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

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

Plaintiffs,

v.

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

Defendants.
_____/

DEFENDANT PALM BEACH COUNTY'S RESPONSE TO PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION WITH INCORPORATED MEMORANDUM OF LAW, DE 8

I. Introduction

On December 19, 2017, the Palm Beach County Board of County Commissioners ("County") passed Ordinance 2017-046 ("Ordinance"), banning providers from engaging in the practice of seeking to change the sexual orientation or gender identity ("conversion therapy," also called "sexual orientation change efforts" or "SOCE") of a minor. Nearly six months later, on June 13 and 14, 2018, Plaintiffs sued and filed their first motion for preliminary injunction. Plaintiff's then filed their Renewed Motion for Preliminary Injunction ("Motion"), DE 8.

"Where a plaintiff seeks to enjoin the enforcement of a legislative enactment, the relief 'must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.'" *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314, 1331 (S.D. Fla. 2006) (citation omitted). Here, Plaintiffs fail to clearly show that an injunction is definitely demanded by the Constitution. *See Welch v. Brown*, No. 15-16598, 2016 U.S. App. LEXIS 17867, at *13 (9th Cir. Oct. 3, 2016) *superseding* 834 F.3d 1041, 1047 (9th Cir. 2016) *cert. denied* 137 S. Ct. 2093 (2017); *King v. Gov. of N.J.*, 767 F.3d 216 (3d Cir. 2014) *cert. denied*, 135 S. Ct. 2048 (2015); *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014) *cert. denied*, 134 S. Ct. 2871 (2014).

In support of this response, the County has filed certified copies of the County's charter, DE 35-1, and the videos and transcripts of the two County Board meetings during which the Ordinance at issue was publicly debated, DE 36-1, 37-1, 43.[1] The County has also attached declarations, Exhibits A-B, and filed Plaintiffs' depositions and answers to discovery. DE 77-81.

II. Issues with Standing

A. Otto Lacks Standing to Challenge the County's Ordinance[2]

Otto lacks standing to sue the County because there is no causal connection between his alleged injury and the County's Ordinance in that the County Ordinance does not apply in the City of Boca Raton where Dr. Otto practices.[3] The Ordinance applies "within the unincorporated areas

[1] *See Turner v. Wells*, 879 F.3d 1254, 1272 n.5 (11th Cir. 2018); *Universal Express, Inc. v. U.S. Sec. & Exch. Comm'n*, 177 F. App'x 52, 53 (11th Cir. 2006); *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005); *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003).

[2] The County does not concede that Hamilton has standing to challenge the Ordinance.

[3] DE 81, 19:25-20:2, 20:19-22, 144:22-24. Otto has regularly scheduled appointments with two clients in Delray and in unincorporated Palm Beach County. *Id*. at 143:17-144:23. But, the client

of Palm Beach County, and in all municipalities that have not adopted an ordinance in conflict." DE 1-5, 12:27-30.[4] Because there is a conflict as to the penalties imposed by the two ordinances, the County Ordinance does not apply in Boca Raton or to Otto.

Otto also lacks standing to challenge an Ordinance that regulates practices he does not engage in or attempt. Otto admits that he does not practice conversion therapy as defined by the County's Ordinance. DE 81, p. 176:8-23 ("I don't practice conversion therapy."); *see also* DE 79-2, nos. 37-38. Otto admits that he has never dealt with gender identity issues. DE 81, 151:19-20. Otto admits that he does not attempt and in fact cannot change a client's sexual orientation. DE 81, p. 43:19-25; 44:1-20; 45:5-12 ("That's like trying to say you go to the doctor and here, 'I'd like to be nine feet tall. Would you try to change me?' That's impossible."). As Otto does not engage in the practice of seeking to change a minor's sexual orientation or gender identity, he lacks standing to challenge a regulation that prohibits such a practice. Accordingly, for want of standing, Otto can show no likelihood of success on his claims against the County for its Ordinance.

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

Plaintiffs lack standing to bring claims on behalf of their patients because third-party standing will not lie where the ability of the purported client to protect his or her own interests is not hindered. *King*, 767 F. 3d 216, 244 (3d Cir. 2014). Plaintiffs have not shown why or how their clients' abilities to protect their interests are hindered. Accordingly, Plaintiffs' Motion should be limited as seeking relief only for themselves.

III. No Substantial Likelihood of Success on the Merits

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

Plaintiffs' Motion focuses on the merits of their free speech claim. DE 8, p. 3-15. Because Plaintiffs' analysis of these claims rests upon a reading of the County's Ordinance that does not comport with the text of the Ordinance, the text is examined.

Under the Ordinance, it is prohibited for "any Provider to **engage in** conversion therapy on any minor ... ." DE 1-5, 13:21-23 (emphasis added). A "provider" is "any person who is licensed

in unincorporated Palm Beach County was not a minor. *Id*. at 150:2-5. And, neither were Otto's minor clients who had same sex attractions. *See id*. at 169:12-170:6.

[4] Generally, citations to docket entries will cite the page number printed in blue at the top of the document. Deposition transcripts, responses to discovery, and exhibits to declarations are notable exceptions.

by the State of Florida to perform counseling pursuant to Chapters 456, 458, 459, 490 or 491 of the Florida Statutes ..." *Id*. at 13:11-12. Members of the clergy are exempted, even if so licensed, when they are *not* holding themselves out as operating pursuant to their Florida State license. *Id*. at 13:16-19. Thus, the Ordinance only applies to providers holding themselves out as operating pursuant to their Florida State license when practicing conversion therapy.

The Ordinance defines "conversion therapy" as:

> **the practice[5] 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.

