

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

**PLAINTIFFS' NOTICE OF FILING DECLARATION AND DEPOSITION
TRANSCRIPTS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs, ROBERT W. OTTO, PH.D. LMFT, individually and on behalf of his patients, and JULIE H. HAMILTON, PH.D., LMFT, individually and on behalf of her patients, gives notice of filing copies of the following documents, attached hereto, in support of Plaintiffs' Motion for Preliminary Injunction (DE 8):

1. Declaration of Plaintiff Julie H. Hamilton, Ph.D., LMFT;
2. Deposition of Helene C. Hvizd, Esq., as Rule 30(b)(6) Representative of Defendant Palm Beach County, Sep. 20, 2018;
3. Deposition of Dr. Shayna Ginsburg, as Rule 30(b)(6) Representative of Defendant Palm Beach County, Sep. 20, 2018; and
4. Deposition of Michael Woika, as Rule 30(b)(6) Representative of Defendant City of Boca Raton, Sep. 21, 2018.

Respectfully submitted,

/s/ Roger K. Gannam
Mathew D. Staver (Fla. 0701092)
Horatio G. Mihet (Fla. 026581)
Roger K. Gannam (Fla. 240450)
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
E-mail: court@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this October 10, 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,)
and JULIE H. HAMILTON, PH.D., LMFT,)
individually and on behalf of her patients,) Civil Action No. 9:18-cv-80771-RLR
)
Plaintiffs,)
)
v.)
)
CITY OF BOCA RATON, FLORIDA, and)
COUNTY OF PALM BEACH, FLORIDA,)
)
Defendants.)

DECLARATION OF PLAINTIFF JULIE H. HAMILTON, PH.D., LMFT

1. I am over the age of 18 years, and I am a named Plaintiff in this case. I have personal knowledge of the matters set forth in this declaration, and would testify competently as to such matters if called to do so.

2. Since the filing of the Verified Complaint in this action on June 13, 2018 (DE 1), I have taken the following actions in connection with my professional practice as a licensed marriage and family therapist in Palm Beach County, Florida:

a. Paid the City of Boca Raton local business tax for the annual periods ending September 30, 2018 and September 30, 2019 (true and correct copies of my City of Boca Raton Business Tax Receipt/Certificate of Use for the annual period ending September 30, 2018, and my Payment Receipt for my online payment of the City of Boca Raton local business tax for the annual period ending September 30, 2019, are attached hereto as Exhibits A-1 and A-2, respectively);

b. Paid the Palm Beach County local business tax for a Boca Raton office for the annual period ending September 30, 2019 (a true and correct copy of my Palm Beach County Local Business Tax Receipt for the annual period ending September 30, 2019 is attached hereto as Exhibit A-3).

c. Provided in-person counselling in the City of Boca Raton consistent with my licensure and applicable law.

I DECLARE under penalty of perjury that the foregoing is true and correct.

EXECUTED this October 9, 2018.

/s/ Julie H. Hamilton
Julie H. Hamilton

LOCAL BUSINESS TAX
RECEIPT # 18 00069044

HAMILTON, JULIE HARREN
HAMILTON, JULIE HARREN
4400 N FEDERAL HWY 21

HAMILTON, JULIE HARREN
2853 WHITE TROUT LN
WEST PALM BEACH FL 33411

CITY OF BOCA RATON
BUSINESS TAX AUTHORITY

**BUSINESS TAX RECEIPT
CERTIFICATE OF USE**
EXPIRES: 9/30/18

THIS IS NOT A BILL
Any changes in name, address, suite, ownership, ect. will require a new application within 15 days to avoid penalty or the license is null and void.

Business Tax fee:	26.25
Penalty fee:	.00
Late fee:	.00
Additional fee:	73.00
Transfer fee:	.00
Total paid:	99.25

has paid the business tax at the above address for the period beginning the 1st day of October and ending the 30th day of September to engage in the business, profession or occupation of:

Classification: EXECUTIVE SUITE SERVICE OTC

Comments: MARRIAGE AND FAMILY THERAPY

WELCOME to the City of Boca Raton. We are proud to have your business in our community. You may call us at 561-393-7937 if you have questions relating to your business needs. We are located at 200 NW 2 Avenue. Lobby hours are 8:00 AM to 4:00 PM Monday thru Friday, except Wednesday, hours are 8:00 AM to 3:00 PM. Our mailing address is 201 W. Palmetto Park Rd, Boca Raton, FL. 33432.

VERIFY all information on your Business Tax Receipt / Certificate of Use and notify us immediately if there is an error.

CHANGES REQUIRE A NEW APPLICATION TO BE SUBMITTED WITH APPROPRIATE FEE(S) AND DOCUMENTATION WITHIN 15 DAYS OF THE CHANGE. If you make any changes to the business; examples: change of location within the City, expansion of space, change of ownership, change of business name, change of applicant/qualifier name, change of mailing address, change in nature of business operated, or add a new type of business at the same or at a different location, a new application must be filed within 15 days of the change in order to keep the account current and avoid paying a penalty. Make sure Division of Corporations reflects all changes.

VISIT our website at: WWW.MYBOCA.US, click on 'BUSINESS', then 'BUSINESS TAX', then on the left side, click on 'FORMS AND REPORTS' to download both City and County applications.

POST the top portion of this document at the above location in a place where it may be seen at all times.

DEACTIVATION: If you cease to operate this business entity, you must return this document to our office with proof that the Division of Corporations filing has been inactivated, including both Corporate and Fictitious Name filings. If the business location has changed, provide proof that the principal address has been changed on Division of Corporations. All signage for discontinued business must be removed within 10 days.

A **COURTESY RENEWAL NOTICE** will be sent 30 to 60 days prior to expiration. If you do not receive the renewal notice, you must still pay the tax on time. Late penalties will not be waived if you do not receive the notice. The Business Tax may be renewed in person, by drop-box in City Hall, by mail or by using the website and Click "e-services". To renew online you will need your Business Tax Receipt # and "pin" #. These numbers will be provided on your renewal notice on the top right corner.

NOTE: At this time classifications that need a license/permit/certification or regulated requirement cannot renew online.

FAILURE TO PAY your Business Tax on or before the close of business on September 30 will cause penalties to be applied to the business tax renewal as indicated below.

PAYMENT AND PENALTY SCHEDULE

DATE PENALTY

EFFECTIVE:	SEPT 30	OCT 1	NOV 1	DEC 1	JAN 1	MAR 1
PENALTY:	0%	10%	15%	20%	25%	25% + \$250.00

EXHIBIT A-1

Payment Receipt

Thank you for your payment.

Transaction Results:

Transaction Status

Success

Auth Code

09516D

Reference Number

93140084

Payment Method:

Charged To

Visa *****3224

Account Holder

Hamilton, Julie H

Billing Address

2853 White Trout Ln, West Palm Beach, FL 33411

Transaction Overview:

Total Amount

\$105.00

Payment Date

EXHIBIT A-2

Charge Details

Charge Description	Amount
18-00069044	\$105.00
Total	\$105.00

« Go back and pay for a different account. (./index.html?OWASP_CSRFTOKEN=U5TB-SPAY-RTGU-TRDE-2P5W-Y0K7-56BB-T1MY)

ANNE M. GANNON
CONSTITUTIONAL TAX COLLECTOR
Serving Palm Beach County

P.O. Box 3353, West Palm Beach, FL 33402-3353
 www.pbctax.com Tel: (561) 355-2264

****LOCATED AT****

4400 North Federal HWY Ste 210
 BOCA RATON, FL 33431

Serving you.

TYPE OF BUSINESS	OWNER	CERTIFICATION #	RECEIPT #/DATE PAID	AMT PAID	BILL #
MARRIAGE & FAMILY THERAPIST	HAMILTON JULIE HARREN	MT1728	U18.743703 - 09/28/18	\$33.00	B40192049

is valid only when receipted by the Tax Collector's Office.

JULIE HARREN
 JULIE HARREN
 2853 WHITE TROUT LANE
 WEST PALM BEACH, FL 33411

STATE OF FLORIDA
PALM BEACH COUNTY
2018/2019 LOCAL BUSINESS TAX RECEIPT

LBTR Number: 2018112160
EXPIRES: SEPTEMBER 30, 2019

This receipt grants the privilege of engaging in or managing any business profession or occupation within its jurisdiction and **MUST** be conspicuously displayed at the place of business and in such a manner as to be open to the view of the public.

Otto v. City of Boca

Helene Hvizd

9/20/2018

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

CASE NO. 9:18-cv-80771-RLR

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,

vs.

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

Defendants.

* * * * *

DEPOSITION OF HELENE C. HVIZD, ESQUIRE
TAKEN AT THE INSTANCE OF THE PLAINTIFFS

* * * * *

DATE: September 20, 2018
PLACE: 300 North Dixie Highway
Suite 359
West Palm Beach, Florida 33401
TIME: 9:03 - 6:11 o'clock p.m.

Florida Court Reporting
561-689-0999

1 APPEARANCES:

2 LIBERTY COUNSEL

PO Box 540774

3 Orlando, Florida 32854-0774

Telephone: 800-671-1776

4 Fax: 407-875-0770

Attorneys for the Plaintiffs

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6 BY: ROGER GANNAM, ESQUIRE

Email: Rgannam@lc.org

7

PALM BEACH COUNTY ATTORNEY'S OFFICE

8 300 North Dixie Highway

Suite 359

9 West Palm Beach, Florida 33401-4605

Telephone: 561-355-6337

10 Attorneys for the Defendant, Palm Beach County

BY: RACHEL M. FAHEY, ESQUIRE

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12 Email: Kphan@pbcgov.org

13

WEISS, SEROTA, HELFMAN, COLE & BIERMAN

14 200 East Broward Boulevard

Suite 1900

15 Fort Lauderdale, Florida 33301-1949

Telephone: 954-763-4242

16 Fax: 954-764-7770

Attorneys for the City of Boca Raton

17 BY: DANIEL L. ABBOTT, ESQUIRE

Email: Dabbott@wsh-law.com

18

CITY OF BOCA RATON

19 201 West Palmetto Park Road

Boca Raton, Florida 33432-3730

20 Telephone: 561-393-7716

Fax: 561-393-7780

21 BY: CHRISTOPHER R. FERNANDEZ, ESQUIRE

Email: Cfernandez@myboca.us

22

Also Present:

23

Robert W. Otto, Ph.D., LMFT

24 Julie H. Hamilton, Ph.D., LMFT

Shayna Ginsburg, Psy.D.

25 Michael Woika, Assistant City Manager for the

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11	Plaintiffs' Exhibit No. 2 marked for identification	34
12	(Excerpt of transcript of County Commission Meeting dated December 5, 2017)	
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1	EXHIBITS CONTINUED	
2	Plaintiffs' Exhibit No. 9 marked for identification	111
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10	Rand Hoch dated 8/29/16)	
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13	8/30/16)	
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15	(E-mail chain starting with e-mail written by Denise Marie Nieman to Rand Hoch dated	
16	3/5/17)	
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1	EXHIBITS CONTINUED	
2	Plaintiffs' Exhibit No. 17 marked for	212
3	identification	
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5	by Helene Hvizd to Rand Hoch dated 8/9/17)	
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10	Plaintiffs' Exhibit No. 19 marked for	236
11	identification	
12	(E-mail chain starting with e-mail written	
13	by Rand Hoch to Denise Marie Nieman dated	
14	12/12/17)	
15	plaintiffs' Exhibit No. 20 marked for	246
16	identification	
17	(Ordinance Number 2017-046)	
18	Plaintiffs' Exhibit No. 21 marked for	272
19	identification	
20	(E-mail chain starting with e-mail written	
21	by Helene Hvizd to Dr. Julie Hamilton and	
22	Todd Bonlarron)	
23		
24		
25		

1 The deposition of HELENE C. HVIZD, ESQUIRE, witness,
2 was taken before me, Rachele Cibula, Notary Public,
3 State of Florida at large, at 300 North Dixie Highway,
4 Suite 359, in the City of West Palm Beach, County of
5 Palm Beach, State of Florida, pursuant to notice in said
6 cause for the purpose of taking said deposition at the
7 instance of the Plaintiffs in the above-styled action
8 pending in the above-styled court.

9 THE COURT REPORTER: Raise your right hand,
10 Please, ma'am.

11 THEREUPON,

12 HELENE C. HVIZD, ESQUIRE,
13 being by me first duly sworn to testify the whole truth
14 as is hereinafter certified, testifies as follows:

15 THE WITNESS: I do.

16 * * * * *

17 MS. FAHEY: Harry, I'd like to make it clear
18 for the record for which topics each witness is being
19 designated this morning.

20 MR. MIHET: I was planning to actually do
21 that --

22 MS. FAHEY: Okay.

23 MR. MIHET: -- before we get too far into
24 it. So --

25 MS. FAHEY: Great.

1 MR. MIHET: -- why don't you let me do that.

2 And, if you have anything to add, you can do that at
3 that time.

4 MS. FAHEY: Sure.

5 MR. MIHET: Okay?

6 MS. FAHEY: Okay.

7 DIRECT EXAMINATION

8 BY MR. MIHET:

9 Q. Good morning, Ms. Hvizd.

10 A. Actually, it's pronounced Hvizd; so the H is
11 silent.

12 Q. Thank you. That was going to actually be my
13 first question to you. So Hvizd, Hvizd. I will work
14 very hard to get that right.

15 A. Thank you.

16 Q. Please forgive me if I mess up.

17 A. No worries. You wouldn't be the first.

18 Q. For what it's worth, my last name isn't the
19 easiest to pronounce either. So I'm kind of used to it.

20 So we've actually met before, and you know that
21 we're here to take today the County's deposition on
22 certain topics as to which you have been designated for.
23 Just so we're all on the same page, the obligatory
24 ground rules of depositions, I'm sure you've heard them
25 many times. The court reporter next to us is

1 transcribing everything down which is why it's important
2 for you and I to speak one at a time. Okay?

3 A. Correct.

4 Q. And it's also important for you to verbalize your
5 answers because nonverbal cues and communication cannot
6 be accurately written down.

7 A. Okay.

8 Q. If you don't understand one of my questions, will
9 you ask me to repeat it?

10 A. I will.

11 Q. And, if you answer one of my questions, is it
12 fair for me to understand that you understood it?

13 A. If I answer as if I understood, yes.

14 Q. Okay. If you should need a break today, feel
15 free to ask. I may be asking for a break before you.
16 But we'll be sure to accommodate you so long as there's
17 not a question pending. Is that okay?

18 A. Thank you.

19 Q. Throughout the day today, I may be using some
20 shorthand terms; and I want to make sure we're all on
21 the same page. So, if I use the word County, you'll
22 know that I'm talking about Palm Beach County, one of
23 the Defendants in this lawsuit.

24 A. Okay.

25 Q. And, if I refer to the ordinance, you'll know

1 that I'm talking about the ordinance regarding
2 conversion therapy that Palm Beach County has enacted
3 which is the subject of this lawsuit?

4 A. Okay.

5 Q. If I refer to SOCE, you'll know that I'm
6 referring to Sexual Orientation Change Efforts?

7 A. Okay.

8 MS. FAHEY: Form.

9 BY MR. MIHET:

10 Q. And, if I refer to GICE, you'll know I'm
11 referring to Gender Identity Change Efforts?

12 A. Okay.

13 Q. And, if I refer to conversion therapy more
14 broadly or generally, I could be referring to either
15 SOCE or GICE or both?

16 MS. FAHEY: Form.

17 BY MR. MIHET:

18 Q. Is that okay?

19 A. I'm only that -- only to clarify --

20 Q. Yeah.

21 A. -- our ordinance bans conversion therapy defined
22 as the practice of seeking to change sexual orientation
23 or gender identity. So that is how we define conversion
24 therapy.

25 Q. Okay.

Page 10

1 A. It may become difficult if you begin to define it
2 differently than we do.

3 Q. I think we can -- we can use that -- that working
4 definition for purposes of today.

5 A. Very good.

6 Q. Okay.

7 (Plaintiffs' Exhibit No. 1 marked for identification)

8 BY MR. MIHET:

9 Q. Now, Ms. Hvizd, I'm showing you a document we've
10 marked as Plaintiffs' Exhibit 1. Do you recognize this
11 to be the Second Amended Notice of Deposition that the
12 Plaintiffs have provided in this case?

13 A. Yes.

14 Q. And you've seen this document before?

15 A. I have.

16 Q. Now, beginning on page two, there's a section
17 called Matters For Examination.

18 Do you see that?

19 A. Yes.

20 Q. And it lists thirteen matters, thirteen
21 paragraphs, I should say.

22 A. Through page four, correct.

23 Q. Right. Now, you've been designated to testify on
24 behalf of the County as to some of these matters,
25 correct?

1 A. Correct.

2 Q. And my understanding is that you've been
3 designated to testify as to matters six, seven, eight,
4 nine and twelve.

5 A. Correct.

6 Q. Are there any other matters that you have been
7 designated to testify about?

8 A. That's my understanding. It's also my
9 understanding thirteen no longer exists, correct?

10 Q. Correct.

11 A. Okay.

12 MS. FAHEY: Harry, at this time, may I make
13 the statement that I was going to make when we began?

14 MR. MIHET: This is a good time.

15 MS. FAHEY: Okay. I just wanted to
16 reiterate the County's understanding of Defendant and
17 County as we said in our August 31, 2018, e-mail and at
18 court on September 12th that the County is the Board of
19 County Commissioners which acts as a collective body in
20 the public. Defendant is -- and County is not any
21 individual Commissioner, employee, agent or
22 representative. So, for purposes of these topics,
23 that's the County's understanding of what Defendant
24 means.

25 BY MR. MIHET:

1 Q. Okay. So, now, you understand, Ms. Hvizd, that,
2 with respect to the topics on which you have been
3 designated, you are testifying on behalf of the County?

4 A. Correct.

5 Q. And so you're providing, not just your personal
6 knowledge, but also the County's position and knowledge
7 on the designated topics?

8 A. I think I would correct your statement slightly.
9 You said I'm providing not just my personal knowledge.
10 I am not providing my personal knowledge, period. I'm
11 providing the knowledge of the County.

12 Q. Okay. That's fair.

13 So you are a lawyer?

14 A. Correct.

15 Q. What year did you graduate from law school?

16 A. 1990.

17 Q. And which law school was that?

18 A. Nova Southeastern.

19 Q. When did you pass the Florida Bar exam?

20 A. 1990.

21 Q. Can you just give me a very brief synopsis of
22 your legal career since 1990.

23 MS. FAHEY: For the record, we understand
24 these are outside the scope of her designated topics.

25 BY MR. MIHET:

1 Q. Go ahead.

2 A. From 1990 to 1993, I served as a law clerk to the
3 Honorable Judge Pollen at the 4th District Court of
4 Appeal. From 1993 to 1996, I was chief of the appellate
5 division at the worker's compensation firm Miller,
6 Kagan, Rodriguez & Silver. From 1996 to 2000, I
7 returned to the 4th District Court of Appeal serving as
8 a law clerk to the Honorable Judge Pollen. From 2000 to
9 2009, I had my own firm, Helene Hvizd Morris at that
10 time, LLC. I was a court-appointed Criminal Justice Act
11 attorney as well as receiving court appointments from
12 the Fifteenth Judicial Circuit representing criminal
13 Defendants on appeal. I also handled other civil and
14 criminal appeals in front of both state and federal
15 civil and criminal cases.

16 From 19 -- from 2009 to 2012, I served as an
17 Assistant Attorney General in the West Palm Beach office
18 of the Florida Attorney General handling criminal
19 appeals. And from 2012 to present, I serve as an
20 Assistant County Attorney, now a Senior Assistant County
21 Attorney, for the Palm Beach County Attorney's Office.

22 Q. Thank you. So you've done some litigation
23 throughout the span of that career?

24 A. Yes. Actually, between 2012 and 2015, I served
25 in the litigation department here at the County

1 Attorney's Office.

2 Q. Okay. And so you've had a chance to take a
3 number of depositions?

4 A. Several.

5 Q. Have you had any experience in First Amendment
6 litigation?

7 A. During the six years I clerked -- yes. During
8 the six years I clerked at the Fourth District Court of
9 Appeal, several of the cases concerned First Amendment
10 issues; so I had that experience. And I may have had an
11 experience or two on First Amendment issues in my
12 private practice.

13 Q. Have you had any prior experience with LGBT
14 issues in litigation prior to your involvement with this
15 ordinance?

16 A. I think I would say -- depending on what you mean
17 by, "experience" --

18 Q. Have you handled any cases involving LGBT issues?

19 A. So, if you define LGBTQ issues broadly as
20 anything having to do with the community, in general,
21 yes, in that I represent the Community Services
22 Department here at Palm Beach County. And the Community
23 Services Department has as one of its programs the
24 Ryan White Part A HIV/AIDS Program, a federal grant
25 that's offered to assist people living with AIDS here in

1 Palm Beach County.

2 Part of my representation included a lawsuit
3 filed against the County on behalf of one of the service
4 providers. I suppose you could say that that involved
5 LGBTQ issues and that it was related to the services
6 that we provide in part to that complainant.

7 Q. You represented the County in that litigation?

8 A. I did not represent the County. I was simply an
9 observer while another member of our litigation team
10 represented the County. But I did have some input in
11 the matter because I represent the Ryan White program.

12 Q. Okay. And what was the nature of that claim in
13 that lawsuit?

14 A. Service provider was unhappy with the amount of
15 grant funding that they received, so they challenged the
16 process by which those grants were awarded.

17 Q. So it wasn't dealing specifically with claims of
18 discrimination or unequal access or deprivation of civil
19 rights for LGBT persons, was it?

20 A. Correct.

21 Q. Have you had any of that kind of experience?
22 Claims brought by or -- or for LGBT persons regarding
23 discrimination for civil rights violations?

24 A. While I've worked at the County?

25 Q. In your career.

1 A. Not that I recall.

2 Q. Okay. Have you had any experience with
3 conversion therapy regulation prior to the ordinance
4 that is at issue in this case?

5 A. Not --

6 MS. FAHEY: Form.

7 Are you asking her as the County or in her
8 individual capacity?

9 MR. MIHET: Her as a witness, yes.

10 MS. FAHEY: Her as a witness for the County?

11 MR. MIHET: Yeah. Well, we're talking about
12 her background and experience right now.

13 MS. FAHEY: Yes. And those we regarded
14 outside the scope.

15 MR. MIHET: Okay.

16 BY MR. MIHET:

17 Q. You in your career?

18 A. Not that I recall.

19 Q. Okay. Do you hold any professional licenses?

20 A. I'm a member of the Florida Bar.

21 Q. Okay. Other than that?

22 A. None.

23 Q. Do you have any counseling or mental health
24 experience?

25 MS. FAHEY: You're asking her as

1 Helene Hvizd, not as Palm Beach County?

2 MR. MIHET: Correct.

3 THE WITNESS: I'm sorry. Could you please
4 repeat the question.

5 BY MR. MIHET:

6 Q. Do you have any experience in counseling or
7 mental health services?

8 A. So, again, the question seems somewhat broad.
9 Experience in counseling?

10 Q. Uh-huh.

11 A. I don't know how to answer that question.

12 Q. Have you provided mental health services to
13 patients?

14 A. No.

15 Q. Have you provided counseling regarding mental
16 health patients?

17 A. No.

18 MS. FAHEY: Form.

19 BY MR. MIHET:

20 Q. What did you do to prepare for today's
21 deposition?

22 A. Well, because I am a 30(b)(6) witness, I attended
23 several meetings with Rachel Fahey, Kim Phan and also
24 Dr. Shayna Ginsburg in preparation for today's
25 deposition; received quite a bit of materials. If you

1 see these five binders here behind me, they were
2 reviewed by me.

3 Q. You anticipated my next question. So thank you.

4 A. You're welcome. I seem to be doing that.

5 And, aside from that, reviewed much of my life
6 between July of -- June of 2016 to the present regarding
7 conversion therapy and the enactment of Palm Beach
8 County's Conversion Therapy Ban Ordinance.

9 Q. About how many -- you said several meetings.
10 About how many meetings did you attend in preparation?

11 A. I believe I attended approximately eight to nine
12 meetings.

13 Q. Over the span of what time?

14 A. I think I would say a five-week period ending
15 today. It may be slightly less than that. These are
16 approximations.

17 Q. And, between the eight or nine meetings
18 altogether, about how many hours of preparation do you
19 think that entailed?

20 A. I'm estimating approximately twenty hours.

21 Q. You mentioned Ms. Fahey and Ms. Phan and
22 Ms. Ginsburg. Was there anyone else present at those
23 meetings besides the four of you ladies?

24 A. No.

25 Q. You mentioned that you reviewed a number of

1 documents and motioned towards a cart full of binders
2 behind you. Generally, what's the nature of the
3 documents in those binders?

4 A. They're documents related to this lawsuit.

5 Q. Okay. And did you review any documents to
6 prepare for today's deposition that are not in those
7 binders?

8 A. Yes.

9 Q. What are those documents?

10 A. It would be difficult for me to give you titles
11 or names of every document I looked at that's not in
12 these binders.

13 Q. How about just in general categories?

14 A. Again, they would be documents related to the
15 lawsuit, the enactment of the ordinance and the lawsuit.

16 Q. Okay. Other than Ms. Fahey, Ms. Phan and
17 Ms. Ginsburg, did you speak with anyone else to prepare
18 for today's deposition?

19 A. Yes.

20 Q. Who's that?

21 A. Mr. Pablo Rivera was consulted regarding the
22 County's ISS Department and their involvement in
23 securing e-discovery, as that was one of the issues
24 under my scope --

25 Q. Okay.

1 A. -- of matter for examination.

2 Mr. Ramsay Bulkeley, the director of -- acting
3 director currently of Palm Beach County's Planning,
4 Zoning and Building Department was consulted regarding
5 matter for examination related to enforcement. Mister
6 --

7 Q. I'm sorry. Can you spell the last name for
8 Ramsay?

9 A. I can't. I'm sorry. B-u-l-k-l-e-y perhaps.
10 He's listed on your -- on the County's Answers to
11 Interrogatories.

12 Q. Okay.

13 A. In fact, you will find all three of the names I'm
14 giving; Pablo Rivera, Ramsay Bulkeley and Robert -- I
15 believe it's DeSantos-Alavera. Excuse me, Robert. I
16 think I've gotten his last name wrong. And you'll find
17 his name on our Answers to Interrogatories, as well. He
18 is the division director for Code Enforcement.

19 There may have been additional conversations that
20 would have occurred internally in the office
21 tangentially related to today's deposition between my
22 boss, Denise Nieman, the County Attorney; my direct
23 supervisor, Lenny Berger, Chief Assistant County
24 Attorney. That's about it.

25 Q. Did you speak with anyone who is not employed by

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1 the County of West Palm -- Palm Beach in preparation for
2 your deposition?

3 A. To prepare for this deposition? No.

4 Q. Okay. What were the nature of your discussions
5 with Ramsay Bulkeley?

6 A. Regarding code enforcement and the enforcement of
7 this ordinance.

8 Q. And what about Robert Santos?

9 A. The same.

10 Q. Okay. How do those -- those two interface in
11 their positions with respect to enforcement of the
12 ordinance?

13 MS. FAHEY: Form.

14 THE WITNESS: Ramsay -- Ramsay is Robert's
15 supervisor or boss. So Ramsay is the acting director of
16 the Planning, Zoning and Building Department, underneath
17 which Code Enforcement is a division. And Robert is the
18 head of the Code Enforcement division.

19 MR. MIHET: I got it. Thank you.

20 THE WITNESS: Uh-huh.

21 BY MR. MIHET:

22 Q. When did the County first begin to consider a ban
23 on conversion therapy?

24 A. The County, as defined by the Board of County
25 Commissioners, as we are aware began considering a ban

1 on conversion therapy on June 20, 2016.

2 Q. And how did that come about?

3 A. That came about via e-mail communication between
4 Rand Hoch, the president and co-founder of the Palm
5 Beach County Human Rights Council.

6 Q. E-mail from him to whom?

7 A. To the County Commissioners.

8 Q. Asking for an ordinance to be enacted?

9 A. Correct.

10 Q. Prior to receiving that e-mail from Mr. Hoch, had
11 the Board of County Commissioners considered the issue
12 of conversion therapy?

13 A. I'm unaware of the Board as a whole having
14 considered the issue prior to the e-mail from Rand Hoch.

15 Q. What was the need asserted by Mr. Hoch for an
16 ordinance banning conversion therapy in Palm Beach
17 County?

18 A. May I refer to his e-mail?

19 Q. Sure.

20 A. It may take me a moment to find. So Rand Hoch
21 sent an e-mail on June 20, 2016, at two-thirty-three
22 p.m. to all of the County Commissioners at the time,
23 carbon copy to Verdenia Baker, Denise Nieman, additional
24 people of whom I am unaware. I'm trying --

25 MS. FAHEY: I didn't mean to cut you off. I

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1 was -- I thought you were finished. I was just going to
2 say, for the record, if you could read in the Bates
3 number.

4 THE WITNESS: Oh, certainly. I'm sorry.
5 I'm reading from PBC Bates number 7642.

6 MR. MIHET: Okay.

7 THE WITNESS: Mr. Hoch notes that he's
8 attached a memorandum with attachments concerning
9 enacting an ordinance to prohibit conversion therapy
10 counseling, practices and treatments by state licensed
11 professionals in Palm Beach County. A copy of the
12 ordinance enacted earlier this month in Miami Beach is
13 included in the packet. He provides a link for more
14 information concerning banning conversion therapy to a
15 Substance Abuse and Mental Health Services
16 Administration Report as well as a link to the Southern
17 Poverty Law Center's article entitled QUACKS:
18 Conversion Therapists, The Anti-LGBT Right and the
19 Demonization of Homosexuality.

20 Q. Okay. And I appreciate you identifying that
21 document. I think, at some point today, I will have
22 some more specific questions about that particular
23 document.

24 So that's the -- the document you just referred
25 to is the e-mail that Mr. Hoch sent to the Board of

1 County Commissioners requesting that they consider and
2 enact an ordinance?

3 A. Correct.

4 Q. Okay. Had the County received any complaints
5 that anyone had been harmed by conversion therapy in the
6 County?

7 MS. FAHEY: This is outside the scope that
8 Ms. Hvizd has been designated to answer.

9 MR. MIHET: So who is going to testify about
10 that?

11 MS. FAHEY: Dr. Shayna Ginsburg has been
12 designated to testify with respect to topics one through
13 five which deal with the County's interest, any evidence
14 of harm, any alleged harm and topics regarding consent.
15 That's one through five.

16 MR. MIHET: Okay.

17 BY MR. MIHET:

18 Q. Had anyone from the County attempted to determine
19 whether anyone in the County was being harmed by
20 conversion therapy?

21 MS. FAHEY: It's also outside the scope. So
22 she -- we'd just move for a protective order that her
23 answer would be for herself only and not as the County
24 as a whole.

25 MR. MIHET: And that's what I'm getting at,

1 her efforts.

2 MS. FAHEY: Okay. And, if you could, for
3 the record, you could say, Ms. Hvizd, did you. That
4 would assist us.

5 MR. MIHET: Well, I asked her if someone
6 did. And I suspect -- let's hear her answer.

7 MS. FAHEY: Okay.

8 THE WITNESS: I'm sorry. I need the
9 question, again.

10 (Requested portion read back by the court reporter)

11 THE WITNESS: And so the question now is did
12 I attempt to determine whether anyone in the County was
13 harmed by conversion therapy?

14 BY MR. MIHET:

15 Q. Well, initially the question is: Has anyone from
16 the County attempted to make that determination?

17 A. Our records do not show that the Board of County
18 Commissioners inquired about conversion therapy prior to
19 June 20, 2016.

20 Q. Okay. But, once Mr. Hoch approached the Board
21 about the need to enact an ordinance, did anyone from
22 the County undertake an investigation, if you will, to
23 determine whether or not anyone in the County was being
24 harmed by conversion therapy?

25 A. I'm having a difficult time answering that

1 question because I understood I was here to testify on
2 behalf of the County as defined by all seven members of
3 the Board of County Commissioners.

4 Q. Sure. And that would include what the Board of
5 County Commissioners did to consider, debate or enact
6 the ordinance.

7 A. You're asking me about anyone in the County. We
8 have approximately five to six thousand employees I
9 believe right now.

10 Q. Okay. Did the Board commission anyone in the
11 County to undertake an investigation to determine
12 whether or not anyone was being harmed by conversion
13 therapy?

14 MS. FAHEY: Form.

15 This is outside the scope.

16 THE WITNESS: I believe, in response to
17 interrogatories, the statement was provided that we
18 don't commission our employees; so that question doesn't
19 make sense.

20 BY MR. MIHET:

21 Q. Did the Board direct or ask anyone in the County
22 to undertake an investigation to determine whether or
23 not anyone was being harmed by conversion therapy?

24 MS. FAHEY: Form.

25 Asked and answered, outside the scope.

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1 THE WITNESS: What time period are you
2 referring to?

3 BY MR. MIHET:

4 Q. Well, I believe you said that the Board had not
5 considered this issue prior to June 20th of 2016.

6 A. Not that we're aware of based on the records that
7 we've obtained.

8 Q. So, after June 20, 2016, until the present day,
9 that's the time period we're talking about.

10 A. Did the Board instruct anyone to --

11 Q. Direct, ask, request anyone to conduct an
12 investigation to determine whether someone in the County
13 was harmed or is being harmed by conversion therapy?

14 A. I know that, during our public meetings at which
15 the ordinance was considered, there were inquiries from
16 members of the Board of County Commissioners to Mr. Hoch
17 about his knowledge of harm to children.

18 Q. Okay. Other than those inquiries?

19 A. Not that I'm aware of.

20 Q. Okay. Now, did you personally take any efforts
21 -- or undertake any efforts to determine whether anyone
22 in the County had been harmed by conversion therapy?

23 A. My efforts would have been those that were
24 involved in the drafting of the ordinance as a whole.
25 So I certainly conducted independent research, Internet

1 searches regarding broad terms such as conversion
2 therapy searches within the Palm Beach Post website
3 regarding conversion therapy.

4 Q. And, in the course of that research, were you
5 attempting to determine whether anyone in the County was
6 being harmed or had been harmed by conversion therapy?

7 A. Yes. That would have been one of the thoughts in
8 my mind as I was conducting research, which is probably
9 my work product; and I'm not waving a privilege.

10 Q. And why -- why did you think it was necessary for
11 you to try to determine whether someone had been harmed
12 or was being harmed by conversion therapy?

13 A. And that is definitely my work product.

14 Q. Okay. How much time -- so you're refusing to
15 answer that question?

16 A. Yes. I believe I have a work-product privilege
17 in why I conducted research or why I did what I did.

18 Q. What did you find with respect to whether or not
19 anyone had been harmed or was being harmed by conversion
20 therapy?

21 MS. FAHEY: You're asking her individually
22 as Ms. Hvizd, not as Palm Beach County?

23 MR. MIHET: Correct.

24 THE WITNESS: I recall finding anecdotal
25 evidence regarding a case that may have been reported at

1 the beginning of the time period when conversion therapy
2 bans were first being considered by states and
3 municipalities of an individual -- and, again, this is
4 working off of recollection. I didn't take any notes or
5 make any record of it that I've been able to review.
6 But I believe I found anecdotal evidence of a teen-ager
7 who had committed suicide based on -- or after having
8 received Sexual Orientation Change Efforts. Undergone,
9 I should say.

10 BY MR. MIHET:

11 Q. And this was an article that you read?

12 A. Again, I can't say whether it was an article or
13 whether it was part of a report. I'm simply not
14 certain.

15 Q. Okay. Was this teen-ager a resident of Palm
16 Beach County?

17 A. No.

18 Q. Was he a resident of the State of Florida?

19 A. No.

20 Q. Was he a resident of the United States?

21 A. Yes.

22 Q. Some other state besides Florida?

23 A. Correct.

24 Q. And the document that you read claimed that the
25 teen-ager had committed suicide as a result of

1 conversion therapy?

2 A. I believe it was that he had committed suicide
3 following his having undergone Sexual Orientation Change
4 Efforts.

5 Q. What type of Sexual Orientation Change Efforts
6 had he undergone?

7 MS. FAHEY: Form.

8 THE WITNESS: I'm not going to be able to
9 answer that question. I don't recall.

10 BY MR. MIHET:

11 Q. Were they aversive or non-aversive?

12 A. Again, I don't recall.

13 MS. FAHEY: Form.

14 BY MR. MIHET:

15 Q. Was he forced to undergo the SOC in that case, or
16 did he do so voluntarily?

17 MS. FAHEY: Form.

18 THE WITNESS: I don't recall.

19 BY MR. MIHET:

20 Q. Was he subjected to Sexual Orientation Change
21 Efforts or Gender Identity Change Efforts?

22 MS. FAHEY: Form.

23 THE WITNESS: I believe it was Sexual
24 Orientation Change Efforts.

25 BY MR. MIHET:

1 Q. Okay. So my question to you, though, was
2 specifically directed to evidence about people being
3 harmed in Palm Beach County as a result of conversion
4 therapy. You identified this anecdotal evidence of a
5 teen-ager from outside of the State of Florida.

6 What did you find within Palm Beach County?

7 MS. FAHEY: Form.

8 THE WITNESS: Other than the reports that
9 the Board had received from Mr. Hoch, I found no other
10 reports in my independent research while drafting the
11 ordinance.

12 BY MR. MIHET:

13 Q. You found no one within Palm Beach County that
14 was being harmed by conversion therapy?

15 MS. FAHEY: You're asking Ms. Hvizd in her
16 individual capacity right now?

17 MR. MIHET: Yes.

18 THE WITNESS: No.

19 BY MR. MIHET:

20 Q. And, to your knowledge, did anyone else within
21 the County find evidence of anyone being harmed by
22 conversion therapy?

23 MS. FAHEY: Outside the scope.

24 THE WITNESS: I can't answer what anyone
25 else in the County did.

1 BY MR. MIHET:

2 Q. Well, my question was to your knowledge.

3 A. No one else in the County came to me with a
4 report of harm to an individual.

5 Q. Okay. And you're not aware of any member of the
6 Commission, for example, conducting an investigation and
7 discovering that people within Palm Beach County were
8 being harmed by conversion therapy?

9 MS. FAHEY: Form.

10 And the individual conduct of the
11 Commissioners is subject to the legislative privilege.
12 Their individual motivations are not relevant and should
13 not be probed.

14 THE WITNESS: And, because of everything
15 that Ms. Fahey just said, I did not probe individual
16 Commissioners about what they knew or didn't know.

17 BY MR. MIHET:

18 Q. So the investigation that you conducted, did
19 someone ask you to conduct it?

20 A. Yes, to the extent that I was assigned the task
21 of reviewing the Board direction -- reviewing the Board
22 direction of June 20, 2016, because I represent the
23 Youth Services Department. And so part of drafting an
24 ordinance is conducting research.

25 Q. Okay. Did someone ask you specifically to

1 research or investigate whether someone within Palm
2 Beach County had been harmed or was being harmed by
3 conversion therapy?

4 A. By assigning me the responsibility to draft this
5 ordinance, it was inherent in that assignment that I
6 would research.

