response and requires him to "describe in detail" what he has told every SOCE counseling minor client prior to the enactment of the Ordinance. This is impossible to do in an interrogatory response, particularly in the context of the client-driven and client-centered therapy he practices, where no two interactions are exactly alike. Otto will therefore respond to the Interrogatory as if limited to Otto's general approach to talk therapy with

same-sex attracted clients and gender confused clients prior to the enactment of the Ordinance. To the extent Otto provides examples, they are not exhaustive or inclusive of everything Otto said or did in such therapy sessions. Otto is prepared to supplement his response with deposition testimony, and otherwise as appropriate in discovery.

RESPONSE: Otto notes that approximately 90 percent of his clients profess to be Bible-believing Christians with sincerely held religious beliefs that the Bible is the source of all truth, including on matters of gender roles. Otto shares those beliefs and therapy sessions sometimes include discussion of Biblical truths, including that God created men and women, that they are distinctly different, and that their design was purposeful. Otto's Christian, Jewish, and Muslim clients all hold the same sincerely held religious beliefs as Otto in this area. Otto's conversations in this area have involved speaking of gender roles and a client's identity from a Christian perspective and viewpoint, specifically looking at what the Bible says on such matters.

13. Describe the principles and methods of the "talk therapy" practices you wish to use but claim that you cannot because of the passage of the County's ordinance.

OBJECTION/RESPONSE: Otto incorporates by reference, as if fully restated herein, his Objections and Responses to Interrogatories 6, 7 and 9.

In addition, Otto states that, because the Ordinance is vague and ambiguous, he does not know how the County is interpreting and applying it, and he does not know the full extent of what the Ordinance prohibits. In essence, the Ordinance prohibits Otto from assisting his minor clients in accomplishing the goals they have for their lives, many of which arise because of their sincerely held religious beliefs, values, and concept of self. Some of his clients' goals are no longer permissible under the Ordinance. The County has taken away the fundamental right of certain clients to self-determination in that they cannot have the goals of changing homosexual behaviors, seeking to understand and thereby diminish, if possible, homosexual attractions; and becoming more secure in their biological sex when their gender identity does not match their biological sex.

14. Describe the principles and methods of the "talk therapy" practices that can reduce or eliminate same-sex attractions.

OBJECTION/RESPONSE: Otto incorporates by reference, as if fully restated herein, his Objections and Responses to Interrogatories 6, 7 and 9.

15. Describe the principles and methods of the “talk therapy” practices that can change a minor’s sexual orientation or gender identity.

OBJECTION/RESPONSE: Otto incorporates by reference, as if fully restated herein, his Objections and Responses to Interrogatories 6, 7 and 9.

16. Identify the author(s), title, publication date, journal, publisher and location of all articles, research papers, or reports that support or substantiate the conclusion that unwanted same-sex attractions result from trauma.

OBJECTION/RESPONSE: Otto objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and impracticable, as it would call for a virtually endless production of every possible article, research paper, report, etc. that supports the correlation between unwanted same-sex attractions and sexual abuse or trauma. Construing this Interrogatory as limited to those articles, research papers, and reports that Otto has reviewed, gained some personal insight from, and recalls as of the time of this response, Otto provides the following response:

Dr. Lawrence S. Mayer and Dr. Paul R. McHugh, “Sexuality and Gender: Findings from a Biological, Psychological, and Social Sciences.” The New Atlantis, Fall 2016, <https://www.thenewatlantis.com/publications/number-50-fall-2016>

Friedman, M.S., Marshal, M.P., Guadamuz, T.E., et. al. “A Meta-Analysis of Disparities in Childhood Sexual Abuse, Parental Physical Abuse, and Peer Victimization Among Sexual Minority and Sexual Nonminority Individuals.” American Journal of Public Health, August 2011, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2009.190009>

17. Have you ever counseled a minor to assist them in coping with wanted same-sex attractions? If so, please identify how many minors you have so helped in the last 5 years.