Id. at 13:1-4 (emphasis added). What follows behind the word "including" cannot be divorced from the core definition of "conversion therapy," which is the practice of *seeking to change* an individual's sexual orientation or gender identity.[6] Conversion therapy does *not include*:

> counseling that provides support and assistance to a person undergoing gender transition, or counseling that: provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct[7] or unsafe sexual practices; **and does not seek to change an individual's sexual orientation or gender identity**.

Id. at 13:4-9 (emphasis added). Specifically exempted from the definition is counseling that "facilitates a person's coping, social support, and identity exploration." Plaintiffs lose sight of this when they complain that they can no longer discuss or explore a client's feelings about their sexual orientation or gender identity.[8] The core of what is prohibited is "the practice of seeking to change an individual's sexual orientation or gender identity." This core informs the list of examples and limits them accordingly. *See id*. Any other interpretation ignores the text and misreads the

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[5] The noun "practice" used in the context of licensed professionals often relates to the exercise of the profession. *See, e.g*., DE 1, ¶ 73 ("In their practices, Plaintiffs..."); ¶ 87 ("the practice of marriage and family therapy..."); DE 8, p. 9 ("As part of their practices, they counsel ...").

[6] *See Massachusetts v. EPA*, 549 U.S. 497, 557 (2007) (discussing the meaning of "including") ("Often, however, the examples standing alone are broader than the general category, and must be viewed as limited in light of that category.").

[7] As it is unlawful in the State of Florida to provide, sell, or show pornographic materials to a minor, *see, e.g*., §§ 847.012, 847.013, 847.0133, Fla. Stat. (2018), the Ordinance permits a provider to address such unlawful conduct with a minor so long as the provider does not seek to change the minor's sexual orientation or gender identity.

[8] *See also* DE 81, p. 191:1-9.

Ordinance.

Furthermore, contrary to Plaintiffs' reading of the Ordinance to prohibit them from discussing SOCE, recommending SOCE,[9] or expressing their opinions about SOCE, *see* DE 8, p. 5-6, the Ordinance expressly states that:

> Palm Beach County does not intend to prevent mental health providers from speaking to the public about SOCE; expressing their views to patients; recommending SOCE to patients; administering SOCE to any person who is 18 years of age or older; or referring minors to unlicensed counselors, such as religious leaders. This Ordinance does not prevent unlicensed providers, such as religious leaders, from administering SOCE to children or adults; nor does it prevent minors from seeking SOCE from mental health providers in other political subdivisions outside of Palm Beach County, Florida[.]

DE 1-5, p. 11:18-24. The Ordinance also does not prohibit any advertisement.[10]

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

Plaintiffs cannot show a substantial likelihood of success on the merits of their free speech claims because the Ordinance does not restrict protected speech. As the Supreme Court recently stated, government "may regulate professional conduct, even though that conduct incidentally involves speech." *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, ("*NIFLA*"), 138 S. Ct. 2361 (June 26, 2018) (citing *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 456 (1978); *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 884 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ.)). [11] Here, the Ordinance regulates "professional conduct."

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[9] *See* DE 77, p. 50:11-15.

[10] *See* DE 81, p. 149:16-18.

[11] "A statute that governs the practice of an occupation is not unconstitutional as an abridgement of the right to free speech, so long as any inhibition of that right is merely the incidental effect of observing an otherwise legitimate regulation." *Locke v. Shore*, 634 F.3d 1185, 1191 (11th Cir. 2011) (citations omitted); *see also Gonzales v. Carhart*, 550 U.S. 124, 158 (2007) ("Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.") (discussing government's restriction of particular method of performing an abortion); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) ("[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.").

See Pickup v. Brown, 740 F.3d 1208, 1225-1231 (9th Cir. 2014).[12] [13]

Plaintiffs provide licensed therapy to clients. Their clients seek help with discomfort, distress and life challenges.[14] The therapy Plaintiffs provide can only legally be done with a license.[15] For, it is therapists "who are trained to understand how to have conversations that are effective and healing ... ."[16] Trained therapists must study and learn the principles and methods of therapy.[17] The methods practiced by Hamilton include eliciting the clients' own ideas, resources and strengths; discovering "exceptions" to the presenting problem, times when the client feels good or comfortable, during the session and as "homework;" "building on" those exceptions; and then "attending" to those times to help the client.[18] Those methods are performed in the context of a relationship that is formalized by an intake process and consent form.[19]

Plaintiffs admit that therapy is a "form of treatment."[20] Thus, the Ordinance bans one type of treatment. It does not ban inquiries like the statute in *Wollschlaeger v. Governor*, 848 F.3d 1293 (11th Cir. 2017). It does not prohibit anyone from expressing their thoughts on or recommendations for a specific type of treatment like the regulation in *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002). It does not compel a specific governmental message, which is "not tied to a procedure at all," like the notice requirement in *NIFLA*, 138 S. Ct. 2361 (2018). Rather, the "speech" of talk therapy, like the consent requirement in *Casey*, 505 U. S. 833 (1992), is only implicated as part of the practice of therapy. Indeed, it *is* the procedure.

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[12] Though the Eleventh Circuit in *Wollschlaeger v. Governor*, 848 F.3d 1293, 1309 (11th Cir. 2017) expressed in dicta "serious doubts about whether *Pickup* was correctly decided" and noted that "characterizing speech as conduct is a dubious constitutional enterprise," 848 F.3d at 1309, the United States Supreme Court embraced that enterprise as proper constitutional analysis: "[w]hile drawing the line between speech and conduct can be difficult, this Court's precedents have long drawn it and the line is long familiar to the bar," *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, ("*NIFLA*"), 138 S. Ct. 2361 (2018) (citations omitted).