7 Q. Okay. But did someone specifically make that
8 request of you?

9 MS. FAHEY: Form. Asked and answered.

10 THE WITNESS: It -- again, it's inherent in
11 the request to draft an ordinance that I would research.
12 BY MR. MIHET:

13 Q. I'll grant you that, Ms. Hvizd.

14 My question is not whether or not somebody asked
15 you generally to research the ordinance and -- and
16 whether you felt that inherent within that was the task
17 of trying to determine if someone was being harmed. My
18 question to you is: Did someone ask you specifically to
19 look into the issue of harm?

20 A. So, if you're asking me whether someone said the
21 words explore the issue of harm, no. They don't have to
22 say that. When someone is assigned the responsibility
23 to draft an ordinance, we must research all aspects of
24 the ordinance, including the basis for it, which is harm
25 to individuals in this case.

1 Q. Now, on December 5, 2017, at the first County
2 Commission meeting regarding the subject ordinance, I
3 think you already mentioned that Mr. Hoch discussed two
4 minors who were being harmed by conversion therapy?

5 A. Correct.

6 (Plaintiffs' Exhibit No. 2 marked for identification)

7 BY MR. MIHET:

8 Q. So I'm showing you what we have marked as Exhibit
9 2. And this is an excerpt of the transcript of the
10 December 5 Commission meeting. I see that you have,
11 perhaps, the whole transcript in front of you. I'm
12 going to be asking you some questions about this
13 particular excerpt that we have marked as Exhibit 2.

14 A. Okay.

15 Q. Okay. And I see that you -- you have, perhaps,
16 cross referenced my Exhibit 2 with the full transcript.
17 Were you able to determine that these are, in fact,
18 pages from that full transcript?

19 A. True and accurate copies.

20 Q. Excellent.

21 Now, was this the first time that Mr. Hoch had
22 mentioned these two minors that were allegedly harmed by
23 conversion therapy?

24 MS. FAHEY: To whom?

25 MR. MIHET: To the County.

1 THE WITNESS: I do not believe this is the
2 first time. I need to refer, though, to Rand Hoch's
3 e-mails.

4 MR. MIHET: Okay.

5 THE WITNESS: I don't see mention of the two
6 individuals in the first June 20, 2016, e-mail from
7 Rand Hoch. But I do believe that he did send the Board
8 of County Commissioners as a whole an e-mail in which he
9 referenced two individuals having been harmed in the
10 County by the practice of conversion therapy. I'll
11 continue looking while you ask questions, if you'd like.

12 BY MR. MIHET:

13 Q. When would that e-mail have been sent?

14 A. Sometime after June 20, 2016.

15 Q. Was it closer to June 20, 2016, or to December 5,
16 2017?

17 A. I can't say.

18 Q. If that e-mail exists, it would be among the
19 stack of Hoch e-mails that you have in that binder?

20 A. Yes.

21 Q. And, if it's not in there, is there a possibility
22 that you are incorrectly remembering this?

23 A. If there is no e-mail from Rand Hoch prior to his
24 testimony on December 5, 2017, referencing harm to
25 individuals, then it is, not only possible, but a

1 certainty that I have improperly recollected.

2 Q. Okay. So I'd like to ask you at some point
3 today, perhaps when you're no longer in the hot seat, to
4 try to find that e-mail and to let me know by the end of
5 the day if you have succeeded in finding it because I
6 will have some questions for you about it.

7 A. Sure. Will do.

8 Q. Great.

9 Now, looking at page sixty-five of Exhibit 2,
10 beginning with line fifteen, is part of Mr. Hoch's
11 testimony -- let me just read to you a couple of
12 sentences. He says: Over the past two years, we've
13 heard from two individuals, minors, who have been
14 required to go to conversion therapy by their parents.
15 These are kids with gay friends who are comfortable
16 where they are. It's their parents that have a problem
17 with their children being gay or lesbian.

18 Have I accurately read his testimony?

19 A. Yes. And, just for the record, it's Bates number
20 389.

21 Q. Correct. Page sixty-five of Exhibit 2.

22 So the minors that he was referencing were minors
23 who had been required to go to conversion therapy by
24 their parents?

25 A. That's what he says, yes.

1 Q. These minors didn't want that therapy or seek it
2 voluntarily?

3 MS. FAHEY: Form.

4 THE WITNESS: I'm not certain whether they
5 wanted it besides being required to go. We do know they
6 were required to go, however.

7 BY MR. MIHET:

8 Q. Okay. The therapy that these minors were
9 allegedly subjected to or required to undertake, was it
10 aversive or was it talk therapy?

11 MS. FAHEY: Form. Speculation.

12 MR. MIHET: Indeed.

13 THE WITNESS: Yeah. I can't say. I can't
14 answer that question.

15 BY MR. MIHET:

16 Q. Mr. Hoch doesn't say?

17 A. Mr. Hoch does not say whether that therapy was
18 aversive.

19 Q. And, just so we're clear, you understand and
20 appreciate the difference between aversive therapy and
21 talk therapy?

22 MS. FAHEY: Form.

23 BY MR. MIHET:

24 Q. Correct?

25 A. I would need you to define to me how you are

1 interpreting those words.

2 Q. Well, why don't you tell me what those words mean
3 to you.

4 MS. FAHEY: Are you asking Ms. Hvizd, or are
5 you asking the County?

6 MR. MIHET: I'm asking her as a witness
7 right now.

8 MS. FAHEY: As the County?

9 MR. MIHET: Correct.

10 THE WITNESS: I don't think I can testify to
11 what seven members of the Board of County Commissioners
12 believe aversive to mean.

13 BY MR. MIHET:

14 Q. Okay. So why don't you tell me what you
15 personally believe aversive to mean.

16 MS. FAHEY: Form. Outside the scope.

17 MS. HVIZD: Is it just aversive you're
18 asking me about now? I know you mentioned --

19 BY MR. MIHET:

20 Q. I'm asking you really if you can -- if you
21 appreciate a difference between aversive and talk
22 therapy?

23 MS. FAHEY: Form. Outside the scope.

24 THE WITNESS: As far as I understand, talk
25 therapy can be aversive therapy.

1 BY MR. MIHET:

2 Q. Can be?

3 A. Yes.

4 Q. What does the term aversive therapy mean to you?

5 MS. FAHEY: Outside the scope.

6 THE WITNESS: Well, an aversive therapy
7 would be one that has as part of its components an
8 element to -- I think I would define it as an element
9 that's intended to change, to harm, to cause to bring
10 into doubt or question that which an individual might
11 otherwise believe in the context of conversion therapy.

12 BY MR. MIHET:

13 Q. Okay. And so, in your understanding, talk
14 therapy can be aversive therapy?

15 A. Yes.

16 MS. FAHEY: Form. Outside the scope.

17 Ms. Hvizd has not been designated to talk
18 about that.

19 BY MR. MIHET:

20 Q. Does the County understand or appreciate that
21 there is a difference between aversive therapy and talk
22 therapy?

23 MS. FAHEY: Form.

24 Assumes facts not in evidence.

25 Outside the scope.

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1 THE WITNESS: I can only testify on behalf
2 of the County to discussion that took place before the
3 Board of County Commissioners during both the December
4 5th and December 19th Board of County Commissioner
5 meetings 2017 when this particular ordinance was being
6 considered. At that time, there were individuals who
7 spoke to the Board of County Commissioners and suggested
8 alternatives to this ordinance such as banning shock
9 therapy, I believe one individual referred to. So,
10 certainly, that is an aversive therapy technique that
11 the Board was asked to consider.

12 When you -- I believe your question was:
13 Did the Board appreciate? Or did -- I'm sorry.

14 BY MR. MIHET:

15 Q. Does the Board think that there is a difference
16 between aversive therapy and talk therapy?

17 MS. FAHEY: Form. Outside the scope.

18 THE WITNESS: As to what the Board thinks,
19 again, I can't get into the head of seven County
20 Commissioners. I can certainly tell you that they were
21 present at a time when shock therapy, an aversive form
22 of therapy, was discussed.

23 BY MR. MIHET:

24 Q. So shock therapy is an aversive form of therapy?

25 MS. FAHEY: Form. Outside the scope.

1 THE WITNESS: Yes.

2 BY MR. MIHET:

3 Q. How is shock therapy different from talk therapy?

4 MS. FAHEY: Form. Outside the scope.

5 Ms. Hvizd has not been designated to speak
6 about this.

7 THE WITNESS: I can't answer that question.

8 BY MR. MIHET:

9 Q. Why not?

10 A. Well, first of all, it's outside the scope; and I
11 haven't been designated to answer that question. And,
12 second of all, I'm not qualified as a mental health
13 provider. And I don't know what you mean by talk
14 therapy.

15 Q. So just -- just for the record, you have been
16 designated to testify as to topic number eight in the
17 deposition notice, correct?

18 A. Correct.

19 Q. And that topic includes the County's
20 consideration, debate, enactment, interpretation,
21 application and enforcement of the ordinance, correct?

22 A. Correct.

23 Q. So by, "talk therapy," I mean, therapy that takes
24 place through words only as opposed to therapy that
25 might take place through such modalities as shock

1 therapy or ice therapy or wristband slap therapy or some
2 other form of physical contact.

3 A. Thank you for that definition.

4 Q. Is that distinction clear?

5 A. Now I understand what you mean by talk therapy.

6 Q. Okay. Understanding what I mean by talk therapy,
7 do you now believe that there is a difference between
8 talk therapy and aversive therapy?

9 A. No.

10 Q. Is all talk therapy aversive therapy?

11 MS. FAHEY: Form. Outside the scope.

12 And, so I can make it clear, topic eight
13 talks about the consideration, debate, enactment,
14 interpretation, application and enforcement of the
15 ordinance. The ordinance does not define aversive
16 therapy or talk therapy. And so --

17 MR. MIHET: Correct.

18 MS. FAHEY: -- this witness's testimony is
19 outside the scope for what she's been designated to talk
20 about.

21 I understand that you've been asking her in
22 her individual capacity as Ms. Hvizd. And you have now
23 provided the definition of talk therapy, and you have
24 given examples of what it sounds like you believe is
25 aversive therapy. But you have not given the definition

1 of aversive therapy. If you'd like to give a definition
2 of aversive therapy, that may assist you in obtaining
3 the testimony you are trying to elicit.

4 BY MR. MIHET:

5 Q. So is it the County's position that talk therapy
6 can include aversive therapy?

7 A. Will you please define aversive therapy.

8 Q. I thought I did already. But aversive therapy
9 would be therapy that includes conduct such as physical
10 interaction with the patient, putting a wristband on the
11 wrist and slapping it when the patient is watching
12 certain images; electroshock therapy, hooking up a
13 patient to electrodes and administering shock therapy;
14 submerging a patient in an ice bath; whacking a patient
15 with a tennis racquet; using a pillow to smother a
16 patient, those kinds of physical interventions that are
17 distinct from therapy that is administered solely
18 through the use of words and speech.

19 MS. FAHEY: Let me be clear, Mr. Mihet.
20 You're defining aversive therapy as physical
21 interaction. You've given an example -- you've given
22 multiple examples of physical conduct, correct?

23 MR. MIHET: Correct.

24 MS. FAHEY: And you have told us in your
25 definition that aversive therapy is, in fact, distinct

1 from your own definitions from talk therapy; is that
2 correct?

3 MR. MIHET: I think my question was -- was
4 clear on its own.

5 MS. FAHEY: Okay. Form.

6 THE WITNESS: Right. So, as I understand
7 it, you're defining aversive therapy as physical therapy
8 or physical actions solely. And you're asking me
9 whether that is different than talk therapy, which
10 you've defined as talk only. So, necessarily, they must
11 be different.

12 MR. MIHET: They must be different.

13 BY MR. MIHET:

14 Q. Are you --

15 A. According to your definitions.

16 Q. Yes.

17 Are you aware of how the APA, the American
18 Psychological Association, defines aversive therapy?

19 MS. FAHEY: Form. Outside the scope.

20 THE WITNESS: I certainly could refer to the
21 APA's task force, if you would like for me to do that.
22 You said American Psychological or --

23 MR. MIHET: Yes --

24 THE WITNESS: -- Psychiatric --

25 MR. MIHET: -- American Psychological.

1 THE WITNESS: -- Association?

2 MR. MIHET: And perhaps you could turn to
3 page twenty-two in the APA task force report.

4 MS. FAHEY: Mr. Mihet, are you referring to
5 the page number that appears at the bottom of the
6 document or the top of the document?

7 MR. MIHET: The bottom.

8 THE WITNESS: So we're now on County Bates
9 number 7522? Is that where you are?

10 MR. MIHET: Yes.

11 BY MR. MIHET:

12 Q. If you'll look in the bottom left-hand corner
13 right before the footnotes, the paragraph that starts
14 with behavior, behavior therapists.

15 Do you see that?

16 A. Correct.

17 Q. It says: Behavior therapists tried a variety of
18 aversion treatments such as inducing nausea, vomiting or
19 paralysis, providing electric shocks or having the
20 individual snap an elastic band around the wrist when
21 the individual became aroused at the same-sex erotic
22 images or thoughts. Other examples of aversive
23 behavioral treatments include covert sensitization,
24 shame aversion, systematic desensitization, orgasmic
25 reconditioning and satiation therapy.

1 Did I read that correctly?

2 A. Yes.

3 Q. And so does that give you an understanding of how
4 the APA views aversion treatments?

5 MS. FAHEY: Form.

6 THE WITNESS: Yes.

7 MR. MIHET: Okay.

8 THE WITNESS: Well, actually, I don't know
9 that I would say this is how the APA views aversion.
10 This is talking about behavior therapists trying a
11 variety of aversion treatments. I'm not certain if this
12 is the APA's position or definition.

13 MR. MIHET: Well, aversion treatments such
14 as. It's how -- what the APA means when it says
15 aversion treatments.

16 THE WITNESS: They're reporting on what
17 behavior therapists did. I don't know that this is a
18 statement of the APA's definition of aversion therapy.

19 MR. MIHET: Okay.

20 BY MR. MIHET:

21 Q. So they could be saying that behavior therapists
22 use aversion treatments such as A, B, C or D?

23 A. I think that is what they're saying.

24 Q. Okay.

25 A. And they include shame aversion, which it would

1 appear to me as not entirely based on physical actions.

2 Q. Well, if you'll look in continuation of that
3 paragraph, it says: Some non-aversive treatments used
4 an educational process of dating skills, assertiveness
5 and affection training with physical and social
6 reinforcement to increase other sex behaviors.

7 Do you see that?

8 A. That is what it says.

9 Q. Okay. So --

10 A. Just -- I'm sorry.

11 Q. Go ahead.

12 A. Just to be complete, I think the last sentence
13 says: Cognitive therapists attempted to change gay men
14 and lesbians' thought patterns by reframing desires,
15 redirecting thoughts or using hypnosis with the goal of
16 changing sexual arousal behavior and orientation.

17 Q. Why is that important?

18 A. I believe you were talking about the definition
19 of Sexual Orientation Change Efforts, and so that's just
20 finishing up their definition. You hadn't read that
21 last sentence. That's all.

22 Q. Okay. So I guess I'm trying to understand what
23 the County's position is with respect to aversion
24 therapy and whether or not there is any difference
25 between that and talk therapy.

1 MS. FAHEY: Form.

2 Asked and answered. Outside the scope.

3 THE WITNESS: And, again, I can only tell
4 you what was reported during the Board of County
5 Commissioner meetings or in e-mails or correspondence to
6 all seven of them. So I can't testify to what was in
7 the individual mind of any individual County
8 Commissioner.

9 BY MR. MIHET:

10 Q. I didn't ask you about individual County
11 Commissioners' minds. I asked you about the -- the
12 position of the County, in this case, the Board of
13 County Commissioners.

14 A. Okay. Could you repeat the question, please.

15 Q. Yes. I'm trying to determine what the County's
16 position is as to whether or not there are differences
17 between aversive therapy and talk therapy with respect
18 to Sexual Orientation Change Efforts or Gender Identity
19 Change Efforts.

20 MS. FAHEY: Form.

21 Outside the scope. Asked and answered.

22 THE WITNESS: Well, I know that the County
23 was provided with the APA task force's report that
24 you're referring to now. That contains a definition of
25 Sexual Orientation Change Efforts that we've just talked

1 about. And I'm noting that one of the -- what is
2 referenced here as aversive by behavior therapists, one
3 of the aversive -- aversion, rather, treatments includes
4 shame aversion. So it's possible that the Board was
5 presented with evidence of an aversion treatment that
6 was not solely physical.

7 BY MR. MIHET:

8 Q. And so are you saying that the Board's position
9 is that there is no difference between the two?

10 MS. FAHEY: Form.

11 Asked and answered. Outside the scope.

12 THE WITNESS: I can't answer a question
13 about the Board's position. I can tell you or report on
14 what is in the transcripts, what is in e-mails that were
15 sent to all seven of them. I don't know that, in an
16 e-mail where all seven of them were referenced or
17 speaking, there's a distinction drawn between a physical
18 attempt to change someone's sexual orientation and the
19 mental talk therapy, I guess you're calling it,
20 attempts.

21 BY MR. MIHET:

22 Q. You're not aware of the Board having a position
23 on this then?

24 MS. FAHEY: Form. Outside the scope.

25 THE WITNESS: Based on what I see in

1 transcripts of all seven of them together, there is no
2 position about physical versus non-physical aversion
3 referenced.

4 BY MR. MIHET:

5 Q. Okay. Getting back to what Mr. Hoch was relating
6 to the Board on December 5, 2017 --

7 MS. FAHEY: Let me just switch her binder
8 real quick.

9 MR. MIHET: Sure. We can just go back to my
10 Exhibit 2.

11 MS. FAHEY: Yes. It's right here.

12 THE WITNESS: Thanks.

13 BY MR. MIHET:

14 Q. Was the therapy that these minors were allegedly
15 subjected to or required to attend by their parents
16 Sexual Orientation Change Efforts or Gender Identity
17 Change Efforts?

18 A. Mr. Hoch states that they were required to go to
19 conversion therapy by their parents.

20 Q. Okay.

21 A. That's all we know.

22 Q. He doesn't say which kind?

23 A. No. He doesn't differentiate between sexual
24 orientation or the other you were saying, Gender
25 Identity Change Efforts.

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1 Q. And what was the harm that these two individuals,
2 minors, allegedly experienced as a result of being
3 required to attend conversion therapy?

4 MS. FAHEY: Form. Outside the scope.

5 THE WITNESS: Mr. Hoch, in this quotation,
6 doesn't discuss the harm.

7 BY MR. MIHET:

8 Q. Does anyone ask him what that harm was?

9 A. On December 5th --

10 Q. Yes.

11 A. -- 2019? You know, he discussed harm, again, on
12 December 19th. I don't --

13 Q. And we'll get to that -- we'll get to that
14 separately. But, on this occasion, did anyone ask him,
15 hey, what's that -- what was the harm that these
16 individuals experienced?

17 MS. FAHEY: Form. Outside the scope.

18 THE WITNESS: There's one question from a
19 Commissioner about the Florida legislature and that's
20 it. No.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. Now, did Mr. Hoch's statement give the impression
24 that he had talked with these two minors himself?

25 A. Mr. Hoch says: We've heard from two individuals,

1 minors.

2 Q. Okay. Did that give the impression that he had
3 talked with these two minors himself?

4 MS. FAHEY: Form.

5 If you're asking about the mental
6 impressions of an individual Commissioner, that's
7 protected by the legislative privilege. If you're
8 asking her to interpret what the transcript says, the
9 document speaks for itself.

10 BY MR. MIHET:

11 Q. What did you understand him to mean?

12 MS. FAHEY: Are you asking Ms. Hvizd based
13 on her individual capacity?

14 MR. MIHET: Yes.

15 THE WITNESS: I understood him to say that
16 we, including him, had heard of two individuals, minors,
17 who were required to go to conversion therapy by their
18 parents.

19 BY MR. MIHET:

20 Q. Well, had heard of or had heard from?

21 A. The statement is: Over the past two years, we've
22 heard from two individuals, minors, who have been
23 required to go to conversion therapy by their parents.

24 Q. And so did you understand that to mean that
25 Mr. Hoch had spoken with these two individuals?

1 A. I don't recall, on December 5th of 2017, how I
2 interpreted this statement. As I look at it now and
3 read it, it does sound as if, in my mind, in my
4 impression, he is saying that we --

5 Q. Including him?

6 A. Including him. He may be referring to the Palm
7 Beach County Human Rights Council because he does
8 reference that he is president earlier. So he may be
9 speaking on their behalf. And that could perhaps be
10 what he means by, "we've heard," in other words, the
11 Palm Beach County Human Rights Council --

12 Q. Okay.

13 A. -- has heard from two individuals. So that
14 sounds as if he's saying that individuals spoke to the
15 Council.

16 Q. The two minors?

17 A. It sounds as if that's what he's saying, yes.

18 Q. Okay. That's -- that's -- you think that that's
19 a reasonable interpretation of his statement?

20 A. That --

21 MS. FAHEY: Form. Outside the scope.

22 THE WITNESS: I don't know about reasonable.
23 That would be my interpretation --

24 MR. MIHET: Okay.

25 THE WITNESS: -- one of my interpretations.

1 I mean, the "we" is the part that's a little
2 bit open ended. But I don't know if he's referring here
3 to the Council or if he's referring to himself with
4 other people.

5 MR. MIHET: Sure.

6 BY MR. MIHET:

7 Q. My question really is focused on whether or not
8 it was the two minors, themselves, that had expressed or
9 that had provided this information.

10 A. That's one way to interpret from two individuals,
11 yeah, the minors, themselves, speaking.

12 Q. That's your way?

13 MS. FAHEY: Form.

14 Outside the scope. Asked and answered.

15 BY MR. MIHET:

16 Q. Okay. I think your testimony is -- is in the
17 record on that.

18 MS. FAHEY: If we could, Harry, when it's
19 convenient for you -- I've been drinking all this. If
20 we can have a break soon?

21 MR. MIHET: Yeah. I think this is an
22 appropriate time.

23 MS. FAHEY: Okay. Thanks.

24 (Recess)

25 (Plaintiffs' Exhibit No. 3 marked for identification)

1 BY MR. MIHET:

2 Q. Ms. Hvizd, I have handed you what we've marked as
3 Plaintiffs' Exhibit 3. And I'm representing to you that
4 this is an excerpt of the transcript from the December
5 19, 2017, meeting of the Palm Beach County
6 Commissioners. If you need to take the time to compare
7 it with your full transcript to make sure it's fair and
8 accurate, please do that. But, for the record, these
9 pages were produced to us by the County; and they begin
10 with PBC-507 on the bottom. They go through PBC-513.

11 So two weeks after he mentioned these two minors
12 that had been allegedly harmed by conversion therapy,
13 Mr. Hoch provided some additional detail to the
14 Commission about them. Do you recall that?

15 MS. FAHEY: Form.

16 THE WITNESS: Yeah. My only clarification
17 would be the allegedly aspect. I don't think he said
18 allegedly on December 5th.

19 MR. MIHET: Well, sure.

20 BY MR. MIHET:

21 Q. He claimed that they were harmed. And I'm not
22 being able to confirm that. So I am using the qualifier
23 allegedly because I don't know who these individuals
24 are.

25 A. Okay. That was why I clarified that he didn't

1 use the word allegedly.

2 Q. Sure. The County doesn't know who these two
3 individuals are either?

4 A. We do not.

5 Q. And the County has not been able to confirm
6 whether or not these two individuals were, in fact,
7 harmed by conversion therapy?

8 MS. FAHEY: Form.

9 Outside the scope. Ms. Ginsburg was
10 designated for that topic.

11 Anytime we go outside the scope, Ms. Hvizd
12 will be testifying in her individual capacity.

13 THE WITNESS: So I'm not aware of a
14 confirmation of the individuals' identity.

15 BY MR. MIHET:

16 Q. Or of the fact -- or of whether or not they were
17 harmed?

18 A. I simply know what Mr. Hoch stated.

19 Q. Okay. So, on page eighty, in lines ten through
20 thirteen, Mr. Hoch says: We received complaints from
21 the mothers of gay people because their friends, the gay
22 children's friends who also identified as gay, were
23 being subjected to conversion therapy.

24 Did I read that correctly?

25 A. Yes. So, reading that statement, does it become

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1 more clear as to whether or not Mr. Hoch had personally
2 spoken with these two minors, themselves?

3 MS. FAHEY: Form.

4 Outside the scope.

5 We're returning to previously when you were
6 asking her for her interpretation, correct?

7 MR. MIHET: Your form is -- objection is
8 noted.

9 MS. FAHEY: Okay. So...

10 MR. MIHET: Yeah.

11 BY MR. MIHET:

12 Q. Go ahead.

13 A. I'm sorry. I need the question repeated, please.
14 (Requested portion read back by the court reporter)

15 THE WITNESS: This particular statement does
16 not make clear whether Mr. Hoch spoke with the
17 individuals, themselves.

18 BY MR. MIHET:

19 Q. Well, what --

20 A. In my mind, personally.

21 Q. Okay. What Mr. Hoch tells the Commission is that
22 he received complaints from mothers of gay people,
23 correct?

24 A. Actually, he says: We received complaints --

25 Q. Okay.

1 A. -- from the mothers of gay people because their
2 friends, the gay children's friends who also identified
3 as gay, were being subjected to conversion therapy.

4 Q. So you got the minors who are being subjected to
5 conversion therapy who are telling their friends who are
6 telling their mothers who are telling Mr. Hoch or his
7 organization?

8 MS. FAHEY: Form. Outside the scope.

9 THE WITNESS: I'm sorry. I'm not certain I
10 followed what you were saying. Could you repeat the
11 question?

12 MR. MIHET: Sure.

13 BY MR. MIHET:

14 Q. What Mr. Hoch is telling the Commission is that
15 he has heard from the mothers of gay people who heard
16 from their gay children who heard from their gay friends
17 that the friends were being subjected to conversion
18 therapy?

19 MS. FAHEY: Same objection.

20 THE WITNESS: That does appear to be what he
21 is saying in this paragraph.

22 BY MR. MIHET:

23 Q. Okay. Now, I'm going to test your bar exam
24 memory a bit. But, by the time that Mr. Hoch was
25 relaying this information to the Board of County

1 Commissioners, about how many levels of hearsay do you
2 think were embedded in that?

3 MS. FAHEY: Form.

4 Outside the scope. Speculation.

5 THE WITNESS: In the paragraph contained on
6 Bates page 509 that you're referring to --

7 MR. MIHET: Uh-huh.

8 THE WITNESS: -- I believe that would be at
9 least third-degree, perhaps second-degree hearsay.

10 MR. MIHET: Okay.

11 THE WITNESS: Which varies, of course, from
12 what he said on December 5th when it appears that there
13 was no hearsay. In fact, he was involved in a
14 conversation or -- or the Council was involved in a
15 conversation with those that were harmed.

16 BY MR. MIHET:

17 Q. Now, did the fact that that variance took place,
18 that Mr. Hoch went from we've heard from the two minors
19 on December 5 to we've heard from mothers who heard from
20 children who heard from friends on December 19th, did
21 that change give the Commission any pause with respect
22 to the claims that Mr. Hoch was making?

23 A. I can't testify as to pause that a Commission
24 would have had because, again, you're asking me for --
25 to get into the individual mind of any of the

1 Commissioners; and that's certainly outside of my
2 abilities.

3 Q. Did anyone challenge him on that change?

4 MS. FAHEY: Form. Outside the scope.

5 THE WITNESS: First of all, I'm not certain
6 it's a change. The two could exist simultaneously.

7 BY MR. MIHET:

8 Q. I'm sorry. I thought you just testified and
9 volunteered the fact that you perceived his testimony to
10 have changed from December 5 to December 19th with
11 respect as to whether or not he heard from these two
12 minors himself or -- or his organization.

13 MS. FAHEY: Form. Argumentative.

14 THE WITNESS: No, I don't believe I ever
15 said that, actually. I did not use the word change, as
16 far as I know. Perhaps the court reporter could read
17 back if I did. I'm suggesting that this statement can
18 exist simultaneously with the initial statement that you
19 pointed out in Plaintiffs' Exhibit No. 2.

20 BY MR. MIHET:

21 Q. How so?

22 A. It is possible that we could have heard reports
23 and that we could have received complaints from mothers
24 of gay people because their friends.

25 Q. With respect as to whether or not Mr. Hoch or his

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1 organization talked to the allegedly harmed minors,
2 themselves, you would agree with me that the two
3 statements are different? In the December 5 statements,
4 he says, we have heard from the minors, correct?

5 A. Correct.

6 Q. And, in the December 19th statements, he says,
7 we've heard from the mothers who have gay sons who have
8 gay friends.

9 MS. FAHEY: Form.

10 BY MR. MIHET:

11 Q. In one statement he says he's heard from the
12 minors allegedly harmed, and in another statement he
13 says he's heard from mothers through their sons from
14 their friends, correct?

15 A. Correct. And I'm stating those statements can
16 exist simultaneously. You could have both; from the two
17 individuals that are harmed, and you could have heard
18 from mothers of gay children whose friends were harmed.

19 Q. I see.

20 Did the Commission undertake any efforts to
21 determine exactly what Mr. Hoch's interaction was or had
22 been with these two minors?

23 A. I believe the only follow-up question by
24 Commissioner Valeche at the December 19th hearing -- and
25 I'm reading from Bates number 509 -- was: And, question

1 mark.

2 Q. Okay. So the answer to my question is no?

3 A. I think that would be a yes, actually. You asked
4 if they undertook any further efforts to understand.
5 That was the question.

6 Q. Okay. And did that -- did that further effort
7 yield additional information about these two minors and
8 whether or not they had been harmed?

9 A. Well, it did, actually. I think, in the
10 following paragraph, Mr. Hoch states: So these kids are
11 still being forced to go to therapists who are telling
12 them that God does not love them.

13 Q. Okay. So getting back to the question I asked
14 earlier about whether or not these kids were being
15 required to go to therapy or whether they wanted to go
16 to therapy themselves, do you remember that?

17 A. Correct.

18 Q. You indicated that you couldn't say from the
19 December 5 statement because it was possible that the
20 parents were requiring them and that they also wanted
21 or -- or not wanted to go?

22 A. Correct.

23 Q. Now that he says that these kids are being forced
24 to go to therapists, do you -- did that give the
25 Commission a better understanding of whether or not this

1 was therapy that the minors were seeking and voluntarily
2 assenting to or whether they were being forced to -- to
3 undergo?

4 MS. FAHEY: Form. Outside the scope.

5 Ms. Hvizd cannot talk about any individual
6 mindset of any individual Commissioner.

7 THE WITNESS: I can testify only to the
8 words that are on the page. And so, when the Board as a
9 group of seven individuals hears the words "being
10 forced," they likely, I would imagine, believe that that
11 means they were being forced.

12 BY MR. MIHET:

13 Q. That they were not voluntarily assenting?

14 A. To the extent that being forced could not exist
15 at the same time as a voluntary assent, yes.

16 Q. Okay. Other than this follow-up question by
17 Commissioner Valeche that consisted of the word "and"
18 and the response, did the Commission make any further
19 inquiry into Mr. Hoch's claims with respect to these two
20 minors?

21 MS. FAHEY: Form. Outside the scope.

22 THE WITNESS: So Commissioner Valeche
23 follows his first question with another asking: Isn't
24 there -- isn't there some recourse for the parent if
25 they feel their child has been harmed by a professional?

1 MR. MIHET: Okay. So that goes into -- into
2 just, you know, recourse and available remedies
3 generally for parents who think that their children may
4 or may not be harmed.

5 BY MR. MIHET:

6 Q. My question was: With respect to the two minors
7 whom Mr. Hoch claimed were being harmed, did the
8 Commission make any further inquiry about that, whether
9 at the December 19th meeting or otherwise?

10 A. Well, you're asking me --

11 MS. FAHEY: Form.

12 THE WITNESS: I'm sorry.

13 MS. FAHEY: Form. Outside the scope.

14 THE WITNESS: You're asking me if they made
15 any further inquiry about that. And I'm suggesting all
16 of Commissioner Valeche's questions, at least the next
17 one: Isn't there some recourse for the parent?

18 Mr. Hoch responds: The parents are the ones who are
19 causing the harm to the children by sending them to
20 therapy. The children are the ones being harmed by the
21 therapy. There's no recourse, et cetera.

22 And then there's an additional question on
23 Bates page 510: Wouldn't the child in this instance, in
24 these two instances, have been able to register a
25 complaint?

1 BY MR. MIHET:

2 Q. Did anyone on behalf of the County follow up with
3 Mr. Hoch about these two allegedly harmed minors outside
4 of what is reflected in this hearing transcript?

5 MS. FAHEY: Form. And when?

6 BY MR. MIHET:

7 Q. At anytime?

8 A. So, as to seven individuals, I do not see on the
9 record any additional follow-up with Mr. Hoch as to
10 these two individuals who have been harmed.

11 Q. Did they direct -- and by, "they," I mean the
12 Commissioners. Did the Commissioners or the Commission
13 direct anyone to follow up with Mr. Hoch about the
14 claims he was making --

15 A. Not --

16 Q. -- about these two minors?

17 A. Not on the record.

18 Q. How about off the record?

19 A. And that's outside the scope of the Defendants,
20 being the seven members of the Board of County
21 Commissioners.

22 Q. I don't think that it is. I think what the
23 Commission did on the record or off the record is
24 entirely within the scope of your examination today.

25 So my question is: Again, did the Commission

1 direct anyone to follow up with Mr. Hoch about the
2 claims that he was making?

3 A. So, if you're asking me whether there is an
4 e-mail on which all seven commissioners are copied or
5 there is any record of public comment during which all
6 seven commissioners are present and a follow-up to this
7 question is posed, I'm not aware of any.

8 Q. So why isn't the answer to my question simply no
9 then? The Commission did not direct anyone to follow up
10 with Mr. Hoch regarding the claims that he was making
11 with respect to these two minors?

12 MS. FAHEY: Form.

13 THE WITNESS: You're asking me now why isn't
14 the answer to your question? Your question changed
15 several times over the course of the past few moments.
16 So I'm now answering your question, and I believe I did.
17 I'm not aware of an e-mail or transcript documenting a
18 meeting of all seven of the Commissioners when a
19 follow-up was requested to if additional direction was
20 given.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. What about any individual Commissioner? Did any
24 individual Commissioner request a person working for the
25 County as part of their official duties to follow up

1 with Mr. Hoch regarding the claims that he was making
2 about these two minors?

3 A. I was asked to prepare to speak on behalf of the
4 Defendants as it was defined in court hearings and this
5 morning as all seven members of the Board of County
6 Commissioners, so I'm not prepared to speak on an
7 individual Commissioner's direction.

8 MS. FAHEY: And nor should she be because it
9 would be invasion of the deliberative process. Anything
10 that individual Commissioner would be doing for their
11 own motivations or fact finding gathering would not be
12 appropriate for Ms. Hvizd to be speaking about when she
13 testifies in this capacity. Furthermore, if you're
14 inquiring as to an attorney/client privilege wherein a
15 -- the County, which is the client here, was consulting
16 with an attorney about legal advice, then we would have
17 that privilege, as well.

18 If you're asking Ms. Hvizd whether she is
19 aware that Palm Beach County, as we have discussed many
20 times, has inquired as you have asked, I believe she's
21 given that answer. It's asked and answered and that
22 there is no record of that inquiry.

23 MR. MIHET: Okay. So is it -- is it your
24 position, Ms. Fahey, that the County can only act
25 through the seven Commissioners acting together?

1 MS. FAHEY: I have defined, for the purpose
2 of this 30(b)(6) deposition, which is asking about the
3 County's enactment of an ordinance and topics related to
4 the enactment of the ordinance, that can only be done in
5 the sunshine wherein they meet as a body and vote. And
6 so that is why we have given you the definition and gone
7 forward with that preparation.

8 BY MR. MIHET:

9 Q. Ms. Hvizd, with respect to Mr. Hoch's statement
10 to the Commission that these kids are still being forced
11 to go to therapists who are telling them that God does
12 not love them -- I believe you -- you read that from the
13 record on PBC-509?

14 A. Correct.

15 Q. Was he relaying to the Commissioners actual
16 statements that the therapists had made to those two
17 minors, or was he relaying an assumption of his about
18 what happens in SOCE or GICE counseling generally?

19 MS. FAHEY: Form.

20 THE WITNESS: It's not clear from this
21 statement. Either one of those interpretations could
22 apply.

23 BY MR. MIHET:

24 Q. Did anyone from the Commission ask him what he
25 meant?

1 A. I see no further questions about what he means by
2 that statement on the transcript.

3 Q. Is the Palm Beach County Commission aware of any
4 therapist in Palm Beach County that would say to a minor
5 during SOCE or GICE counseling that God does not love
6 them?

7 MS. FAHEY: Form. Outside the scope.

8 THE WITNESS: Yes. I believe, during the
9 transcripts of either or both the December 5th and the
10 December 19th meetings, there were individuals who spoke
11 to the Commission. And I'll have to take a more careful
12 look, but one or more of them may have been licensed
13 therapists who were suggesting that a homosexual
14 lifestyle was contrary to their religious beliefs.

15 BY MR. MIHET:

16 Q. To whose religious beliefs?

17 A. The therapists who were speaking.

18 Q. Okay. My question wasn't about the individual
19 religious beliefs of therapists or counselors in Palm
20 Beach County. My question was: Does the Palm Beach
21 County Commission know of any therapist within Palm
22 Beach County that would actually say to a minor during
23 the course of counseling that God does not love them?

24 MS. FAHEY: Form.

25 Outside the scope. Asked and answered.

1 THE WITNESS: I think that could be a
2 reasonable inference based on language of some of the
3 people who represented themselves as licensed therapists
4 and spoke to the Board of County Commissioners on both
5 December 5th and December 19th.

6 BY MR. MIHET:

7 Q. You think that, if a licensed therapist happens
8 to believe that homosexuality is a sin, that, therefore,
9 it goes without saying that that therapist is going to
10 express that belief to a minor during counseling?

11 A. That's a lot of assumptions.

12 MS. FAHEY: Form. Outside the scope.

13 MR. MIHET: I agree.

14 THE WITNESS: Yeah.

15 MR. MIHET: But it appears to be the
16 assumptions you're making.

17 BY MR. MIHET:

18 Q. And I'm asking you whether, in fact, you're
19 making those assumptions?

20 A. Actually, that wasn't the question that you asked
21 me. I believe the question you asked me was whether or
22 not the Board was aware of any licensed therapists who
23 have made statements that God did not love them to their
24 patients.

25 Q. To their minor patients --

1 A. Clients I believe we call them.

2 Q. To their minor patients, right.

3 So you responded by saying that there were
4 therapists who expressed the view at County Commission
5 meetings that they believed homosexuality to be a sin,
6 correct?

7 A. Yes. And I really should find them so that I can
8 speak directly from their words instead of simply
9 characterizing what I recall.

10 Q. Well, but you responded to my question with
11 something that counselors may or may not have told the
12 Commission regarding their own views. And my question
13 wasn't about the views of counselors. My question was
14 about what counselors tell minors during the course of
15 SOCE or GICE counseling. Okay?

16 And my question, again, is: Does the Palm Beach
17 County Commission know of any therapist within Palm
18 Beach County that actually say that to their minor
19 clients or would say that to their minor clients?

20 A. So, if you're asking me whether there was any
21 testimony during the 5th or the 19th, December 5th or
22 December 19, 2017, meetings when a licensed therapist
23 said, I tell my clients God does not love you, I do not
24 believe that you will find that on these transcripts.

