

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

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**PLAINTIFFS’ MOTION FOR LEAVE TO FILE CONSOLIDATED REPLY IN  
SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION, AND  
FOR LEAVE TO EXCEED THE PAGE LIMITATION**

Pursuant to S.D. Fla. L. R. 7.1, Plaintiffs, Robert W. Otto, Ph.D., LMFT, and Julie H. Hamilton, Ph.D., LMFT, individually and on behalf of their patients (“Plaintiffs”), respectfully move this Court for: (a) leave to file a consolidated Reply in support of their Motion for Preliminary Injunction; and (b) leave to exceed the page limit for said Reply. In support, Plaintiffs show the Court as follows:

- 1) On June 22, 2018, Plaintiffs filed their Renewed Motion for Preliminary Injunction. (Dkt. 8).
- 2) On July 13, 2018, the Court entered a Joint Discovery Plan for Preliminary Injunction Motion (dkt. 25), which was subsequently revised through the entry of the Amended Discovery Plan for Preliminary Injunction Motion, entered by the Court on August 8, 2018. (“Amended PI Plan”) (Dkt. 50).
- 3) Pursuant to the Amended PI Plan, on September 10, 2018 Defendants City of Boca Raton (“City”) and Palm Beach County (“County”) (collectively “Defendants”) filed **separate** responses in opposition to the Preliminary Injunction Motion. (Dkts. 83 and 85, respectively).
- 4) Arguably, the Amended PI Plan already permits Plaintiffs to file a single, consolidated Reply in support of their Preliminary Injunction Motion. (Dkt. 50 at 2) (“Plaintiffs shall file their **Reply** in support of the preliminary injunction motion ...”) (emphasis added).

Nevertheless, out of an abundance of caution, Plaintiffs respectfully request leave to file a single, consolidated Reply, in the interests of efficiency. Defendants' separate responses in opposition raise many of the same (sometimes identical) arguments. Filing a single, consolidated Reply would be much more efficient than filing two separate replies. Plaintiffs note that, for the same reasons, the Court has already permitted Plaintiffs to file a single, consolidated response in opposition to Defendants' two separate motions to dismiss. (Dkts. 54, 62). Granting the relief requested herein would therefore be consistent with the parties' and the Court's past practice in this case.

5) With respect to the page limit, an enlargement of the limit provided in S.D. Fla. L.R. 7.1(c)(2) (10 pages for one reply, presumably 20 pages for a consolidated reply to two oppositions) is both necessary and warranted here for multiple reasons, including:

- a) Defendants' two separate oppositions, to which Plaintiffs are replying, span a combined **42 pages**, and raise myriad arguments, legal and factual. (Dkts. 85, 85). Moreover, the oppositions attach, cite or otherwise rely upon hundreds of pages of deposition transcripts, discovery documents and other exhibits. (*Id.*)
- b) Over Plaintiffs' objection (dkt. 70), the Court permitted two amici to file briefs opposing the preliminary injunction motion (dkts. 73, 90, 91), which combined span an additional **43 pages**. (Dkts. 90, 91). In their Reply, Plaintiffs need to respond to some of the arguments raised by the amici as well.
- c) Since the filing of the Preliminary Injunction Motion, pursuant to the Amended PI Plan, the parties have engaged in significant preliminary injunction discovery, yielding over **16,000 pages** of documents and over **1,000 pages** of deposition transcripts. Plaintiffs endeavor to distill this voluminous record for the Court in their Reply.
- d) Also since the filing of the Preliminary Injunction Motion, the Supreme Court decided a seminal case, *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) ("*NIFLA*"), which abrogated both of the principal cases upon which Defendants premised the ordinances challenged in this suit. Plaintiffs' Reply must explain in detail the dispositive effect of *NIFLA* for this case, and must also address Defendants' untenable attempts

to avoid that effect.

6) Plaintiffs have attempted to be as brief as possible, while fully addressing the weighty and complex constitutional issues involved in this case. In light of the considerations above, Plaintiffs' Reply spans 32 pages (excluding tables). Plaintiffs diligently attempted but could not address the issues before the Court in a shorter submission.

7) Plaintiffs request leave to file their oversized Reply, because it will assist the Court in reviewing, distilling and adjudicating the important issues and voluminous record presented in this case. Plaintiffs are mindful of the Court's time and do not submit this motion for purposes of undue delay.

WHEREFORE, for good cause shown, Plaintiffs respectfully request that this Motion be granted, and that the Court permit them to file one consolidated Reply of 32 pages (excluding tables) in support of their Preliminary Injunction Motion. Plaintiffs conditionally file the Reply herewith while awaiting the Court's decision on this motion.

Respectfully submitted,

/s/ Roger K. Gannam

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of October 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