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

[14] DE 81, p. 22:12-21

[15] DE 77, p. 72:21-73:4; DE 81, p. 23:8-9.

[16] DE 77, p. 234:22-235:2.

[17] DE 77, p. 71:15-17, 72:6-11, 72:21-73:21; DE 81, p. 22:22-25:19, 37:8-38:3.

[18] DE 77, p. 105:2-106:6, 107:15-108:5; DE 78-1, no. 7, 9;

[19] DE 81, p. 97:14-98:14; DE 77, p. 55:3-57:5.

[20] DE 79-2, no. 34, 36; DE 78-2, no. 33, 35; DE 78-1, no. 23; DE 79-1, no. 23.

The fact that Plaintiffs' therapeutic practice is performed predominantly through "talk" does not convert those words into expressive or symbolic speech. *Pickup*, 740 F.3d at 1229-30. The practice of psychotherapy is not and should not be inherently expressive for the proider. *See Pickup*, 740 F.3d at 1230. Members of the public explained that to the County.[21] Hamilton concurred that a therapist's "self-disclosure" should only be done to meet the needs of the client.[22] The purpose of therapy is not for Plaintiffs to express their personal views.[23] Plaintiffs' practices are client-focused and client-directed: the client sets the therapeutic goals,[24] the client's values control,[25] the client tells Plaintiffs what brings them in and how they think Plaintiffs can help.[26] Hamilton explained that she does not introduce her own ideas or advice or suggestions, but uses what the client brings to the table.[27] For example, even if a client says that exercise helps them, Hamilton does not suggest that they exercise more, she asks what *they* think about exercising more.[28] She does not tell a client that a theory "fits" them; the client tells her if it fits or not.[29] Similarly, Otto also does not give advice; he talks about pros and cons for the client to weigh,[30] asks his clients how they make sense of their own feelings,[31] and lets them decide what they should do with what they bring to the table.[32] Whatever expression Plaintiffs believe they accomplish through their client-directed therapy (where they do not express their own beliefs or suggestions) is merely incidental to the treatment they provide. *See Pickup*, 740 F.3d at 1231.

Because the ban "regulates a professional practice that is not inherently expressive, it does not implicate the First Amendment." *Id*. Accordingly, this Court should apply the same

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[21] *See* DE 36-1, p. 49: 22-25, 50:1 ("Ethical clinicians maintain and complete continuing education and consultation to ensure that their political, personal, and religious views are not impressed on to their clients as this impacts their ability to remain objective.") 60:11-14 ("We're trained and we're retrained not to take control, not to impose our personal beliefs on any client. That would be inappropriate.").
[22] *See* DE 77, p. 29:25 – 30:13.
[23] *See* DE 77, p. 34:6-17, 222:14-23, 224:7-8; DE 81, p. 24:2-3, 105:7-10.
[24] DE 77, p. 66:10-12; DE 81, p. 44:14-14; DE 78-2, no. 36-37; DE 79-2, no. 37-38.
[25] DE 77, p. 89:6-8.
[26] DE 81, p. 57:22-23; DE 77, p. 100:9-10.
[27] DE 77, p. 157:2-158:3, 165:15-166:8.
[28] DE 77, p. 199:8-22.
[29] DE 77, p. 165:15-166:8.
[30] DE 81, p. 74:23-75:21
[31] DE 81, p. 72:5-18.
[32] DE 81, p. 155:15-156:20.

"deferential review" received by "other regulations of the practice of medicine." *Id*. at 1231; *see also Casey*, 505 U. S. 833 (1992). Because banning the practice of conversion therapy on minors is rationally related to a legitimate governmental interest of protecting minors from the practice of conversion therapy, the Ordinance is a constitutional exercise of the County's police power to regulate professional conduct in the interest of the public health, safety and welfare.

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

Even if this Court concludes that the Ordinance implicates the First Amendment, which the County does not concede, (i.) the Ordinance is content and view-point neutral and thus should be analyzed under intermediate scrutiny but nevertheless (ii.) survives even strict scrutiny, and should therefore be upheld. Accordingly, whatever standard is applied, Plaintiffs cannot show a substantial likelihood of success on the merits of their First Amendment claims.

i. The Ordinance is content and viewpoint-neutral.

The Ordinance is content neutral. It applies to all licensed providers who hold themselves out as engaging in conversion therapy pursuant to their license regardless of the provider's ideological basis. The Ordinance proscribes conversion therapy whether it is based on Christianity, Islam, Judaism,[33] culture,[34] or scientific beliefs about appropriate treatment.[35]

Content is not regulated; thus, the Ordinance is content neutral. *See Pickup*, 740 F.3d at 1231 (9th Cir. 2014).[36] For example, the Ordinance does not prohibit Hamilton from telling a girl in therapy that she looks "so beautiful" in a dress[37] so long as that is not Hamilton's practice of seeking to change that girl's gender identity. Similarly, Hamilton may not tell a boy that he is "so beautiful" in a dress if that is a practice of seeking to change that boy's gender identity. The Ordinance bans a particular practice – no matter its basis or content.

Furthermore, the Ordinance is viewpoint neutral. *See id.* at 1231; *see also King v. Gov. of N.J.*, 767 F.3d 216, 237 (3d Cir. 2014) ("The prohibition of this method of communicating a particular viewpoint, however, is not the type of viewpoint discrimination with which the First

[33] *See* DE 77, p. 153:17-20.
[34] *See* DE 36-1, p. 34:2-11.
[35] *See* DE 77, p. 323:20-25.
[36] Alternatively, the Court could find that the ban discriminates "in a way that does not trigger strict scrutiny" because the basis of the content discrimination "is the very reason the entire class of speech at issue is proscribable." *See King v. Gov. of N.J.*, 767 F.3d 216, 236 (3d Cir. 2014).
[37] DE 77, p. 107:1-13.