25 Q. Would we find any evidence submitted to the

1 Commission during its consideration of this ordinance
2 showing or demonstrating that there are licensed
3 therapists in Palm Beach County that say or would say to
4 their clients, their minor clients, that God does not
5 love them?

6 MS. FAHEY: Form. Outside the scope.

7 THE WITNESS: And, when you say, "that say
8 or would say" --

9 MR. MIHET: Uh-huh.

10 THE WITNESS: -- my suggestion is it could
11 be inferred from the language here of trained therapists
12 who say that homosexual lifestyle is contrary to their
13 religious views, that that would be expressed during a
14 counseling session.

15 BY MR. MIHET:

16 Q. Because I thought a minute ago you were telling
17 me that there's too many assumptions in there; and you
18 weren't prepared to assume that, just because a
19 therapist holds that belief personally, that they would
20 then also share that with a minor patient.

21 A. No. Actually --

22 MS. FAHEY: Form. Sorry.

23 THE WITNESS: -- your question changed.

24 MS. FAHEY: Form. Argumentative.

25 What's the question?

1 BY MR. MIHET:

2 Q. Now, on December 18th, the County also received
3 an e-mail from a Mr. Nick Sofoul, S-o-f-o-u-l --

4 A. Correct.

5 Q. -- who claimed that his friends had been harmed
6 by conversion therapy, correct?

7 A. I would need for you to give me a copy of what
8 you're referring to, please.

9 (Plaintiffs' Exhibit No. 4 marked for identification)

10 MR. MIHET: (Hanging).

11 THE WITNESS: Thank you. Oh, you gave me a
12 marked-up copy. Did you intend that?

13 MR. MIHET: Oh, I'm sorry. No, I did not.
14 Thank you.

15 BY MR. MIHET:

16 Q. And I'll refer you to the third page of this
17 exhibit, which is the actual December 18th e-mail,
18 correct?

19 A. Yes.

20 Q. Now, this e-mail was sent on Monday, December
21 18th, at ten-sixteen p.m.?

22 A. Correct.

23 Q. And that's December 18, 2017, right?

24 A. Correct. December -- I'm sorry, December 18,
25 2017, correct.

1 Q. Right. Now, was this the first time that
2 Mr. Sofoul had brought this to the County's attention?

3 MS. FAHEY: Form. Outside the scope.

4 THE WITNESS: This is the -- I'm not certain
5 that this is the first e-mail Nick Sofoul sent to the
6 Commissioners. And, for that, I would need to take a
7 look at the Commissioners' e-mails, which I have here.
8 They're quite lengthy. That might be more advantageous
9 time-wise if I do that afterwards.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. As you sit here now, are you able to recall an
13 earlier communication from Mr. Sofoul to the
14 Commissioners regarding alleged harms of conversion
15 therapy?

16 A. I cannot recall, which is why I would want to
17 look to be certain.

18 Q. Okay. So the same request that I made earlier
19 regarding Mr. Hoch's December 5th statement I would make
20 now with respect to Mr. Sofoul; and, that is, if you
21 find another communication during the -- the course of
22 our proceedings today, please let me know.

23 A. Will do.

24 Q. If it's not in the stack of materials that you
25 have with you, is it fair to assume that it doesn't

1 exist?

2 A. I believe I have all of the e-mails that were
3 sent to the seven Commissioners --

4 Q. Okay.

5 A. -- in that stack.

6 Q. Now, this e-mail was sent then the night before
7 the final vote of the ordinance -- or on the ordinance,
8 right?

9 A. Correct.

10 Q. That vote took place the following morning at
11 nine-thirty a.m.?

12 A. Well, a meeting took place at nine-thirty a.m. I
13 don't think this was the first item on the agenda, so it
14 would have been sometime thereafter. And I believe
15 there was both a morning and afternoon meeting on that
16 day.

17 Q. Okay. But the --

18 A. I'm --

19 Q. I'm sorry. Go ahead.

20 A. I'm just not certain what time the vote took
21 place.

22 Q. All right. The ordinance was taken up in the
23 morning session on December 19th, correct?

24 A. Okay.

25 Q. And so, given that this e-mail was sent at

1 ten-sixteen the night before, did the Commission
2 consider this e-mail prior to the vote?

3 A. I can tell you that all seven of the
4 Commissioners would have received this e-mail at
5 ten-sixteen on December 18, 2017.

6 Q. Can you tell me whether or not they reviewed
7 their e-mails between ten-sixteen p.m. and nine-thirty
8 a.m. the following morning?

9 A. As I understand it, I'm here to testify as to all
10 seven together; and so what any individual Commissioner
11 did in terms of reviewing e-mails or this particular
12 e-mail I would not know.

13 Q. Was this e-mail included in the record on -- of
14 the hearing on December 19th?

15 A. I'm not aware of it being included in the record
16 directly as a reference to a December 18, 2017, at
17 ten-sixteen p.m. e-mail.

18 Q. And so are you aware of any evidence or
19 indication that the Board of County Commissioners did,
20 in fact, collectively consider this particular e-mail
21 prior to their final vote on the ordinance on
22 December 19th --

23 MS. FAHEY: Form.

24 BY MR. MIHET:

25 Q. -- 2017?

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1 A. As I understand it, an e-mail that was sent to
2 all seven commissioners would be something that we would
3 state, the County would state, that the County
4 considered.

5 Q. Well, but you're not able to tell me whether or
6 not the Commissioners actually reviewed this e-mail in
7 the late night hours between ten-sixteen p.m. and
8 nine-thirty a.m. the next morning, correct?

9 MS. FAHEY: Form. Argumentative.

10 THE WITNESS: I'm not here to testify as to
11 what any individual Commissioner did or did not review.
12 I can tell you an e-mail that went to all seven
13 Commissioners and was received by them is considered by
14 them. For purposes of this deposition, I understand I'm
15 representing what all seven commissioners saw, heard,
16 said; so this is something they saw.

17 BY MR. MIHET:

18 Q. Well, that's really my question. How do you know
19 that this is something that they saw given that it was
20 sent to them well after business hours on a Sunday night
21 and that their --

22 A. Monday night.

23 Q. I'm sorry, Monday night.

24 -- and that their meeting took place at
25 nine-thirty the following morning?

1 MS. FAHEY: Form. Asked and answered.

2 THE WITNESS: Again, I understood the
3 purpose of a 30(b)(6) deposition to be you're asking me
4 what the County saw, heard, read prior to its debate and
5 enactment of an ordinance. And an e-mail addressed to
6 all seven of the Commissioners would fall within that
7 gambit.

8 BY MR. MIHET:

9 Q. And so, other than the fact that this e-mail was
10 sent on the night of Monday, December 18th, at
11 ten-sixteen p.m. to all seven Commissioners, are you
12 relying on anything else to conclude that the Commission
13 actually considered the e-mail?

14 A. No.

15 Q. Okay. Now --

16 A. Except -- may I just back up one moment? Except
17 to the extent that there may be a reference within the
18 transcripts of harm noted, then that could be referring
19 to this. But there is no reference during the
20 transcripts of an e-mail from Mr. Sofoul.

21 Q. Okay. Now, in this e-mail, Mr. Sofoul says in --
22 in the first paragraph, partway through the first --
23 through the second sentence: I have personally heard
24 and been moved by the horrific stories of friends that
25 have been subject to these cruel and inhumane methods.

1 Do you see that in there?

2 A. Yes.

3 Q. Who is he talking about?

4 MS. FAHEY: Form. Speculation.

5 THE WITNESS: Friends.

6 BY MR. MIHET:

7 Q. Are these friends residents of Palm Beach County?

8 MS. FAHEY: Form.

9 THE WITNESS: That is not entirely clear.

10 He does state he's a resident of Palm Beach County.

11 BY MR. MIHET:

12 Q. You can't -- we can't tell by looking at his
13 e-mail whether his friends were residents of Palm Beach
14 County?

15 MS. FAHEY: Form.

16 THE WITNESS: Well, he does, in fact, ask --
17 in the last sentence of that first paragraph, he says:
18 Passing this ordinance would send a strong message that
19 PBC, Palm Beach County, stands with the LGBT community
20 in protecting children from mental and physical abuse of
21 these archaic and dangerous practices. So he is talking
22 about children in Palm Beach County in that sentence it
23 appears.

24 BY MR. MIHET:

25 Q. Where does he say that?

1 A. Well, he says: Palm Beach County stands with the
2 LGBT community in protecting children.

3 Q. Okay.

4 A. If he's talking about an ordinance that our
5 County Commissioners are passing, that has to be Palm
6 Beach County children.

7 Q. Is it possible that these horrific stories of
8 friends, that these friends are residents of other
9 states?

10 MS. FAHEY: Form.

11 THE WITNESS: It is definitely possible that
12 they are residents of other states. It's also possible
13 they're residents of Palm Beach County.

14 BY MR. MIHET:

15 Q. Okay. Did the Commission ever undertake any
16 effort to determine which friends he was talking about
17 in this e-mail?

18 A. I'm not aware of all seven commissioners
19 inquiring as to what -- where the -- his friends reside.

20 Q. Okay. What were the particular cruel and
21 inhumane methods to which Mr. Sofoul's friends had
22 allegedly been subjected?

23 A. We don't know from this e-mail what aversive or
24 non-aversive techniques were used on these individuals.

25 Q. Did the Commission ever make a follow-up inquiry

1 as to that?

2 A. I'm not aware of any follow-up inquiry.

3 Q. Were these friends of Mr. Sofoul minors or
4 adults?

5 A. Well, he is asking or writing, he says, in
6 support of a proposed ban on conversion therapy for
7 minors. And his recollect -- his knowledge that this is
8 an ordinance that will apply to minors. And then his
9 statement about horrific stories of friends being
10 subjected to cruel and inhumane methods could be viewed
11 as his recognition that the horrific stories were from
12 minors.

13 Q. Could it also be understood from his statements
14 that the friends were adults?

15 A. It could be adults. It could be minors. Yes.

16 Q. Did the Commission make any effort to determine
17 whether he was talking about minors or adults?

18 A. I'm not aware of any follow-up to this e-mail by
19 the Commission.

20 Q. Were these friends of Mr. Sofoul forced to
21 undergo conversion therapy, or did they voluntarily
22 assent to it?

23 A. He doesn't state directly the suggestion --
24 actually, he doesn't state. I'll just leave my answer
25 at that.

1 Q. Did the Commission undertake any efforts to
2 determine that?

3 A. I'm not aware of any follow-up to the e-mail of
4 December 18, 2017, conducted by the Board as a whole.

5 Q. Mr. Sofoul continues in the second paragraph by
6 saying: Thank you for your continued leadership. I am
7 a proud PBC resident and hope that you will make the
8 right choice and not be swayed by potential legal
9 challenges by people who dedicate their lives to hatred
10 and intolerance.

11 Do you see that?

12 A. I do.

13 Q. Who do you think he was referring to in that
14 statement?

15 A. He --

16 MS. FAHEY: Form.

17 Are you asking Ms. Hvizd, or are you asking
18 Palm Beach County?

19 BY MR. MIHET:

20 Q. Who did the Palm Beach County Commission believe
21 that he was referring to?

22 A. So I can't speak on behalf of any individual
23 Commissioner. The Commissioners as a whole likely
24 considered the legal challenge. And cite people who
25 dedicate their lives to hatred and intolerance to be

1 referring to the Liberty Counsel, as I believe the
2 Commissioners all received correspondence from the
3 Liberty Counsel threatening to vindicate the rights of
4 their clients.

5 Q. Did the Palm Beach County Commission believe that
6 Liberty Counsel and its people dedicate their lives to
7 hatred and intolerance?

8 MS. FAHEY: Form. Outside the scope.

9 Ms. Hvizd's answer would only be referring
10 to her own personal knowledge.

11 THE WITNESS: Right. So I can't testify as
12 to a belief by any individual Commissioner. All seven
13 of the Commissioners together did not express a belief,
14 that I'm aware of, that the Liberty Counsel dedicates
15 their lives to hatred and intolerance.

16 BY MR. MIHET:

17 Q. Does the Palm Beach County Commission believe
18 that either Mr. Otto or Ms. Hamilton dedicate their
19 lives to hatred and intolerance?

20 MS. FAHEY: Form. Outside the scope.

21 It's not one of the designated topics. And
22 Ms. Hvizd's answer would only be speaking on behalf of
23 herself.

24 THE WITNESS: So I cannot testify as to what
25 the seven Commissioners as a whole think or believe

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1 about either Dr. Otto or Julie Hamilton. I can tell you
2 I'm not aware of any statement on the record by all
3 seven Commissioners or any e-mail sent to all seven
4 Commissioners referencing Dr. Otto or Dr. Hamilton in
5 that way.

6 BY MR. MIHET:

7 Q. What does Ms. Hvizd think in that regard about
8 Dr. Otto or Dr. Hamilton?

9 MS. FAHEY: Objection.

10 Completely irrelevant.

11 THE WITNESS: Ms. Hvizd has no thoughts
12 about Dr. Otto or Dr. Hamilton. I believe my e-mails to
13 them will reflect that I treated them with decency and
14 respect throughout the course of the enactment of this
15 conversion therapy ordinance. And I hope they would
16 feel the same toward me.

17 BY MR. MIHET:

18 Q. So you don't think that they dedicate their lives
19 to hatred and intolerance, do you?

20 A. I can't answer that question.

21 Q. Why not?

22 A. Because I can't answer that question.

23 MS. FAHEY: Objection.

24 This is completely irrelevant about
25 Ms. Hvizd's personal beliefs about Plaintiffs.

1 THE WITNESS: Are we waiting for an answer?

2 I can't answer that question.

3 MS. FAHEY: It's asked and answered.

4 BY MR. MIHET:

5 Q. Well, why can't you answer it?

6 A. I can't answer that question. My personal
7 beliefs are so far outside the scope of this 30(b)(6)
8 deposition.

9 Q. Well, why -- why don't you let the attorneys and
10 the Court decide what is or is not within the scope. I
11 think that you are likely going to be a witness in this
12 case, and I think that your opinions and biases --
13 potential biases are quite relevant. So why don't you
14 answer the question, and then the attorneys will argue
15 and the Court will decide whether or not that's --
16 that's relevant to the case.

17 MS. FAHEY: This is not a deposition of
18 Ms. Hvizd. She has not been noticed in her individual
19 capacity today. We are far afield from the scope of the
20 designated topics. Ms. Hvizd has given you an answer.
21 You continue to ask her the same question. And we will
22 move for a protective order when you notice Ms. Hvizd's
23 deposition of herself in her individual capacity to
24 preclude inquiry into this line of questioning as it's
25 wholly irrelevant to the passage of the ordinance.

1 Ms. Hvizd is not -- Ms. Hvizd, individually,
2 is not the Board of County Commissioners. Even if she
3 were a Commissioner, her individual motivations are
4 wholly irrelevant and would be subject to the
5 legislative privilege. That, however, is not applicable
6 to her individually. But her individual thoughts are
7 not relevant. And, at this point, I think we're veering
8 into harassing the witness.

9 MR. MIHET: I mean, for the record, she did
10 not answer my question. And she said that the reason
11 why she didn't answer my question was she -- she
12 couldn't answer my question. So -- and she said she
13 couldn't answer my question because she felt it wasn't
14 -- wasn't relevant. So a witness cannot be instructed
15 not to answer a question on the basis of relevance. And
16 I think that I'm entitled to an answer.

17 MS. FAHEY: And I think that a witness can
18 be instructed not to answer a question to further the --
19 the obtaining of a protective order. And so we're
20 making an ore tenus protective order with respect to
21 Ms. Hvizd's personal opinions about any individual,
22 particularly the Plaintiffs, as that is what you have
23 asked in the scope of this and because it is harassing
24 of her, not within the scope of this deposition. And
25 she has given information about her treatment of the

1 Plaintiffs. She does not believe that it has any
2 bearing on the testimony she's been called on to give
3 today.

4 MR. MIHET: Okay.

5 BY MR. MIHET:

6 Q. Are you feeling harassed, Ms. Hvizd?

7 A. Yes, I am.

8 Q. You are.

9 In the last paragraph of this e-mail, Mr. Sofoul
10 includes a URL link to an internet article.

11 Do you see that?

12 A. I do.

13 Q. Did the Commissioners review the article that was
14 linked?

15 A. I can't testify as to what any individual
16 Commissioner did or did not review. I can tell you what
17 the group of seven received. They received this e-mail
18 that includes that link.

19 Q. Okay. And so your testimony, as I recall it, is
20 that, by virtue of receiving this e-mail, they would
21 have considered the e-mail as part of their voting on
22 the ordinance?

23 A. Correct.

24 Q. And does that also mean that they would have
25 considered the article that's linked in the e-mail?

1 A. That's a reasonable inference to suggest that
2 they would have considered that article, as well.

3 Q. Okay.

4 (Plaintiffs' Exhibit No. 5 marked for identification)

5 BY MR. MIHET:

6 Q. I've handed you a document that we have marked as
7 Exhibit 5. And I'll represent to you that this is the
8 article that is linked to -- in this e-mail. And, as
9 you can tell by looking at the article, it recounts the
10 story and the efforts of one Samuel Brinton who is
11 engaged in activism to ban conversion therapy. Are you
12 able to see that?

13 A. I see that. I have no independent recollection
14 of this being the article of the link, however.

15 MS. FAHEY: Have you had the opportunity to
16 review all of Plaintiffs' Exhibit 5?

17 THE WITNESS: I have not.

18 BY MR. MIHET:

19 Q. Directing your attention to the second page of
20 the article about three paragraphs in, it states:
21 Brinton said they were eleven years old when their
22 parents sent them to a conversion therapist.

23 Do you see that?

24 A. Yes.

25 Q. And then two paragraphs below that, it says:

1 Brinton said the so-called therapist used extreme and
2 abusive techniques including covering Brinton's hand in
3 ice, wrapping it in conductive wires to apply heat and
4 even electroshock therapy while forcing Brinton to look
5 at images of men touching. Brinton said the therapist
6 stopped the techniques when he showed Brinton images of
7 men with women.

8 Do you see that?

9 A. Yes, I see that.

10 Q. So the kind of conversion therapy that Mr. Sofoul
11 was expressing a position against was aversive
12 conversion therapy?

13 MS. FAHEY: Form.

14 Misrepresents the e-mail.

15 THE WITNESS: So, again, you're asking me to
16 get now inside the head of Nick Sofoul. And I simply
17 cannot do that nor was I asked to appear today for that
18 purpose.

19 BY MR. MIHET:

20 Q. Well, I'm asking you to tell me, based on the
21 materials that he provided to the County Commission,
22 whether those materials were discussing aversive therapy
23 or non-aversive therapy?

24 A. If you're asking me if Plaintiffs' Exhibit 5 and
25 what you just referenced is aversive therapy, that is

1 aversive therapy --

2 Q. It is?

3 A. -- as I understand it.

4 Q. Okay.

5 A. Personally. As I personally understand it.

6 (Interruption by the court reporter)

7 BY MR. MIHET:

8 Q. Your answer wasn't clear for the record.

9 A. I believe it was your answer that was not
10 clear --

11 Q. Yours isn't either. Can you repeat your -- your
12 answer when you said, if you're asking me whether this
13 is aversive or non-aversive.

14 A. I would ask the court reporter to reread my
15 answer, please.

16 (Requested portion read back by the court reporter)

17 THE WITNESS: That's clear to me.

18 BY MR. MIHET:

19 Q. How did the Commission interpret this particular
20 evidence? Did they regard this particular therapy that
21 Mr. Sofoul was complaining about to be aversive or
22 non-aversive therapy?

23 A. There's no statement on the record by all seven
24 Commissioners of how they regarded this article.

25 Q. Okay. So have we now covered all of the

1 complaints of conversion therapy harm that the County
2 was aware of prior to enacting the ordinance?

3 A. No, I don't believe you have.

4 MS. FAHEY: Form. Sorry.

5 This was outside the scope of Ms. Hvizd's
6 designated topics. As you know, Dr. Ginsburg has been
7 designated for topics one through five.

8 MR. MIHET: Sure. But Ms. Hvizd was
9 designated on what the Commission considered in enacting
10 the ordinance, which is topic number eight. And I
11 believe this goes squarely to what the Commission
12 considered.

13 MS. FAHEY: And I understand that. However,
14 Rule 30(b)(6) does require reasonable particularization
15 of the topics. And it appears from your topics that
16 you've broken out consideration as different types of
17 harms and consideration about consent. And we did
18 designate and prepare a specific witness for topics one
19 through five. And so I'm just making that clear for the
20 record, that that word consideration can't just swallow
21 up all of the other topics.

22 MR. MIHET: Okay.

23 BY MR. MIHET:

24 Q. What other evidence of harm did the County
25 Commission consider besides the two minors that Mr. Hoch

1 referred to and the e-mail from Mr. Sofoul?

2 MS. FAHEY: Same objection. Scope.

3 THE WITNESS: I'm not designated to answer
4 that question. Question number four asks for any
5 evidence of alleged harm, and I believe Dr. Ginsburg is
6 prepared to answer that question.

7 BY MR. MIHET:

8 Q. Okay. Earlier you said in response to my
9 question that you don't believe that we've covered all
10 of the complaints. What additional complaints did you
11 have in mind that we have not covered?

12 MS. FAHEY: Form.

13 THE WITNESS: I'm sorry. Could you please
14 repeat my full answer regarding what you're referencing?

15 MR. MIHET: Yeah.

16 BY MR. MIHET:

17 Q. When I -- when I first asked you the question
18 whether you've covered all of the complaints of
19 conversion therapy harm that the County was aware of
20 prior to enacting the ordinance, you first indicated
21 that you did not believe that we had covered them all.

22 A. I'm sorry. I'll need to hear that, again, from
23 the court reporter. I'm not certain what the question
24 was that -- and the answer.

25 (Requested portion read back by the court reporter)

1 BY MR. MIHET:

2 Q. So what other complaints did you have in mind
3 that caused you to answer that question in the way that
4 you did?

5 MS. FAHEY: Form. Outside the scope.

6 THE WITNESS: Complaints of harm would be
7 something that should be asked of Dr. Shayna Ginsburg
8 who's here to testify regarding question number four.

9 MR. MIHET: And we will ask her that.

10 BY MR. MIHET:

11 Q. My question to you is: When you said, I don't
12 believe that you have, what did you have in mind that we
13 haven't covered yet?

14 A. You were asking me, I believe, whether the two
15 incidents that Rand Hoch testified to and Mr. Sofoul's
16 e-mail were all of the complaints of harm that the
17 County Commissioners considered; and I suggested that I
18 don't believe that that is all.

19 Q. Okay.

20 A. And Dr. Ginsburg will be testifying as to matter
21 for examination number four, which is any evidence of
22 alleged harm.

23 Q. Why is it that you don't believe that that was
24 all the evidence that the County considered?

25 A. I believe there is additional -- there are

1 additional statements in the transcript of harm.

2 Q. So residents of Palm Beach County?

3 A. I can't testify to this matter any -- in any
4 further detail. I wasn't prepared for that. It's
5 question number four that Dr. Ginsburg was prepared for.

6 Q. Okay.

7 (Plaintiffs' Exhibit No. 6 marked for identification)

8 BY MR. MIHET:

9 Q. Ms. Hvizd, I've handed you a document we have
10 marked as Exhibit 6. I believe this is the June 20,
11 2016, communication from Mr. Hoch to the Board of County
12 Commissioners that you were referring to earlier in your
13 testimony. PBC-7642 to PBC-7645.

14 A. Is there a question there?

15 Q. Yeah. Is this that -- that first e-mail that
16 Mr. Hoch sent to the County Commission?

17 A. Yes, it is. It's the first e-mail that we're
18 aware of that Mr. Hoch sent the County Commission.

19 Q. On the subject of conversion therapy?

20 A. On the subject of conversion therapy.

21 Q. On the second page in the first paragraph of his
22 June 20, 2016, memorandum, he begins by saying:
23 Conversion therapy, also known as reparative therapy, is
24 counseling based on the erroneous assumption gay,
25 lesbian, bisexual and transgender identities are mental

1 disorders that can be cured through aversion treatment.

2 Did I read that correctly?

3 A. Yes.

4 Q. What was the type of treatment that Mr. Hoch was
5 asking the County Commissioners to ban? Aversive or
6 non-aversive?

7 MS. FAHEY: Form.

8 THE WITNESS: I don't believe you can take
9 from that one sentence what he's asking us to ban.

10 MR. MIHET: Okay.

11 THE WITNESS: You'd have to read his entire
12 memorandum as a whole, including his attachments.

13 BY MR. MIHET:

14 Q. Is he defining for the Commission what he means
15 when he says "conversion therapy" in that first
16 paragraph?

17 A. In the first paragraph, I think -- you can't take
18 the first paragraph by itself. You have to read the
19 entire memorandum and attachments.

20 Q. So, when he says, "conversion therapy is," he's
21 not telling the County Commissioners what he means by
22 the words conversion therapy?

23 MS. FAHEY: Form. Speculation.

24 THE WITNESS: Yeah. It is impossible for me
25 to tell what Mr. Rand Hoch -- or Judge Rand Hoch is

1 meaning by conversion therapy.

2 BY MR. MIHET:

3 Q. It's impossible for you to tell what Mr. Hoch
4 means by conversion therapy from a statement where he
5 says, conversion therapy is counseling based on the
6 erroneous assumption, et cetera, et cetera?

7 MS. FAHEY: Form.

8 To the extent you're suggesting the document
9 speaks for itself, the document speaks for itself.
10 Otherwise, argumentative.

11 THE WITNESS: I'm prepared to testify as to
12 what all seven of the Board of County Commissioners --
13 all seven members of the Board of County Commissioners
14 received. They received this memorandum. They received
15 the cover e-mail. And they received the attachments,
16 including the substance abuse and Mental Health Services
17 Administration published report as well as the Southern
18 Poverty Law Center's article regarding: QUACKS:
19 Conversion Therapists, the Anti-LGBT Right, and the
20 Demonization of homosexuality. I think you have to
21 review all of that to determine what the Board of County
22 Commissioners understood Mr. Hoch to be talking about.

23 BY MR. MIHET:

24 Q. When the Board of County Commissioners read this
25 first paragraph in Mr. Hoch's memorandum that says:

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1 Conversion therapy is counseling based on the erroneous
2 assumption gay, lesbian, bisexual and transgender
3 identities are mental disorders that can be cured
4 through aversion treatment, could they have understood
5 him to refer to non-aversive treatment?

6 MS. FAHEY: Form.

7 THE WITNESS: Again, I can testify only to
8 what all seven Board of County Commissioners --

9 MR. MIHET: That's what I'm asking you
10 about.

11 THE WITNESS: -- received. And they
12 received this e-mail including that sentence. The
13 e-mail includes a memorandum and several -- two other
14 attachments that reference conversion therapy
15 differently than this.

16 BY MR. MIHET:

17 Q. On the second page of his memorandum, which is
18 76 -- PBC-7644, Mr. Hoch says at the top: The Palm
19 Beach County Human Rights Council recognizes that the
20 practice of conversion therapy, which is most often
21 forced upon minors by their parents or guardians, is
22 extremely harmful.

23 Do you see that?

24 A. Yes.

25 Q. Does the County Commission agree that the

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1 practice of conversion therapy is most often forced upon
2 minors by their parents or guardians?

3 MS. FAHEY: Form.

4 THE WITNESS: I can't testify as to what any
5 individual Commissioner believes about whether
6 conversion therapy is most often forced upon minors. I
7 can tell you that all seven of the members of the Board
8 of County Commission received this e-mail and may
9 have -- and considered it.

10 MR. MIHET: Okay.

11 THE WITNESS: Not may have. They did
12 consider it.

13 (Plaintiffs' Exhibit No. 7 marked for identification)

14 BY MR. MIHET:

15 Q. Did the County Commission undertake any efforts
16 to determine whether or not the practice of conversion
17 therapy within Palm Beach County was most often forced
18 upon minors by their parents or guardians?

19 MS. FAHEY: Form.

20 THE WITNESS: So, as a whole, the seven
21 members of the Board of County Commissioners listened to
22 statements regarding whether conversion therapy, as
23 other people were defining it, included actions that
24 were voluntary or that were involuntary. I think, if
25 you read the transcripts, you'll see that there's some

1 reference to voluntariness and involuntariness.

2 MR. MIHET: Can you read that back, please.

3 (The requested portion read back by the court reporter)

4 BY MR. MIHET:

5 Q. So now I've handed you a document that we have
6 marked as Exhibit 7, which is a July 31, 2016,
7 memorandum from Mr. Hoch to the County Commissioners,
8 PBC-7695 to 7699. Is this a -- a memorandum that
9 Mr. Hoch sent and that the County Commissioners
10 considered?

11 A. Yes.

12 Q. On the second page of the memorandum, which is
13 the third page of the exhibit, 7697, five paragraphs in,
14 Mr. Hoch is discussing the possibility of litigation;
15 and he is assuring the Commissioners that the taxpayers
16 of Palm Beach County will not be burdened with the
17 expense of litigation because there are others who are
18 prepared to fund the litigation efforts.

19 Do you see that?

20 A. I'm not certain that I would characterize this as
21 an assurance that Palm Beach County taxpayers will not
22 pay money for representation. I'm sorry.

23 Q. Well, looking at the language that he has
24 emphasized in bold where he says: So, rest assured, in
25 the event you enact the requested ban and Mat Staver

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1 carries out his threat, the taxpayers of Palm Beach
2 County will not be burden with the expense of
3 litigation.

4 A. Yes, you've read that sentence correctly.

5 Q. So are you still not sure that this can be fairly
6 characterized as an assurance by him to the
7 Commissioners?

8 MS. FAHEY: Form.

9 Document speaks for itself.

10 THE WITNESS: I can just say that you've
11 read that sentence correctly in terms of what Mr. Hoch
12 stated to the Commissioners.

13 BY MR. MIHET:

14 Q. Has Mr. Hoch or his group funded any of the
15 litigation expenses in this litigation thus far?

16 A. I'm not aware of any funding from Mr. Hoch. And
17 did you say --

18 MS. FAHEY: Form.

19 I believe this is outside the scope of what
20 she's been designated to talk about. Are you -- are you
21 looking --

22 MR. MIHET: Yeah. I'm -- topic number
23 seven: All communications and coordination between
24 Defendant and Equality Florida or any other advocacy
25 group regarding the ordinance or any other effort to ban

1 SOCE for minors.

2 THE WITNESS: Yes. So that's regarding the
3 ordinance. So you're expanding that topic now to be
4 referring to the litigation?

5 MR. MIHET: Regarding the ordinance. I
6 don't think that's expanding the topic. I think it's
7 fairly subsumed within the topic.

8 MS. FAHEY: Okay. We disagree that it's
9 within the scope.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. So your answer was you're not aware of any
13 outside group funding any of the litigation expenses?

14 A. Correct.

15 MS. FAHEY: And I'll make it clear for the
16 record, no outside group has funded the litigation on
17 behalf of Palm Beach County.

18 BY MR. MIHET:

19 Q. Would that include any fees that may -- that
20 might be charged by consultants or experts?

21 A. I must make it clear here. I am not litigating
22 this matter. I've not noticed an appearance as counsel
23 on behalf of Palm Beach County in this matter. So I am
24 not aware of all of the facts and circumstances
25 regarding the litigation. And it's outside the scope of

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1 matters -- I believe it's outside the scope of the
2 matters I was called to testify to today because
3 question seven is communications and coordination
4 between Defendant and Equality Florida or any other
5 advocacy group regarding the ordinance or any other
6 effort to ban SOCE for minors. It says nothing about
7 the litigation.

8 MS. FAHEY: I will make it clear for the
9 record, Mr. Mihet, that no entity, organization or
10 individual outside of Palm Beach County Board of County
11 Commissioners is carrying the costs of this litigation.
12 I understand you're asking specifically about fees for
13 experts. Is that what you want to know about?

14 MR. MIHET: Yes.

15 MS. FAHEY: That's true for that group.

16 MR. MIHET: Okay.

17 BY MR. MIHET:

18 Q. On the first page of his memorandum, PBC-7696,
19 Mr. Hoch says in that first paragraph, the last
20 sentence: It is PBCHRC's hope that, once the County
21 Attorney has offered an opinion concerning the legal
22 aspects of enacting such a ban, the Board of County
23 Commissioners will take prompt action to protect LGBTQ
24 children throughout the County.

25 Have I read that correctly?

1 A. Yes.

2 Q. What County opinion -- County Attorney opinion is
3 Mr. Hoch referring to?

4 MS. FAHEY: Objection. Speculation.

5 BY MR. MIHET:

6 Q. You work for the County Attorney's Office,
7 correct?

8 A. I do work for the County Attorney's Office,
9 correct.

10 Q. And you were working for the County Attorney's
11 Office on July 31, 2016?

12 A. Yes.

13 Q. Okay. So what County Attorney opinion is
14 Mr. Hoch referring to?

15 MS. FAHEY: Objection.

16 Speculation. Outside the scope.

17 THE WITNESS: I have -- personally -- now,
18 again, this is not what the County, being seven members
19 of the Board of County Commissioners, believed Mr. Hoch
20 to be referring to. You're asking me what Mr. Hoch is
21 referring to. I'm not inside his head. I would have to
22 speculate, and I couldn't. I don't know.

23 BY MR. MIHET:

24 Q. What did the County Commissioners understand him
25 to refer to?

1 A. And --

2 MS. FAHEY: Objection. Same objection.

3 THE WITNESS: -- there is no other statement
4 that I'm aware of to all seven Commissioners regarding
5 County Attorney having offered an opinion. There are
6 quite a few e-mails as you can see from looking at the
7 cart filled with paper behind me. There may be another
8 e-mail here that references a County Attorney opinion.
9 I'm not independently aware of it now. If you'd like
10 for me to take a look through the documents and get back
11 with you as I said I would on a couple of other matters,
12 I'm happy to do that. But I simply don't know.

13 MR. MIHET: Okay.

14 THE WITNESS: Thank you.

15 (Plaintiffs' Exhibit No. 8 marked for identification)

16 BY MR. MIHET:

17 Q. I'm handing you Exhibit 8. And, I apologize, I
18 only have one extra copy of this. Exhibit 8 is an
19 e-mail from -- or an e-mail chain of communications
20 between Mr. Hoch and your boss, Ms. Nieman.

21 You'll see, starting at the bottom of the chain,
22 Ms. Nieman writes to Mr. Hoch; and this is August 4,
23 2016. She says: Hi Rand. We had hoped to issue an
24 opinion by week's end, but that is not going to happen.
25 She continues: My intention, as a professional

1 courtesy, especially on such a controversial and
2 highly-charged topic, is to share our position with you
3 next week before officially rendering an opinion to the
4 BCC. After you've had a chance to see where we're
5 heading, a formal response to the BCC will be issued.

6 What is Ms. Nieman referring to there?

7 MS. FAHEY: Objection.

8 Form, outside the scope.

9 This deposition is not -- in this 30(b)(6)
10 deposition, Ms. Hvizd cannot testify as to Ms. Nieman's
11 intentions specifically and individually. We've been
12 called upon to speak as the Board and not as Ms. Nieman.
13 So her answer will be outside of the scope. You're
14 asking her to speculate about what Ms. Nieman meant.

15 THE WITNESS: I don't know.

16 BY MR. MIHET:

17 Q. Was there a -- a plan that you were aware of to
18 issue an opinion to the BCC but to provide it in advance
19 to Mr. Hoch first?

20 MS. FAHEY: The same objection. So that I
21 don't repeat myself, it applies to all of your questions
22 regarding to Plaintiffs' Exhibit 8.

23 MR. MIHET: Okay.

24 THE WITNESS: I would also assert a
25 work-product privilege in terms of -- well, certainly an

1 attorney/client privilege in terms of my representation
2 of the Board of County Commissioners and any actions
3 that I would have taken in representing them.

4 BY MR. MIHET:

5 Q. Only asking you about things that you've
6 already -- that the County Attorney's Office has already
7 disclosed to Mr. Hoch here.

8 A. You're asking me for my personal knowledge of an
9 opinion. That is an attorney/client privileged
10 communication between me and my client.

11 Q. Okay. So I'm asking you about your knowledge
12 with respect to what Ms. Nieman is telling Mr. Hoch in
13 this e-mail.

14 A. Okay.

15 Q. Okay?

16 A. Okay.

17 MS. FAHEY: Let it be clear for the record,
18 Ms. Hvizd was not copied on this communication thread
19 that is Plaintiffs' Exhibit 8.

20 MR. MIHET: Okay.

21 THE WITNESS: So you'll have to ask me a
22 question. You're asking me about this e-mail. Go head
23 and ask me the question.

24 BY MR. MIHET:

25 Q. Was there an intention on behalf of the County

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1 Attorney's Office to provide an opinion to the BCC but
2 only after providing that opinion to Mr. Hoch?

3 A. And my answer is the same. If you're asking me
4 about my work on behalf of the Board of County
5 Commissioners, then that would be attorney/client
6 privilege. If you're asking me about Denise Nieman, her
7 e-mail has to speak for itself. I can't testify as to
8 what was in her head.

9 Q. Okay. Do you recall being copied on this e-mail?

10 A. It doesn't appear as if I was copied on that
11 e-mail.

12 Q. Is it a common practice for the County Attorney's
13 Office to provide its positions to proponents of an
14 ordinance, first, before providing it to the BCC?

15 MS. FAHEY: Objection. Outside the scope.

16 THE WITNESS: I'm prepared to testify as a
17 30(b)(6) witness today to testify on behalf of the Board
18 of County Commissioners, which means all seven members
19 of the Board of County Commissioners. And this question
20 is not within that scope at all.

21 BY MR. MIHET:

22 Q. Well, this question goes to the communications
23 and coordinations between the Defendant and advocacy
24 groups.

25 A. I believe --

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1 Q. Mr. Hoch is a member of an advocacy group, right?

2 A. And it says regarding the ordinance. And at the
3 beginning of this deposition, you defined the ordinance
4 to be the Conversion Therapy Ban Ordinance --

5 Q. Right.

6 A. -- or any other effort to ban SOCE for minors.
7 So a question about a general practice is not within
8 that scope.

9 Q. Well, I'm trying to find out if what was being
10 offered to him in this e-mail with respect to the
11 ordinance is something that takes place routinely or if
12 this was a special accommodation that the County
13 Attorney's Office was providing to Mr. Hoch?

14 A. I understand the extent of your question. And
15 I'm suggesting it's outside the scope of what it is that
16 I was called to testify to today. I'm called here to
17 testify regarding this ordinance.

18 Q. Well, sure. But the extent of the County's
19 coordination with other advocacy groups is directly
20 relevant to this issue. Whether or not one advocacy
21 group was receiving special consideration that's not
22 provided to others goes to the extent of the
23 coordination between the Defendant and that group.

24 And I would respectfully ask that you allow the
25 attorneys who are representing you and ourselves to

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1 quibble over what's within the scope and what's not
2 within the scope and for you to answer my question based
3 on your knowledge, please?

4 MS. FAHEY: And Ms. Hvizd is absolutely
5 within her right to advise you that it is within --
6 beyond the scope that she was prepared to testify today
7 based upon our understanding of these specific topics.
8 And so she may continue, as any 30(b)(6) witness may
9 continue, to advise that she believes it's outside of
10 her scope. She will then provide answers to the best of
11 her individual knowledge.

12 And I also suggest that, instead of asking
13 about the County Attorney Office's practices as a whole,
14 which has already been suggested to you to invade the
15 attorney/client privilege and our work-product
16 practices, that you would ask specifically, as you just
17 stated, about this ordinance.