RESPONSE: Otto has not counseled a minor seeking to cope with wanted same-sex attractions. Otto is a Christian counselor. He has worked at a Christian counseling center on the campus of a Christian church. He has marketed his services via Christian friends, churches, Christian schools, and doctors and lawyers who are Christians. Most of Otto’s clients share the same Christian convictions or are at least comfortable working from this framework. If a client was looking for help becoming comfortable with same-sex attractions, Otto would refer that client to professionals who would be better able to help, as is common in his profession.

18. In the year prior to the passage of the County's ordinance at issue, what percentage of your practice involved counseling that sought to change a minor's gender identity of [*sic*] sexual orientation and what percentage of your counseling sought to assist a minor in embracing or coping with a non-heterosexual orientation or a gender identity that differed from their anatomical sex?

RESPONSE: Otto has not had a client present with issues related to gender identity or gender identity confusion. As to minors who present with stated goals to conform their sexual attractions, behaviors, or identity to their sincerely held religious beliefs, values, or concept of self, in a typical year prior to the enactment of the Ordinance they accounted for a small part (approximately five percent) of Otto's practice.

19. Explain with specificity and in detail (a) the decline in profit your practice has sustained since or as a result of the passage of the County's conversion-therapy ban ordinance at issue; (b) identify the actual dollar amount of the decline in profit; (c) and identify the specific methodology you utilized to compute (a) and (b) above.

OBJECTION: Otto objects to this Interrogatory on the grounds that it is premature. The Preliminary Injunction Hearing is concerned exclusively with the irreparable and incalculable harm that the unconstitutional Ordinance is imposing on Otto and his clients each and every day it remains in effect, by virtue of its indiscriminate ban on constitutionally protected speech, and its violation of other constitutional liberties. This is the primary harm this lawsuit seeks to redress. Accordingly, it is not proper for "Preliminary Injunction Interrogatories" to request a calculation of money damages. Otto does not seek money damages at the Preliminary Injunction Hearing.

In the subsequent merits and damages phase of discovery following the Preliminary Injunction Hearing, Otto will attempt to calculate his lost revenues and profits from the clients he has had to turn away following enactment of the Ordinance, and will provide same to Defendants, provided Defendants stipulate that such disclosure does not amount to any waiver of Otto's Fifth Amendment Privilege with respect to any other information. To the extent lost revenues and profits from clients turned away on account of the Ordinance can be calculated, they would constitute only a portion of the harm suffered by Otto and his clients, and they could not make Otto or his clients whole for the irreparable harm imposed by the Ordinance.

20. Identify by first and last initial and age only all minor clients with whom you completely terminated your professional relationship because of the passage of the County's ordinance at issue and the date of the termination.

OBJECTION: Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance.

Otto further objects to this interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks him to divulge too much identifying information regarding his clients.

Otto is willing to provide the number of "Doe" clients or potential clients, and their ages, whom he has had to turn away, or for whom he has had to alter the scope of therapy on account of the Ordinance, but only if Defendants stipulate that such disclosure does not amount to any waiver of Otto's Fifth Amendment Privilege, or the psychotherapist-patient privilege, with respect to any other information.

21. Identify by first and last initial and age only all minor clients with whom you substantially changed your professional relationship because of the passage of the County's ordinance at issue.

OBJECTION: Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance.

Otto further objects to this interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks him to divulge too much identifying information regarding his clients.

Otto is willing to provide the number of "Doe" clients or potential clients, and their ages, whom he has had to turn away, or for whom he has had to alter the scope of therapy on account of the Ordinance, but only if Defendants stipulate that such disclosure does not

amount to any waiver of Otto's Fifth Amendment Privilege, or the psychotherapist-patient privilege, with respect to any other information.

22. Identify by first and last initial and age only all clients whom were minors (under age 18) when they initially engaged your counseling services that are or were experiencing unwanted same-sex attractions and wanted to reduce or eliminate the unwanted desire within the last ten years.