Amendment is concerned."). Much like a code of ethics prohibiting a counseling student from imposing upon patients her religious values, including those regarding homosexuality, *see Keeton v. Anderson-Wiley*, 664 F.3d 865, 875 (11th Cir. 2011), the Ordinance does not discriminate based on the viewpoint of the provider but prohibits all providers from specified practices.

The Ordinance does not discriminate between the direction of the intended change. A provider is not permitted to engage in a practice that seeks to change a heterosexual minor into a non-heterosexual any more than they may seek to change a non-heterosexual minor into a heterosexual: neither is permitted. Just because one situation is specifically included as an illustration of the prohibited conduct does not mean that the other situation is permitted.

Nor is the Ordinance viewpoint-based for excluding from the definition of "conversion therapy" practices that support a minor who is undergoing gender transition. Plaintiffs' argument on pages 11 and 12 of the Motion ignores that gender dysphoria, unlike "unwanted same sex attractions" or "homosexuality," is a diagnosable mental condition recognized by the authoritative diagnostic manual.[38] A provider is only permitted to support and assist a minor in their gender transition if the minor is already "undergoing" it. It is thus not a true "exception," because it does not permit a provider to engage in a practice that seeks to change a minor; it only permits a provider to support and assist the minor in what that minor is undergoing.

As a content and viewpoint-neutral regulation, the Ordinance, if it implicates the First Amendment at all, is entitled to intermediate scrutiny. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017). Just like the New Jersey conversion therapy ban was "sufficiently tailored to survive intermediate scrutiny," the County's Ordinance, which is nearly identical to the New Jersey ban, also withstands such scrutiny. *See King*, 767 F.3d at 240.

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

"[T]he regulation of health and safety matters is primarily, and historically, a matter of local concern." *Hillsborough Cty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985). The County is authorized to adopt ordinances to protect the health, safety, and general welfare of its

[38] DE 77, p. 52:7-53:1, 53:22-54:10, 140:5-10; DE 79-2, no. 12-14 ("Otto admits that the Diagnostic and Statistical Manual of Mental Disorders does not list "being lesbian, gay, bisexual or transgender" as a mental condition, although it does list "genderdysphoria."); DE 78-2, no. 11-13 (same).

residents.[39] *See* DE 35-1, § 3. Here, the Ordinance states, "Palm Beach County has a compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and questioning youth, and in protecting minors against exposure to serious harms caused by sexual orientation and gender identity change efforts." DE 1-5, 11:25-28; *see also id*. at 12:15-20. "It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'" *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (citation omitted).

The "whereas" clauses of the Ordinance summarize the condemnation of conversion therapy by a number of well-known, reputable professional and scientific organizations. For example, in 2009 an American Psychological Association task force reported that:

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

DE 1-6, p. 88. Plaintiffs quote this report, which acknowledges deficiencies in the body of research on conversion therapy, to attack the County for concluding that *voluntary* conversion therapy is harmful to *minors*. *See* DE 8, pp. 18-19. The County responds with four points: First, notwithstanding the limitations in the research, the task force still found that SOCE can cause harm and recommended against it. DE 1-6, pp. 88-89. Second, the task force did not conclude, and Plaintiffs identify no basis to assume, that minors experience harms to any less degree than adults. Third, the "voluntariness" of minors' request for SOCE counseling is undermined by their dependence[40] and developmental state.[41] Fourth and finally, the law does not require scientific

[39] Plaintiffs admit that "Palm Beach County has the power to legislate in the interest of protecting the well-being of minors, but only to the extent such legislation is authorized under the Florida Constitution and statutes, and only if such legislation does not violate statutory or constitutional protections." DE 78-2, no. 5; DE 79-2, no. 6.

[40] *See* DE 79-2, no. 25; DE 78-2, no. 24.

[41] "Children and adolescents are often unable to anticipate the future consequences of a course of action and are emotionally and financially dependent on adults. Further, they are in the midst of developmental processes in which the ultimate outcome is unknown. Efforts to alter that developmental path may have unanticipated consequences[.]" DE 1-6, p. 86; *see also* DE 36-1, 23:6-13; DE 81, p. 173:8-15.

unanimity or conclusive proof to authorize government regulation. *See Collins v. Texas*, 223 U.S. 288, 297-98 (1912) (recognizing the "right of the State to adopt a policy even upon medical matters concerning which there is difference of opinion and dispute"); *King*, 767 F.3d at 239 (3d Cir. 2014) ("[A] state legislature is not constitutionally required to wait for conclusive scientific evidence before acting to protect its citizens from serious threats of harm.").

Other organizational condemnations of conversion therapy were also considered by the County. *See* Exhibit A, Hvizd Declaration. In 2015, the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration ("SAMHSA") issued a report stating, "Mental health and behavioral interventions aimed at achieving a fixed outcome, such as gender conformity, including those aimed at changing gender identity or gender expression, are coercive, can be harmful, and should not be part of treatment." *Id*. at Exhibit 11, p. 13. In 1993, the American Academy of Pediatrics stated, "Therapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation." *Id*. at Exhibit 2, p. 633. The American Academy of Child and Adolescent Psychiatry agreed that conversion therapy is contraindicated:

> Psychiatric efforts to alter sexual orientation through "reparative therapy" in adults have found little or no change in sexual orientation, while causing significant risk of harm to self-esteem. ...
>
> There is no empirical evidence that adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness, and caring, which are important protective factors against suicidal ideation and attempts. ... Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial, or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated.
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> ***
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> Similarly, the possible risk that children may be traumatized by disapproval of their gender discordance must be considered. Just as family rejection is associated with problems such as depression, suicidality, and substance abuse in gay youth, the proposed benefits of treatment to eliminate gender discordance in youth must be carefully weighed against such possible deleterious effects.