18 You've advised that you'd like to know about
19 whether any other advocacy groups received the same
20 e-mail. And so we -- I encourage you to keep it focused
21 on this ordinance and the County as we've told you we've
22 defined it, communications with Mr. Hoch or any other
23 advocacy group.

24 MR. MIHET: Thank you, Ms. Fahey. But I
25 insist on asking the questions that I want to ask.

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1 BY MR. MIHET:

2 Q. And so are you -- are you not going to answer my
3 question as asked, Ms. Hvizd?

4 A. I can't answer your question as asked.

5 Q. Why?

6 A. Because I was prepared to testify today regarding
7 communications and coordination between the Defendant
8 and Equality Florida or any other advocacy group
9 regarding the ordinance or any other effort to ban SOCE
10 for minors. And your question is outside --

11 Q. And I'm asking you --

12 (Interruption by the court reporter)

13 THE WITNESS: And your question is outside
14 that scope.

15 BY MR. MIHET:

16 Q. But, based on your personal knowledge -- let me
17 agree with you for purposes of our discussion. I don't
18 concede your point. We can argue about that to the
19 Court later. But, for purposes of our discussion today,
20 let me ask you, if this is outside the scope, to just
21 give me your personal knowledge. Okay?

22 So, based upon your personal knowledge of how the
23 County Attorney's Office does things, is it customary to
24 provide an opinion to an advocacy group prior to
25 providing it to the Board of County Commissioners?

1 MS. FAHEY: Form. Outside the scope.

2 All other objections have been asserted with
3 respect to this document.

4 THE WITNESS: So now that I'm testifying as
5 a fact witness as to what Helene Hvizd knows of, I have
6 been involved in the drafting of two ordinances, the
7 Palm Beach County Home Caregivers Ordinance and the
8 Conversion Therapy Ban Ordinance, in the past three
9 years that I've been working on the transactional side
10 of the office. Approximately four years, actually.
11 And, in both instances, we worked closely with the
12 advocates on behalf of adoption of those ordinances.

13 BY MR. MIHET:

14 Q. And did you provide the advocates with the County
15 Attorney's positions on the proposed ordinances before
16 providing those positions to the BCC?

17 A. Yes.

18 Q. You did? Okay.

19 A. And I should clarify. I'm not certain that it
20 was a written opinion in either one of those instances.
21 We certainly work closely with advocates on behalf of an
22 ordinance, though.

23 (Plaintiffs' Exhibit No. 9 marked for identification)

24 BY MR. MIHET:

25 Q. All right. I'm -- I've handed you what we have

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1 marked as Exhibit 9. And this is an e-mail chain
2 between Mr. Hoch and you and Ms. Nieman on or around
3 August 26, 2016. Now --

4 MS. FAHEY: Harry, if I may. Before you
5 begin inquiring about this e-mail, I just want to assert
6 the same objections that we have been as far as the
7 definition of the sentence and scope of the topic and
8 Ms. Hvizd's personal knowledge. I won't repeat them to
9 clutter your record.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. On August 26th -- this is towards the bottom of
13 the first page. On August 26, 2016, at three-forty
14 p.m., Mr. Hoch wrote you an e-mail. Do you see the
15 start of that?

16 A. I'm sorry. Are you --

17 Q. It begins with Helene.

18 A. You said toward the bottom of the page or the top
19 of the page?

20 Q. The bottom of the page.

21 A. Okay. So I see Rand Hoch wrote. And I see he's
22 referencing me, Helene. I'm not certain, but I imagine
23 I received it.

24 Q. Is there another Helene that works in the County
25 Attorney's office?

1 A. You're asking me to take a look at this document
2 and tell you what Rand Hoch wrote to me. I see his
3 name, but I don't see a "to Helene Hvizd" with my e-mail
4 address on it. So...

5 Q. Okay. Well --

6 A. And, no, there is no other Helene that works in
7 the County Attorney's Office.

8 Q. All right. You see at the top of that e-mail
9 that your e-mail address is included in the cc there?

10 A. Yes. I did receive the Friday, August 26th,
11 e-mail.

12 Q. Okay. And that would have included this first
13 e-mail in the chain that Mr. Hoch was writing to you,
14 correct?

15 A. Yes.

16 Q. Okay. Now, he says to you in the beginning:
17 Denise advised me of her concern that implied preemption
18 to be an obstacle in having the BCC move forward with
19 PBCHRC's requested ordinance to prohibit conversion
20 therapy on minors.

21 Did I read that correctly?

22 A. Correct.

23 Q. Then, on the next page, he goes on to provide
24 some lengthy block quotes from the Browning case. Do
25 you see that?

1 A. Yes.

2 Q. And then, in the bottom paragraph, he says:

3 Having reviewed Chapters 458, 459, 490 or 491, Florida
4 Statutes, I could find no legislative scheme that is so
5 pervasive as to evidence an intent to preempt the
6 requested County ordinance.

7 Do you see that?

8 A. Yes.

9 Q. Now, Ms. Nieman responded to him later that day
10 at the top of page one, correct?

11 A. Correct.

12 Q. And she copied you on her communications?

13 A. Yes.

14 Q. And you remember receiving that e-mail?

15 A. A personal recollection at this very moment, no.
16 But it is definitely addressed with a carbon copy to me.

17 Q. You have no reason to think that you did not
18 receive it?

19 A. None.

20 Q. Okay. In the fourth paragraph on this page, she
21 says: I appreciate that you know much more about the
22 subject than we do; but, as you can tell based on our
23 convo yesterday, I made myself very familiar with the
24 issue. On a very basic level, how can we say that CT is
25 a local issue? The entire field of therapy regulation

1 is conducted at the state level.

2 Did I read that correctly?

3 A. You read that correctly.

4 Q. What did you understand her to refer to by the
5 acronym CT?

6 A. Conversion therapy.

7 Q. Okay. Did you believe her statement with respect
8 to "the entire field of therapy regulation is conducted
9 at the state level" to be true when she conveyed it on
10 August 26, 2016?

11 MS. FAHEY: And you're asking her in her
12 individual capacity?

13 MR. MIHET: Correct.

14 THE WITNESS: In my personal capacity at the
15 time that this e-mail was written, I did believe that
16 there was some truth to a statement that therapy in
17 general is regulated at the state level. I later came
18 to recognize that, in fact, the state law and Department
19 of Health regulations -- Department of Health, rather,
20 statute does provide for the possibility that regulation
21 for protection may -- of citizens may occur at a local
22 level, as well.

23 BY MR. MIHET:

24 Q. Her statement was not that therapy regulation in
25 general is conducted at the state level, was it?

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1 A. No. She says: The entire field of therapy
2 regulation is conducted at the state level.

3 Q. Okay. In the next paragraph, she says: If we
4 moved away from regulations into what's okay to
5 advertise, as you suggested yesterday, the BCC would
6 have to make significant assumptions that it's not
7 qualified to make. What did you understand her to refer
8 to in that remark?

9 A. I --

10 MS. FAHEY: Form. Scope.

11 THE WITNESS: I did not understand that
12 remark.

13 BY MR. MIHET:

14 Q. Okay. She then asks you to jump in if you can
15 shed anymore light. And then, in the next paragraph,
16 she says: Rand, I was hoping you'd be able to provide
17 us with something more factually specific. We're on
18 standby.

19 What -- what was she asking for with respect to
20 something more factually specific?

21 MS. FAHEY: Form. Speculation, scope.

22 THE WITNESS: Right. So the way I,
23 Helene Hvizd, interpreted this statement, this is a
24 unique situation that we were in conversing with
25 Rand Hoch. He is a judge, former retired judge, I

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1 believe -- I don't know if he's retired or simply a
2 former judge -- and an attorney, as well. And so, in
3 dealing with this citizen and this citizen's request
4 that the County enact an ordinance, there was discussion
5 with Rand Hoch about legal precedent. And so shedding
6 more light on the issue likely referred to legal
7 precedent that he could offer regarding preemption.

8 BY MR. MIHET:

9 Q. So, when she says: Something more factual --

10 A. Actually, excuse me. May I correct myself --

11 Q. Yes.

12 A. -- because I believe the statement "shedding more
13 light" follows regulations into what's okay to
14 advertise. So I think Ms. Nieman was probably asking
15 Mr. Hoch for any legal precedent he might be able to
16 provide regarding advertising conversion therapy.

17 Q. So you thought that, when she said that she
18 wanted something more factually specific, she was
19 referring to legal precedent?

20 A. More factually specific?

21 Q. Yeah.

22 A. I'm not sure I see those words.

23 Q. Right under the paragraph where it says: Helene,
24 feel free to jump in. Under that paragraph, she says:
25 Rand, I was hoping you'd be able --

1 A. Oh, I see.

2 Q. -- to provide us with something more factually
3 specific.

4 A. Right. So factually specific regarding
5 advertising, correct.

6 Q. Precedent?

7 A. Shedding more light likely referred to precedent.

8 Q. Okay. Then she continues in the next paragraph
9 where she says: I truly appreciate your openness and
10 willingness to exchange information and understand where
11 we're coming from. Yesterday's conversation suggested
12 just that. Maybe your team has something at the ready.
13 This is a classic non-localized issue, in my view.

14 Do you see that?

15 A. I see that.

16 Q. What did you understand her to refer to when she
17 said, "this is a classic non-localized issue"?

18 MS. FAHEY: Objection. Form.

19 THE WITNESS: So, as I was reading this, I
20 interpreted that sentence in conjunction with the entire
21 field of therapy regulation is conducted at the state
22 level to mean that Denise Marie Nieman at the time
23 believed that this was an issue to be dealt with at the
24 state level and not the local level. And, as I stated
25 before, she ultimately came to view this, as understand

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1 it, differently based on additional research. This is
2 July 26, 2016. This is about --

3 MR. MIHET: August 26th.

4 THE WITNESS: I'm sorry. August 26, 2016.

5 So that was just a couple of months into the
6 issue having been raised and discussed.

7 BY MR. MIHET:

8 Q. So, when she says, "this is a classic
9 non-localized issue," the "this" refers to conversion
10 therapy bans?

11 MS. FAHEY: Objection. Scope, speculation.

12 THE WITNESS: And I would be speculating. I
13 believe it refers to conversion therapy in general.

14 MR. MIHET: Okay.

15 THE WITNESS: I'm not certain that it's
16 simply the advertising or that it's another aspect.

17 BY MR. MIHET:

18 Q. Did you agree on August 26, 2016, with Ms. Nieman
19 that conversion therapy is a classic non-localized
20 issue?

21 MS. FAHEY: Objection.

22 Are you asking her for anything that she
23 wrote and disclosed to someone in the public, or are you
24 asking her for her mental impressions or advice to the
25 client?

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1 MR. MIHET: Well, she invited her to jump in
2 here in this discussion.

3 BY MR. MIHET:

4 Q. I guess, did you -- did you jump in with this
5 discussion to say to Mr. Hoch that you agreed or
6 disagreed with --

7 A. I don't recall. I'm certain you'll let me know
8 if I did.

9 Q. You may be right.

10 MS. FAHEY: Before we begin another exhibit,
11 would now be a good time to take a comfort break?

12 MR. MIHET: Yeah. We can do that.

13 (Recess)

14 (Plaintiffs' Exhibit No. 10 marked for identification)

15 BY MR. MIHET:

16 Q. Ms. Hvizd, I'm showing you now Exhibit 10 which
17 is -- let me give some to counsel -- which is an August
18 28, 2016, e-mail chain. Starting at the bottom of the
19 first page, we have an e-mail from Mr. Hoch to you and
20 Ms. Nieman. Do you see that?

21 A. Yes.

22 Q. He says in there that: While I await more input
23 from our legal team, I am still confused about your
24 concern with implied preemption. In Denise's recent
25 response from the Detroit Airport -- she is always

1 working -- she asked, how can we say that CT is a local
2 issue? The entire field of therapy regulation is
3 conducted at the state level. If that is the case,
4 wouldn't the entire field of the regulation of
5 discrimination in housing, public accommodations and
6 employment also be conducted at the state level? If so,
7 why would implied preemption not have applied in the
8 years before 1990 and 2015 when the Board of County
9 Commissioners -- and then he lists on the next page
10 three things that the County Commissioners did with
11 respect to fair housing, equal employment and equal
12 opportunity. Do you see that?

13 A. Yes, I see that.

14 MS. FAHEY: And the County wishes to assert
15 its same objections with respect to the previous e-mails
16 that have been from Mr. Hoch to legal counsel for the
17 County and not to the County as we defined it for
18 purposes of this deposition. Questions about these
19 e-mails would be not on behalf of the County as a
20 30(b)(6) witness but in Ms. Hvizd's individual capacity.

21 MR. MIHET: We understand that. And I'll
22 grant you that objection for all of these e-mails so you
23 don't have to keep making them.

24 MS. FAHEY: Okay.

25 MR. MIHET: Okay?

1 BY MR. MIHET:

2 Q. So what did you understand Mr. Hoch to be
3 conveying in this e-mail to you, Ms. Hvizd?

4 A. Just exactly what he said.

5 Q. Which is what?

6 A. That Denise Marie suggested that the entire field
7 of therapy regulation is conducted at the state level --

8 Q. Uh-huh.

9 A. -- and that he said, if that's the case, then
10 wouldn't the, quote, entire field, end quote, of
11 regulation of discrimination in housing also be
12 conducted at the state level. And, if so, why would
13 implied preemption not have applied in the years between
14 1990 and 2015 when the Board of County Commissioners
15 took these actions regarding housing?

16 Q. Okay. Now, did Ms. Nieman respond to that
17 concern?

18 A. And so that is I believe -- let's see.

19 Q. The e-mail immediately above the one we just
20 looked at --

21 A. Yes.

22 Q. -- on the first page.

23 A. It appears that she did.

24 Q. She writes in that e-mail: Bonsoir, Rand and
25 Helene.

1 Do you see that?

2 A. I think -- I think she would pronounce it
3 slightly different. Bonsoir, but oui oui.

4 Q. Perhaps.

5 She says: Rand, I'm jumping in here only to say
6 that there are significant differences in what you've
7 proposed in the past and what you're asking the BCC to
8 do this time. It was clear that the County could do
9 what it did, not so much at all with your latest ask,
10 try as hard as we might to find something. There comes
11 a point where others with jurisdiction have to step up.

12 Do you see that?

13 A. Yes, I see that.

14 Q. What did you understand her to refer to when she
15 said that there was significant differences between what
16 the Commission did in the past and what Mr. Hoch was
17 asking it to do now?

18 A. So, as I read your Plaintiffs' Exhibit 10 in
19 conjunction with Plaintiffs' Exhibit 9, I believe what
20 Denise Marie was speaking of at that point was the
21 advertising ask, if you will. Again, I would have to
22 refer to all of the e-mails in this chain to understand
23 completely. But I believe that she's stating that he is
24 now asking that we propose a ban on advertising
25 conversion therapy and that that is significantly

1 different from what he had proposed in the past, which
2 was to ban conversion therapy.

3 Q. Well, if you look at his e-mail at the bottom of
4 the page, it's titled PBCHRC-PBC Conversion Therapy Ban
5 Ordinance-implied preemption, with end quotes. Do you
6 see that?

7 A. Yes, I see that.

8 Q. And do you see that, in his e-mail to you that
9 started this chain, he's talking about being confused
10 about your concern with implied preemption. Do you see
11 that?

12 A. Yes, I see that.

13 But here reading from the August 28th e-mail --
14 and what I'm suggesting to you is that you have to take
15 all these e-mails in context. The 26th preceded the
16 28th only by two days. And, in the 26th, Denise Marie
17 was saying: We moved away -- and, if we moved away from
18 regulations into what's okay to advertise as you
19 suggested yesterday. So I'm -- if I recall correctly, I
20 believe Denise Marie was referring to significant
21 differences between an advertising ban and a ban on the
22 practice itself.

23 Q. She wasn't talking about the significant
24 differences between the things that the Commission did
25 in the past that are referenced in Mr. Hoch's e-mail and

1 the conversion ban that Mr. Hoch was proposing now?

2 MS. FAHEY: Form. Speculation.

3 THE WITNESS: Yes, she may have been.

4 Again, I can't say for certain what she was
5 referencing there.

6 MR. MIHET: Okay.

7 THE WITNESS: It follows his reference to
8 the housing, but it also follows her reference to an
9 advertising ban. So I'm not certain.

10 BY MR. MIHET:

11 Q. So it's your -- it was your understanding when
12 you saw her write that quote, "it was clear that the
13 County could do what it did. Not so much at all with
14 your latest ask," that she was referring to a ban on
15 advertising and not a ban on conversion therapy?

16 A. If you're asking me that question as a fact
17 witness, which you must because I cannot testify as to
18 what I meant or thought or interpreted for all seven
19 members of the Board of County Commissioners, I answer
20 your question by saying I do not recall.

21 Q. Okay. When she said, there comes a point where
22 others with jurisdiction have to step up, what -- who
23 did you understand her to be referring to in that -- in
24 that remark?

25 A. That likely referred to the Florida legislature.

1 Q. Okay.

2 (Plaintiffs' Exhibit No. 11 marked for identification)

3 BY MR. MIHET:

4 Q. So now I've handed you an exhibit we have marked
5 as No. 11, another chain of e-mail communications
6 between Mr. Hoch and you and Ms. Nieman. I'll direct
7 your attention, first, to the second page of this
8 exhibit only for the purpose of showing you that we're
9 still talking about Mr. Hoch's August 26th e-mail where
10 he is addressing implied preemption, where he is citing
11 to the Browning case and where he is saying on the last
12 page that he could find no legislative scheme that is so
13 pervasive. You recall that e-mail communication that
14 we've already talked about?

15 A. Yes.

16 MS. FAHEY: And, to make it clear, we've
17 agreed that the County objections apply to this?

18 MR. MIHET: Yes.

19 BY MR. MIHET:

20 Q. So, on the first page of this Exhibit 11 starting
21 at the -- about halfway through the page, you see that
22 you are responding to Mr. Hoch's e-mail on implied
23 preemption. Do you see that?

24 A. Yes.

25 Q. This response was provided on August 29, 2016?

1 A. Correct.

2 Q. Now, in this response, you say to him: In
3 follow-up to your e-mail of Friday, I offer the
4 following synopsis of legal research conducted on the
5 question of whether a County may enact a conversion
6 therapy ban.

7 Do you see that?

8 A. Yes.

9 Q. So we're not talking about an advertising ban?
10 We're talking about a conversion therapy ban here?

11 A. In this e-mail, I am talking about a conversion
12 therapy ban.

13 Q. Okay. You go on and say: The dual
14 considerations a local government must address when
15 determining whether it is able to enact legislation in a
16 particular area are preemption and conflict. Then you
17 say: The Florida legislature scheme of licensing and
18 regulating businesses and professions is pervasive,
19 Chapters 458, 459, 490 and 491.

20 Did I read that correctly?

21 A. That's not the complete sentence, but what you
22 read is correct.

23 Q. Oh, I'm sorry. Continuing: Evidencing an intent
24 that this area be preserved to the legislature.

25 A. You read that correctly.

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1 Q. Okay. So Mr. Hoch, in his e-mail to you that
2 began this, referenced the same four chapters; 458, 459,
3 490 and 491. And you said that you couldn't find a
4 legislative scheme that was so pervasive as to evidence
5 an intent to preempt the requested County ordinance.
6 You see that at page three?

7 A. I see that.

8 Q. You're telling him that you've looked at the same
9 statutory provisions; and you've concluded that, in
10 fact, the scheme of licensing and regulating businesses
11 and professions is pervasive, correct?

12 A. I don't believe I was telling him that that was
13 my view. I believe, as I normally do, and as,
14 hopefully, any good attorney does, I play devil's
15 advocate. So, if I have someone who is suggesting one
16 side or one argument, I push them to tell me why. This
17 is the argument against what you're saying. Tell me
18 why.

19 Q. Well, now, to be fair, you're not telling him
20 that this is an argument that can be made. To me, it
21 looks pretty emphatic. You say, quote, the Florida
22 legislature scheme of licensing and regulating
23 businesses and professions is pervasive.

24 MS. FAHEY: Objection. Argumentative.

25 BY MR. MIHET:

1 Q. I'm not meaning to argue with you. I'm asking
2 you: Did you not intend that to be a statement of the
3 legal research that you conducted and a statement of
4 your conclusions?

5 A. No. I did not intend that to be a statement of
6 my conclusions. I had not concluded anything at this
7 early date. Again, this is August 29, 2016. We had had
8 this subject -- I had had this subject on my desk for
9 just two months. The subject stayed on my desk for a
10 period of over a year. And the County's position, as
11 it's been stated in the County's Motion to Dismiss, is
12 the County's position regarding this ordinance when
13 enacted.

14 Q. Well, yes. But, on August 29, 2016, it was your
15 belief that the Florida legislature scheme of licensing
16 and regulating businesses and professions is pervasive,
17 was it not?

18 A. And, again, I would just tell you that I hadn't
19 drawn a firm conclusion one way or the other. At this
20 early stage, I was continuing to debate all issues
21 including preemption.

22 Q. Okay.

23 A. And so, to an attorney who was suggesting to me
24 that he would offer some proof, I'm telling him, here's
25 my concern or here's what the legal research shows. The

1 legislature scheme is pervasive.

2 Q. So what language in this paragraph can you point
3 me to that would suggest to Mr. Hoch that this wasn't
4 your conclusion but that you were just playing devil's
5 advocate or that you were just presenting to him some
6 arguments that might be made?

7 A. And, again, you would have to look at the stack
8 of e-mails that went back and forth between Rand Hoch
9 and myself, and I'm sure you have. And you will see
10 that that is typically the way I would present issues
11 that I wanted Rand Hoch to provide me with contrary
12 arguments for.

13 Q. Okay. So you go on in this e-mail and you say:
14 Neither County nor municipal governments license
15 counselors, and there is no support in the law for a
16 conclusion that regulating counselors is a local
17 issues -- issue as addressed in Browning.

18 Did I read that correctly?

19 A. Yes.

20 Q. Was that also not an emphatic statement on your
21 behalf?

22 A. An emphatic statement? No.

23 Q. No.

24 A. This is typically how I would play devil's
25 advocate with any attorney that I was asking to make

1 their point.

2 Q. Okay. You go on and you say: To the contrary,
3 every indication is that regulation of businesses and
4 professions, including counselors, is a state issue.

5 Did you say that to him.

6 A. Yes.

7 Q. Did you mean by that statement to indicate that
8 every indication is that regulation of businesses and
9 professions, including counselors, is a state issue?

10 A. I certainly meant the words that are on the
11 paper, yes.

12 Q. Okay. Is that also not an emphatic statement
13 that you made?

14 A. I'm having a hard time understanding what you
15 mean by: Is that an emphatic statement? What do you
16 mean by that?

17 Q. I'm sorry. I thought I was referencing something
18 you said earlier where you said that the statements that
19 you have provided in this e-mail were not meant to be
20 emphatic representations of your conclusions but merely
21 designed to elicit a response from Mr. Hoch and to have
22 him provide you with a contrary viewpoint.

23 A. I believe I was responding to your initial
24 characterization of an emphatic statement. If I'm not,
25 then I stand corrected. But, at this point, I don't

1 know what you mean by: Is that an emphatic statement,
2 or is that not an emphatic statement? I've explained
3 several times what I do is play devil's advocate. And,
4 by the time this ordinance was ultimately drafted, I
5 believe that we have every right as Palm Beach County to
6 enact this ordinance. I would not have signed off on
7 legal sufficiency otherwise.

8 Q. Well, I appreciate you making that statement; but
9 that wasn't my question. And we'll be here a lot
10 shorter if you answer the questions I ask instead of the
11 questions that you want to answer today.

12 And so my question is: When you made this
13 statement that every indication is that regulation of
14 businesses and professions, including counselors, is a
15 state issue, did you mean that or -- or not?

16 MS. FAHEY: Form. Asked and answered.

17 THE WITNESS: When I made that statement, I
18 was challenging Mr. Hoch to tell me otherwise -- show me
19 otherwise.

20 BY MR. MIHET:

21 Q. And was that statement indicative of what you
22 believed or not?

23 A. At the time, I had not drawn a conclusion one way
24 or the other.

25 Q. You -- well, let me ask you this. Was the

1 Florida legislature scheme of licensing and regulating
2 businesses and professions pervasive on August 29, 2016?

3 A. No, it was not.

4 Q. It was not?

5 A. It was not. I came to learn that as I continued
6 to conduct research and read and interpreted express and
7 implied preemption in the context of this ordinance.
8 So, on that date, it was not. It has not been.

9 Q. Okay. So the statement that you made then was
10 incorrect?

11 A. No. I believe you're mischaracterizing my
12 statement. I make statements, as any good attorney
13 does, to other attorneys asking them to prove me wrong
14 in order to vet all possible arguments on an issue.

15 Q. Well, sure, Ms. Hvizd. But you understand the
16 difference between a statement such as, hey, Mr. Hoch,
17 some people have argued that the Florida legislature
18 scheme of licensing and regulating businesses is
19 pervasive. I've been looking at it. I don't know yet
20 which way I'm going to go on that. I'm curious as to
21 what your position is. And, on the other hand, saying
22 what you did, which is that you've looked at it; and it
23 is pervasive. You appreciate a difference between those
24 two approaches?

25 MS. FAHEY: Objection.

1 Mischaracterizes the e-mail.

2 THE WITNESS: I appreciate the difference
3 that you are making between the words that are used. I
4 think, if you read all of my e-mails, you'll soon find
5 out or discover that this is precisely how I challenged
6 other attorneys, how I challenged Rand Hoch to convince
7 me otherwise. I make the statement; and, I say, you
8 show me otherwise or here is the contrary argument.
9 Disprove me.

10 BY MR. MIHET:

11 Q. So, in the absence of an actual statement from
12 you that says here is a contrary argument and I'm
13 looking to figure out what you think about this, how can
14 the Court or anyone else looking at what you write
15 determine whether or not you actually mean what you say?

16 MS. FAHEY: Form.

17 Speculation, argumentative.

18 That e-mail speaks for itself. The first
19 line is, I have -- in follow-up on your e-mail --

20 MR. MIHET: I'm sorry.

21 MS. FAHEY: -- of Friday --

22 MR. MIHET: I'm sorry, counsel.

23 MS. FAHEY: -- I offer the following
24 synopsis.

25 MR. MIHET: Please refrain from making

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1 speaking objections. If you want to object as to form,
2 that's fine.

3 THE WITNESS: The Court -- I'm sorry. May I
4 answer your question?

5 MR. MIHET: Yes.

6 THE WITNESS: The Court would have to look
7 at all of my e-mail exchanges with Mr. Hoch. And you
8 will see that this occurs frequently. This is the way I
9 challenge him to disprove the arguments against him.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. You also say: As to conflict, a local ordinance
13 regulating the treatment available to patients would
14 conflict with Florida's broad Patients' Bill of Rights.

15 Do you see that?

16 A. Yes, I do.

17 Q. And you go on in the next sentence to say:
18 Counties are prohibited from enacting an ordinance that
19 conflicts with general law.

20 Do you see that?

21 A. Yes.

22 Q. So were you telling Mr. Hoch that a local
23 ordinance prohibiting conversion therapy would conflict
24 with Florida's broad Patients' Bill of Rights?

25 A. I was presenting Mr. Hoch with that argument

1 challenging him to disprove me.

2 Q. Okay. And where do you tell him that you do not
3 actually subscribe to that argument?

4 A. You'd have to look through all of my e-mails, as
5 I've said several times, in order to understand that
6 this was the character of the exchanges between
7 Rand Hoch and myself.

8 Q. Where in this particular e-mail do you point out
9 to him that you don't actually subscribe to these
10 theories, but you're just presenting them for purposes
11 of eliciting a response?

12 A. I don't say those words.

13 Q. Do you convey that thought?

14 A. I believe, if you read all of the e-mail
15 exchanges between Rand Hoch and myself, you will
16 understand that that is precisely the thought I'm
17 conveying.

18 Q. So can you point me to an e-mail exchange where
19 you actually make that distinction and you say, hey, I
20 don't actually believe this; but I'm curious what your
21 take is on this issue?

22 A. No. I never say that --

23 Q. Okay.

24 A. -- that I can recall. I mean, you're talking
25 about a year and almost a half ago. I don't -- I don't

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1 know that I can recall every single e-mail I sent to
2 Rand Hoch. I think my e-mails are one of those seven or
3 eight-inch --

4 Q. Can you think of any e-mail where you indicate to
5 him that a position that you convey is not actually your
6 position but one as to which you would like him to
7 provide you a response?

8 A. Not off the top of my head, I can't.

9 Q. Okay.

10 A. It's simply the way I argue with all of my
11 colleagues. If you ask any of them, you'll hear the
12 same thing. They generally dislike my arguments because
13 I simply state the opposite point of view and force them
14 to convince me otherwise. I've been kicked out of many
15 an office.

16 Q. When you say, "kicked out," you mean -- you don't
17 mean --

18 A. My colleagues --

19 Q. -- fired or --

20 A. I mean, my colleagues have had enough of me.
21 Devil's advocate.

22 Q. So does the same -- the same -- does your boss,
23 Ms. Nieman, have the same custom or strategy as you,
24 which is to state a position but in a way -- I'm sorry.
25 Let me just cut that off halfway through.

1 Does Ms. Nieman have the same custom or approach
2 as you've just described?

3 MS. FAHEY: Form, speculation.

4 THE WITNESS: I don't know.

5 BY MR. MIHET:

6 Q. You deal with her, don't you?

7 A. Yes.

8 Q. Okay. And so, from your dealings with her, does
9 she make it a habit to state positions that she doesn't
10 actually subscribe to?

11 A. I really -- so we're off of 30(b)(6). You're
12 asking me as a fact witness to testify now regarding
13 Denise Marie Nieman's habits. And I cannot say one way
14 or the other whether she ever plays devil's advocate. I
15 imagine she does. Most of attorney's do.

16 Q. So you would imagine that she also makes
17 statements such as the Florida legislature scheme of
18 licensing and regulating businesses and professions is
19 pervasive without actually meaning what she writes?

20 MS. FAHEY: Form, speculation.

21 THE WITNESS: I can't say.

22 MR. MIHET: Okay. Fair enough.

23 (Plaintiffs' Exhibit No. 12 marked for identification)

24 BY MR. MIHET:

25 Q. So now we're looking at a document we've marked

1 as Exhibit 12. This is more e-mail communications
2 between Mr. Hoch and yourself and Ms. Nieman dated
3 August 30, 2016. You see at the bottom there, Mr. Hoch
4 starts by writing to you and Ms. Nieman: Since the
5 Liberty Counsel has threatened litigation, I trust that
6 all of our e-mail concerning the litigation are
7 temporarily exempt from public records requests in
8 accordance with Chapter 119. Is that your
9 understanding, as well?

10 You see that?

11 A. Yes.

12 Q. Do you remember receiving that inquiry from him?

13 A. I do. This was -- I'm sorry.

14 MS. FAHEY: Oh, I'm sorry.

15 Just clear for the record, same objections
16 noted.

17 MR. MIHET: Okay.

18 THE WITNESS: I do remember receiving this.

19 BY MR. MIHET:

20 Q. And why does it bring a smile to your face?

21 A. Because he obviously was incorrect in his
22 assertion that my communications with a third party
23 would be protected under either work-product or
24 attorney/client privileges.

25 Q. And you conveyed that to him in your response,

1 correct?

2 A. I discussed work product. I don't think I
3 suggested he was wrong on the basis of attorney/client,
4 as well, if he would have been.

5 Q. Well, let's look at what you say. You say: No,
6 our e-mails are not exempt from a public records
7 request. The work-product exemption contained in
8 Chapter 119 that applies to litigation work product of
9 agency attorneys is waived when the work product is
10 disclosed.

11 And you cite a case. Do you see that?

12 A. Yes.

13 Q. So that was your response to him?

14 A. That was my response to him.

15 Q. Now, did you actually mean what you said this
16 time? Was this simply providing him a -- one of many
17 available positions for the purposes of eliciting his
18 response?

19 MS. FAHEY: Form.

20 THE WITNESS: I believe, if you read this
21 e-mail, it's pretty clear I was absolutely telling him a
22 response to his question, which was: Is that your
23 understanding? No, that is not my understanding.

24 BY MR. MIHET:

25 Q. So, in this e-mail, you actually meant what you

1 wrote?

2 A. I was not playing devil's advocate with Rand Hoch
3 in this e-mail.

4 Q. Okay. So I'm looking at then Exhibit 11, which
5 we've just looked at, and now at Exhibit 12. To me,
6 both e-mails seem to relay the same kind of clear
7 position from you in response to his questions, right?
8 11 was also a question that he wrote to you about
9 implied -- implied preemption, and you provide him with
10 your responses. What is different about these two
11 e-mails in terms of what you meant to convey?

12 A. I believe these two e-mails are absolutely
13 different. There is no question from Rand at the
14 beginning of the other e-mail, Plaintiffs' Exhibit
15 No. 11. I was not responding in Plaintiffs' Exhibit
16 No. 11 to a question from Rand. In fact, he had given
17 me his legal position. I was giving him the contrary
18 legal position, as any good devil's advocate would do,
19 and asking him to tell me where I was going wrong.

20 And, third, granted, Plaintiffs' Exhibit No. 12,
21 he is asking me a question. He is saying: I trust our
22 e-mails concerning the litigation are temporarily exempt
23 from public records. Is that your understanding? And I
24 answered that question, no, that is not my
25 understanding.

1 Q. I see. So he was soliciting your understanding
2 expressly in -- in this e-mail, Exhibit 12, right?

3 A. He asked me a question.

4 Q. Right.

5 And, in Exhibit 11, the e-mail that he sent, you
6 did not construe that to elicit your thoughts on the
7 question of implied preemption, did you?

8 A. Plaintiffs' Exhibit No. 11 is a back and forth,
9 as you will see from all of my e-mails, for the most
10 part, with Rand Hoch where he presents one point of
11 view. I present the contrary. And we go back and forth
12 so that we can get to the end result.

13 Q. I gotcha.

14 Now, what is the work product that was disclosed
15 that you're referring to in your e-mail on Exhibit 12?

16 A. I don't know what I was referring to there
17 specifically.

18 Q. Well, he's asking you about the -- the preceding
19 e-mails at the end of August 2016, right?

20 A. He says: I trust all of our e-mail, singular --

21 Q. Okay.

22 A. -- concerning the litigation are temporarily
23 exempt from public records requests.

24 Q. Okay.

25 A. And I am saying, under -- he says, under Chapter

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1 119. And I reply, under Chapter 119, the work-product
2 exemption applies to litigation work product. It's
3 waived when the work product is disclosed. I'd have to
4 read that case again. I'm not certain whether that
5 principle is stated precisely that way in the case. I
6 imagine it probably is.

7 Q. So the reason that the e-mails were not exempt
8 from a public records request, you write, is because the
9 work product had been disclosed or would be disclosed?

10 A. That is what I write. Again, I would have to
11 take a look at the Lightbourne versus McCollum case to
12 see precisely what it states.

13 Q. Okay. And so you don't know what work product
14 you're referring to here?

15 A. Well, he's asking me whether all of our e-mails
16 concerning the litigation are exempt from public
17 records.

18 Q. Uh-huh.

19 A. So I imagine I'm referring to any work product
20 that may have been revealed in e-mails concerning the
21 litigation.

22 Q. Such as, for example, the work product that is in
23 Exhibit 11 that we've been discussing --

24 MS. FAHEY: Form.

25 BY MR. MIHET:

1 Q. -- which contains your statements about implied
2 impression --

3 A. I think what I'm --

4 Q. -- implied preemption?

5 A. I think what I'm trying to say is that that's not
6 work product because it's an e-mail between Rand Hoch
7 and myself.

8 Q. Okay.

9 A. And the work product exemption in Chapter 119
10 that applies to litigation is waived when it's
11 disclosed. So I am sharing my personal thoughts,
12 opinions with Rand Hoch. It can't be work product.

13 Q. Okay. So the County is not asserting any common
14 interest or other privilege with respect to Rand Hoch or
15 his organization?

16 A. And, if you're asking me in terms of the County's
17 position for this litigation, that's not a subject that
18 I was prepared to discuss. I don't believe the County's
19 assertions of privileges are contained in items six
20 through twelve of the scope of this deposition.

21 MS. FAHEY: Yes. And, for the record, the
22 deposition topics that encompass all of the County's
23 responses to interrogatories were eliminated and
24 replaced with topic nine.

25 MR. MIHET: Okay.

1 BY MR. MIHET:

2 Q. Now, Mr. Hoch gives a one-word response to your
3 e-mail. Do you see that at the top of Exhibit 12?

4 A. Yes.

5 Q. He says, bummer, right?

6 A. Yes.

7 Q. What did you understand him to mean by that?

8 A. Bummer.

9 Q. Meaning?

10 A. I would have to look at the definition of bummer
11 to tell you exactly how it's defined. Not a good thing.

12 Q. You don't have to look at the definition of
13 bummer to tell me that he was bummed by the news that
14 you conveyed to him?

15 A. That's one way to interpret it, certainly. I
16 just interpreted it as not a good thing, yes.

17 Q. And why was it not a good thing that his e-mails
18 to you and your e-mails to him would not be exempt --

19 MS. FAHEY: Form.

20 BY MR. MIHET:

21 Q. -- from a public records request?

22 A. I have no idea why he would consider that to be
23 not a good thing. Any communication that a citizen has
24 with me is a good thing.

25 Q. Okay. Did you ever have any further discussions

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1 with him about this issue? By, "this issue," I mean,
2 the discoverability of e-mail communications between --

3 A. I don't believe --

4 Q. -- you and him?

5 A. I'm sorry.

6 Q. Just want to make sure the record's clear.

7 MR. MIHET: Did you get my question?

8 THE COURT REPORTER: I did.

9 THE WITNESS: I don't believe -- I can't
10 recall ever having another discussion with Rand Hoch via
11 e-mail. You're saying discussion; but, obviously, it
12 would have been an e-mail exchange or --

13 BY MR. MIHET:

14 Q. Well, or a telephone or an in-person discussion
15 with him about the discoverability of written
16 communications between him and the County's attorney or
17 the need to keep certain communications verbal rather
18 that in writing or anything along those lines?

19 A. So I was prepared to come here today to be
20 deposed as a 30(b)(6) witness prepared to testify
21 regarding the topics that were provided in the notice of
22 depo. I am not prepared today to be a fact witness.
23 But, if you're asking me as a fact witness whether I
24 ever had any other communications with Rand Hoch
25 regarding a lack of exemption, I would answer, I don't

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1 recall.

2 Q. Okay.

3 (Plaintiffs' Exhibit No. 13 marked for identification)

4 BY MR. MIHET:

5 Q. So now I've handed you Exhibit 13. This is a
6 three-page string of communications.

7 MS. FAHEY: The County reserves all of the
8 objections that it has been asserting for this type of
9 e-mail.

10 BY MR. MIHET:

11 Q. All right. Starting at the -- on the third page
12 of this e-mail chain, there is a message on March 3,
13 2017, from Denise Nieman to Mr. Hoch. Do you see that?

14 A. I do see that. I'm not copied on any of those
15 e-mails, as I see them, right.

16 Q. Okay. In this particular e-mail, she says: I
17 still intend to send out the opinion before the next BCC
18 meeting 3/14, but the Mayor won't be there.