OBJECTION: To the extent the Interrogatory purports to request information about Otto's minor clients after the enactment of the Ordinance in suit, Otto objects and declines to respond on the basis of the Fifth Amendment privilege against self-incrimination. Although Otto has been forced to alter his speech and conduct after the enactment of the Ordinance in order to avoid a knowing violation, Otto notes that the Ordinance is not only vague and ambiguous in what it purports to prohibit, but also purports to impose criminal penalties for any violation, whether knowing or unknowing. Accordingly, Otto does not wish to provide the County with any information upon which to prosecute him for any unknowing violations of the Ordinance. Otto will therefore respond to the Interrogatory as if limited to the nine (9) years prior to the enactment of the Ordinance.

Otto further objects to this Interrogatory on the grounds that it seeks information protected by the psychotherapist-patient privilege and that it asks him to divulge too much identifying information in relation to these clients. Otto construes this Interrogatory to only request the number and approximate ages of clients seeking help for unwanted same-sex attractions.

RESPONSE: In the nine (9) years prior to the enactment of the Ordinance, Otto had the following minor clients who sought help with unwanted same-sex attractions:

Doe 1 (high school student)
Doe 2 (high school student)
Doe 3 (high school student)
Doe 4 (high school student)

23. Do you admit that therapy you wish to provide is a mental health treatment? If not, please explain why.

RESPONSE: Otto admits that the SOCE counseling he wishes to provide to the minor clients who seek and desire it is a form of treatment carried out solely through speech, and agrees with the Eleventh Circuit Court of Appeals that characterizing speech as treatment or procedure in an effort to afford it less First Amendment protection is a dubious constitutional enterprise.

24. Do you admit that therapy you wish to provide is professional conduct? If not, please explain why.

RESPONSE: Otto denies that the SOCE counseling he wishes to provide to the minor clients who seek and desire it is professional conduct, and agrees with the Eleventh Circuit Court of Appeals that characterizing speech as conduct in an effort to afford it less First Amendment protection is a dubious constitutional enterprise.

As to Objections:

/s/ Horatio G. Mihet
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VERIFICATION

I, Robert W. Otto, Ph.D., LMFT, declare under penalty of perjury under the laws of the United States of America that the foregoing interrogatory responses are true and correct.

/s/ Robert W. Otto
Robert W. Otto, Ph.D., LMFT

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August 2018, a true and correct copy of the foregoing was served on all counsel of record via electronic mail, including:

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/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs

Florida Attorney General Advisory Legal Opinion

Number: AGO 95-25

Date: April 6, 1995

Subject: Local Government Code Enforcement Act

The Honorable Barry E. Krischer
State Attorney
Fifteenth Judicial Circuit
401 North Dixie Highway
West Palm Beach, Florida 33401-4209

RE: LOCAL GOVERNMENT CODE ENFORCEMENT ACT--COUNTIES--MUNICIPALITIES--
county may enact ordinance enforcing its codes and ordinances pursuant to
s. 162.21, F.S., making violations of such codes or ordinances civil
infractions with civil penalties. s. 162.21, F.S.

Dear Mr. Krischer:

You ask substantially the following question:

May a charter county enact an ordinance limiting the sanction for
violation of county ordinances to civil penalties?

In sum:

A county choosing to enforce its codes or ordinances pursuant to section
162.21, Florida Statutes, is required to make a violation of its codes or
ordinances a civil infraction with a civil penalty. This does not,
however, preclude a county from enforcing its codes or ordinances
individually such that violation of some may be a civil infraction, while
violation of others may be a misdemeanor.

You state that the Palm Beach County Criminal Justice Commission has been
assigned the task of reviewing all county ordinances that provide for
criminal sanctions and to evaluate such ordinances to determine whether
civil penalties would be more appropriate. There is concern, however, that
the requirement in section 125.69(1), Florida Statutes, that violations of
county ordinances be prosecuted in the same manner as misdemeanors are
prosecuted, precludes the county from limiting the sanction to a civil
penalty.