Id. at Exhibit 7, pp. 967-69. Hamilton agrees that children can only take so much rejection of their

personhood,[42] and both Plaintiffs admit that self-rejection can be harmful to minors.[43] The American College of Physicians also stated:

> Available research does not support the use of reparative therapy as an effective method in the treatment of LGBT persons. Evidence shows that the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons. Research done at San Francisco State University on the effect of familial attitudes and acceptance found that LGBT youth who were rejected by their families because of their identity were more likely than their LGBT peers who were not rejected or only mildly rejected by their families to attempt suicide, report high levels of depression, use illegal drugs, or be at risk for HIV and sexually transmitted illnesses [.]

Id. at Exhibit 12, p. 11. The American Psychiatric Association concurred that the potential risks were great: "The potential risks of "reparative therapy" are great and include depression, anxiety, and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient." *Id*. at Exhibit 3. The Pan American Health Organization denounced the practice, "'Reparative' or 'conversion therapies' have no medical indication and represent a severe threat to the health and human rights of the affected persons. They constitute unjustifiable practices that should be denounced and subject to adequate sanctions and penalties." *Id*. at Exhibit 9, p. 2. The American Psychoanalytic Association also warned against conversion therapy:

> Psychoanalytic technique does not encompass purposeful attempts to "convert," "repair," change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.

Id. at Exhibit 6. In concluding that conversion therapy is a harmful practice, the County was entitled to rely on the judgments of these professional organizations. *See King*, 767 F.3d at 238 ("Legislatures are entitled to rely on the empirical judgments of independent professional organizations that possess specialized knowledge and experience concerning the professional practice under review ... ."). At the Board Meetings, the County also heard from practitioners in the field of mental health whom echoed the concerns of the professional organizations. *See* DE 36-1, 12:8—14:20, 17:6-17. 50:7-12, 77:8-9; DE 37-1, 15:5-17:10, 23:3—25:5, 41:8—44:12.

[42] DE 77, p. 284:5-285:16.
[43] DE 78-2, no. 25; DE 79-2, no. 26.

Plaintiffs' testimony also calls into question sexual orientation change *efforts* by therapists. "I can't change your attractions," Hamilton admits.[44] Otto agrees: "I can't change any client."[45] Further, neither Otto nor Hamilton learned sexual orientation change efforts in their masters or doctorate course work at Nova Southeastern University.[46]

Local providers and members of the public gave the County reason to believe that "conversion therapy" was being practiced on minors in its jurisdiction. *See* DE 36-1, 17:23—18:2; DE 37-1, 8:23-25, 46:10-16, 47:13-17, 48:22—49:5. The County learned of two complaints of children forced to go to conversion therapy, *see* DE 36-1, 65:15-21; DE 37-1, 64:22-25, 79:23-80:25, and received an email from a resident who supported the conversion therapy ban and had "personally heard and been moved by the horrific stories of friends that have been subject to these cruel and inhumane methods." Exhibit B, Rivera Declaration, Exhibit 1.

To address this compelling interest, the Ordinance is narrowly tailored to prohibit only the **practice**, as opposed to any discussion or recommendation, of **conversion therapy**, which is the practice condemned by numerous professional organizations as contraindicated, harmful, and ineffective, on **minors**, "whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely,"[47] by **licensed providers**, who would be the only ones able to hold themselves out as engaging in these condemned practices pursuant to an official license or scientifically based principles and methods.

The County cannot rely on blanket and general prohibitions against discrimination and "harming minors" to adequately protect minors from the specific harms of conversion therapy. First, codes of ethics and disciplinary rules are the floor – not a blueprint – of acceptable conduct. Second, despite the outcry against conversion therapy, the state and the organization that creates the marriage and family therapy code of ethics, the American Association for Marriage and Family Therapy ("AAMFT"), have not specifically prohibited the practice.[48] Third, the state's failure to ban conversion therapy should not be conflated with its tacit approval. The continuing learning education accrediting body for the state licensing board revoked certification for credits from one

[44] DE 77, p. 134:19.
[45] DE 81, p.44:3.
[46] DE 81, p. 186:17-187:4; DE 77, p. 15:12-18.
[47] *See Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990).
[48] *See* DE 77, p. 95:22-23; DE 36-1, p. 15:12-21.

of Hamilton's presentations that the board said was about "conversion therapy."[49] Fourth, even if the creator of the code of ethics had renounced a specific practice, it would not stop providers from engaging in conversion therapy. For example, Hamilton was not aware whether the AAMFT had a position on SOCE.[50] In fact the AAMFT has issued such a statement: "the association does not consider homosexuality a disorder that requires treatment, and as such, we see no basis for such therapy." Exhibit A, Hvizd Declaration, Exhibit 13. When the County cannot rely on providers to know whether the creators of their code of ethics[51] has issued a statement about a particular practice, the County cannot rely on providers to conclude that they should not engage in practices that are contraindicated, harmful, and perpetuate discriminatory views of gender and sex, and thus prohibited by their licensing board and code of ethics.[52]