19 Do you have any knowledge of what opinion
20 Ms. Nieman was referencing?

21 A. I do not know.

22 Q. She continues to say: Not sure where your
23 12 floor discussions ended up, if it matters.

24 Do you have any knowledge what she is referring
25 to when she talks about 12 floor discussions?

1 A. I don't know. I would have to guess. The 12th
2 floor of the governmental center is where the
3 Commissioners' offices are located, so 12th floor
4 generally means Commissioner discussions.

5 Q. Okay. That -- that helps because I didn't know
6 that. So your guess in context would be that she is
7 referencing discussions that Mr. Hoch might have had
8 with County Commissioners?

9 A. That would be my guess.

10 Q. Okay. Now, in his response to Ms. Nieman on
11 March 4, which is at the bottom of the second page in
12 this exhibit, he says: Denise, no rush on this at all.
13 The longer we wait, the more local ordinances will be
14 enacted.

15 Do you see that?

16 A. I see that.

17 Q. Now, in the next paragraph, he says: I'm hoping
18 that your opinion includes your recommendation that the
19 state enact Jeff Clemens bill. Cites to the bill. And
20 then it says: To address the issue statewide and that
21 municipalities in the County continue to enact local
22 ordinances.

23 Do you see that?

24 A. I see that.

25 Q. Again, do you know what opinion he is

1 referencing?

2 A. I do not know. I'm assuming it's the same
3 opinion we spoke of before, but that would simply be an
4 assumption guess on my part.

5 Q. Okay. And then he says: PBCHRC does not want
6 anything in your opinion to be perceived as discouraging
7 municipalities from taking action similar to what has
8 been done so far in West Palm Beach, Lake Worth, Boynton
9 Beach and Riviera Beach.

10 Do you see that?

11 A. I see that.

12 Q. So do you have any idea what Mr. Hoch is
13 referencing there?

14 A. Municipalities taking action similar to what has
15 been done so far. Let me look at the date. Oh, this is
16 March of 2017. We've skipped way ahead. And, by that
17 time, I believe West Palm Beach, Lake Worth, Boynton
18 Beach and Riviera Beach had all enacted ordinances
19 banning conversion therapy.

20 Q. And what certain --

21 A. If not -- Excuse me. I'm sorry. If not already
22 enacted, they were in a drafting or reading process
23 then.

24 Q. What concern did Mr. Hoch have about an opinion
25 from the Palm Beach County Attorney's Office impacting

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1 his efforts with respect to conversion therapy bans at
2 the municipality level?

3 MS. FAHEY: Form. Speculation.

4 THE WITNESS: I can't testify as to what Mr.
5 Rand Hoch's concerns were. I can only say that the
6 words speak for themselves. Apparently, the Palm Beach
7 County Human Rights Council didn't want anything in
8 Denise Marie's opinion to be perceived as discouraging
9 municipalities of taking action similar to what has been
10 done so far in West Palm Beach, Lake Worth, Boynton
11 Beach and Riviera Beach.

12 MR. MIHET: Okay.

13 BY MR. MIHET:

14 Q. Now, you see, above that e-mail at the top of the
15 second page of this exhibit, Ms. Nieman writes back to
16 Mr. Hoch. And she says three paragraphs in: As for my
17 opinion, I may not reference Jeff by name but certainly
18 will emphasize that it's a state issue. As for the
19 cities, there's no stopping them from using my opinion.
20 Maybe you don't want it at all, question mark. You're
21 not racking up any counties. Maybe continue with your
22 city focus, question mark. Something to consider.

23 Do you have any knowledge what Ms. Nieman was
24 attempting to convey when she asked Mr. Hoch whether or
25 not he wants her opinion to be issued at all?

1 A. I'm sorry. Could you repeat your question,
2 please?

3 MR. MIHET: Could you read that back,
4 please.

5 (Requested portion read back by the court reporter)

6 MS. FAHEY: Form.

7 BY MR. MIHET:

8 Q. What Ms. Nieman was attempting to convey.

9 A. So, again, this is a guess because I'm not
10 Ms. Nieman. But I believe what she's saying -- what
11 she's asking him is whether Rand Hoch -- oh, I'm sorry
12 -- whether Rand Hoch wants the County's opinion to issue
13 now or not.

14 Q. Okay.

15 A. I mean, it appears as if that's what she's
16 saying.

17 Q. Okay. And, in your experience in the County
18 Attorney's Office, again, is this a customary thing for
19 the County Attorney to give a proponent of a bill the
20 option of whether or not the County Attorney's opinion
21 would be issued at all?

22 MS. FAHEY: We reassert our same objections
23 concerning the customary question.

24 BY MR. MIHET:

25 Q. To your knowledge.

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1 A. And, again, I've had experience with two
2 ordinances; so that's the extent of my knowledge. And I
3 can simply say that we work with proponents of
4 ordinances in the enactment of the ordinance. So it
5 might -- it could occur.

6 Q. You don't see any problem with that?

7 A. And I need you to ask me a full question.

8 A problem with what?

9 Q. With giving the proponent of a bill the option of
10 whether or not to have the County Attorney issue an
11 opinion on that bill.

12 A. So no.

13 Q. Okay. Now --

14 A. Can I clarify, though? I don't think it's
15 someone else's call. The County Attorney serves at the
16 pleasure of the Board of County Commissioners, so they
17 are her client.

18 Q. You think so?

19 A. And this appears to be somewhat of a rhetorical
20 question. Maybe-you-don't-want-it-at-all rhetorical
21 question.

22 Q. Oh.

23 A. Obviously, the County Attorney has to do legal
24 work on behalf of the Board of County Commissioners.

25 Q. I got it. So this is an example of Ms. Nieman

1 writing things down that she doesn't actually mean?

2 MS. FAHEY: Form.

3 THE WITNESS: I totally disagree with your
4 characterization.

5 MR. MIHET: Okay.

6 THE WITNESS: I'm suggesting that could be a
7 rhetorical question.

8 MR. MIHET: All right.

9 BY MR. MIHET:

10 Q. Well, then you see at the bottom of page one of
11 this Exhibit 13, Mr. Hoch writes back. And he says at
12 the bottom of that second paragraph, last sentence: I'd
13 hate for your opinion to bring our municipal efforts to
14 a screeching halt.

15 Do you see that?

16 A. Yes.

17 Q. And then, at the top of this Exhibit 13, we have
18 the response from Ms. Nieman back to Mr. Hoch. Do you
19 see that?

20 A. Yes.

21 Q. Okay. Now, she writes in the second paragraph:
22 I suggested that it was a state issue, which could
23 eliminate any discussion at the local level; so I'm not
24 sure where the working work the cities came in. I also
25 mentioned working with the state association governing

1 therapists to mandate compliance with the national APA
2 Code of Conduct. That seems to have the most teeth.

3 Do you see that?

4 A. I do.

5 Q. What do you think she was referencing when she
6 says that "I suggested that it was a state issue"?

7 A. I have to read what Rand asked first because,
8 taking that out of context without reading his complete
9 statement, it's difficult --

10 Q. Okay.

11 A. -- to understand what's meant.

12 Q. Go ahead.

13 A. So it appears as if -- and, again, I'm guessing.
14 I don't know what was in Denise Marie Nieman's head when
15 she was writing these words. It appears as if her
16 statement "I suggested that it was a state issue which
17 would eliminate any discussion at the local level" may
18 have been referring to the preemption question, again,
19 in her previous statements regarding the state concerns.

20 Q. Okay. Now, in the second -- or not second -- the
21 next paragraph of Ms. Nieman's e-mail, she says: As for
22 the other, cities have shared with is -- I submit that
23 she meant to say us -- their concerns about implied
24 preemption and other areas that we've discussed with
25 you. It's not just a County issue.

1 Do you see that?

2 A. Yes.

3 Q. What cities shared with you their concerns about
4 implied preemption?

5 MS. FAHEY: Who is "you" in your question?

6 MR. MIHET: The County Attorney's Office.

7 MS. FAHEY: Outside the scope.

8 THE WITNESS: So, again, this is not asking
9 me as a 30(b)(6) witness but as a fact witness to
10 testify regarding circumstances that occurred at some
11 point about a year and a half ago. I do not recall what
12 cities. And I certainly wouldn't know what cities
13 Denise Marie was talking about unless she told me.

14 BY MR. MIHET:

15 Q. Next paragraph she says: We'll keep it in still
16 researching mode.

17 Do you see that?

18 A. Yes.

19 Q. Do you think she's -- she's referring to the
20 opinion that had been discussed?

21 A. That's the subject line of this e-mail, CT
22 opinion.

23 Q. So then she says: But know that nothing will
24 change just because more cities enact ordinances unless
25 one is tested and upheld on issues of concern to us.

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1 Do you see that?

2 A. I see that.

3 Q. So what do you think she meant when she made that
4 statement?

5 MS. FAHEY: Form. Speculation.

6 THE WITNESS: I would have to guess as to
7 what Denise Marie Nieman meant when she made that
8 statement. There seem to be a few different meanings in
9 this statement. First, she says that we're still
10 researching or that we will keep the CT opinion in still
11 researching mode.

12 MR. MIHET: Uh-huh.

13 THE WITNESS: She also says that nothing
14 will change just because more cities enact ordinances.
15 I'm presuming that means with the CT opinion. Again,
16 I'm guessing. Unless one is tested and upheld on issues
17 of concern to us might be unless another ordinance is --
18 likely that means unless another ordinance is tested --
19 likely that means in the courts -- and upheld on issues
20 of concern to us.

21 BY MR. MIHET:

22 Q. Okay. Would a fair reading of her statement mean
23 that, if Mr. Hoch brought to the County's attention the
24 fact that other municipalities were passing these
25 ordinances, as far as the County was concerned, that

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1 wouldn't change its analysis because what would need to
2 happen would be for one of those local policies or
3 ordinances to be tested and upheld?

4 MS. FAHEY: Form.

5 THE WITNESS: Yes, with one slight
6 variation. I think "unless one is tested and upheld on
7 issues of concern to us" doesn't necessarily mean that
8 our CT opinion would change, but it may have some
9 influence on it.

10 BY MR. MIHET:

11 Q. What do you mean?

12 A. I think, if I'm interpreting this, it -- at all
13 as she may have meant, it means, our opinion on
14 conversion therapy will remain our opinion on conversion
15 therapy regardless of whether other cities enact
16 ordinances. However, if another city enacts an
17 ordinance that is then tested in the courts and upheld
18 that are on issues of concern to us, as well, that could
19 change our opinion.

20 Q. Okay. And then she says in the next paragraph:
21 By the way, we did confirm with the Property Appraiser's
22 Office that the CT therapists you shared with us all
23 work in incorporated areas.

24 Do you see that?

25 A. Yes.

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1 Q. What CT therapists had Mr. Hoch shared with you?

2 A. There was a meeting that took place with
3 Rand Hoch, myself, Trent Steele and Denise Marie Nieman.
4 And, just for the record now, this is fact witness.
5 This has nothing to do with 30(b)(6) or what I was
6 prepared to testify to today. I'm fairly certain that,
7 in discovery, the meeting notes that Rand Hoch provided
8 us were disclosed and that there was, among those notes,
9 a list of what looked like White Pages printouts of
10 therapists. And he discussed those therapists as
11 practicing conversion therapy.

12 Q. Okay.

13 MS. FAHEY: For your record, Harry, do you
14 want us to refer you to the Bates page numbers?

15 MR. MIHET: Yeah. Why not.

16 MS. FAHEY: The White Pages that were just
17 referred to by Ms. Hvizd are PBC-001428 through
18 PBC-001431.

19 (Plaintiffs' Exhibit No. 14 marked for identification)

20 BY MR. MIHET:

21 Q. Exhibit 14 has just been placed in front of you.
22 This is additional communications between Ms. Nieman and
23 Mr. Hoch on April 12, 2017.

24 MS. FAHEY: Our objections extend to this
25 document, as well, for the record.

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1 MR. MIHET: Okay.

2 BY MR. MIHET:

3 Q. You'll see at the bottom of this page, Mr. Hoch
4 says: Denise, can we put off your memo until July.

5 Do you see that?

6 A. I see that.

7 Q. We've got a final hearing in July in one of the
8 municipalities, and it would be a big help. I've
9 explained to the Commissioners who have inquired why we
10 aren't moving forward quickly with the County ordinance,
11 and they are onboard.

12 Do you see that?

13 A. I see that.

14 Q. Are you aware of any communications that Mr. Hoch
15 had with Commissioners and which Commissioners were
16 onboard?

17 MS. FAHEY: Which topic are you -- are you
18 suggesting this falls under?

19 MR. MIHET: The consideration, enactment,
20 debate of the ordinance.

21 MS. FAHEY: Okay. And so any individual
22 Commissioners mindsets and motivations and that sort of
23 thing would be subject to the legislative privilege. We
24 have provided you with all of the e-mails to
25 Commissioners.

1 MR. MIHET: Okay.

2 BY MR. MIHET:

3 Q. Are you aware which Commissioners Mr. Hoch was
4 referencing in this e-mail?

5 A. I'm not. Personally, this is outside the scope
6 of my 30(b)(6) testimony.

7 Q. So he asks Ms. Nieman to put off her memo until
8 July, and what does Ms. Nieman respond with?

9 A. If you're asking me to read Ms. Nieman's e-mail
10 to Mr. Hoch of April 12, 2017, she says: Of course.
11 You want me to read the rest of the e-mail, as well?

12 Q. Yeah. Keep reading.

13 A. In fact, I told the Commissioners why I haven't
14 issued an opinion yet after you and I spoke, that we
15 didn't want what I had to say to impact your efforts
16 with the cities. I'm surprised you are getting
17 questions unless they didn't want to take my word for
18 it. In any event, I was holding off indefinitely. Let
19 me know when you want it to go, keeping in mind that
20 nothing that happens with cities holds much persuasive
21 value unless a court rules on the exact issues I'm
22 concerned about. I'll be on standby.

23 Q. Okay. So Ms. Nieman says that she was holding
24 off her opinion indefinitely, correct?

25 A. She says that.

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1 Q. So do you still think that the question that she
2 had posed to Mr. Hoch earlier in the exhibit we talked
3 about with respect to whether or not he wanted her
4 opinion in the first place was a rhetorical question on
5 her behalf?

6 A. Could you tell me what exhibit you're speaking
7 about, please?

8 MS. FAHEY: Form. Speculation.

9 BY MR. MIHET:

10 Q. It was Exhibit 13, second page on the top where
11 she says: As for my opinion. And she continues and
12 then she says: Maybe you don't want it at all.

13 I believe you indicated that that might have just
14 been a rhetorical question because her client is the
15 BCC, and so Mr. Hoch's preference would not have any
16 bearing on when or if her opinion would be released.

17 A. I said I believe that to be a rhetorical
18 question, correct. And does this change that? No.

19 Q. Right. It does not. Okay.

20 Now, she references that she had a discussion
21 with the Commissioners and told them why she hadn't yet
22 issued the opinion. What discussion is she referencing
23 there?

24 A. I have no idea. That's an attorney/client
25 privilege. What the County Attorney address -- speaks

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1 of to -- speaks about to the Commissioners? That -- I
2 mean, this is so far from 30(b)(6) that I was prepared
3 to testify about. This is an e-mail from Denise Nieman.
4 I'm not copied on it. I have no personal knowledge of
5 this particular e-mail.

6 You're now asking me what she means in con --
7 about conversations with the Commissioners. And I'm
8 asserting for her, even though it's not the subject of
9 this deposition, an attorney/client privilege. Anything
10 a County Attorney says to the Commissioners would be
11 attorney/client privilege as it relates to the business
12 that we're here to do.

13 Q. Except that she discloses in this e-mail that we
14 now have in our hands and read in the public record what
15 it is that she told the Commissioners, does she not?

16 A. I don't think this does --

17 MS. FAHEY: So what is disclosed here is
18 disclosed, and that is public. Any further inquiry into
19 their meetings, the attorney and the client, would not
20 be appropriate and would be violating attorney/client
21 privilege. At this time on April 12, 2017, we do have a
22 letter threatening suit regarding this ordinance. And
23 anticipation of litigation is happening at the County
24 Attorney's Office and at the County. And so, with what
25 you see here, that is information that you have in your

1 possession.

2 BY MR. MIHET:

3 Q. Now, Ms. Nieman, again, conveys the same
4 sentiment that she did in the prior exhibit we looked at
5 where she says: Nothing that happens with cities holds
6 much persuasive value unless a court rules on the exact
7 issues I'm concerned about.

8 Do you see that?

9 A. I do.

10 Q. Do you understand that to be a reference, again,
11 to the preemption issue and whether or not the enactment
12 of additional ordinances by cities would affect her
13 position on preemption?

14 A. It could be preemption. It could be read more
15 broadly. I'm not certain what Denise Marie Nieman
16 intended by that sentence.

17 Q. Okay.

18 A. I mean, she says: Nothing that happens with
19 cities. That could go beyond just preemption.

20 Q. Well, but she says that in response to Mr. Hoch
21 telling her that another city is about to have a final
22 hearing on a conversion therapy ban, right?

23 A. Correct. But the conversion therapy ban address
24 -- concerns about the conversion therapy ban were
25 greater than simply preemption.

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1 Q. Do you know whether the communication that
2 Ms. Nieman references in her e-mail with the County
3 Commissioners took place as part of a shade meeting or
4 whether it was part of a public meeting of the County
5 Commissioners?

6 A. No, I do not.

7 MS. FAHEY: Objection.

8 Assumes facts not in evidence -- that are
9 not in evidence.

10 (Plaintiffs' Exhibit No. 15 marked for identification)

11 MS. FAHEY: Before we begin another exhibit,
12 Mr. Mihet, were you planning to break for lunch?

13 MR. MIHET: I was. Can we go another twenty
14 minutes or so?

15 MS. FAHEY: Are you comfortable with another
16 twenty minutes, Ms. Hvizd?

17 THE WITNESS: I'm quite hungry right now.

18 MR. MIHET: So we can stop now.

19 MS. FAHEY: Thank you, Mr. Mihet. I have
20 twelve-fifty-nine, one o'clock. Two o'clock work?

21 MR. MIHET: Yes.

22 (Recess)

23 BY MR. MIHET:

24 Q. We're back on the record after the lunch break.

25 Ms. Hvizd, I'm going to show you what we've

1 marked as Exhibit 15?

2 A. Thank you.

3 Q. This is an additional chain of e-mail
4 communication between Mr. Hoch and various individuals.
5 I'd like to start on the third page of this exhibit,
6 which is PBC-8017. This is an August 28th e-mail from
7 Mr. Hoch -- and I think you have to look at the very
8 bottom of the previous page to see that, which is the
9 bottom of the second page -- to a number of individuals,
10 including Denise Nieman, and with a copy to what appear
11 to be Commission members and the Mayor. Is that so?

12 A. Yes, all seven members of the Commission.

13 Q. Okay.

14 A. And Trent Steele.

15 Q. If you will look --

16 A. I'm sorry. And Todd Bonlarron, who is an
17 Assistant County Administrator.

18 Q. Right.

19 So, on August 28, 2017, if you'll look four
20 paragraphs into this e-mail, Mr. Hoch says to these
21 individuals: At this time, PBCHRC would like you to
22 move forward with providing your office's opinion
23 concerning enacting a countywide ordinance to ban
24 conversion therapy for minors by licensed professionals.
25 As we have discussed, your staff's legal opinions may

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1 well not be in agreement with that of PBCHRC and the
2 twelve municipal attorneys and one county attorney in
3 Florida whom have addressed these matters. But, be that
4 as it may, we would like to move forward at this time.

5 Did I read that correctly?

6 A. Yes.

7 Q. What was Mr. Hoch saying to Denise Nieman with
8 respect to the opinion that had been withheld up to this
9 point?

10 MS. FAHEY: Form.

11 THE WITNESS: That the opinion, quote, may
12 well not be in agreement with that of PBCHRC and the
13 twelve municipal attorneys and one county attorney in
14 Florida whom have addressed these matters. But, be that
15 as it may, we would like to move forward at this time,
16 end quote.

17 BY MR. MIHET:

18 Q. Well, before -- before that sentence, in the
19 first sentence, he tells the County Attorney that she
20 can now go ahead and move forward with providing that
21 opinion, correct?

22 A. No. I believe he says that the Palm Beach County
23 Human Rights Council would like you to move forward --

24 Q. Correct.

25 A. -- with providing your office's opinion.

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1 Q. Do you have an understanding as to why Mr. Hoch
2 copied all of these various individuals on his
3 communication to Denise Nieman?

4 MS. FAHEY: Form. Speculation.

5 THE WITNESS: I don't know.

6 BY MR. MIHET:

7 Q. If you will look at the e-mail that precedes the
8 one we just talked about, which starts at the bottom of
9 the first page of this Exhibit 15 --

10 MS. FAHEY: Do you mind referencing the
11 Bates number to help me.

12 MR. MIHET: Sure. This is PBC-8015, an
13 e-mail on Wednesday, September 20, 2017.

14 BY MR. MIHET:

15 Q. It is an e-mail to what appears to be County
16 Commissioners and the Mayor and Mr. Bonlarron and
17 Ms. Nieman forwarding the August 28th e-mail that we
18 just discussed and stating on the second page in the
19 second paragraph: Over the past few weeks, Denise and I
20 have spoken concerning banning conversion therapy
21 countywide. It is my hope that you will give her
22 direction at next week's BCC meeting to draft an
23 ordinance to prohibit both the practice and the
24 advertisement of conversion therapy as outlined in
25 PBCHRC's e-mail dated August 28, 2017. See below.

1 Do you see that?

2 A. I see that. I think my only correction would be
3 I believe you said that this e-mail precedes the e-mail
4 of August 28th. So --

5 Q. I meant precedes in the exhibit --

6 A. Oh.

7 Q. -- not precedes in time.

8 A. I see. Okay.

9 Q. Okay?

10 So Mr. Hoch is asking the Commissioners to give
11 the County Attorney direction to draft an ordinance. Is
12 that your understanding of this?

13 A. Correct. And they already had, by the way.
14 June 20th, the direction from the Board of County
15 Commissioners through Mayor Berger was to come back with
16 an ordinance.

17 Q. June 20th of?

18 A. Of 2016.

19 Q. 2016.

20 But now we are more than a year later --

21 A. Uh-huh.

22 Q. -- on September 20, 2017.

23 A. Uh-huh.

24 Q. And the County Attorney had not yet come back
25 with the ordinance draft requested by the Commission?

1 A. Correct.

2 Q. And so why was there so much time that lapsed?

3 MS. FAHEY: Form.

4 THE WITNESS: I don't know. I mean, I'm
5 guessing why there was so much time that elapsed, that
6 it likely was based on what you've already read into the
7 record regarding a discussion between the proponents of
8 the ordinance, the citizen who was petitioning their
9 government to take some action that they would prefer.
10 And by, "they," I mean, the Palm Beach County Human
11 Rights Council would prefer that no action be taken
12 until this date.

13 Q. And the reason that he'd prefer that no action be
14 taken was because, if action had been taken prior to
15 this date, it would have hurt his organization's efforts
16 in passing these kinds of ordinances at the local level
17 in other localities?

18 MS. FAHEY: Form.

19 THE WITNESS: So you're asking me for the
20 reason Rand Hoch did something? I don't know.

21 BY MR. MIHET:

22 Q. Well, as exhibited in the e-mails that we have
23 been reading about today, was that not the -- the
24 thought that they conveyed to you?

25 A. I think the e-mails would have to speak for

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1 themselves. The words of the e-mails are Rand Hoch's
2 words. I can't tell you what thoughts he had at the
3 time.

4 Q. So your testimony is that, having gone through
5 those e-mails today, as you sit here, you have no idea
6 why it was that Mr. Hoch requested for there to be a
7 delay of longer than a year on this ordinance?

8 A. No, that's not --

9 MS. FAHEY: Form.

10 THE WITNESS: -- my testimony at all. My
11 testimony is that the words of his e-mail have to speak
12 for themselves. I'm not in Rand Hoch's head.

13 BY MR. MIHET:

14 Q. I'm asking you what those words meant to you and
15 whether you have any knowledge as to why he requested
16 for there to be a year-long delay in the preparation of
17 this ordinance?

18 MS. FAHEY: Who is the "you" in your
19 question?

20 MR. MIHET: The deponent.

21 THE WITNESS: Meaning, Helene Hvizd,
22 individually, not 30(b)(6). So, if you point to some
23 words, I'll be happy to talk about them. But I'm not --
24 your question is too vague for me to know what you're
25 even -- which e-mails or words you're talking about

1 right now.

2 MR. MIHET: The e-mails that we've been
3 talking about today.

4 THE WITNESS: I have thirteen -- fifteen,
5 now, exhibits in front of me. Some were from Denise.
6 Some were from Rand. Some were from Nick Sofoul. And
7 then other e-mails.

8 BY MR. MIHET:

9 Q. And so it's all mush right now in terms of the
10 thought that Mr. Hoch was sending to Denise, the County
11 Attorney, asking her to delay the issuance of her
12 opinion because it would hurt his efforts in getting
13 ordinances passed at the local level? That doesn't ring
14 any bells as we sit here today?

15 MS. FAHEY: Objection.

16 Mischaracterizes the witness's testimony.
17 Argumentative, asked and answered.

18 THE WITNESS: I'm asking you to please point
19 me to language, and I'll be happy to review it and tell
20 you what I do or do not know about that language.

21 BY MR. MIHET:

22 Q. Without us doing that, you're not able to sit
23 here today right now and tell me why it was that
24 Mr. Hoch had wanted there to be this delay in the
25 drafting and presentation of the ordinance?

1 MS. FAHEY: Form.

2 THE WITNESS: I'm asking you to please point
3 me to language; and I'll be happy, after my one-hour
4 restful and relaxing lunch, to look at it and to give
5 you my best answer.

6 BY MR. MIHET:

7 Q. My question is not that. My question is:
8 Without doing that, you're not able to give me an
9 answer?

10 A. To what?

11 Q. As to whether -- as to whether or not you had any
12 idea of why it was that Mr. Hoch wanted there to be over
13 a year delay in the drafting and presentation of the
14 ordinance to the Board of County Commissioners.

15 MS. FAHEY: Form.

16 Asked and answered, speculation.

17 THE WITNESS: I will have to look through
18 e-mails. If you won't point me to --

19 MR. MIHET: I don't want you --

20 THE WITNESS: -- one individually --

21 MR. MIHET: -- to take the time to do that
22 because we have a very limited time here today.

23 BY MR. MIHET:

24 Q. I'm asking you, as you sit here right now without
25 looking at any e-mails, do you have any idea of why it

1 was that Mr. Hoch wished for there to be over a year
2 delay in presenting the County ordinance to the County
3 Commissioners?

4 A. I was called here today to testify as a 30(b)(6)
5 witness on behalf of the County as a whole, which
6 consists of seven members of the Board of County
7 Commissioners, regarding specific matters of examination
8 listed on your Second Amended Notice of Taking
9 Depositions of Defendants. Rand Hoch's motives in doing
10 anything are not part of this 30(b)(6) notice.

11 Q. So is the answer --

12 A. If you'd like to point me to specific language in
13 an e-mail and ask me if I know what Rand Hoch thought,
14 I'll be happy to do that or answer that question. But,
15 right now, I don't know what you're talk -- which e-mail
16 you're talking about.

17 Q. I'm not talking about any e-mails, Ms. Hvizd.

18 A. It's Hvizd.

19 Q. Hvizd.

20 A. Thank you.

21 Q. I'm sorry.

22 A. No worries.

23 Q. I'm taking about the fact that there was a --
24 over a year-long delay between the time that the County
25 Commissioners requested an ordinance to be drafted until

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1 the time when Mr. Hoch says we are now ready to move
2 forward. And, without referencing any e-mails, I'm
3 asking you very simply: Do you have any idea why that
4 delay took place? It's a yes or no question. You
5 either know or you don't know.

6 MS. FAHEY: Mr. Mihet, are you asking her
7 why Mr. Hoch wanted a delay or why a delay occurred?
8 I've heard two different questions, so I just want to --

9 MR. MIHET: Well, let's --

10 THE WITNESS: I've heard two different
11 questions, as well.

12 MR. MIHET: Okay.

13 BY MR. MIHET:

14 Q. So let's -- let's do both. Why he wanted a
15 delay?

16 A. I don't know.

17 Q. You don't know.

18 Why a delay occurred?

19 A. A delay occurred because we were not pressed to
20 present the Board of County Commissioners with an
21 ordinance, as far as I know, until the December date.

22 Q. So a delay occurred because Mr. Hoch requested
23 it?

24 MS. FAHEY: Form.

25 Mischaracterizes testimony.

1 Asked and answered.

2 THE WITNESS: Again, I would ask, if you'd
3 like to show me to Mr. Rand's request -- Mr. Hoch's
4 request, I'll be happy to tell you, yes, he requested.
5 But, until you do that, I'm not prepared to characterize
6 Rand's e-mails.

7 BY MR. MIHET:

8 Q. Looking at the e-mail above the one we've just
9 read, which is PBC-8015, the first page of Exhibit 15 --
10 it's the second e-mail on the page, September 20, 2017,
11 from Ms. Nieman back to Mr. Hoch. Do you see that one?

12 A. Yes.

13 Q. She says: When you say countywide, you mean,
14 countywide applicable in the unincorporated and
15 incorporated areas? I ask because many people use it
16 just to mean throughout the County's jurisdiction. You
17 have so many cities who moved forward already. And I
18 still have enforcement concerns which I mention in my
19 BCC e-mail, being relieved that none of the six were in
20 the unincorporated area.

21 Do you see that?

22 A. Yes.

23 Q. What enforcement concerns did Ms. Nieman still
24 have?

25 A. I don't know.

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1 Q. What impact did the reach of this ordinance,
2 whether or not it was in the unincorporated area or the
3 incorporated area, have on its potential enforcement?

4 MS. FAHEY: Form.

5 THE WITNESS: What -- I don't understand
6 your question, what impact did it have.

7 BY MR. MIHET:

8 Q. Well, she says she still has enforcement concerns
9 in the context of her mentioning that she wants this to
10 be applicable only in the unincorporated areas. She
11 says: I ask because many people use it to mean
12 throughout the County's jurisdiction. And then she goes
13 on to say: I still have enforcement concerns.

14 So I'm just asking you: Was there consideration
15 of the scope of the application of the ordinance
16 vis-a-vis its potential enforcement?

17 MS. FAHEY: Form.

18 THE WITNESS: As to the end of your
19 question, I can answer that. I think you may have
20 mischaracterized what Denise Marie Nieman was saying in
21 the e-mail slightly. But was there concern about the
22 scope in terms of where this ordinance would be
23 enforced? Yes.

24 BY MR. MIHET:

25 Q. What was -- what was that concern?

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1 A. Every ordinance that we bring to the Board of
2 County Commissioners has to be viewed in terms of
3 whether it will apply throughout both unincorporated and
4 incorporated areas of Palm Beach County or whether it
5 will apply only in the unincorporated areas of Palm
6 Beach County. There's a procedure in place for whether
7 -- how that ordinance proceeds based on the answer to
8 that question.

9 Q. And why was it the County Attorney's preference
10 that this ordinance would apply only in the
11 unincorporated areas?

12 MS. FAHEY: Form. Speculation.

13 THE WITNESS: I don't know.

14 (Plaintiffs' Exhibit No. 16 marked for identification)

15 BY MR. MIHET:

16 Q. So now I've handed you a document we've marked as
17 Plaintiffs' Exhibit 16. And you will see that it's a
18 communication from Ms. Nieman to Mr. Hoch in which she
19 appears to be forwarding to him an e-mail that she wrote
20 to the County Commissioners. Do you see that?

21 A. I do.

22 Q. The e-mail that is being forwarded, the one that
23 she wrote to the County Commissioners, appears to have
24 been written on September 7, 2017. Do you see that?

25 A. It does appear to be written on that date.

1 Q. Have you seen this e-mail before?

2 A. Again, I'm here as a 30(b)(6) witness to testify
3 on behalf of the County. Individually, I was not
4 prepared as a fact witness for this deposition. The
5 question of whether I've seen it before? I'd have to go
6 back and look through all of these personal e-mails
7 between Denise Marie and myself or -- to see if I was
8 copied. I don't know.

9 Q. Did the County --

10 MS. FAHEY: I'm sorry. For the record, the
11 County reasserts its objections with respect to e-mails
12 that the Board as a whole are not on and Ms. Hvizd is
13 not on.

14 BY MR. MIHET:

15 Q. Did the County Commissioners receive this e-mail
16 from Ms. Nieman that says, "Dear Commissioners"?

17 A. It doesn't say that the County Commissioners are
18 copied. However, it does say, "Dear Commissioners."
19 Likely, they were.

20 Q. Okay. So, in this particular e-mail, Ms. Nieman
21 says to the Board of County Commissioners that -- well,
22 let's just start up top. In the first paragraph, she
23 says: This is in response to the BCC's direction last
24 summer to research the viability of the adoption of a
25 County ordinance banning conversion therapy, a form of

1 counseling that attempts to change one's sexual
2 orientation. The direction was given at the request of
3 Rand Hoch on behalf of the PBC Human Rights Council.

4 Do you see that?

5 A. Yes.

6 Q. Now, she goes on and says: We strongly believe
7 that this area should be regulated by the state.

8 Do you see that?

9 A. Yes.

10 Q. Was that, in fact, her belief?

11 MS. FAHEY: Form. Speculation.

12 THE WITNESS: I don't know.

13 BY MR. MIHET:

14 Q. When she says, "we," who is she referring to?

15 MS. FAHEY: Form. Speculation.

16 THE WITNESS: I don't know.

17 BY MR. MIHET:

18 Q. Is she referring to the County Attorney's Office?

19 A. I don't know.

20 Q. Okay. Is she referring to you?

21 A. I don't know.

22 Q. Did you, on September 7, 2017, strongly believe
23 that this area should be regulated by the state?

24 A. Don't recall.

25 Q. What do you mean you don't recall?

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1 (Interruption by someone entering the deposition room)

2 MS. FAHEY: Sorry, Harry. We just need to
3 put some paper towels in that trash can.

4 BY MR. MIHET:

5 Q. Let me strike my last question and ask you this
6 instead.

7 Have you ever believed that conversion therapy is
8 an area that should be regulated by the state?

9 A. Yes. Early on in my research, I did have that
10 belief. Oh, did I just waive an attorney/client or
11 work-product privilege?

12 Q. But by --

13 A. I'm not intending to waive any work-product or
14 attorney/client privilege.

15 Q. But, by September 7, 2017, you don't know whether
16 you still believed that?

17 A. I don't recall.

18 Q. Okay. Two paragraphs below that, it says: Our
19 initial research revealed a number of significant legal
20 issues that would have prevented my office from signing
21 off for legal sufficiency. Assistant County Attorney,
22 Hvizd --

23 A. The H is silent.

24 Q. Yes, Hvizd.

25 -- and I reviewed our concerns with Mr. Hoch and

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1 ultimately mutually agreed to hold off issuing an
2 unfavorable opinion to give us time to monitor how the
3 pending cases evolved and to see how the jurisdictions
4 who did move forward with an ordinance administered and
5 enforced same. We also wanted to see if any of the new
6 enactments would be challenged. To the best of our
7 knowledge, none have been.

8 So Ms. Nieman is relating to the Commissioners
9 that the reason for the delay is that you wanted to see
10 how this issue would play out in terms of other
11 localities adopting similar ordinances?

12 MS. FAHEY: Form.

13 THE WITNESS: I believe she says: We also
14 wanted to see if any of the new enactments would be
15 challenged.

16 MR. MIHET: Okay.

17 BY MR. MIHET:

18 Q. Now, up to September 7, 2017, to the best of, I
19 guess, her knowledge and whoever else she included in
20 "our" there, none had been challenged?

21 A. I'm sorry. Are you asking me up until September
22 8th, had any other municipalities' enactments of
23 conversion therapy bans been challenged?

24 Q. September 7, 2017.

25 A. September 7th. I'm not certain when Tampa's

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1 lawsuit was filed, but I believe it was during the
2 course of our enacting ours. So Tampa I believe is the
3 first State of Florida enactment that we were aware of
4 having been challenged.

5 Q. Okay. I'll represent to you that I believe that
6 was in December 2017.

7 So my question is: When Ms. Nieman relates to
8 the Commissioners that, to the best of her knowledge,
9 none have been challenged, you don't have any reason to
10 dispute the accuracy of that statement, do you?

11 THE WITNESS: I don't.

12 MS. FAHEY: Form. Scope.

13 MR. MIHET: Okay.

14 BY MR. MIHET:

15 Q. Now, you recall the statements that we've read by
16 Ms. Nieman in two of the prior e-mails where she said
17 that other local enactments would not change anything in
18 the County's position unless and until one of those
19 would be challenged and upheld. Do you recall those --
20 those e-mails?

21 MS. FAHEY: Form.

22 THE WITNESS: I think you're slightly
23 mischaracterizing what she said or misstating it. But
24 there was a reference to ordinances and other
25 municipalities being challenged.

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1 BY MR. MIHET:

2 Q. And do you recall her stating that nothing would
3 change with respect to the County Attorney's position
4 unless a local ordinance were challenged and upheld on
5 the issues of concern to the County?

6 MS. FAHEY: Form.

7 THE WITNESS: Can you point me to the
8 statement that she made, please. Actually, I can point
9 you to it. Plaintiffs' Exhibit No. 14, the last
10 sentence of Denise Marie's e-mail dated October 12,
11 2017, to Rand contains the statement: Let me know when
12 you want it to go, keeping in mind that nothing that
13 happens with cities holds much persuasive value unless a
14 court rules on the exact issues I'm concerned about.

15 Q. Right. And then --

16 A. Is that what you're referring to?

17 Q. Yes.

18 And then, on the prior Exhibit, 13, she says in
19 the fourth paragraph on the first page: Will keep it
20 still in researching mode but know that nothing will
21 change just because more cities enact ordinances unless
22 one is tested and upheld on issues of concern to us.

23 Do you see that?

24 A. Yes.

25 Q. Okay. So, as of September 7, 2017, none of the

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1 other local ordinances in Florida had been challenged
2 and upheld on issues of concern to the County, correct?

3 A. And -- correct, as long as that Tampa lawsuit
4 is -- as you suggest, wasn't filed until -- and
5 certainly not upheld.

6 Q. And certainly not upheld yet, unfortunately.

7 A. Uh-huh.

8 Q. So then we -- strike that.

9 So, given that no local ordinance had been
10 challenged and upheld on issues of concern to the
11 County, is it fair to understand then that nothing had
12 changed in the County Attorney's position with respect
13 to whether or not this ordinance could move forward?

14 MS. FAHEY: Form.

15 THE WITNESS: No, I don't think that's fair.

16 Let me just ask. Are you asking me about
17 the County Attorney's position? Because, again, I'm not
18 Denise Marie Nieman. I can't testify as to what she
19 thought or felt. I can testify to words on a piece of
20 paper that she wrote, but that's it.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. So she had previously said we've established:
24 That, unless and until a local ordinance is challenged
25 and upheld on issues of concern to the County, nothing

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1 would change in the County Attorney's position, correct?

2 A. I don't know that she said nothing would change
3 in the County Attorney's position.

4 Q. Okay. What do you think she was referring to?

5 A. Well, in one, she says: Nothing that happens
6 with cities holds much persuasive value unless a court
7 rules on the exact issues I'm concerned about.