Section 125.69(1), Florida Statutes, provides:

"Violations of county ordinances shall be prosecuted in the same manner as
misdemeanors are prosecuted. Such violations shall be prosecuted in the
name of the state in a court having jurisdiction of misdemeanors by the
prosecuting attorney thereof and upon conviction shall be punished by a

fine not to exceed \$500 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment."

In Attorney General Opinion 71-233 (1971), this office concluded that the provision in section 125.69, Florida Statutes (1971), making county code violations misdemeanors that must be prosecuted in the name of the state and punishable by a fine and imprisonment precluded a county from providing by ordinance for a penalty other than that provided by general law. Subsequent to the rendition of that opinion, the statute was amended to reflect the present language directing that code violations be prosecuted in the same manner as misdemeanors.[1] Thus, while the prosecution of code violations may be carried out in the same manner as the prosecution of a misdemeanor, the Legislature no longer characterizes such a violation as a misdemeanor.

In 1989, section 125.69(2), Florida Statutes, was added to allow the board of county commissioners of each county to designate its agents or employees as code inspectors whose duty it is to assure compliance with the county's code.[2] In the same legislative act, Part II, Chapter 162, Florida Statutes, was created to provide supplemental procedures for the enforcement of county or municipal codes or ordinances and penalties for the violation thereof.[3] Pursuant to section 162.21, Florida Statutes, a county may designate employees or agents as code enforcement officers with the duty to enforce its codes and ordinances.[4] The statute specifically states:

"(5) A county or a municipality is authorized to enforce codes and ordinances under the provisions of this section and may enact an ordinance establishing procedures for the implementation of such provisions, including a schedule of violations and penalties to be assessed by code enforcement officers. If a county or municipality chooses to enforce codes or ordinances under the provisions of this section, *each code or ordinance* or the ordinance enacted by the county or municipality establishing procedures for implementation of this section shall provide:

- (a) That a violation of a code or an ordinance is a civil infraction.
- (b) A maximum civil penalty not to exceed \$500.
- (c) A civil penalty of less than the maximum civil penalty if the person who has committed the civil infraction does not contest the citation.
- (d) For the issuance of a citation by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or an ordinance.
- (e) For the contesting of a citation in county court.
- (f) Such procedures and provisions as are necessary to provide for the enforcement of a code or an ordinance under the provisions of this section." [5] (e.s.)

Thus, the Legislature has specifically authorized counties to enforce their codes or ordinances individually or as a whole pursuant to the provisions in section 162.21, Florida Statutes, but requires that the county make a violation of a code or ordinance enforced under the statute a civil infraction.[6] Where the Legislature has directed how a thing is to be done, in effect it operates as a prohibition against its being done in any other manner.[7] Accordingly, a county choosing to enforce its codes or ordinances, either individually or as a whole, pursuant to

section 162.21, Florida Statutes, is required to make a violation of such codes or ordinances a civil infraction with civil penalties.[8]

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] See s. 1, Ch. 79-379, Laws of Florida.

[2] See section 12, Ch. 89-268, Laws of Florida.

[3] See section 11, Ch. 89-268, Laws of Florida.

[4] Section 162.21(2), Fla. Stat. (1994 Supp.).

[5] Section 162.21(5), Fla. Stat. (1994 Supp.).

[6] See s. 162.21(8), Fla. Stat. (1994 Supp.), stating that "[t]he provisions of this section are additional and supplemental means of enforcing county or municipal codes or ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances."

[7] See *Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) (legislative directive as to how a thing is to be done is, in effect, a prohibition against its being done in another manner).

[8] Cf. Op. Att'y Gen. Fla. 88-48 (1988) (county may provide only civil penalties for the violation of an animal control or cruelty ordinance enacted pursuant to s. 828.27, Fla. Stat., requiring that such ordinances enacted pursuant to that section make the violation of an animal control or cruelty ordinance a civil infraction and prescribe civil penalties).