Nor can the County rely on the "voluntariness" of therapy to adequately protect minors. Providers presume a minor's participation in therapy equals consent.[53] Under this definition, it is presumed that even a four or six year old can "consent" to therapy because they "come in, willing to talk, [and] participate."[54] The County cannot ignore that children are influenced by their parents[55] and may feel pressure to be at harmony with their parents and authority figures, which include the therapist.[56] This is evidenced by Plaintiffs' practices. Family harmony may cause Hamilton not to encourage a minor whom wishes to pursue a gender transition to "go down a transgendered path" while living under the same roof as disapproving parents.[57] Otto explained that, because the family lives under the same roof, it is important to have everyone "on the same page."[58] Minors, and their therapists, are concerned about conflicts within the family. For example,

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[49] DE 77, p. 267:18-269:8.
[50] DE 77, p. 235:7-10.
[51] Though she is not a member of AAMFT, Hamilton subscribes to the AAMFT code of ethics. *Id.* at 237:2-7.
[52] Another reason the County cannot rely on general prohibitions against harm to minors to protect minors from the specific harms of conversion therapy is the fact that some psychological harms may take years to be fully manifested or understood. *See* DE 79-2, no. 50; DE 78-2, no. 49. Minors should not have to wait until the harms inflicted upon them are fully manifested or understood before the harmful practice inflicting the harm is proscribed.
[53] DE 77, p. 90:20-91:9, 91:20-92:1, 95:85:6-97:3, 101:8-18.
[54] DE 77, p. 94:6-13, 101:8-18.
[55] DE 78-2, no. 23; DE 79-2, no. 24.
[56] DE 77, p. 91:10-13.
[57] DE 77, p. 327:19-328:11.
[58] DE 81, p. 57:5-21.

one of Otto's minor clients was brought in by a parent whom wanted the minor's same sex attractions to decrease, but the minor's concern was to decrease conflict with the parent and to make sense of the disconnect between the minor's attractions and faith. DE 81, 87:25-90:8. Determining whether such a minor, experiencing a conflict with the authority figures whom provide them with physical and financial support, is participating in therapy "voluntarily" is more nuanced than the litmus test of "is the minor talking?"

As the SAMHSA report noted, "[i]nformed consent cannot be provided for an intervention that does not have a benefit to the client." Exhibit A, Hvizd Declaration, Exhibit 11, p. 27. Even if the minor's participation in conversion therapy were truly voluntary, the minor's "informed consent" to the practice still would not adequately address the County's concern about the harms. *See King v. Gov. of N.J.*, 767 F.3d 216, 240 (3d Cir. 2014) (finding that "an informed consent requirement could not adequately ensure that only those minors that could benefit would agree to move forward").

3. The Ordinance Is Not a "Prior Restraint"

Plaintiffs' "prior restraint" claims, DE 8, pp. 22-23, stretch holdings concerning licensing moratoriums beyond their reach. The Ordinance is no moratorium on the licensed practice of therapy. It prohibits one particular practice. Plaintiffs may still engage in other practices on minors, and they may engage in conversion therapy on adults. Plaintiffs cannot show that the "peaceful enjoyment" of their alleged First Amendment freedoms are "contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official." *See Staub v. City of Baxley*, 355 U.S. 313, 322 (1958). Plaintiffs' meritless "prior restraint" claims cannot support a preliminary injunction.

4. The Ordinance is Not Vague.

Plaintiffs' vagueness concerns can be answered by reading the Ordinance. Both Plaintiffs know what practices would violate the Ordinance. Hamilton knows what it means to seek to change sexual orientation or gender identity. Hamilton testified that it was her goal to offer therapy that would seek to change a female child's gender identity from male to female.[59] Hamilton, who considers "sexual orientation" and "sexual attractions"[60] to be synonymous concepts, has offered

[59] DE 77, p. 94:25-95:9.
[60] DE 77, p. 141:10-142:1.

therapy "hoping to reduce attractions, if at all possible."[61] Though Otto does not practice conversion therapy, he is aware of the practice and provides his clients an "informed consent form [that] outlines the nature of SOCE counseling, explains the controversial nature of SOCE counseling, ... and informs the client of the potential benefits and risks associated with SOCE counseling." *Id*. at ¶ 128; DE 81-6.

The Third Circuit analyzed a nearly identical ban of conversion therapy in *King* and rejected the plaintiffs' argument that the banned practice was unconstitutionally vague. *King*, 767 F.3d at 240. Here, as in *King*, the banned conduct is sufficiently clear to pass constitutional muster where the therapy is a discrete practice within the profession, has been the target of public statements by professional organizations, and is familiar to Plaintiffs. *Id*. at 240-41. Accordingly, the Ordinance is not void for vagueness. *See id*.; *see also Pickup v. Brown*, 740 F.3d 1208, 1233-34 (9th Cir. 2014) ("SB 1172 is not void for vagueness.").

As the Ordinance is not a prior restraint, is neither vague nor overboard, and is narrowly tailored to address the County's compelling interest, and Plaintiffs cannot show a likelihood of success on their free speech claims, no preliminary injunction should issue on these claims.

B. Plaintiffs Fail to Argue the Merits of Their Free Exercise Claims

As Plaintiffs do not argue the likelihood of success of their free exercise claims in DE 8, they have waived entitlement to a preliminary injunction issuing on the basis of these claims. Even if the issue were preserved, Plaintiffs cannot show a likelihood of success on the merits of their free exercise claims because the Ordinance is facially neutral and generally applicable,[62] Plaintiffs have no constitutional right to offer and their clients have no constitutional right to receive any particular form of treatment from any particular provider,[63] and the County may regulate professional conduct without implicating or violating the First Amendment. Accordingly, no preliminary injunction should issue based upon the merits of these claims.

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[61] DE 77, p. 137:10-138:18.