8 Q. Okay.

9 MS. FAHEY: That's Exhibit 14.

10 BY MR. MIHET:

11 Q. Persuasive value to whom?

12 MS. FAHEY: Form.

13 THE WITNESS: I don't know what she meant.
14 I mean, who she intended by that -- that word.

15 MR. MIHET: Okay.

16 BY MR. MIHET:

17 Q. All right. Moving on, she says in a couple of
18 paragraphs below that: While we still have legal
19 concerns including but not limited to implied
20 preemption, the Florida Patients' Bill of Rights,
21 conflicting federal circuit court opinions and parental
22 rights, there was some arguments that advanced to a
23 point where we were able to move from a definite no to a
24 maybe. I use this term since the case law can go either
25 way, clearing the path for an ordinance should a

1 majority of the BCC so directs.

2 Do you see that?

3 A. Yes.

4 Q. So what were the arguments that had advanced to a
5 point where there could be a move from a definite no to
6 a maybe?

7 MS. FAHEY: Speculation, scope.

8 THE WITNESS: I don't know.

9 BY MR. MIHET:

10 Q. But this is an e-mail that was sent to the County
11 Commissioners and that they received and reviewed as a
12 whole?

13 A. Correct. I mean, we know that this e-mail
14 appears to have been sent to the County Commissioners.

15 Q. Okay. Is this an e-mail that the County
16 Commissioners relied upon in their consideration and
17 eventual enactment of the ordinance?

18 A. Yes.

19 Q. So, given all that, you are not able to tell me
20 what she is referring to when she says that there was
21 some arguments that advanced to a point where the County
22 could now move from a definite no to a maybe?

23 MS. FAHEY: Form.

24 THE WITNESS: I can only tell you that her
25 words are as they are on this sheet of paper. What

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1 Denise Marie Nieman intended them to mean or what is not
2 plainly on this piece of paper I can't testify to.

3 Q. You can't testify as to what the County
4 Commission understood those words to mean?

5 MS. FAHEY: Form.

6 THE WITNESS: I can testify to what seven
7 members of the Board of County Commissioners reading
8 this could interpret this to mean. And they could
9 interpret this to mean that there were some arguments
10 that advanced to a point where the County Attorney's
11 Office was able to move from a definite, no, do not
12 enact a conversion therapy ban to a maybe convert --
13 adopt or enact a conversion therapy ban.

14 Q. What did they understand those arguments to be,
15 the ones that had moved or that had advanced?

16 A. I will -- again, you're asking me what the
17 individual Board members understood --

18 Q. No --

19 A. -- and I can't testify to that.

20 Q. -- I'm not.

21 A. No?

22 Q. I'm asking you what the County Commission
23 believed those arguments were that had advanced to the
24 point where now they could move from a definite no to a
25 maybe?

1 MS. FAHEY: Form.

2 THE WITNESS: And I am going to suggest
3 that, if you view the trans -- or read the transcripts
4 or view the BCC meetings when this ordinance was
5 considered, the questioning from the Commissioners
6 seemed to concern preemption. So, likely, the
7 Commissioners had concerns about arguments regarding
8 preemption --

9 Q. Okay.

10 A. -- having moved from a definite no to a maybe.

11 Q. And what -- what precipitated that move? What
12 changed to get the arguments of preemption to move from
13 a definite no to a maybe?

14 MS. FAHEY: Form. Asked and answered.

15 THE WITNESS: I'm -- I have to assert a
16 work-product privilege if you're asking me for what in
17 my work or my consulting with my client changed
18 regarding preemption.

19 MR. MIHET: No.

20 BY MR. MIHET:

21 Q. I'm asking you about this e-mail that was sent
22 that says that some arguments, which you've said could
23 be the preemption arguments, have moved, have changed,
24 have gone from a definite no to a maybe.

25 A. Okay.

1 Q. So, in connection with that disclosure that is
2 now a public document and that we've been talking about,
3 I'm asking you what was the reason for that change?
4 What were those changes?

5 MS. FAHEY: Mr. Mihet, unless you're aware
6 of that being enumerated in any other public document,
7 it would be work product that has not been made publicly
8 available. And so the witness has given an answer
9 numerous times to this question. The document speaks
10 for itself. With respect to your inquiry into the
11 mental impressions of Denise Marie Nieman or Ms. Hvizd,
12 we would assert a work-product privilege.

13 MR. MIHET: Well, we don't agree that there
14 could be a partial disclosure such as what we have in
15 this document without then disclosing what the change
16 was and what the reason was for that change. And so, if
17 you're instructing the witness not to answer, we can --
18 we can take that up at a later date. Is that what your
19 instruction is?

20 MS. FAHEY: I believe the witness has given
21 you an answer.

22 MR. MIHET: No, she hasn't. My question to
23 her was: What had changed to cause those arguments to
24 go from -- on preemption to go from a definite no to a
25 maybe? And she -- she, herself, then asserted a

1 work-product privilege.

2 THE WITNESS: I can answer, if I may,
3 please?

4 MS. FAHEY: And, just for the record, I just
5 want to state our objection. We are objecting to
6 expanding beyond what has already been disclosed and
7 provided and put into public records. If you --

8 MR. MIHET: Okay. So --

9 MS. FAHEY: Sorry. We produced voluminous
10 e-mails involving Ms. Hvizd, Ms. Nieman and Mr. Hoch
11 where this was -- where the ordinance was discussed.
12 And so, to the extent that you are testing her memory on
13 what any other e-mail may have, I ask that you please
14 let us know that. If you're asking for her to explore
15 further this, please let us know that, as well.

16 MR. MIHET: I think my question is pretty
17 clear, and I think the witness wants to answer. So the
18 only question for you is: Are you going to allow her to
19 answer, or are you going to invoke a privilege that
20 would require us to go to court later on?

21 THE WITNESS: I'm going to allow her to
22 answer. She's not able to speak for Denise Marie
23 Nieman's mind.

24 MR. MIHET: I'm not asking for her to speak
25 for Denise Marie Nieman's mind.

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1 THE WITNESS: Will you repeat the question,
2 please.

3 MR. MIHET: Yes, if I can remember it now.

4 THE COURT REPORTER: Do you want me to read
5 it back?

6 MR. MIHET: No. I will try it, and we'll
7 see how -- how we do.

8 BY MR. MIHET:

9 Q. What had changed in the arguments on preemption
10 to advance them from a definite no to a maybe in terms
11 of whether or not the County could move forward with
12 this ordinance?

13 MS. FAHEY: I'm reasserting my previous
14 objections.

15 THE WITNESS: If you listen or read the
16 transcript of the BCC meeting where they discussed
17 preemption, I think you will hear -- actually, let me
18 refer to that record, if you don't mind.

19 So this is on Palm Beach County Bates stamp
20 number 392 and beyond. And Commissioner Abrams
21 expressed his concern a couple areas of inquiry. He
22 said -- and the first was what the County Attorney's
23 position was on the issue of jurisdiction. I replied to
24 that question by suggesting that it really should be
25 phrased in terms of preemption and that there were two

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1 ways for a local government to be preempted by the
2 legislature, express preemption and implied preemption,
3 and then went into more detail regarding the implied
4 preemption; that there had been no court in the State of
5 Florida to address that question and that there were two
6 sides to the argument, that one side concerned the
7 Florida legislature having left the door open for local
8 governments to legislate in order to protect the health,
9 safety and welfare of children and that the other side
10 of the argument concerned the Patients' Bill of Rights
11 and extensive legislation regarding professional
12 associations.

13 BY MR. MIHET:

14 Q. So there's no question that the argument changed
15 from a definite no to a maybe. My question is: What
16 was the reason for that change? Was there, for example,
17 any repeal of the Florida statutory scheme that was
18 previously considered to be pervasive?

19 A. No. There was no repeal of Florida Statute, as
20 far as I'm aware of.

21 Q. Okay. Was there -- what other reason was there
22 for this change in position on preemption from a
23 definite no to a maybe?

24 A. I think I would point to a recognition of the
25 first part of my answer which talked about proponents of

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1 the ordinance pointing to language in the Florida law
2 that said that counties enact ordinances to protect the
3 health, safety and welfare of the children. So I think
4 that was a change from an initial suggestion that there
5 was no allowance in the law for counties to regulate in
6 this area.

7 Q. Now, was that a -- was that law that you're
8 referencing one that was enacted prior to June of 2016
9 or after?

10 A. No. It was enacted before, prior to.

11 Q. So that had always been the law for purposes of
12 this ordinance?

13 A. As far as I know.

14 Q. Okay. So that law hadn't changed?

15 A. The law hadn't changed. I think I stated,
16 though, a recognition of that statute.

17 Q. Were you not aware previously that counties can
18 legislate in the interest of the health, safety and
19 morals of their citizenry?

20 MS. FAHEY: Form.

21 Mischaracterizes testimony.

22 Outside the scope.

23 THE WITNESS: I'm aware that the Palm Beach
24 County Charter as well as the State Constitution and
25 state statutes allow counties to legislate in the area

1 of protecting the health, safety and welfare of
2 children.

3 BY MR. MIHET:

4 Q. So the County Attorney's Office was aware of that
5 previously when it concluded that the argument on
6 preemption was a definite no. What changed to move that
7 argument from a definite no to a maybe?

8 MS. FAHEY: Form.

9 You're asking this witness for her legal
10 opinion and Ms. Nieman's legal opinion.

11 MR. MIHET: No, I'm not.

12 THE WITNESS: I can -- I can clarify what I
13 intended when I said language in the Florida legislature
14 should have been Florida Statutes. And the recognition
15 concerned specifically the Department of Health's
16 statutory enabling statute or the Department of Health
17 statutes defining those professions over which they
18 regulate, one of them being licensed marital and family
19 therapists. And the language is cited in the County's
20 Motion to Dismiss --

21 BY MR. MIHET:

22 Q. Is that what you --

23 A. -- so you'll find the statute number there.

24 Q. Is that what you said to the Commissioners?

25 A. I said: The proponents of this particular

1 ordinance point to language in the Florida
2 legislature -- and, again, it should have been Florida
3 Statutes -- that says that counties may protect the
4 health, safety and welfare of children. And they see
5 that as a statement of the legislature's intent not to
6 preempt counties from legislating in this area.

7 Q. So they wouldn't have had a reason to know that
8 you were referring to some statute that was cited, what,
9 six months later in the County's Motion to Dismiss,
10 would they?

11 MS. FAHEY: Form, argumentative.

12 THE WITNESS: I never did state the
13 Department of Health statutes when I spoke to them.

14 BY MR. MIHET:

15 Q. Other than that particular change, what else had
16 changed to move this preemption argument from a definite
17 no to a maybe?

18 A. I'm not aware of any other change.

19 Q. That was it. Okay.

20 A. When the legislature states in a statute that
21 they anticipate local governments will be allowed to
22 legislate in a particular area, we can view that as a
23 strong argument that we're not impliedly preempted from
24 legislating.

25 Q. But they had stated that prior to June of 2016,

1 correct?

2 A. Correct. And what I'm noting for you is is that
3 that language was noted and recognized between June 20th
4 of 2016 and September 7th of 2017. I'm not aware of
5 every single statute in the State of Florida. Those six
6 large books are not all in my head.

7 Q. Okay. Now, in the next paragraph, Ms. Nieman
8 writes to the Commissioners: In addition to the legal
9 issues, after researching the history of conversion
10 therapy, I felt it important to bring to your attention
11 some general observations as well as some practical
12 concerns. Most of the universal complaints seem to be
13 about religious organizations that the ordinance would
14 not legally be able to address.

15 Do you see that?

16 A. Yes.

17 Q. What is being conveyed to the County
18 Commissioners in that --

19 MS. FAHEY: Form.

20 Q. -- section?

21 MS. FAHEY: Scope.

22 THE WITNESS: I could just repeat the words
23 that you just said, if you'd like me to do that.

24 MR. MIHET: No, I don't want you to do that.

25 BY MR. MIHET:

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1 Q. I want you to explain to me what the County
2 Commissioners were considering when they were being told
3 that the universal complaints came from religious
4 organizations that would not be able to be addressed in
5 the ordinance?

6 MS. FAHEY: Form. Scope.

7 THE WITNESS: Actually, it's not that the
8 universal complaints came from religious organizations,
9 rather it's that the complaints seem to be about
10 religious organizations and that the ordinance would not
11 legally be able to address.

12 MR. MIHET: Okay.

13 BY MR. MIHET:

14 Q. So what were the universal complaints about
15 religious organizations?

16 MS. FAHEY: Form. Scope.

17 THE WITNESS: I do not know what
18 Denise Marie Nieman intended by those words.

19 BY MR. MIHET:

20 Q. What does the County Commission believe that she
21 was referring to?

22 A. Complaints about religious organizations that the
23 ordinance would not legally be able to address.

24 Q. Religious organizations doing what?

25 A. Conversion therapy.

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1 Q. And why would not the ordinance be able to
2 address conversion therapy engaged in by religious
3 organizations?

4 MS. FAHEY: Form.

5 Calls for a legal opinion.

6 THE WITNESS: I can only tell you that the
7 draft ordinance presented to the Board of County
8 Commissioners had an exclusion from its definition of
9 provider for religious -- actually, I believe it's
10 for -- let me get the ordinance exactly.

11 Q. Clergy?

12 A. So provider -- a provider does not include
13 members the clergy who are acting in their roles as
14 clergy or pastoral counselors and providing religious
15 counseling to congregants as long as they do not hold
16 themselves out as operating pursuant to any of the
17 aforementioned Florida Statute licensures.

18 Q. Well, the County Commission came to believe that
19 conversion therapy was harmful to minors, correct?

20 A. Correct.

21 Q. When provided by licensed therapists, correct?

22 A. Correct.

23 Q. Is conversion therapy less harmful to minors when
24 provided by members of the clergy or religious
25 organizations?

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1 MS. FAHEY: Form. Outside the scope.

2 THE WITNESS: I can't say whether the Board
3 of County Commissioners had an opinion on that one way
4 or the other. There's nothing in our records that
5 demonstrates that.

6 BY MR. MIHET:

7 Q. So you don't know what the County's position is
8 on that?

9 A. Correct.

10 Q. Why does the County believe that the ordinance
11 would not be able to legally address harmful conduct
12 engaged in by religious organizations?

13 MS. FAHEY: Form.

14 Calls for a legal opinion.

15 THE WITNESS: Without waiving my
16 attorney/client privilege or work-product privilege, the
17 concern would be government interference with the
18 practice of religion.

19 MR. MIHET: Okay.

20 BY MR. MIHET:

21 Q. I mean, I'm sure that -- that you and the County
22 Commissioners watch the news. And I'm sure you've seen,
23 you know, priests and clergy be arrested and go to jail
24 all the time for engaging in conduct that harms
25 children, right?

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1 MS. FAHEY: Form. Outside the scope.

2 THE WITNESS: I actually avoid the news as
3 often as possible, and I find my life is much happier
4 because of that.

5 BY MR. MIHET:

6 Q. So you're not aware of the current controversy
7 involving the Catholic church and the allegations of
8 sexual abuse of minors?

9 A. I've heard --

10 MS. FAHEY: Form. Outside the scope.

11 THE WITNESS: I've heard only rumblings, no
12 details.

13 BY MR. MIHET:

14 Q. It's the County's position then that the County
15 does not have the power to address or regulate harmful
16 conduct by religious organizations directed at children?

17 MS. FAHEY: Form.

18 THE WITNESS: No.

19 MR. MIHET: No.

20 BY MR. MIHET:

21 Q. That's not what was meant by complaints about
22 religious organizations that the ordinance would not
23 legally be able to address?

24 MS. FAHEY: Form.

25 THE WITNESS: At this point, I know that we

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1 had already been presented with several drafts of other
2 municipalities' ordinances that contain the same
3 language that we ultimately included in our ordinance,
4 which is that a provider does not include members of the
5 clergy who are acting in their roles as clergy or
6 pastoral counselors in providing religious counseling to
7 congregants as long as they don't hold themselves out as
8 operating pursuant to any of the aforementioned Florida
9 Statute's licensures. And I know that that language
10 remained in our ordinance in December when it was
11 presented to the Board of County Commissioners.

12 MR. MIHET: That's -- that's very nice that
13 you point that out, but that really wasn't my question.

14 THE WITNESS: I'm sorry. What was your
15 question?

16 BY MR. MIHET:

17 Q. My question was --

18 MR. MIHET: Can you ask -- read my last
19 question, please.

20 (Requested portion read back by the court reporter)

21 BY MR. MIHET:

22 Q. So I guess let me try to ask it a different way.
23 Is it not the County's position -- strike that,
24 again.

25 Is it the County's position that the County is

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1 unable legally to address harmful conduct directed
2 towards children engaged in by religious organizations?

3 MS. FAHEY: Form. Outside the scope.

4 BY MR. MIHET:

5 Q. Does the County have a position whether or not it
6 has the legal authority to stop religious organizations
7 from engaging in harmful conduct towards minors in its
8 jurisdiction?

9 A. I'm not aware of a County position on that topic.

10 Q. Okay. Ms. Nieman continues in that same
11 paragraph: Further, all of the six therapists who have
12 been identified to us as practicing conversion therapy
13 in Palm Beach County are located in the incorporated
14 areas of the County, which I suppose is a plus because
15 one of the main concerns is enforcement. Did I read
16 that correctly?

17 A. Yes.

18 Q. Why is it a plus from an enforcement standpoint
19 that the six therapists are practicing in the
20 incorporated areas of the County?

21 A. I believe -- again, I'm not Denise Marie Nieman;
22 so I don't know what she was thinking when she wrote
23 those words. But, from the standpoint of the County
24 hearing those words --

25 Q. Or reading them?

1 A. -- or reading them, rather, the County would
2 always prefer to have to expend less money and efforts
3 in enforcement of any of our ordinances. So it would be
4 a plus for us not to have to enforce an ordinance.
5 Monetarily, it would be a plus. We'd have less time
6 expended by our employees, et cetera, that could be used
7 for other purposes.

8 Q. But, if you have a County ordinance that applies
9 in unincorporated and incorporated areas, would the
10 County not be the entity that would be responsible for
11 enforcing that ordinance in the incorporated areas?

12 A. If the ordinance applies in both incorporated and
13 unincorporated areas, it is possible that the County
14 would be responsible for enforcing it in both.

15 Q. So how is it then a plus for the County to have
16 the ordinance -- or to have the six therapists, rather,
17 practicing conversion therapy all be located in
18 incorporated areas of the County?

19 A. By this time, September 7th of 2017, several
20 other municipalities in Palm Beach County had already
21 enacted ordinances banning conversion therapy. And, by
22 the terms of our countywide ordinance language, our
23 ordinance does not apply in any municipality that had
24 enacted an ordinance in conflict with ours. And
25 conflict is defined in terms of the most simple of

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1 differences; difference in the definition, difference in
2 penalties imposed, et cetera.

3 So if, in fact, all six therapists who have been
4 identified are practicing in incorporated areas of the
5 County, other municipal -- other municipal ordinances
6 would apply to them; and the County would not be
7 responsible for enforcing those.

8 Q. Okay. So we have most of the universal
9 complaints being about religious organizations that the
10 ordinance cannot legally address, right?

11 A. Those words are on this paper, yes.

12 Q. And we have the six therapists practicing in
13 incorporated areas of the County where, perhaps, they're
14 already subject to other bans on conversion therapy,
15 correct?

16 A. Correct.

17 Q. So why is there still a need then for an
18 ordinance at the County level?

19 MS. FAHEY: Form. Scope.

20 THE WITNESS: Well, there's still
21 unincorporated areas of the County that wouldn't be
22 covered by municipal ordinances. We're not certain that
23 these are the only six therapists that are practicing
24 conversion therapy in Palm Beach County. And, in fact,
25 there were quite a few who testified during both the

1 December 5th and December 12th hearings.

2 MR. MIHET: Okay.

3 BY MR. MIHET:

4 Q. Now, on the subject of enforcement, Ms. Nieman
5 goes on and says: It's difficult to imagine how a
6 county code enforcement officer would be able to issue a
7 citation for a violation. How would an officer
8 determine if a violation occurred? The ordinances play
9 more of a deterrent role.

10 What is the County Commission being told with
11 respect to whether or not this is going to be an
12 enforceable ordinance?

13 A. So, based on what I'm reading here, it appears as
14 if part of that, "it's difficult to imagine how a code
15 enforcement officer would be able to issue a citation
16 for a violation," some of that may apply to the
17 incorporated versus unincorporated area of the County
18 concept. To the extent that that applies to
19 unincorporated areas of the County where a code
20 enforcement officer would be able to issue a citation
21 rather --

22 Q. Uh-huh.

23 A. -- are you asking me how would an officer
24 determine if a violation occurred?

25 Q. Well, are county code enforcement officers not

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1 permitted to issue citations in the incorporated areas
2 of the County?

3 A. Not if there's an ordinance in conflict that we
4 can't enforce.

5 Q. Okay. But, if there's not an ordinance in
6 conflict, are they permitted to issue a citation in an
7 incorporated area?

8 A. If Palm Beach County adopts an ordinance that
9 applies in incorporated and unincorporated areas, we can
10 enforce that ordinance in both incorporated and
11 unincorporated areas.

12 Q. Okay. Except that the County Commission is being
13 told that it's difficult to imagine how a code
14 enforcement officer would be able to issue a citation
15 for a violation?

16 A. Correct.

17 Q. Because we don't know how an officer would
18 determine if a violation occurred?

19 MS. FAHEY: Form.

20 THE WITNESS: No, I don't think those words
21 are on this paper. This paper says: How would an
22 officer determine if a violation occurred? That's a
23 question.

24 BY MR. MIHET:

25 Q. Following the immediately preceding statement

1 that says: It's difficult to imagine how a citation
2 could be issued.

3 A. Correct. It does follow that sentence.

4 Q. And so how would an officer determine if a
5 violation of the ordinance has occurred?

6 A. Are you asking me how that ordinance would be
7 enforced?

8 Q. Yeah. Well, I'm asking you, in light of the
9 statements here that say it's difficult for -- to
10 imagine how that would take place, how does the County
11 envision it taking place now? Has the County been able
12 to imagine it notwithstanding the asserted difficulty in
13 this communication?

14 MS. FAHEY: Form.

15 THE WITNESS: Well, I believe, if you take a
16 look at the transcripts of the meetings before the Board
17 of County Commissioners, you'll see that I was asked
18 that question by Mayor McKinlay. I believe it's during
19 the December 19th hearing where she asked me to explain
20 the complaint process. And I did answer the question.
21 All of the Commissioners were present and heard the
22 answer, so I would refer you back to that.

23 Q. Okay. So what was difficult about imaging that
24 then if you were able to answer that -- the question?

25 A. So you're asking me what Denise Marie Nieman

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1 meant on September 7th when she wrote that, and I can't
2 testify to what she meant.

3 Q. What did the County Commission understand was
4 difficult about the enforcement of this ordinance?

5 A. I can refer to the December 19th transcript when
6 I discussed for them what could be difficult. The
7 process would be complaint driven. There would be a
8 code enforcement officer who would investigate. The
9 difficulty concerned collection of the evidence. There
10 would likely be, since it is complaint driven, a
11 complaint; and that would be some evidence regarding the
12 practice of conversion therapy having taken place. But
13 then difficulties could arise regarding the collecting
14 of evidence because of the patient/therapist privilege.
15 That was what the Board heard from me.

16 Q. Uh-huh. Does the code enforcement officer have
17 to observe a violation before he can issue a citation?

18 A. No.

19 Q. So, if somebody calls and complains about trash
20 in somebody's yard, is the code enforcement officer able
21 to issue a citation to the owner of that property
22 without going out and visually confirming that trash, in
23 fact, exists in somebody's yard?

24 MS. FAHEY: Form. Scope.

25 THE WITNESS: I'm sorry. I may have

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1 misunderstood your first question. A code enforcement
2 officer issues a notice of violation after there has
3 been some evidence collected of a violation. Do they
4 have to witness it in the case of conversion therapy?
5 No, they would not have to be in a therapist's office
6 while conversion therapy was being practiced.

7 BY MR. MIHET:

8 Q. In the case of other violations that Code
9 Enforcement is charged with enforcing, would they have
10 to witness a violation in order to issue a citation?

11 MS. FAHEY: Form. Scope.

12 THE WITNESS: I can't tell you whether they
13 would have to witness a violation as to every ordinance
14 that they enforce.

15 BY MR. MIHET:

16 Q. Can you think of any ordinances where they would
17 not have to witness a violation?

18 MS. FAHEY: Form. Scope.

19 THE WITNESS: I -- again, I thought the
20 whole issue of code enforcement ordinances, all of the
21 ordinances that they enforce were -- was removed from
22 the topics for today's deposition, if I'm not mistaken.

23 MR. MIHET: Why don't you let the attorneys
24 worry about what is and is not proper scope and just
25 answer the question until you receive an instruction to

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1 the contrary from your attorney, please.

2 THE WITNESS: I've been prepared as a
3 30(b)(6) witness to testify regarding matters of
4 examination provided in your second amended with the
5 recognition that there would be no questions regarding
6 number thirteen, the extent to which the Defendant
7 regulates any other clinical practices, any other
8 types --

9 MR. MIHET: This is not a question about the
10 extent to which the Defendant regulates other practices.
11 This is a question directed to enforcement.

12 BY MR. MIHET:

13 Q. And my question to you is: Are you aware of any
14 other instances where a code enforcement officer can go
15 out and -- or can issue a citation without first
16 visually confirming that a violation has taken place?

17 A. I don't know.

18 MS. FAHEY: Form. Beyond the scope.

19 MR. MIHET: You don't know. Okay. You
20 could have saved ten minutes if you had just given me
21 that answer earlier, but we can trudge on if you require
22 me to pull it out of you.

23 THE WITNESS: I'm having some problems
24 understanding your questions. They seem somewhat
25 inarticulate.

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1 MR. MIHET: If that's the case, Ms. Hvizd,
2 if you misunderstand one of my questions, I'd like for
3 you to abide by the agreement we had at the beginning of
4 the session that we had today where we said that, if you
5 do not understand the question I'm asking, you would ask
6 me to repeat and clarify it.

7 THE WITNESS: I believe I've done that.

8 MR. MIHET: Actually, instead what you've
9 done is to assert that my question is going into an area
10 that's not within the scope of this deposition and a
11 whole host of other things but tell me that you didn't
12 understand my question. If you don't understand a
13 question that I ask, please let me know; and I will do
14 my best to rephrase it.

15 THE WITNESS: Will do.

16 MR. MIHET: Thank you.

17 MS. FAHEY: And the witness is absolutely
18 correct that you're asking her about ordinances that are
19 not the ordinance at issue.

20 MR. MIHET: Okay. Well, that's an objection
21 for you to make --

22 MS. FAHEY: And I said --

23 MR. MIHET: -- not for the witness. So your
24 objection is noted for the record.

25 MS. FAHEY: And the witness has every right

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1 to let the record reflect for what she was prepared to
2 testify today because it needs to be clear what you're
3 asking her as the County and what you're asking her in
4 her individual capacity.

5 Is now a good time to take a comfort break?

6 MR. MIHET: Sure.

7 (Recess)

8 (Plaintiffs' Exhibit No. 17 marked for identification)

9 BY MR. MIHET:

10 Q. Okay. Ms. Hvizd, I'm showing you now what we
11 have marked as Plaintiffs' Exhibit 17.

12 MS. FAHEY: The County is asserting its
13 objections that it had for the previous e-mails that
14 didn't involve the Board of County Commissioners.

15 MR. MIHET: Okay.

16 BY MR. MIHET:

17 Q. This is additional e-mail communications between
18 you and Ms. Nieman and Mr. Hoch and others. If you will
19 look at the very bottom of the first page, which is
20 PBC-15551, there's an e-mail from you. The header is at
21 the bottom, Wednesday, August 9, 2017. And then the
22 e-mail continues on the next page, the second page of
23 the exhibit. Do you see that?

24 A. Yes.

25 Q. And you say: Hello Rand. A question has

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1 occurred regarding enforcement of a conversion therapy
2 ban ordinance. Enforcement of such an ordinance
3 necessarily implicates review of a minor's medical
4 records.

5 Do you see that?

6 A. I do.

7 Q. So who raised the question?

8 A. I don't recall.

9 Q. Okay. Now, you then ask: Will you please
10 address how a conversion therapy ban ordinance can be
11 enforced given the protections afforded a minor's
12 medical records and the patient/therapist privilege.

13 Do you see that?

14 A. Yes.

15 Q. So, unlike in the -- some of the prior e-mails
16 that we've discussed, in this particular e-mail, you
17 specifically tell Mr. Hoch that someone had raised the
18 question. And you ask him to comment on it without
19 stating or implying that you, yourself, take that
20 position, correct?

21 MS. FAHEY: Form.

22 THE WITNESS: Incorrect.

23 MR. MIHET: Okay.

24 THE WITNESS: The second sentence is exactly
25 that. Enforcement of such an ordinance necessarily

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1 implicates review of a minor's medical records. It
2 doesn't --

3 MR. MIHET: Okay.

4 THE WITNESS: -- because we can get the
5 child to talk. If the child has a complaint and they
6 give it to us, we have evidence on which to move
7 forward. This, again, is my devil's advocate. I state
8 a point of view that's the most extreme opinion against
9 what I'm asking him to address.

10 Q. So you're -- you're specifically asking him to
11 address that point, right?

12 A. After I state as a fact that enforcement of an
13 ordinance necessarily implicates review of the minor's
14 medical records when it doesn't.

15 Q. Which is right after you say that a question has
16 arisen, correct?

17 A. Correct.

18 Q. Now, is it the County's position then that an
19 alleged violation of the ordinance can be prosecuted
20 without reviewing the minor's medical records?

21 A. Yes.

22 Q. How would that be possible?

23 A. The child would make a complaint that would be
24 observed, listened to and then repeated in front of a
25 special master during a hearing.

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1 Q. How would a therapist defend against that charge?

2 A. The therapist would present their case to the
3 special master.

4 Q. And would make use of the child's medical records
5 in the process?

6 A. Could make use of the child's medical records.
7 Could simply testify regarding their recollections
8 without records.

9 Q. You say in the second paragraph: I'm copying
10 Robert Santos-Alborna, the County's Code Enforcement
11 Officer, and Shannon Fox, the Assistant County Attorney
12 who represents Code Enforcement. If we are given
13 direction to draft a Conversion Therapy Ban Ordinance,
14 Robert and Shannon will be involved in the process.

15 Do you see that?

16 A. Yes.

17 Q. Were they involved?

18 A. Actually, yes. And I should clarify. This is
19 the Robert Santos-Alborna whose name I referenced as
20 probably having massacred when I said it the first time.
21 And there were two additional people that I didn't
22 mention to you who were involved in the process.
23 Shannon Fox, Assistant County Attorney, she does
24 represent Code Enforcement. She participated in a
25 meeting with Dr. Hamilton. And then also

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1 Dr. Tony Spaniol, he was involved in that same meeting.
2 So he also participated in drafting of the ordinance to
3 a certain extent. I mean, they certainly didn't put any
4 words on paper; but they were part of the process.

5 Q. What was their involvement in that process?

6 A. Both Shannon Fox and Tony Spaniol attended a
7 meeting with Dr. Hamilton. I believe there was an
8 attorney by the name of Mast who was on the phone at the
9 time of the meeting. Todd Bonlarron was present. I was
10 present. And, if I didn't mention Dr. Ginsburg, she was
11 there, as well.

12 Q. Okay. Other than attending that meeting, did
13 these two individuals have any other involvement?

14 A. And, by the two individuals, you mean,
15 Tony Spaniol or Shannon Fox?

16 Q. I'm sorry. I mean, Robert Santos-Alborna and
17 Shannon Fox.

18 A. Yes. Robert Santos-Alborna was consulted prior
19 to this deposition in preparation for this deposition.
20 I think, when you read it, you read him as a code
21 enforcement officer. In fact, he's the director that I
22 was speaking of. That's what I was trying to explain.

23 Q. Okay.

24 A. So Ramsay Bulkeley is the division -- is the
25 director of Planning, Zoning and Building.

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1 Robert Santos-Alborna is the County's Code Enforcement
2 director. So he's under Ramsay Bulkeley. And he was
3 consulted in helping me prepare for
4 enforcement-of-the-ordinance questions.

5 Q. Okay. In the e-mail above of one we just read
6 which starts at the half of the first page, Mr. Hoch
7 responds to you and says: Helene, I truly do not
8 understand why you're making this so complicated.

9 Do you see that?

10 A. I do. That's someone not liking my devil's
11 advocate, again. I get this all the time.

12 Q. What did you think about his tone in this e-mail?

13 A. About his tone in this e-mail?

14 Q. Yeah.

15 MS. FAHEY: Objection. Relevance. Form.

16 THE WITNESS: I viewed him as being upset
17 with my statement of facts that I was calling on him to
18 try to contest. And, actually, there's another e-mail
19 where I think he expresses that tone even more clearly
20 suggesting that I shouldn't have anything to -- or that
21 I perhaps was not the best person to give this
22 assignment to. And I think you'll -- if you listen to
23 the transcripts, you'll hear him say that I fought with
24 him regularly or challenged him regularly throughout the
25 drafting of this ordinance. So he's made it clear that

1 we had -- he did debate about the ordinance.

2 BY MR. MIHET:

3 Q. So he says in the second paragraph: For the
4 ordinance to be enforced, the minor has to come forward
5 and file a complaint. So the minor can clearly waive
6 confidentiality of his or her own medical records.

7 Do you see that?

8 A. Yes.

9 Q. So did that answer your question that you had
10 posed to him in that previous e-mail?

11 A. He provided me with an answer that -- I would
12 never rely on someone else's answer without conducting
13 my own independent research though. And, during the
14 December 19th -- or perhaps it was the 5th. During the
15 December 5th hearing, I provided more detail for the
16 Board of County Commissioners regarding my
17 understanding -- my understanding, rather, of a minor's
18 ability to waive the patient/therapist privilege.

19 Q. So, in your response to him -- that's at the top
20 of this page -- you say: Our Code Enforcement division
21 will be relying on complaints to begin their
22 investigation. We may not, in fact likely will not,
23 have a minor's consent. Of course, we would likely need
24 a minor's parent's consent, correct, to rely on in order
25 to secure a minor's medical records. Your help in

1 addressing this concern is greatly appreciated.

2 So he had not yet addressed your concern, which
3 is why you were asking him for his continued input?

4 A. I think he started to address it, yes. I think
5 you just read the part where he was saying the minor has
6 to come forward and file a complaint so the minor can
7 clearly waive confidentiality. And then I was playing
8 devil's advocate in saying that we may not, in fact
9 likely will not, have a minor's consent. So what do we
10 do then?

11 Q. So, when you say: Of course, we would likely
12 need a minor's parent's consent, correct, you don't
13 actually mean that? You're just writing it down just to
14 test him to get him to respond back to you with --

15 A. I'm taking --

16 Q. -- his position?

17 A. Yes. I'm taking the most firm possession against
18 his in order to force him to consider it and give me
19 arguments against that.

20 Q. Okay. Let me ask you, with respect to code
21 enforcement, how many code enforcement officers does the
22 County of Palm Beach have?

23 A. I believe the total number is about twenty-five,
24 if I'm not incorrect. And there are five senior code
25 enforcement officers. And any conversion therapy --

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1 yeah, senior code enforcement officers. Any conversion
2 therapy complaints would be directed to the senior code
3 enforcement officers. So there would be five that would
4 be handling enforcement of the Conversion Therapy Ban
5 Ordinance.

6 Q. Now, the ordinance, itself, as I recall, does not
7 specify that it's going to be handled by the senior code
8 enforcement officers.

9 A. No. Our ordinance would never differentiate
10 between one level or another of code enforcement
11 officers --

12 Q. So where does --

13 A. -- as far as I know.

14 Q. So where does that rule, for lack of a better
15 term, come from then, that code -- that conversion
16 therapy complaints would be referred to the five senior
17 code enforcement officers?

18 A. In preparing for this deposition on behalf of the
19 County, I consulted with Robert. And I've given his
20 last name a couple of times. I'm not recalling it very
21 quickly. He was the one as the -- excuse me.
22 Robert Santos-Alborna. And, in consulting with him, he
23 was the one who said that this ordinance would be
24 enforced by the five senior code enforcement officers.
25 Would be -- and I should clarify enforced. It would be

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1 their responsibility to create notices of violation and
2 conduct investigation and then prosecute the matter in
3 front of a special master.

4 Q. Is this a written rule that exists, or is this
5 just a matter of custom or practice that he has
6 developed for his department?

7 A. The code enforcement director has the discretion
8 to assign cases to code enforcement officers as he sees
9 fit. And he has expressed his -- orally expressed, not
10 in writing, his discretion would be to allow senior code
11 enforcement officers to enforce this ordinance.

12 Q. Did he express then the intention not to allow
13 enforcement for this ordinance to go to any of the other
14 twenty enforcement officers?

15 A. I was informed by Mr. Alborna, Santos-Alborna,
16 rather, that this ordinance would be enforced by the
17 senior code enforcement officers. And there are five of
18 them.

19 Q. And, just so I'm clear, the five are part of the
20 twenty-five or in addition to the twenty-five?

21 A. Part of.

22 Q. Part of the twenty-five.

23 A. And, if I could add this to the group of -- the
24 list of three other questions that I was able -- that
25 I'm given permission, hopefully, to go back and verify,

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1 I would want to verify that precise number. I know
2 there are five senior code enforcement officers who will
3 enforce this. But I would like to be able to verify the
4 total number of code enforcement officers.

5 Q. Okay. Did Mr. Alborna tell you why he would
6 refer code enforcement investigations to the senior code
7 officers in -- for this ordinance?

8 A. Right. The director of the Code Enforcement
9 division believes that the Conversion Therapy Ban
10 Ordinance would require enforcement by people with
11 experience in enforcing County ordinances, the most
12 experience. And the senior code enforcement officers
13 are those people.

14 Q. And you said the -- who would believe that that
15 would --

16 A. Mr. Alborna.

17 Q. Mr. Alborna. Okay.

18 A. Uh-huh.

19 Q. And why does he believe that enforcement would
20 require the most experienced officers?

21 A. I don't know that we got to the -- to the
22 question of why. If that was something that I was
23 supposed to be prepared about to testify today, I
24 certainly will try.

25 MS. FAHEY: Scope.

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1 THE WITNESS: I guess I would simply suggest
2 that he believed that those with the most experience
3 would be the best.

4 BY MR. MIHET:

5 Q. What is the educational requirement for the five
6 senior code enforcement officers?

7 A. May I refer to the job description for the senior
8 code enforcement officers?

9 Q. Sure.

10 A. Thank you.

11 Q. Is that a document that has been produced in this
12 litigation?

13 MS. FAHEY: No.

14 MR. MIHET: Do you have a copy for me?

15 MS. FAHEY: We'll make one. Would you like
16 me to take a break and do it right now?

17 MR. MIHET: Let's do it. Off the record.

18 (Recess)

19 (Plaintiffs' Exhibit No. 18 marked for identification)

20 BY MR. MIHET:

21 Q. Ms. Hvizd, we have marked a document that's
22 Exhibit 18. It's titled Senior Code Enforcement
23 Officer. Can you tell us what this document is?

24 A. Yes. This document is the job description for
25 the position of senior code enforcement officer for Palm

1 Beach County.

2 Q. Okay. And, so looking at this document, are you
3 able to tell me what the educational requirements are
4 for the senior code enforcement officers?