[62] *See Keeton v. Anderson-Wiley*, 664 F.3d 865, 879-80 (11th Cir. 2011); *King v. Gov. of N.J.*, 767 F.3d 216, 242 (3d Cir. 2014); *see also Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1077 (9th Cir. 2015).

[63] *See Connecticut v. Menillo*, 423 U.S. 9, 11 (1975); *Mitchell v. Clayton*, 995 F.2d 772, 775 (7th Cir. 1993).

C. Preemption

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

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

Examination of the "whole law" regarding regulation of health care providers reveals that the Florida Legislature expressly recognized that local governments will legislate in the area of regulating mental health care providers. Section 456.003(2)(b), Florida Statutes (2017), expresses the legislature's intent to allow the Florida Department of Health to enact regulations applicable to marriage and family therapists "for the preservation of the health, safety, and welfare of the public under the police powers of the state . . . when . . . *[t]he public is not effectively protected by other means, including, but not limited to*, other state statutes, *local ordinances*, or federal legislation." § 456.003(2)(b), Fla. Stat. (2017) (emphasis supplied). Given the Legislature's express recognition that local governments may enact ordinances to protect the health of their citizens by regulating marriage and family therapists, Plaintiffs are not likely to succeed on their implied preemption claim and no preliminary injunction should issue on the merits of that claim.

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

Plaintiffs cannot show a substantial likelihood of success on their claim under the Florida Patient's Bill of Rights and Responsibilities, because it does not create a private cause of action. § 381.026(3), Fla. Stat. (2017) ("This section shall not be used for any purpose in any civil ...

action and neither expands nor limits any rights or remedies provided under any other law.").

E. Religious Freedom Restoration Act

Plaintiffs cannot show a substantial likelihood of success on their claim under the Florida Religious Freedom Restoration Act ("FRFRA"), section 761.03, Florida Statutes, (Count VIII), because they cannot show that the Ordinance places a substantial burden on their religion. "[A] substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires." *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 (Fla. 2004). The inquiry is "whether a particular religious practice is obligatory or forbidden." *Id*.

Plaintiffs are not likely to show that their religion requires *licensed* practitioners to engage in practices that seek to change a *minor's* sexual orientation or gender identity. Plaintiffs admit that their religion does not require them to change or convert homosexuals into heterosexuals.[64] Plaintiffs claim that their religion requires them to help people with their goals;[65] Plaintiffs do not claim that their religion requires them to help people with their goals in a way that would violate the law. Otto correctly acknowledges that the Ordinance does not require him to affirm any person's same sex attractions.[66] Moreover, the Ordinance only restricts when Plaintiffs may engage in conversion therapy (during the time of a client's minority) and only permits – it does not compel – affirmative therapy. Because Plaintiffs cannot show a substantial burden on their religion, their FRFRA claim fails. *See, generally*, *Freeman v. Dep't of High. Saf. & Motor Vehs.*, 924 So. 2d 48, 57 (Fla. 5th DCA 2006).

IV. Preliminary Injunction Is Not Necessary to Prevent Irreparable Harm

Plaintiffs allege they will suffer irreparable injury in the form of their First Amendment rights and that they are subject to fines. DE 8, p. 19. For the reasons already stated, Plaintiffs have not suffered a loss of their First Amendment freedoms and the County has not violated their First Amendment rights that would constitute irreparable harm. Furthermore, Plaintiffs fail to carry their burden of showing that they will suffer irreparable injury absent a preliminary injunction because (A) Otto's practice does not violate the Ordinance, (B) Plaintiffs' alleged harm is quantifiable and can be compensated by monetary damages and (C) Plaintiffs' delays in seeking

[64] DE 81, p. 163:14-17; DE 77, p. 220:12-223:4, 285:24-287:22.
[65] DE 81, p. 161:21-162:4; DE 77, p. 217:2-15.
[66] DE 81, p.162:18-163:2.

relief against the County significantly undermine any finding that they might suffer irreparable injury if an injunction is not issued. "An injury is 'irreparable' only if it cannot be undone through monetary remedies." *Del Monte Int'l, GMBH v. Ticofrut,* S.A., 2017 U.S. Dist. LEXIS 33140, *20 (S.D. Fla. Mar. 7, 2017) (internal citations omitted).

A. Otto's Practice Does Not Violate the Ordinance [67]

As discussed in Section II. A., *supra*, Otto admits that he does not practice conversion therapy as defined by the County's Ordinance. Otto 43:19-25, 44:1-20, 45:5-12, 86:3-5, 151:19-20, 170:18-22, 176:8-23. Based on Otto's own testimony, the Ordinance does not apply to him or his practice and therefore, he is not suffering any irreparable injury because of the Ordinance.

B. Plaintiffs' Alleged Harm is Quantifiable and Compensable

The alleged injuries must be special or unique to be irreparable. *Del Monte Int'l*, 2017 U.S. Dist. LEXIS 33140 at * 20 (internal citations omitted). Plaintiffs state in their Motion that part of their irreparable injury is based on "if Plaintiffs violate the Ordinances' prohibitions, then they are subject to fines . . . ." [68] DE 8, p. 19. Monetary damages is insufficient to establish irreparable injury. *Del Monte Int'l*, 2017 U.S. Dist. LEXIS 33140 at * 20 (internal citations omitted). Additionally, Otto testified that he has not lost any business clients because of the passing of the Ordinance nor has he claimed to have lost any potential clients. DE 81, 85: 24-25; 86: 1-6. Hamilton testified that she turned away two potential clients. DE 1, ¶¶ 157-158; DE 77, 262: 3-9. Considering Hamilton sees clients at most once per week and always charges the same amount for a session, Hamilton could calculate her lost revenue. DE 77, 57:15-58:7. However, losing business clients because of the passing of the Ordinance is business income which is monetary and quantifiable and therefore, not special, unique or irreparable.

C. Plaintiffs' Five Month Delay in Seeking Relief Significantly Undermines Any Finding that They Might Suffer Irreparable Injury if an Injunction is Not Issued

Plaintiffs filed their Complaint five months after the County enacted the Ordinance. DE 1; DE 1-5. A preliminary injunction is premised on the need for speed and urgent action to protect

[67] The County does not concede that Hamilton's practice does violate the Ordinance.

[68] Plaintiffs also allege they will be subject to disciplinary actions for violating the Ordinance. However, the Ordinance does not impose any penalty other than a civil fine. In any event, the Ordinance is consistent with the Standard 1.1 of the AAMFT Code, which prohibits discriminating against clients based on their sexual orientation or gender identity. DE 1, ¶ 91.

a plaintiff's rights and requires a showing of imminent irreparable harm. *Wreal, LLC v. Amazon.com*, 840 F. 3d. 1244, 1248 (11th Cir. 2016). The Eleventh Circuit has upheld a denial of a preliminary injunction solely because of an unexplained five months delay because it "fatally undermined any showing of irreparable injury." *Id*. Here, both Plaintiffs spoke at the December 5, 2017, meeting. DE 36-1, 8-11, 17-23. At the December 19 meeting, Hamilton spoke and Otto's wife, Shannon Otto, spoke on his behalf. DE 37-1, 8-12. Plaintiffs were aware of the Ordinance but inexplicably waited five months before filing their Complaint and subsequent Motion for a Preliminary Injunction. This fatally undermines their claims of the imminent irreparable harm.

V. The Remaining Factors Weigh Against the Issuance of an Injunction

The balance of the hardships and the public interest weighs against the issuance of an injunction. "Congressional intent and statutory purpose can be taken as a statement of public interests." *Johnson v. U.S. Dep't of Agriculture*, 734 F.2d 774, 788 (11th Cir. 1984). The Ordinance expressly states that the County has a "compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and questioning youth, and in protecting its minors against exposure to serious harms caused by sexual orientation and gender identity change efforts;" and "Section 1. INTENT" states that the "Ordinance is to protect the physical and psychological well-being of minors." DE 1-5, p. 5:5-9, 25-27. The County found "overwhelming research demonstrating that sexual orientation and gender identity change efforts can pose critical health risk to lesbian, gay, bisexual, transgender or questioning persons . . . . " DE 1-5, p. 5:9-13.

During the County's public meetings on December 5 and 19, 2017, members of the public spoke directly to the Board of the harms of conversion therapy. DE 36-1, pp. 11-17; 49-51; 65-67. At the December 19 meeting, a concerned member of the public reported directly to the Board that his organization had received complaints of unwanted conversion therapy. DE 37-1, p. 80:10-13. The Board also received an email from a resident about the "horrific stories of friends that have been subject" to "cruel and inhumane" conversion therapy methods. *See* Exhibit B, Rivera Declaration, Exhibit 1.

The County has compelling interests in protecting the physical and psychological well-being of minors that are subject to harmful ineffective conversion therapy. This interest outweighs Hamilton's economic and monetary loss due to turning away two potential clients or having to withhold administering conversion therapy during the pendency of trial when both Plaintiffs

expressly admit that "being lesbian, gay, bisexual or transgender" is not a mental condition per the Diagnostic and Statistical Manual of Mental Disorders. DE 79-2, no. 12-14; DE 78-2, no. 11-13. Plaintiffs also conceded that minors can change *without therapy* and therefore, the County's interests outweighs the Plaintiffs alleged hardships.[69] Notably, Hamilton testified that her concern is that children are getting older and the Ordinance is preventing her from providing conversion therapy to young children when she prefers early intervention.[70] Hamilton's concern that a child will be a few months older during the pendency of trial does not outweigh the County's concern with preventing harmful treatment to children. Nothing in the Ordinance prevents Plaintiffs from practicing in other areas outside conversion therapy or from treating issues such as suicidal idealization, self-harm, depression, anxiety, low self-esteem, etc. Moreover, Otto fails to show any irreparable harm to himself as he does not practice conversion therapy, does not deal with gender identity confusion, and does not attempt to change sexual orientation.[71] For the reasons stated, the County's hardships and public interests outweighs the Plaintiffs' alleged harms.

WHEREFORE, for the reasons stated above, the County asks this Court to deny Plaintiffs' Motion [DE 8]. The County seeks any and all other relief the Court deems just and proper.

Respectfully submitted,

/s/ Rachel Fahey

Rachel Fahey, Esquire
Assistant County Attorney

[69] DE 81, p. 171:3-16; DE 77, p. 226:12-13.
[70] DE 77, p. 206:15-25; 207:1-22; 309:17-25; 310:1-11 ("We know that the earlier you catch something, the better."); DE 78-1, no. 22 (Hamilton provided gender identity confusion therapy to a six year old).
[71] DE 81, p. 43:19-20; 43:25; 44:1-20 ("**Q:** All right. Is it a part of your practice to attempt to change any client's sexual orientation?" **A:** I can't change any client. My client's [sic] come to me with issues of distress that they want to work on, and I will talk with them about those issues and about alleviating their stress. Or if they have a conflict between their sincerely held beliefs and some other aspect of their life, *be that sexual or not*, we'll talk about those incongruities and how to make sense of those and how to decrease their anxiety and discomfort that comes from that.") (Emphasis added).

CERTIFICATE OF SERVICE

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

/s/ Rachel Fahey
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