5 A. So, as far as education, meaning, the education
6 they have to be hired, their minimum entrance
7 requirements on the second page, graduation from high
8 school or an equivalent recognized certification,
9 preferably supplemented with college-level course work
10 in public or business administration or
11 a closely-related field and then three years' experience
12 in the interpretation and enforcement of land use
13 regulations as a code enforcement officer including one
14 year experience in a supervisory capacity or any
15 equivalent combination of related training and
16 experience.

17 Q. How many of the five senior code enforcement
18 officers have educational training beyond a high school
19 diploma?

20 A. That answer I cannot give you. I can get it for
21 you, but I do not know as I sit here. I know they must
22 have at least a high school or equivalent.

23 Q. Okay. Do the senior code enforcement officers
24 hold any professional licenses?

25 MS. FAHEY: Scope.

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1 THE WITNESS: There may be some senior code
2 enforcement officers that are licensed in other areas.

3 Do you mean related to code enforcement --

4 MR. MIHET: No. I mean --

5 THE WITNESS: -- or unrelated?

6 MR. MIHET: I mean, unrelated.

7 BY MR. MIHET:

8 Q. Are any of them, for example, licensed mental
9 health professionals by the State of Florida?

10 A. Oh, that, I wouldn't be able to answer.

11 MS. FAHEY: Scope.

12 BY MR. MIHET:

13 Q. You don't know?

14 A. I don't know.

15 Q. Okay. Have the senior code enforcement officers
16 received any training on how to investigate complaints
17 arising under the ordinance?

18 A. No.

19 Q. Is there any training planned for them?

20 A. Yes. They will be trained before they're asked
21 to enforce the ordinance.

22 Q. When will they be trained?

23 A. The training has not been assigned a date yet.
24 There's no date.

25 Q. Have the training materials been developed?

1 A. No.

2 Q. I take it they have not been asked to take any
3 enforcement actions to date?

4 A. Correct.

5 Q. What will the training consist of?

6 A. We don't know yet because it's not been written
7 down.

8 Q. Okay. Are there any enforcement guidelines or
9 memoranda that can be provided to the senior code
10 enforcement officers?

11 A. There are enforcement guidelines in general and
12 standard operating procedures that apply to the job of
13 senior code enforcement officer. So all of those would
14 apply.

15 Q. Are there any enforcement guidelines or memoranda
16 relating to the conversion therapy ordinance?

17 A. No.

18 Q. Okay. Is there any plan to issue any enforcement
19 guidelines or memoranda with respect to enforcement of
20 the ordinance?

21 A. Yes.

22 Q. What is that plan?

23 A. To create standard operating procedure and to
24 implement it.

25 Q. When will they be created?

1 A. I don't know. The date's not been set.

2 Q. What will they include?

3 A. The standard operating procedures include
4 guidance offered for code enforcement officers regarding
5 the manner of investigation and the manner of
6 presentment of the case, presenting the case to the
7 special magistrate. So it would include the procedures
8 they should follow.

9 Q. Now, this ordinance has been in effect for just
10 about nine months. Actually, ten months, correct?
11 December 19th of 2017?

12 A. I think it actually became effective when it was
13 filed with the state, if I'm not mistaken. Yeah. The
14 effective date is when it was filed with the state.
15 That was the 21st of December.

16 Q. Okay. So just about ten months. Why haven't
17 those enforcement guidelines or memoranda been issued
18 already?

19 A. Because we haven't been enforcing the statute --
20 the ordinance rather.

21 Q. So the plan is to wait until the first
22 enforcement situation arises and then issue the
23 guidelines or memoranda?

24 A. I don't know that there is a plan that's been
25 established. But, if there was, it wouldn't be to wait

1 until --

2 Q. Okay. So there is no plan?

3 A. As far as I know, there is no plan.

4 Q. Is there a current policy within the County not
5 to enforce the conversion therapy ordinance?

6 A. I'm not aware of a policy.

7 Q. Okay. If there's a complaint, it will be
8 enforced?

9 A. As far as I know, yes.

10 Q. Do the five senior code enforcement officers have
11 any expertise or experience in enforcing other
12 regulations against licensed professionals?

13 A. May I clarify my last question, please -- or my
14 last answer rather?

15 Q. Yes.

16 A. You asked, if there was a complaint, if it would
17 be enforced. So, obviously, that would depend on
18 whether the complaint occurred in an unincorporated area
19 of Palm Beach County or an incorporated area where our
20 ordinance applied. But, in that situation, yes, it will
21 be enforced.

22 Q. Okay.

23 A. So your question now? I'm sorry. I'm going to
24 have to ask you to repeat it.

25 Q. Do the five senior code enforcement officers have

1 any expertise or experience in enforcing other
2 regulations against licensed professionals?

3 MS. FAHEY: Form. Scope.

4 THE WITNESS: And I cannot answer that
5 question.

6 BY MR. MIHET:

7 Q. You don't know?

8 A. No, I believe my 30(b)(6) asked me for
9 enforcement of this ordinance, not others. And I didn't
10 prepare an answer for other ordinances.

11 Q. Well, I think the magistrate judge was fairly
12 clear in stating that we would be permitted to ask
13 questions about the expertise and experience of the code
14 enforcers, and so I think that's related to that issue.

15 A. This sheet provides you with the experience:
16 Examples of work; nature of work; required knowledge,
17 skills and minimum entrance requirements for the people
18 who will be enforcing the ordinance.

19 Q. Okay. So you're not able to identify any
20 expertise or experience that the five senior code
21 enforcement officers have in enforcing regulations
22 against licensed professionals?

23 MS. FAHEY: Scope.

24 THE WITNESS: And, again, I can tell you
25 that these are examples of the work that they do. So

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1 they certainly supervise and review investigations of
2 complaints involving land use, noise, fences, related
3 matters arising from the enforcement of the zoning and
4 accessory codes.

5 Q. Okay.

6 A. That they prepare evidence against violators and
7 present cases at meetings of the Code Enforcement Board;
8 that they investigate citizen complaints to determine
9 validity; issue violation notices, notices to correct --

10 Q. Let me --

11 A. -- and citations.

12 Q. I'm sorry. Let me interrupt because we'll make
13 it easier for the court reporter not -- not reading all
14 these extraneous things. Is there anything in this
15 document, Exhibit 18, that speaks to any expertise or
16 experience of the five senior code enforce officers in
17 enforcing regulations against licensed professionals?

18 MS. FAHEY: Form. Scope.

19 THE WITNESS: I believe that I know that
20 code enforcement does, in fact, enforce ordinances
21 against licensed contractors. So, yes, they do that.

22 BY MR. MIHET:

23 Q. Okay. What --

24 A. And these are the things they would do;
25 investigate, prepare evidence and present cases.

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1 Q. What are you thinking of when you say ordinances
2 against licensed contractors?

3 MS. FAHEY: Form. Scope.

4 THE WITNESS: There are County ordinances
5 that require licensure for certain contractors. And so
6 those who practice without a license, there would be
7 code enforcement actions against them.

8 BY MR. MIHET:

9 Q. Anything else?

10 A. Oh, I --

11 MS. FAHEY: Form.

12 Scope. The request for additional
13 ordinances has already been ruled upon by
14 Judge Reinhart.

15 MR. MIHET: I'm asking only about experience
16 or expertise that the five senior code enforcement
17 officers have in enforcing regulations against licensed
18 professionals.

19 MS. FAHEY: I believe that falls under topic
20 thirteen.

21 MR. MIHET: I believe it falls under the
22 experience and expertise.

23 THE WITNESS: To the extent there are other
24 licensed professionals who may be cited with code
25 enforcement citations, they have experience in doing

1 that.

2 BY MR. MIHET:

3 Q. Do the five senior code enforcement officers have
4 any expertise or experience in enforcing regulations
5 against licensed health professionals?

6 MS. FAHEY: Form. Outside the scope.

7 THE WITNESS: To the extent that there are
8 licensed health professionals who might be violating a
9 county code, then they would have experience in
10 enforcing that.

11 BY MR. MIHET:

12 Q. Like, for example, like a licensed health
13 professional having trash outside their office?

14 MS. FAHEY: Form. Outside the scope.

15 THE WITNESS: That would not be a citation
16 as far as I can tell based on their licensure. Are you
17 asking me based on their licensure or just simply based
18 on any code violation?

19 BY MR. MIHET:

20 Q. Well, I guess I'm asking -- you say, "to the
21 extent." Do they or do they not have experience or
22 expertise in enforcing regulations against licensed
23 health professionals?

24 MS. FAHEY: Form. Outside the scope.

25 THE WITNESS: So, if you're asking me

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1 whether there are other code enforcement -- whether
2 there are other code provisions, rather, that are
3 written against -- or that are written in such a way
4 that they would impose a burden on a licensed mental
5 health professional, I'm not prepared to answer that
6 question. I understood it was removed from the scope of
7 today's examination.

8 Q. So I'm asking you if they have any expertise or
9 experience in enforcing regulations against licensed
10 health professionals?

11 A. I can't answer that question. I don't know.

12 Q. Okay. Does the County have any concerns about an
13 unlicensed individual having to determine whether a
14 licensed professional -- health professional acted
15 correctly or incorrectly?

16 MS. FAHEY: Form.

17 THE WITNESS: The County has placed the
18 enforcement of the conversion therapy ban on their Code
19 Enforcement division, so they must not have concerns
20 about it.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. How is it possible for an unlicensed code
24 enforcement officer to determine whether a particular
25 mode of therapy provided by a licensed health

1 professional violates the ordinance?

2 MS. FAHEY: Form.

3 THE WITNESS: I think code enforcement
4 officers would collect evidence and then determine,
5 based on the evidence they collected, whether a
6 violation of the ordinance had taken place.

7 BY MR. MIHET:

8 Q. And so, to do that, they would have to determine
9 what it is that the licensed health professional did or
10 did not do during the course of therapy, correct?

11 A. They would likely rely on complaints. I think
12 we've said that throughout.

13 Q. Yes.

14 A. And the Commissioners were advised that this
15 would be complaint driven.

16 Q. Yes.

17 A. So they would rely on a complaint and then
18 compare that complaint to the language of the ordinance
19 to determine whether, in fact, a licensed health
20 professional conducted a therapy that sought to change
21 an individual's sexual orientation or gender identity.

22 Q. And so, in a typical case -- not a typical. But
23 let's suppose that there's a case where a minor comes
24 forward and makes a complaint; and he says, during
25 therapy sessions, Ms. Hamilton said to me X, Y and Z

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1 and I believe that violates the ordinance. What would
2 happen next in terms of enforcement?

3 A. There would be an investigation.

4 Q. Okay. And what would that consist of?

5 A. Well, you've given me a hypothetical with an X
6 and a Y and a Z. So, obviously, we would need quite a
7 bit more detail than that.

8 Q. Well, we would need to know what the X, Y and the
9 Z was that was said allegedly to the minor, correct?

10 A. At least.

11 Q. And then we would need someone to determine
12 whether the X, Y and the Z that was said to the minor is
13 an acceptable mode of treatment or whether it runs afoul
14 of the ordinance, correct?

15 MS. FAHEY: Form.

16 THE WITNESS: The ultimate decider of fact
17 in these cases is the special master.

18 BY MR. MIHET:

19 Q. Well, but the initial decider of fact would have
20 to be the code enforcement officer issuing a citation?

21 A. They would bring a notice of violation to the
22 special master.

23 Q. And so, in order to issue the notice of
24 violation, the code enforcement officer would have to
25 initially determine whether or not what was said, the X,

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1 Y and the Z, is an acceptable mode of mental health
2 practice or whether it is something that's prohibited by
3 the ordinance?

4 A. They would -- the -- I will agree with you that
5 the code enforcement officer would need to compare the
6 evidence they had with the language of the ordinance to
7 determine whether, in fact, there was a provider who
8 sought to change an individual's sexual orientation or
9 gender identity.

10 Q. And the County has no problems in trusting a --
11 an unlicensed code enforcement officer to -- to make
12 that initial decision?

13 MS. FAHEY: Form.

14 THE WITNESS: Code enforcement officers
15 would be the ones who would initial -- who would
16 initiate a notice of violation. So no.

17 MR. MIHET: Okay.

18 THE WITNESS: The ultimate decider of fact
19 is the special master though.

20 (Plaintiffs' Exhibit No. 19 marked for identification)

21 MS. FAHEY: For the record, we reassert the
22 objections that we've been making for e-mails that don't
23 involve the whole Board.

24 MR. MIHET: Okay.

25 BY MR. MIHET:

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1 Q. I've just handed you what we've marked as Exhibit
2 19, which is some more e-mail communications between
3 Mr. Hoch and Ms. Nieman and you and Mr. Bonlarron. I'll
4 direct your attention, first, to the middle of the
5 second page where there is a December 12, 2017, e-mail
6 from Ms. Nieman to Mr. Hoch. Do you see that?

7 A. Yes.

8 Q. In this e-mail, Ms. Nieman says: Hi Rand, I know
9 a lot of work has gone into the ordinance and that
10 efforts are still being made now to make changes
11 acceptable to both sides; but the ordinance up for final
12 reading is what was before the BCC on the first reading
13 with some changes based on BCC comments.

14 Do you see that?

15 A. Yes.

16 Q. Then she says: The Tampa challenge of an
17 ordinance that is practically identical to ours changes
18 things now.

19 Do you see that?

20 A. Yes.

21 Q. And then she says: I will be recommending that
22 the BCC not move forward until a determination is made
23 in that case. It would be crazy to adopt an ordinance
24 that is under review. Surely, you understand. When the
25 court rules, assuming all's well, we'll bring it back

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1 for first and second reading, again, eliminating all the
2 questions about its legality. We'll be on very solid
3 ground. I trust you understand.

4 Do you see that?

5 A. Yes.

6 Q. Why would it be crazy to adopt an ordinance that
7 is under review by a court?

8 MS. FAHEY: Form.

9 THE WITNESS: Ms. Nieman discussed that with
10 the Board of County Commissioners during the
11 December 19th meeting at the beginning of consideration
12 on second reading of the ordinance. And --

13 Q. Did she tell them that it would be crazy to adopt
14 an ordinance that is under review?

15 A. I believe she states, I would never recommend.
16 Let me find exactly what she states. So this is on PBC
17 Bates number 434. And she says: I would strong -- we
18 had a chance to review that complaint -- she's referring
19 to the complaint in the City of Tampa case -- since last
20 meeting. And it really is an ordinance that's similar
21 to ours. I would strongly recommend that the Board not
22 take action on this but to hold off and direct staff to
23 monitor the court proceeding. That way we can learn and
24 have a federal court case in Florida as to what the --
25 the law is in Florida.

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1 Q. Okay. So I missed the part where she says why
2 it's crazy to adopt an ordinance that's under judicial
3 review.

4 MS. FAHEY: Form.

5 THE WITNESS: She doesn't use the word
6 "crazy" --

7 MR. MIHET: Okay.

8 THE WITNESS: -- but she strongly recommends
9 that you wait -- that the Board wait and not take any
10 action.

11 MR. MIHET: All right.

12 THE WITNESS: And then she does say: Then I
13 stopped short of this I believe -- no, I think I may
14 have said -- we can learn and have a federal court case
15 in Florida as to what the law is in Florida. So I think
16 that's the basis for a statement that it would be crazy
17 because you'd want to know, if an identical ordinance
18 had been challenged, what the outcome of that challenge
19 was, as I believe you noted in several of her other
20 e-mails --

21 BY MR. MIHET:

22 Q. So did the --

23 A. -- where she said --

24 Q. I'm sorry. Are you done?

25 A. No.

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1 Q. Okay.

2 A. -- where she said she would want to see if other
3 municipalities' ordinances had been challenged and what
4 the outcome was.

5 Q. Okay. This was -- this was finally the chance to
6 have that challenge with an outcome that would inform
7 the County on whether or not it would be wise to
8 proceed?

9 A. This was the first opportunity, correct.

10 Q. Okay. Now, did the County Commission adopt her
11 recommendation to hold off; or did they do what she
12 thought would be a crazy thing to do?

13 MS. FAHEY: Form.

14 THE WITNESS: They took a vote on that
15 matter and -- of postponing. And I believe the vote was
16 five to two against postponing. So they decided to move
17 forward.

18 BY MR. MIHET:

19 Q. Okay. Now, when she explained this to Mr. Hoch,
20 she said twice, I believe, "I'm sure you'll understand,"
21 or words to that effect. Did he understand?

22 A. I don't know.

23 Q. Well, if you'll look at the e-mail right above
24 the one we just read, which is the top of page two of
25 this exhibit, you have an e-mail from Mr. Hoch to

1 Todd Bonlarron, right?

2 A. Yes. I see an e-mail, December 12, 2017, at
3 eleven-of-four.

4 Q. Yes.

5 A. That's what you're referring to?

6 Q. Yes.

7 A. Yes.

8 Q. So he basically tells Mr. Bonlarron that this
9 needs to -- to move forward notwithstanding the
10 developments, correct?

11 A. Right. He notes the harm being done to children
12 in Palm Beach County and that it's real. And he
13 suggests that to let this continue for years while the
14 federal courts consider a civil case should be a
15 decision left to the Board of County Commissioners. So
16 he's asking that it remain on the agenda.

17 Q. Okay. On the bottom of the first page,
18 Ms. Nieman responds to him. And she assures him that it
19 will still be on the agenda because it has to stay on
20 the agenda in that first line. Do you see that?

21 A. Yes.

22 Q. Okay. Why don't you read into the record the
23 next paragraph.

24 A. Oh, I'm sorry. Are you referring to the December
25 12th e-mail at eleven-twenty-four from Denise Marie

1 Nieman?

2 Q. Yes.

3 A. Okay. So the first statement here is: It has to
4 stay on the agenda because it was advertised, so no
5 worries there.

6 Q. Right.

7 A. Right.

8 Q. That's what I was saying. She's telling him it
9 has to stay on there because it was already advertised?

10 A. Correct.

11 Q. Okay. So why don't you read the next paragraph
12 into the record.

13 A. Rand, I have never and would never recommend that
14 or county move forward with something under judicial
15 review. This is the ideal issue to go to school on some
16 other local government. Of course, they don't have to
17 accept my recommendation. That has happened before.

18 Q. Okay. And go ahead and read the next one, as
19 well.

20 A. I'm surely in favor of doing whatever we can to
21 help our child -- excuse me -- I'm surely in favor of
22 doing whatever we can to help any child, adult or
23 animal. You should know this by now. But this is an
24 enforceable ordinance anyway. So we're assuming it will
25 have a deterrent effect. Why risk taxpayer exposure

1 now?

2 Q. What do you think she's saying in that paragraph
3 that you just read?

4 MS. FAHEY: Form. Speculation, scope.

5 THE WITNESS: I don't know.

6 MR. MIHET: Okay.

7 BY MR. MIHET:

8 Q. You hesitated a little bit when you read the
9 middle of that -- that second line. Is it because you
10 think, in context, what she meant to say is that this is
11 an unenforceable ordinance anyway?

12 MS. FAHEY: Form.

13 THE WITNESS: I don't know. I can't
14 possibly know what Denise Marie Nieman intended to say
15 in an e-mail she wrote.

16 MR. MIHET: Okay.

17 BY MR. MIHET:

18 Q. Does it make sense that we're assuming it will
19 have a deterrent effect if the ordinance is enforceable?

20 A. Yes.

21 Q. Okay. Does it make sense that we're assuming it
22 will have a deterring effect if the ordinance is
23 unenforceable?

24 MS. FAHEY: Form.

25 THE WITNESS: No.

1 BY MR. MIHET:

2 Q. Why is she asking, "why risk taxpayer exposure
3 now"?

4 A. I don't know. I can't know why Denise Marie
5 Nieman said anything she said.

6 Q. Now, at the top of that same page, first page of
7 Exhibit 19, you see Mr. Hoch's response. And he says:
8 If the ordinance is not passed on the 19th, the County
9 Commissioners will be seen as giving credence to the
10 Liberty Counsel, the Florida Family Association and the
11 other anti-LGBTQ hate groups who will run with this far
12 and wide. Remember, these groups have to publish the
13 real reasons why the BCC took this action, if they do;
14 and they won't.

15 Do you see that?

16 A. Yes.

17 Q. Was that a concern that the County Commissioners
18 took into account that, if they were to not pass the
19 ordinance on the 19th, that it would be seen as giving
20 credence to the Liberty Counsel and other hate groups?

21 MS. FAHEY: Form. To the extent you're
22 asking about individual Commissioner's motivations,
23 deliberative process, legislative privilege.

24 MR. MIHET: I heard nothing of the sort in
25 my question, but your objection is noted.

1 THE WITNESS: Could you please repeat the
2 question?

3 (Requested portion read back by the court reporter)

4 THE WITNESS: None of the documentation that
5 I reviewed for preparation of a 30(b)(6) deposition on
6 behalf of the County indicates that they took into
7 effect that concern.

8 BY MR. MIHET:

9 Q. You mean, account? Took into account that
10 concern? I think you said took into effect.

11 A. Oh, took into account. Definitely that was my
12 intent.

13 Q. Okay. He says in the next to the last paragraph:
14 In the event, I can't get the votes, can we just have it
15 pulled from the agenda at the meeting without
16 explanation? Broward County is set to move forward on
17 their ordinance on the second reading in January. And I
18 wouldn't want your recommendation to also carry over to
19 a large County with a lot of at-risk kids.

20 Do you see that?

21 A. Yes.

22 Q. What was he asking you and Denise to do?

23 MS. FAHEY: Form.

24 THE WITNESS: In the event he could not get
25 the votes, he asked whether it could just be pulled from

1 the agenda at the meeting without explanation.

2 BY MR. MIHET:

3 Q. And I didn't see a response to his request. Was
4 there a response to his request?

5 A. I don't recall.

6 Q. Was there a decision made as to whether or not it
7 would just be pulled from the agenda without
8 explanation?

9 A. Denise Marie Nieman's statement is that it has to
10 stay on the agenda because it was advertised. So that
11 was the case.

12 Q. Okay.

13 (Plaintiffs' Exhibit No. 20 marked for identification)

14 BY MR. MIHET:

15 Q. So, Ms. Hvizd, I've handed you a document we've
16 marked as Exhibit 20, which I'm sure you will recognize
17 to be the ordinance we have spent the day talking about
18 today, which is Ordinance Number 2017-046, correct?

19 A. Correct.

20 Q. Now, in this document, the way it's presented, we
21 have one ordinance appearing in the first half, the
22 first seven pages. And then -- and then we have another
23 version, the final signed version of that same ordinance
24 in the second half, the last seven pages.

25 A. Correct.

1 Q. Correct?

2 Is that -- is that a typical way of maintaining
3 County ordinances? I think this is how we pulled it
4 from the County's records.

5 So I guess my question is: Is it typical for the
6 County to maintain prior drafts of an ordinance?

7 A. When --

8 MS. FAHEY: Form. Scope.

9 THE WITNESS: When there is a strikethrough
10 version of an ordinance, it's presented along with a
11 clean copy.

12 MR. MIHET: Okay.

13 BY MR. MIHET:

14 Q. On -- and my understanding -- well, let me ask
15 you. What was your role in the drafting of this
16 ordinance?

17 A. I drafted the ordinance.

18 Q. Okay. And how much of the language in this
19 ordinance is original from you, and how much was
20 borrowed from other ordinances that you consulted?

21 MS. FAHEY: Scope. Form.

22 THE WITNESS: I made changes to placement of
23 language within this ordinance from others. But I
24 believe there is no original language from me. Oh, I'm
25 going to take that back. I believe, at the end of the

1 ordinance, from section five on page six, Bates number
2 PBC-06, violations; section six, penalties; section
3 seven, enforcement; section eight, repeal of laws in
4 conflict; section nine, severability; section ten,
5 inclusion in the code of laws and ordinances; section
6 eleven, captions; and, section twelve, effective date
7 were my language.

8 Q. Okay. And I'm sorry. I missed it. You begin
9 that listing at section five, violations?

10 A. Correct.

11 Q. Okay. So, prior to section five, the -- the
12 language in the ordinance, which is the whereas clauses
13 and sections one through four, I believe you said that
14 does not contain your original language? That was
15 borrowed from other ordinances?

16 MS. FAHEY: Scope.

17 THE WITNESS: Correct with just the slight
18 variation to say, for example, the last whereas clause
19 says here the Palm Beach County Board of County
20 Commissioners desires to prohibit. And that language
21 was borrowed from ordinances of other municipalities
22 that would have had that municipality's name and not
23 Palm Beach County. So I made those changes throughout
24 the last several whereas clauses.

25 Q. I got it.

1 So, for example, on page four in line nine, the
2 whereas clause where it says: Whereas, the Palm Beach
3 County Board of County Commissioners hereby finds the
4 overwhelming research demonstrating that sexual
5 orientations and identity change efforts can pose
6 critical health risks -- I'm going to stop there --
7 that's language that you took from other ordinances; and
8 you swapped the name of the County Commission in this
9 case to insert the Palm Beach County Board of County
10 Commissioners?

11 A. Correct.

12 MS. FAHEY: Scope.

13 BY MR. MIHET:

14 Q. Do you remember -- strike that.

15 What ordinance did you take this language from?

16 MS. FAHEY: Scope.

17 THE WITNESS: This is an amalgamation of
18 several different ordinances, including West Palm Beach,
19 a draft ordinance that was provided to us by the -- that
20 was attached -- I believe it was Miami Beach's -- that
21 was attached to Rand Hoch's e-mail and viewing all of
22 the municipalities' ordinances that had already enacted
23 a conversion therapy ban. So I drew from all of them.

24 Q. Okay. On page three, line twenty-five --

25 A. I'm sorry. I need to expand my answer. I also

1 considered New Jersey's ordinance as well as
2 California's law. Not ordinance but law. Thank you.

3 Q. Uh-huh.

4 And let's flip over to the second half of the
5 document that has the final version of the ordinance.
6 So that's page eight of fourteen, if you look at the
7 top.

8 A. Right. It's the clean copy of the ordinance.

9 Q. Yeah, the clean copy.

10 A. Okay.

11 Q. So now going to page three there, line
12 twenty-five, it says: Whereas, Palm Beach County has a
13 compelling interest in protecting the physical and
14 psychological wellbeing of minors.

15 Do you see that?

16 A. Yes.

17 Q. Why is this recitation in here?

18 MS. FAHEY: Scope.

19 THE WITNESS: To express Palm Beach County's
20 compelling interest to protect the physical and
21 psychological wellbeing of minors.

22 BY MR. MIHET:

23 Q. And why was it important to express that in the
24 ordinance?

25 A. The intent of an ordinance is helpful to express

1 in the ordinance for any questions that arise about the
2 purpose of the ordinance.

3 Q. There's separate recitations about the intent of
4 the Palm Beach County. This one is about its compelling
5 interest assertions. Why is that one important to have
6 in the ordinance?

7 A. In case --

8 MS. FAHEY: Scope.

9 THE WITNESS: -- the ordinance is
10 challenged, you'd like it to be clear what your
11 compelling interest is.

12 MR. MIHET: Okay.

13 BY MR. MIHET:

14 Q. And so it's important then -- it was important
15 then for you to identify the compelling interest in this
16 paragraph?

17 MS. FAHEY: Scope.

18 THE WITNESS: Every aspect, every word of
19 this ordinance is important for one reason or another.

20 MR. MIHET: Okay.

21 BY MR. MIHET:

22 Q. And it was important for the identification of
23 the compelling interest to be comprehensive and
24 exhaustive, correct?

25 MS. FAHEY: Scope.

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1 THE WITNESS: I would not say that I was
2 concerned about being exhaustive in this paragraph. I
3 don't think I considered whether I had listed every
4 compelling interest, no.

5 MR. MIHET: Okay.

6 BY MR. MIHET:

7 Q. So it was important for you to identify the
8 compelling interest, but it was not important to
9 identify all of the compelling interests?

10 MS. FAHEY: Scope.

11 BY MR. MIHET:

12 Q. Is that what your testimony is?

13 A. I definitely believed it was important to
14 identify a compelling interest, and I've done so in this
15 paragraph.

16 Q. Were there other compelling interests that the
17 County was asserting that you did not include in this
18 paragraph?

19 MS. FAHEY: Scope.

20 THE WITNESS: Well, I think, if you look
21 through the number of whereas clauses that are contained
22 in the clean copy of the ordinance, you'll see that much
23 of the language is drawn from professional organizations
24 and includes recitations of their position or position
25 statements that conversion therapy is harmful. So

1 those, of course, were all wrapped up into the
2 compelling interest to protect the physical and
3 psychological wellbeing of minors.

4 MR. MIHET: Right. And that's what that
5 paragraph says.

6 BY MR. MIHET:

7 Q. My question is: Were there other compelling
8 interests that you did not identify in this paragraph
9 that the County was asserting?

10 A. I believe the document speaks for itself in terms
11 of the compelling interests that were presented to the
12 Board of County Commissions. This document is it.

13 Q. And those are them?

14 A. That is the compelling interest protecting the
15 physical and psychological wellbeing of minors.

16 Q. Okay. Now, the whereas clause that talks about
17 the overwhelming research -- and that's page three, line
18 twenty-nine and thirty. I think we've already -- may
19 have read this. So it says: Palm Beach County Board of
20 County Commissioners hereby finds the overwhelming
21 research demonstrating that Sexual Orientation and
22 Gender Identity Change Efforts can pose critical health
23 risks.

24 (Interruption by the court reporter)

25 BY MR. MIHET:

1 Q. It says: Whereas, the Palm Beach County Board of
2 County Commissioners hereby finds the overwhelming
3 research demonstrating that Sexual Orientation and
4 Gender Identity Change Efforts can pose critical health
5 risks. And I'm going to stop there.

6 This overwhelming research that's referenced is
7 the research that's identified in the whereas clauses of
8 the ordinance, correct?

9 A. Correct.

10 Q. There's not some other research that the
11 Commission considered that is not listed in the
12 ordinance here, correct?

13 A. The Commissioners may have considered other
14 evidence. But that was what these words were
15 referencing, only what's in this ordinance. I can't say
16 whether the individual Commissioners considered other
17 evidence.

18 Q. As a group, the BCC considered the research
19 that's identified in the whereas clauses of the
20 ordinance?

21 A. Correct.

22 Q. Okay. Now, this research spans a couple of
23 hundred pages or so, roughly, right?

24 A. You mean, the actual reports, themselves?

25 Q. Yes.

1 A. I believe --

2 Q. It's fairly voluminous?

3 A. I believe it would be probably closer to three
4 hundred. I think the APA report alone is about a
5 hundred and sixty.

6 Q. Okay. Did the Commissioners read all of this
7 research?

8 MS. FAHEY: Form.

9 This is the legislative process privilege.

10 THE WITNESS: I can't testify as to what any
11 individual Commissioner read or didn't read. I can tell
12 you that they were presented with everything that was
13 contained in this ordinance.

14 MR. MIHET: Okay.

15 BY MR. MIHET:

16 Q. You don't know the extent to which the
17 Commissioners actually consulted the research?

18 A. Individual Commissioners? No.

19 Q. Okay.

20 A. I'm here to testify on behalf of seven of them
21 and what they saw and what they read.

22 Q. Okay.

23 A. And they read these words.

24 Q. Okay. Now, did you read the research?

25 A. I read a good deal of it. I will not testify

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1 today under oath where I'm sworn to tell the truth that
2 I read every word of those two-hundred-fifty-plus pages.

3 Q. You're familiar with it?

4 A. I am.

5 Q. Now, the ordinance bans both Sexual Orientation
6 Change Efforts and Gender Identity Change Efforts,
7 correct?

8 MS. FAHEY: Form.

9 THE WITNESS: The ordinance speaks for
10 itself. And, in terms -- it defines conversion therapy
11 as the practice of seeking to change an individual's
12 sexual orientation or gender identity. So that is what
13 is banned.

14 MR. MIHET: Okay.

15 BY MR. MIHET:

16 Q. Now, in the -- you just read from the definition
17 of conversion therapy on page five, correct?

18 A. Correct. PBC Bates code 12.

19 Q. Okay. So, in the context of efforts to change a
20 minor's gender identity, what kinds of efforts to change
21 behaviors, gender identity or gender expressions are
22 prohibited by the ordinance?

23 MS. FAHEY: Form.

24 THE WITNESS: You included the words change
25 behaviors, and that's a defining word. I think our

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1 ordinance defines conversion therapy as the practice of
2 seeking to change an individual's sexual orientation or
3 gender identity.

4 MR. MIHET: Okay.

5 THE WITNESS: So that is what is banned.

6 MR. MIHET: Right.

7 BY MR. MIHET:

8 Q. So I'm asking you focusing specifically on the
9 practice of seeking to change an individual's gender
10 identity.

11 A. Okay.

12 Q. That's banned by the ordinance?

13 A. Correct.

14 Q. And it says: Including but not limited to
15 efforts to change behaviors, gender identity or gender
16 expressions?

17 A. Correct.

18 Q. So my question to you is: What kinds of efforts
19 to change behaviors, gender identity or gender
20 expressions are banned by the ordinance specifically in
21 the context of the gender identity?

22 A. Those that seek to change an individual's gender
23 identity.

24 Q. Okay. So what specific efforts to change
25 behaviors, gender identity or gender expressions are

1 banned by the ordinance?

2 MS. FAHEY: Asked and answered. Form.

3 THE WITNESS: The ordinance speaks for
4 itself and bans all efforts that can -- that would be
5 contained in the words, "a practice seeking to change an
6 individual's gender identity."

7 BY MR. MIHET:

8 Q. Can you give me any particular examples of
9 efforts to change behaviors, gender identity or gender
10 expressions that would be banned by the ordinance as
11 prohibition on the practice of seeking to change an
12 individual's gender identity?

13 A. All efforts that seek to change an individual's
14 sexual orientation or gender identity are banned.

15 Q. I understand. I'm simply asking you to give me
16 an example.

17 A. Any --

18 MS. FAHEY: Form. Asked and answered.

19 THE WITNESS: Any effort. I could not list
20 examples of efforts to change an individual's gender
21 identity.

22 BY MR. MIHET:

23 Q. You cannot give me one?

24 A. Actually, I, again, came here prepared to discuss
25 on behalf of seven members of the Board of County

1 Commissioners what they considered. And they considered
2 these words, "conversion therapy is the practice of
3 seeking to change --

4 Q. Let me stop you because that's -- that's really
5 not my question.

6 You also came here designated to testify about
7 the County's interpretation, enforcement and application
8 of the ordinance. And so I'm asking you the County's
9 position on what types of efforts to change behaviors,
10 gender identity or gender expressions are prohibited by
11 the ordinance? My understanding from your testimony is
12 that you cannot give me a specific example. If that's
13 your answer, please just state so; and we can move on.

14 A. I already said I could not give you an answer --

15 Q. Okay.

16 A. -- to it --

17 Q. Now, let me give you some examples then. If a
18 prepubertal child, say a ten-year-old, who was born a
19 boy has expressed a female gender identity, would the
20 ordinance prohibit a therapist from encouraging that
21 child to embrace his given male body and to align with
22 his assigned gender role?

23 A. If that practice seeks to change the
24 ten-year-old's gender identity, then it would constitute
25 conversion therapy.

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1 Q. Okay. And how do you know if the practice seeks
2 to change the ten-year-old's gender identity?

3 A. You'd have to look at the facts of any individual
4 case. And I think you just laid out facts where someone
5 sought to change an individual's gender identity.

6 Q. And so the answer to my question is the example I
7 just gave you would be prohibited by the ordinance?

8 A. As long as it does seek to change the gender
9 identity. I don't know that you were specific in
10 stating that. So...

11 Q. Well, what I stated, again, is suppose a
12 prepubertal child, a ten-year-old, who was born as a boy
13 has expressed a female gender identity, would the
14 ordinance prohibit a therapist from encouraging that
15 child to embrace his given male body and to align with
16 his assigned gender role?

17 MS. FAHEY: Form.

18 THE WITNESS: If the practice does seek to
19 change the gender identity. So I think I would need to
20 know more facts about exactly what that therapy
21 consisted of.

22 MR. MIHET: Well, it consists of encouraging
23 the child to embrace his given male body, not his female
24 gender identity, and to align his identity with his
25 assigned gender role, that is, his male body.

1 THE WITNESS: Okay. That --

2 MR. MIHET: That's the practice.

3 THE WITNESS: That does sound as if the
4 practice is seeking to change his gender identity, so it
5 would qualify as conversion therapy.

6 BY MR. MIHET:

7 Q. And be prohibited by the ordinance?

8 A. Yes.

9 Q. Now, for that same child, would the ordinance
10 prohibit a therapist from verbally endorsing and
11 supporting behaviors and attitudes that align with the
12 child's sex assigned at birth and verbally discouraging
13 behaviors and attitudes that do not align with the
14 child's gender assigned at birth?

15 MS. FAHEY: Form.

16 THE WITNESS: Only -- the conversion therapy
17 ordinance only bans practices that seek to change an
18 individual's sexual identity.

19 MR. MIHET: Okay.

20 BY MR. MIHET:

21 Q. So a therapist could verbally endorse and support
22 behaviors and attitudes of the child that align with the
23 sex assigned at birth and discourage the behaviors and
24 attitudes of the child that don't align with the child's
25 sex assigned at birth and not -- or that not violate the

1 ordinance?

2 MS. FAHEY: Form.

3 THE WITNESS: As long as there was no
4 practice that sought to change the gender identity, then
5 that would -- that would be the case.

6 BY MR. MIHET:

7 Q. So, as long as the therapist is not intending to
8 change the gender identity, he could -- he or she could
9 engage in the conduct just described without violating
10 the ordinance?

11 MS. FAHEY: Form.

12 THE WITNESS: Correct. The ordinance
13 requires that conversion therapy occurs when a practice
14 seeks to change an individual's gender identity. If
15 there is no seeking to change a gender identity, there
16 is no conversion therapy.

17 BY MR. MIHET:

18 Q. Well, the conduct itself, though, verbally
19 endorsing and supporting behaviors and attitudes that
20 align with the child's sex assigned at birth, whether or
21 not that conduct is -- is harmful, doesn't depend on
22 what's in the mind of the therapist, does it?

23 MS. FAHEY: Form.

24 THE WITNESS: That's -- how can I answer
25 that question? That's your opinion, right?

1 BY MR. MIHET:

2 Q. Well, I guess I'm asking you. The child comes to
3 the therapist having adopted a female gender identity
4 even though the child was born a male; and the therapist
5 engages in a course of therapeutic practice where the
6 therapist is encouraging the child to act like a boy and
7 to have the attitudes of a boy, discouraging the child
8 from acting like a girl and having the attitudes of a
9 girl. That particular therapeutic practice is going to
10 be either harmful or not harmful standing on its own
11 irrespective of what's in the mind of the therapist.
12 Would you agree with me or not?

13 MS. FAHEY: Form.

14 THE WITNESS: I can only speak to our
15 ordinance which bans a practice that seeks to change a
16 gender identity and finds that that practice is harmful.

17 MR. MIHET: Okay.

18 BY MR. MIHET:

19 Q. So, if the therapist does not seek to change the
20 gender identity, then the therapist could engage in this
21 conduct all day long, could verbally endorse and support
22 behaviors that align with the child's male biological
23 body and could verbally discourage behaviors that do not
24 align with the child's male biological body without
25 violating the ordinance?

1 MS. FAHEY: Form.

2 THE WITNESS: In order to violate this
3 ordinance, the practice has to seek to change an
4 individual's sexual orientation or gender identity. If
5 that is not occurring, then there is no conversion
6 therapy.

7 BY MR. MIHET:

8 Q. So now that child --

9 A. I think we've heard several people say they don't
10 seek to change.

11 Q. Sure.

12 A. So that's not conversion therapy.

13 Q. So now that child leaves that therapy session and
14 walks from Ms. Hamilton's office to the code enforcement
15 officer and says, Ms. Hamilton spent a full day with me
16 verbally encouraging me to be a boy even though I
17 identify as a girl; and she spent a full day with me
18 discouraging me from engaging in behaviors and attitudes
19 that are not consistent with my biological body. What
20 does the code enforcement officer have to do now to
21 determine whether or not Ms. Hamilton violated the
22 ordinance?

23 MS. FAHEY: Form.

24 THE WITNESS: The code enforcement officer
25 would take that complaint, determine whether or not that

1 qualified sufficiently as meeting the definition of
2 conversion therapy in order to provide a notice of
3 violation. And then it would be up to the special
4 master to determine whether or not conversion therapy
5 occurred.

6 BY MR. MIHET:

7 Q. And what would he need to know to decide whether
8 or not the conduct complained of amounts to a practice
9 that seeks to change the gender identity of the
10 individual?

11 A. He likely would have enough, based on what you
12 said, to file a notice of violation; and then additional
13 investigation would occur.

14 Q. What would have to be learned in that additional
15 investigation to determine whether or not Ms. Hamilton
16 violated the ordinance?

17 A. It would be up to the special master to determine
18 after hearing both sides, not just the complaint. But,
19 in this case, you're making it a violation filed against
20 Dr. Hamilton. So Dr. Hamilton would appear in front of
21 the special master, as well. Additional evidence would
22 be taken from her. And the special master would
23 determine whether Dr. Hamilton's practice sought to
24 change the individual's gender identity.

25 Q. So, as long as Dr. Hamilton comes in and says,

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1 yes, I engaged in that conduct as described but my
2 intent was not to seek to change the individual's gender
3 identity, then she's off scot-free?

4 MS. FAHEY: Form.

5 THE WITNESS: The special master would still
6 have to make that decision. Of course, in any -- in any
7 case where you argue, there's opportunities to question
8 the credibility of a witness's testimony.

9 Q. So the special master would question witnesses,
10 including minors and children?

11 A. The special master is allowed to question.

12 Q. The witnesses?

13 A. Yes.

14 Q. Okay. What about a younger child, say a
15 six-year-old who was born a boy but who identifies as a
16 girl, likes to dress as a girl, likes to do things that
17 girls do, does not show any interest in things that boys
18 do? This child goes to Dr. Otto. Would the ordinance
19 permit Dr. Otto to seek to help this child to embrace
20 his boyhood and to feel good about being a boy through
21 talk therapy that encourages masculine activities,
22 increasing relationships with male role models, play
23 dates with other boys, et cetera, while discouraging
24 cross-gender behavior?

25 A. Again, the --

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1 MS. FAHEY: Form.

2 THE WITNESS: -- ultimate question is
3 whether or not the practice sought to change the
4 individual's gender identity. So there would have to be
5 a hearing. And all of the evidence would have to come
6 before the special master for that determination to be
7 made.

8 BY MR. MIHET:

9 Q. And, if it is determined that Dr. Otto sought to
10 change the individual's gender identity, then he will
11 have engaged in a -- in conduct prohibited by the
12 ordinance?

13 A. Correct.

14 Q. And, if the evidence reveals that Dr. Otto's
15 intent was not to seek to change the child's gender
16 identity, then he will have -- he will be found not to
17 violate the ordinance?

18 A. Correct.

19 MS. FAHEY: Form.

20 BY MR. MIHET:

21 Q. But, in either situation, the child has been
22 subjected to the same conduct, agreed?

23 MS. FAHEY: Form.

24 BY MR. MIHET:

25 Q. In other words, the child, when Dr. Otto is

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1 encouraging him to be a boy and to feel good about being
2 a boy and, you know, to engage in things that boys like
3 to do and when Dr. Otto is encouraging the child to
4 avoid activities that girls like to do, I mean, the
5 child is already experiencing that conduct and that
6 therapy irrespective of Dr. Otto's intent, right?

7 MS. FAHEY: Form.

8 THE WITNESS: I can only refer to the
9 language of the ordinance. If the practice seeks to
10 change gender identity or gender orientations, that act
11 constitutes conversion therapy. That's a decision that
12 has to be made after gathering all of the evidence.

13 MR. MIHET: Okay.

14 BY MR. MIHET:

15 Q. What about an adolescent who was born female but
16 has been identifying as a male for a time? If that
17 minor seeks therapeutic help in changing gender identity
18 behaviors and expressions back to match her biological
19 body, would the ordinance prohibit a therapist from
20 providing talk therapy to assist with that identity
21 change?

22 MS. FAHEY: Form.

23 THE WITNESS: If the practice seeks to
24 change the individual's gender identity, that would be
25 conversion therapy; and that would be prohibited.

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1 BY MR. MIHET:

2 Q. If the adolescent's intent is to change the
3 gender identity back to female and the therapist assists
4 the adolescent with that goal, that would be prohibited
5 by the ordinance?

6 MS. FAHEY: Form.

7 THE WITNESS: Yes. If the practice does
8 seek to change the adolescent's gender identity, that is
9 within the definition of conversion therapy.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. And it doesn't matter who seeks to change the
13 gender identity, if -- whether it's the child or the
14 therapist, correct?

15 MS. FAHEY: Form.

16 THE WITNESS: I don't know that I would say
17 it doesn't matter.

18 BY MR. MIHET:

19 Q. Well, if the child seeks to change the gender
20 identity or the sexual orientation, for that matter, and
21 the therapist engages in talk therapy to assist with
22 that goal, that would be a violation of the ordinance?

23 A. I think the question would then -- yes, that
24 would be a violation of the ordinance --

25 Q. Okay.

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1 A. -- if that is a practice that seeks to change
2 gender identity.

3 MR. MIHET: Okay. Let's take a break.

4 (Recess)

5 BY MR. MIHET:

6 Q. Ms. Hvizd, getting back to the issue of
7 enforcement, does a complaint have to come from the
8 minor child, himself or herself, in order for it to be
9 investigated by Code Enforcement?

10 A. No.

11 Q. Who else could the complaint come from?

12 A. Anyone.

13 Q. The parent of a child?

14 A. Correct.

15 Q. The friend of a child?

16 A. Yes.

17 Q. Or, in Mr. Hoch's example, the mother of the
18 child of a friend -- or the mother of a -- let me try
19 that back.

20 In Mr. Hoch's example, it could come from the
21 mother whose son's friend was subjected allegedly to
22 therapy?

23 MS. FAHEY: Form.

24 THE WITNESS: A complaint can be made by
25 anyone.

1 MR. MIHET: Okay.

2 BY MR. MIHET:

3 Q. So would a code enforcement officer have to speak
4 with the minor child himself in a situation like that
5 where the complaint comes from someone else in order to
6 determine whether or not a violation took place?

7 MS. FAHEY: Form.

8 THE WITNESS: They would have to collect all
9 evidence available based on an investigation to make a
10 determination whether there was a potential violation.
11 The violation ultimately would be decided by the special
12 master.

13 BY MR. MIHET:

14 Q. So, in a case where the minor child seeks and
15 voluntarily assents to SOCE or GICE and the minor
16 child's parents are okay and have consented to it, as
17 well, but, you know, a neighbor or some other third
18 party bystander has reason to suspect that conversion
19 therapy has taken place, what would a code enforcement
20 officer have to do in order to investigate that kind of
21 an alleged violation of the ordinance?

22 MS. FAHEY: Form.

23 THE WITNESS: Well, code enforcement officer
24 would conduct an investigation that included examination
25 to the extent possible of anyone who had knowledge.

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1 BY MR. MIHET:

2 Q. So, in this particular case, since the child is
3 not complaining and the parent is not complaining and
4 the therapist certainly is not complaining, who else
5 would the code enforcement officer have to speak with?

6 MS. FAHEY: Form.

7 THE WITNESS: The code enforcement officer
8 would attempt to speak to anyone that could have
9 knowledge.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. And, if no one has knowledge other than, you
13 know, a bystander who made the complaint, what is the
14 code enforcement officer to do in that case?

15 A. If no one has knowledge?

16 Q. Yeah.

17 A. Then there will be no other evidence to collect.

18 Q. So the only evidence you would have is the
19 complaint of the bystander that says, hey, I think
20 something wrong is afoot in Dr. Hamilton's office?

21 MS. FAHEY: Form.

22 THE WITNESS: If no one else has knowledge,
23 correct, yes.

24 MR. MIHET: Okay.

25 (Plaintiffs' Exhibit No. 21 marked for identification)

1 BY MR. MIHET:

2 Q. Ms. Hvizd, I have now handed you a document that
3 we have marked as Plaintiffs' Exhibit 21. And it is an
4 e-mail correspondence between Miss -- Dr. Julie Hamilton
5 and yourself. Do you see that?

6 A. Yes.

7 Q. Starting with the second e-mail on the first page
8 of this exhibit, this is a December 11, 2017, e-mail
9 from Dr. Hamilton to you and Todd Bonlarron, subject,
10 tightening the ordinance. Do you see that?

11 A. Yes.

12 Q. And, in this e-mail, Dr. Hamilton suggests an
13 amendment to the ordinance to make it apply only to
14 coercive counseling practices -- sorry -- counseling
15 practices or treatments that seek to change an
16 individual's sexual orientation or gender identity
17 against the individual's will. Do you see that?

18 A. Yes.

19 Q. Do you recall receiving this proposed
20 amendment --

21 A. Yes.

22 Q. -- from Dr. Hamilton?

23 And your response we see at the top of this
24 document, Exhibit 21, you say: Thank you for your
25 suggested edits to the ordinance. We made a couple of

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1 amendments to the ordinance, copy attached. And it is
2 currently circulating for agenda approval. I see that
3 you copied Todd. He would be the person to give me
4 final approval to make your suggested edits, so I will
5 await Todd's direction.

6 Do you see that?

7 A. Yes.

8 Q. Why was Todd the person to give final approval
9 for Miss -- for Dr. Hamilton's suggested amendment?

10 A. I would look to Todd, as the Assistant County
11 Administrator, for direction on how he wanted the
12 ordinance to be presented to the Board of County
13 Commissioners. I signed off for legal sufficiency
14 already. So...

15 Q. Had he had input in the language of the ordinance
16 up to that point?

17 MS. FAHEY: Form. Scope.

18 THE WITNESS: Todd was involved in the
19 drafting of this ordinance. I think I mentioned he
20 attended the meeting with Dr. Hamilton, Shayna Ginsburg,
21 Tony Spaniol and Shannon.

22 You know, I might note, when I received this
23 e-mail, I remember reading it and thinking that these
24 changes were recommended. What Dr. Hamilton said is:
25 Instead of the current ordinance, I would recommend the

1 attached resolution. And, in county government, there's
2 a large difference between an ordinance and a
3 resolution. An ordinance is considered the law as
4 enacted by the County. A resolution, which is -- I
5 think ultimately what one of the other municipalities --

6 MR. MIHET: I'm sorry. I'm going to
7 interrupt you. And I see that, and I didn't ask you
8 about that.

9 BY MR. MIHET:

10 Q. What she told you was that she didn't want this
11 ordinance, right?

12 A. Uh-huh.

13 Q. But then she says in the last sentence of that
14 first paragraph in her e-mail: However, if the HRC or
15 Commissioners are not willing to consider the attached
16 resolution, would you consider making the following
17 changes to the current ordinance?

18 Do you see that?

19 A. Right.

20 Q. So it was clear to you that what she was
21 suggesting as an alternative was to make these
22 amendments to the current ordinance that was under
23 consideration?

24 A. You know, now that I look at this and you state
25 that, I'm wondering was there an attachment to this

1 e-mail? Is it on here?

2 Q. Well, there is an attachment because, when you
3 responded back to her --

4 A. Uh-huh.

5 Q. -- you say: We made a couple of amendments to
6 the ordinance, copy attached. So what's attached to
7 this is the red-lined version of the ordinance
8 containing the amendments that you made, right?

9 A. Uh-huh.

10 Q. But the proposed language that Dr. Hamilton was
11 providing to you was actually included in her e-mail to
12 you, and you see that at the very bottom paragraph of
13 the first page of Exhibit 21. Do you see that?

14 A. Yeah. I'm going back through the e-mail chain,
15 though; and I'm seeing -- I think, if you go all the way
16 back to Palm Beach County docket -- or Bates number,
17 rather, 6044 --

18 Q. Okay.

19 A. -- and was that the first time that initial
20 e-mail was sent?

21 Q. Well, it looks to me like it's the same e-mail
22 and the same response.

23 A. Right. But was that the first time that it was
24 sent to either me or --

25 Q. Well, it's the same time. It's still December 1

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1 -- I'm sorry. It's still December 11, 2017, at
2 twelve-twenty-two p.m. It's the same --

3 A. Right. No, I understand that. But my concern is
4 that it says I would recommend the attached resolution.
5 So I'm wondering --

6 Q. Okay.

7 A. -- if there was a resolution attached to that
8 e-mail.

9 Q. There may or may not have been. My question
10 isn't about the resolution that she was presenting. My
11 question is: Was it clear to you from this paragraph
12 where she says, however, if the HRC or Commissioners are
13 not willing to consider the attached resolution, would
14 you consider making the following changes to the current
15 ordinance? And then she tells you what the following
16 changes are that she wants to make.

17 A. Correct.

18 Q. She wants to add the word coercive, and she wants
19 to add the words against the individual's will. Do you
20 see that?

21 A. Yes.

22 Q. So you understood that she was asking for those
23 amendments to be made to the current ordinance, not some
24 other resolution or some other document?

25 A. No. I think what I'm telling you is that I

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1 believe she was recommending another document, an
2 attached resolution that we don't have in front of us
3 right now. And, if that attached resolution --

4 Q. That was option A.

5 A. Okay.

6 Q. And option B was what?

7 A. Exactly what you're saying, to change -- add the
8 word coercive before the word counseling and add against
9 the individual's will on line sixteen at the end of the
10 paragraph.

11 Q. Okay. Was option A approved or adopted by the
12 County Commission?

13 A. The County Commission asked us for an ordinance,
14 not a resolution; so it was not.

15 Q. Was option B approved or adopted by the County
16 Commission?

17 A. No.

18 Q. Was option B ever presented to the County
19 Commission?

20 A. I --

21 MS. FAHEY: Form.

22 THE WITNESS: -- can only testify to what's
23 contained in our records. And I don't know whether
24 Todd Bonlarron presented that to the Commissioners
25 individually. He meets with them individually. I don't

1 know whether he did or not.

2 BY MR. MIHET:

3 Q. What was Mr. Bonlarron's response to your e-mail
4 wherein you said, "so I will await Todd's direction"?
5 What was his direction?

6 A. I did not -- I'm fairly certain -- again, outside
7 the scope of 30(b)(6). I'm here as an individual
8 testifying to facts that I haven't had a chance to look
9 at. I don't know that there was any response by
10 Todd Bonlarron. I don't recall.

11 Q. You don't recall receiving any direction?

12 Did you call Mr. Bonlarron up to say, hey,
13 Mr. Bonlarron, or Todd if you refer to him by his first
14 name, I'm still waiting to hear from you with respect to
15 this amendment that has been offered by Ms. Hamilton?

16 A. I don't recall.

17 Q. Okay. So fair to say that Ms. Hamilton's request
18 died with this e-mail that we've been looking at,
19 Exhibit 21? It was not acted upon after this date?

20 MS. FAHEY: Form. Scope.

21 THE WITNESS: I can't say that. I know the
22 e-mail is copied to Todd Bonlarron. I don't know
23 whether he took any action.

24 MR. MIHET: Okay.

25 BY MR. MIHET:

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1 Q. Is the information that Todd Bonlarron presents
2 to an individual Commissioner something that would have
3 been considered by the Commission?

4 MS. FAHEY: So you're talking about
5 individual Commissioners?

6 MR. MIHET: Yes.

7 MS. FAHEY: So, individually, their
8 motivations and individual considerations, they're
9 apples and oranges. So deliberative process would apply
10 to the individuals. The Commission collectively doesn't
11 have that --

12 MR. MIHET: Okay. That's great. But that's
13 not the question I asked.

14 BY MR. MIHET:

15 Q. Is information that Todd Bonlarron presents to
16 the -- to an individual Commissioner something that is
17 considered by the Commission?

18 MS. FAHEY: Form.

19 THE WITNESS: Sounds a little bit like
20 semantics. I don't know that I can answer that
21 question.

22 BY MR. MIHET:

23 Q. Well, I think we spent all day with you reminding
24 me that something that one individual Commissioner
25 considers or doesn't consider solo is not something that

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1 is considered by the entire County Commission. Have you
2 not made that distinction at least --

3 MS. FAHEY: Form.

4 BY MR. MIHET:

5 Q. -- two dozen times today?

6 A. I think what I -- no.

7 Q. No?

8 A. I don't believe -- I -- I --

9 Q. Okay.

10 A. I've stopped there because, certainly, an
11 individual may talk about a subject to each of the
12 Commissioners. That subject has been considered by the
13 County if the County is all seven.

14 Q. But I didn't ask you about something that
15 Mr. Todd Bonlarron would have told to each Commissioner.

16 A. I thought you said Commissioners, plural.

17 Q. No. I said, is information that Todd Bonlarron
18 presents to an individual Commissioner something
19 considered by the Commission?

20 A. If he presents the same information to all seven,
21 which is our practice --

22 Q. I didn't say --

23 A. -- then yes.

24 Q. I didn't say --

25 A. He wouldn't present information to one

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1 Commissioner only. I'm sorry. Maybe I needed to
2 explain the process with a government client. So, when
3 we have a government client and it consists of seven
4 members of the County Commission, we have a policy in
5 the County that we provide the same information to all
6 seven. We may do that individually, or we may do that
7 at one time. At one time would be in public because two
8 or more members of the County Commission sitting
9 together constitutes a public meeting. So we would have
10 to do that in public to all seven.

11 Q. Okay.

12 A. Individually, we will speak with individual
13 Commissioners and repeat the same message to all seven
14 of them as identically as we possibly can. That's part
15 of our role.

16 Q. I'm sorry if you've already answered this
17 question. But did Mr. Bonlarron meet individually with
18 each County Commissioner to present to them the
19 suggested amendment to the ordinance that Ms. -- that
20 Dr. Hamilton was requesting in this Exhibit 21?

21 A. I do not know.

22 MR. MIHET: Okay. I have a few questions
23 for your colleague now. I don't know how many of my
24 questions she'll be able to answer and whether we can
25 fill up a whole hour. If we can't, I reserve the right

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1 to bring you back for a few more questions so we don't
2 leave any time on the table.

3 MS. FAHEY: Since it's unclear whether we
4 will be bringing her back, can I ask a few questions
5 now; or do you want to do it totally at the end?

6 MR. MIHET: I don't know. It depends on the
7 answers from the next witness. So -- in part.

8 MS. FAHEY: Okay. And just so -- I'm trying
9 to understand what your preference is for the procedure.
10 I do have a few questions for Ms. Hvizd. So --

11 MR. MIHET: Oh.

12 MS. FAHEY: -- so would you prefer that I
13 ask those now?

14 MR. MIHET: I prefer that we wait until I'm
15 done asking my questions.

16 MS. FAHEY: Okay.

17 THE WITNESS: I would prefer that you do it
18 now.

19 (Recess)

20 CROSS EXAMINATION

21 BY MS. FAHEY:

22 Q. All right. Ms. Hvizd, were -- you had noted a
23 couple of times where you wanted to reserve the right to
24 get additional information to answer Mr. Mihet's
25 questions?

1 A. Right.

2 Q. Did you receive any additional information on
3 behalf of the Palm Beach County Board of County
4 Commissioners to educate you to better answer the
5 question that was directed to you about the number of
6 code enforcement officers employed by Palm Beach County?

7 A. Right. The total number is twenty-five. There
8 are five senior code enforcement officers within that
9 twenty-five. Actually, I'm going to take that back.
10 The total number is thirty, twenty-five code enforcement
11 officers and five senior code enforcement officers.
12 Excuse me. And, right now, one of them is missing; so
13 there are only a compliment of twenty-nine.

14 Q. And the one that's missing is a regular code
15 enforcement officer, correct?

16 A. Correct.

17 Q. All right. You also requested an opportunity to
18 go back and look at the e-mails to determine whether the
19 e-mail you were discussing with Mr. Mihet from
20 Nick Sofoul was the first e-mail received by
21 Mr. Nick Sofoul on the topic of conversion therapy,
22 right?

23 A. Correct.

24 Q. Did the County Attorney's Office paralegals
25 conduct that search for you?

1 A. They did. And that was his first e-mail.

2 Q. You were also -- suggested at one point that
3 Mr. Hoch may have mentioned specifically more
4 information about two individual minors in the form of
5 an e-mail to the BCC at some point. Do you remember
6 that with Mr. Mihet?

7 A. Correct.

8 Q. Did the County Attorney's Office paralegals
9 undertake a review of the e-mails for you to answer that
10 question?

11 A. They did.

12 Q. And what was the result of that inquiry?

13 A. They found no other e-mails from Rand Hoch
14 referencing the two individuals.

15 Q. You were asked by Mr. Mihet about the preparation
16 that you did for today's deposition, correct?

17 A. Correct.

18 Q. And were there -- do you recall having a
19 conversation with Tony Spaniol and the director of the
20 Youth Services Department in preparation for this
21 deposition?

22 A. Yes. I did speak with Tammy Fields, the director
23 of the Youth Services Department, and Tony Spaniol in
24 preparation for this deposition.

25 Q. You also advised us that you spoke with a

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1 Mr. Ramsay Bulkeley and a Robert Santos-Alborna from the
2 Code Enforcement perspect -- for the Code Enforcement
3 topic. Were there any other persons on that call other
4 than myself?

5 A. Shannon Fox was also on the call.

6 Q. Who is Shannon Fox?

7 A. She's an Assistant County Attorney who's
8 responsible for the Code Enforcement division.

9 Q. Does Denise Nieman have the authority to pass an
10 ordinance?

11 A. No.

12 Q. Who does the Palm Beach County Conversion Therapy
13 Ban Ordinance regulate?

14 A. Providers as defined by the ordinance.

15 Q. Does the ordinance regulate minors who are not
16 licensed providers?

17 A. No.

18 Q. Is the intent of a practitioner the sole
19 determining factor as to whether conversion therapy is
20 what has been provided to a minor?

21 A. No.

22 Q. What is conversion therapy?

23 A. Conversion therapy means the practice of seeking
24 to change an individual's sexual orientation or gender
25 identity. There's an additional aspect to the

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1 definition. I don't know if you want me to read the
2 whole thing.

3 Q. Is the definition of conversion therapy contained
4 in the Palm Beach County ordinance that we've been
5 discussing today?

6 A. Yes, it is. And that's what I was referring to
7 throughout my deposition, I believe, was that definition
8 as contained in the ordinance.

9 Q. So what is it that has to be seeking to change
10 the minor?

11 A. The provider must be practicing and seeking to
12 change an individual's sexual orientation or gender
13 identity.

14 Q. And, when you say, "provider," are you referring
15 to the practice of the provider?

16 A. Yes.

17 Q. Does the definition of conversion therapy
18 encompass efforts to change gender identity?

19 MR. MIHET: Asked and answered.

20 THE WITNESS: Yes, it does.

21 MS. FAHEY: That's all I have.

22 MR. MIHET: Just a couple of follow-ups.

23 REDIRECT EXAMINATION

24 BY MR. MIHET:

25 Q. You mentioned that you spoke with a Tammy Fields

1 and a Tony?

2 A. Spaniol, S-p-a-n-i-o-l.

3 Q. And these are individuals in which department?

4 A. Youth Services Department.

5 I mentioned Tony Spaniol actually as having
6 attended the meeting with Dr. Hamilton.

7 Q. Okay.

8 A. And Shayna Ginsburg and myself and
9 Todd Bonlarron. So I've mentioned him before.
10 Tammy Fields is the director of Youth Services.

11 Q. And you spoke with them in preparation for
12 today's deposition?

13 A. Correct.

14 Q. Was there information that they provided to you
15 that you relayed to us today during your deposition?

16 A. No. Their information was not helpful.

17 Q. Okay. What, generally, did you speak to them
18 about?

19 A. Youth Services Department, which Dr. Ginsburg
20 then ultimately spoke with you about.

21 Q. Okay. Was there anything else that you covered
22 with them that she didn't cover with me?

23 A. No.

24 Q. Okay. What else besides the intent of the
25 practitioner is relevant to whether or not a violation

1 of the ordinance has taken place?

2 A. All of the facts and circumstances surrounding
3 the therapy have to be examined in order to determine
4 whether the therapy is a practice that seeks to change
5 an individual's sexual orientation or gender identity.

6 Q. But the intent of the practitioner is certainly a
7 relevant consideration?

8 A. It is part of the equation.

9 Q. Okay. Would you say it's a very important
10 consideration?

11 A. I don't think I would give it a percentage or
12 importance on any kind of scale. It's a part of the
13 consideration.

14 Q. Fair enough. Okay.

15 MR. MIHET: That's all I've got.

16 MS. FAHEY: We'll read.

17 (Proceedings concluded at 6:11 o'clock p.m.)

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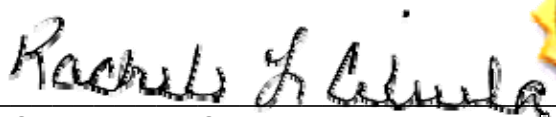
CERTIFICATE OF OATH

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele L. Cibula, the undersigned authority,
certify that HELENE HVIZD, ESQUIRE, personally appeared
before me and was duly sworn.

Witness my hand and official seal this 24th day of
September, 2018.


RACHELE L. CIBULA
Notary Public, State of Florida
My Commission #FF 936928
Expires: December 14, 2019



1 C E R T I F I C A T E

2 THE STATE OF FLORIDA)

3 COUNTY OF PALM BEACH)

4

5 I, Rachele Lynn Cibula, Notary Public, State of
6 Florida at Large,7 DO HEREBY CERTIFY that I was authorized to and did
8 stenographically report the foregoing deposition; and
9 that the transcript is a true and correct transcription
10 of the testimony given by the witness.11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel connected with the action, nor am I
13 financially interested in the action.

14 Dated this 24th day of September, 2018.

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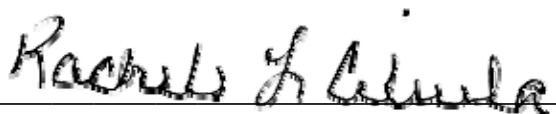
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RACHELE LYNN CIBULA, NOTARY PUBLIC

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Shayna Ginsburg

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

CASE NO. 9:18-cv-80771-RLR

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,

vs.

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

Defendants.

* * * * *

DEPOSITION OF DR. SHAYNA GINSBURG
TAKEN AT THE INSTANCE OF THE PLAINTIFFS

* * * * *

DATE: September 20, 2018
PLACE: 300 North Dixie Highway
Suite 359
West Palm Beach, Florida 33401
TIME: 5:01 - 6:03 o'clock p.m.

Florida Court Reporting
561-689-0999

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Julie H. Hamilton, Ph.D., LMFT
25 Michael Woika, Assistant City Manager for the

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1 The deposition of DR. SHAYNA GINSBURG, witness, was
2 taken before me, Rachele Cibula, Notary Public, State of
3 Florida at large, at 300 North Dixie Highway, Suite 359,
4 in the City of West Palm Beach, County of Palm Beach,
5 State of Florida, pursuant to notice in said cause for
6 the purpose of taking said deposition at the instance of
7 the Plaintiffs in the above-styled action pending in the
8 above-styled court.

9 THE COURT REPORTER: Raise your right hand,
10 Please, ma'am.

11 THEREUPON,

12 DR. SHAYNA GINSBURG,
13 being by me first duly sworn to testify the whole truth
14 as is hereinafter certified, testifies as follows:

15 THE WITNESS: Yes.

16 DIRECT EXAMINATION

17 BY MR. MIHET:

18 Q. Good afternoon, Dr. Ginsburg. How are you?

19 A. Fine, thank you.

20 Q. You've been sitting in this deposition throughout
21 the day today. Undoubtedly, you heard the ground rules
22 at the beginning. Do you remember what they are?

23 A. If you'd like to repeat them just in case.

24 Q. Very briefly. We speak one at a time. You
25 verbalize your answers. You ask me to repeat or clarify

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561-689-0999

1 any question that may be inarticulately phrased.

2 A. Okay.

3 Q. And you ask me for a break if you need it.

4 A. Okay.

5 Q. Sounds good?

6 A. Yep.

7 Q. What is your educational background?

8 A. I have a Doctorate in psychology.

9 Q. From where?

10 A. My Doctorate is from the California School of
11 Professional Psychology at Alliant International
12 University in San Francisco.

13 Q. And when did you obtain that Doctorate?

14 A. My Doctoral degree was obtained in 2007.

15 Q. And how long have you been employed by the County
16 of Palm Beach?

17 A. I was a Doctoral intern with Palm Beach County in
18 2006.

19 Q. Okay.

20 A. I've been employed since that time.

21 Q. And what is your current job position and title?

22 A. I am currently the chief of clinical services
23 education and training.

24 Q. And what does that position entail?

25 A. That position is -- basically, I run the

1 education and training section of the residential
2 treatment and family counseling division of the Youth
3 Services Department. So I oversee the staff in the
4 education and training center. I run -- I'm the
5 training director of various student programs. I run
6 the program for Doctoral interns, Post-Doctoral fellows
7 and Doctoral practicum students. I maintain the
8 continuing education sponsorship program for the Board
9 of Social Work, Marriage and Family Therapy and Mental
10 Health Counselors for the Board of Psychology and for
11 the Board of Nursing. And I provide clinical
12 supervision to trainees. I am also involved on the
13 administrative team developing policies and procedures
14 for the residential treatment and family counseling
15 division to follow.

16 Q. What license -- what licensures do you hold from
17 the State of Florida?

18 A. I am a licensed psychologist.

19 Q. Any others?

20 A. And a driver's license.

21 Q. Do you have any professional licenses from other
22 states?

23 A. No.

24 Q. Okay. What has your role been with respect to
25 the ordinance regarding conversion therapy that we've

1 been discussing today?

2 A. I have been asked by my division director, my --
3 if I had any thoughts on conversion therapy. I couldn't
4 recall when that initially took place; but, before it
5 was enacted. I was at that meeting with Dr. Hamilton
6 that Ms. Hvizd referred to during her testimony, and
7 I've had some meetings with the County Attorneys.

8 Q. Who was it that solicited your thoughts, you
9 said, about conversion therapy?

10 A. Dr. Tony Spaniol who is the division director for
11 the residential treatment and family counseling
12 division.

13 Q. And you don't remember when that was?

14 A. No. It was an e-mail that was sent out. I
15 couldn't recall the date.

16 Q. Was that before or after this particular lawsuit
17 was filed?

18 MS. FAHEY: Form.

19 THE WITNESS: I don't know when the lawsuit
20 was filed.

21 BY MR. MIHET:

22 Q. Well, I believe you said it was before the
23 ordinance was enacted --

24 A. Uh-huh.

25 Q. -- so --

1 A. Okay. So then yes.

2 Q. -- it would have to be yes.

3 A. Uh-huh.

4 Q. And what did the e-mail ask of you?

5 A. If there's a copy of the e-mail, I can tell you
6 exactly what it asked.

7 Q. Okay.

8 A. I don't have that e-mail in this binder. I don't
9 know if that's something that you have.

10 Q. Do you know was that e-mail produced to the
11 Plaintiffs in this case?

12 MS. FAHEY: I believe so.

13 MR. MIHET: Okay.

14 BY MR. MIHET:

15 Q. Without looking at the e-mail, you're not able to
16 recall what it asked you to do?

17 A. I can tell you the gist.

18 Q. Yeah. That's what I'm asking for.

19 A. All right. Basically, what my stance was -- or
20 would I support -- you know, would I be in favor of an
21 ordinance banning conversion therapy for minors.

22 Q. And did you respond by e-mail?

23 A. I did.

24 Q. What was the gist of your response?

25 A. The gist was that I wholeheartedly supported a

1 ban on conversion therapy for minors.

2 Q. And did you provide reasons as to why you would
3 wholeheartedly support?

4 A. I provided a link to various -- the various
5 position papers from the national associations that have
6 taken a stance opposing conversion therapy.

7 Q. Did your supervisor ask for your thoughts with
8 respect to aversive or non-aversive therapy on the
9 subject of Sexual Orientation Change Efforts?

10 A. He did not.

11 Q. Did you provide any thoughts on aversive or
12 non-aversive therapy in your response?

13 A. If that information was contained in that link to
14 the position papers, that would have been all that I
15 provided in my response.

16 Q. You didn't provide any thoughts on that yourself?

17 A. Not -- no.

18 Q. Okay. Did your supervisor ask you to provide any
19 thoughts on forced conversion therapy versus therapy
20 that a minor child seeks and voluntarily assents to?

21 A. He only asked what my position was on the -- a
22 ban on conversion therapy.

23 Q. And, in your response, did you provide him with
24 any thoughts on any differences between forced
25 conversion therapy and therapy that a minor child seeks

1 and assents to?

2 A. As I said before, the only thing I provided was a
3 link to those position papers.

4 Q. Well, that wasn't the only thing because you also
5 told them you wholeheartedly --

6 A. Yeah, that I wholeheartedly support it --

7 Q. -- support it?

8 A. -- correct.

9 Q. Okay. You heard us discuss earlier today some
10 complaints that the County was made aware of with
11 respect to minors that were allegedly harmed within Palm
12 Beach County as a result of conversion therapy, correct?

13 A. Correct.

14 Q. And you heard us talk about the two minors that
15 Mr. Hoch heard about from the mother of some gay
16 children about their gay friends, right?

17 A. Correct.

18 Q. And then you heard us talk about Mr. Sofoul --

19 A. Correct.

20 Q. -- with respect to some unnamed friends of his
21 which he claimed had been harmed, correct?

22 A. Correct.

23 Q. Did the County receive any other complaints about
24 conversion therapy harms occurring in Palm Beach County
25 prior to the enactment of the ordinance?

1 MS. FAHEY: Form.

2 THE WITNESS: When you say, "complaints," do
3 you mean by individuals coming forward saying they had
4 been harmed?

5 MR. MIHET: Yes, or by mothers of gay
6 children whose friends may have been harmed or by, you
7 know, people such as Mr. Sofoul saying that he had
8 friends that might have been harmed. So specific claims
9 of harm to specific people within Palm Beach County.

10 THE WITNESS: To specific people? No, not
11 to my knowledge.

12 BY MR. MIHET:

13 Q. So the only evidence of harm to people residing
14 in Palm Beach County that the Commission considered was
15 that which was brought forth by Mr. Hoch and by
16 Mr. Sofoul?

17 MS. FAHEY: Form.

18 THE WITNESS: Can you repeat that one more
19 time, please?

20 MR. MIHET: Yes.

21 Can you read that back.

22 (Requested portion read back by the court reporter)

23 MS. FAHEY: Form.

24 THE WITNESS: Mr. Hoch and Mr. Sofoul were
25 the only individuals that addressed the County as a

1 whole and provided information on specific individuals.

2 BY MR. MIHET:

3 Q. So the answer to my question is yes?

4 A. Yes.

5 Q. Okay. You heard Ms. Hvizd talk about the efforts
6 that she made to try to determine whether anyone else
7 had been harmed by conversion therapy in Palm Beach
8 County --

9 A. Uh-huh.

10 Q. -- correct?

11 A. Correct.

12 Q. Did you undertake any efforts to determine
13 whether anyone else had been harmed by conversion
14 therapy within Palm Beach County?

15 A. I did not.

16 MS. FAHEY: Scope.

17 BY MR. MIHET:

18 Q. Did anyone ask you to undertake those efforts?

19 A. No.

20 Q. Are you aware of anyone else besides you or
21 Ms. Hvizd that might have been tasked by the County
22 Commission to investigate and determine whether or not
23 anyone had been harmed by conversion therapy in Palm
24 Beach County?

25 A. No, I'm not aware.

1 Q. Now, you heard the -- the testimony that we
2 covered with Ms. Hvizd about the two minors that
3 Mr. Hoch discussed with the Commission. And you heard
4 the -- the testimony that he provided that those minors
5 had been forced to participate in conversion therapy,
6 correct?

7 A. They've been required to go to conversion
8 therapy.

9 Q. Well, they had been forced --

10 A. Uh-huh.

11 Q. -- as well as required --

12 A. Okay.

13 Q. -- correct?

14 A. Correct.

15 Q. And you were here when we went over the article
16 with respect to the individual that Mr. Sofoul had
17 brought to the attention of the Commission and recall
18 the discussion about him being forced to participate in
19 conversion therapy by his parents?

20 MS. FAHEY: Form.

21 THE WITNESS: Can you repeat that, please?

22 MR. MIHET: Sure.

23 BY MR. MIHET:

24 Q. You recall that Mr. Sofoul had presented the
25 County Commissioners in the e-mail with an article

1 regarding an individual who claimed to have been harmed
2 by conversion therapy?

3 MS. FAHEY: And if you could give her a
4 moment to find it. I don't believe that's Dr. Ginsburg
5 had an opportunity to look at that while Ms. Hvizd was
6 testifying. For the record, we're looking at
7 Plaintiffs' Exhibit 5.

8 THE WITNESS: Okay. Should I -- should I
9 read the entire article now?

10 BY MR. MIHET:

11 Q. Well, I'm just asking you: Are you able to tell
12 from what you've already read that that individual had
13 been forced to participate in conversion therapy?

14 A. That is certainly the inference from what is
15 written here.

16 Q. Right. So, prior to enacting the ordinance, the
17 County had no knowledge of any harm suffered by any
18 minors in its jurisdiction from voluntary Sexual
19 Orientation or Gender Identity Change Efforts?

20 MS. FAHEY: Form.

21 THE WITNESS: The individuals that had been
22 required or forced to go by their parents may have also
23 wanted to go.

24 BY MR. MIHET:

25 Q. Well, if somebody's forced to do something, is it

1 possible that they may also want to do --

2 A. Absolutely.

3 Q. -- that which they are forced to do?

4 MS. FAHEY: Form.

5 THE WITNESS: Most likely not.

6 MR. MIHET: Right.

7 BY MR. MIHET:

8 Q. You don't have to force someone to do something
9 they want to do, correct?

10 A. It's, yes, semantics. But okay.

11 Q. Okay. So, back to my question, then.

12 Prior to enacting the ordinance, the County had
13 no knowledge of any harm suffered by any minors in its
14 jurisdiction from voluntary Sexual Orientation or Gender
15 Identity Change Efforts?

16 MS. FAHEY: Form.

17 THE WITNESS: Nothing was presented to the
18 County.

19 BY MR. MIHET:

20 Q. So the answer to my question is, no, they had no
21 knowledge?

22 A. They had no knowledge.

23 Q. Okay. Now, to your -- were you part of any
24 discussions or decision on whether or not the ordinance
25 as it was proposed and prior to the enactment should ban

1 only forced or coercive therapy or whether it should ban
2 voluntary therapy, as well?

3 MS. FAHEY: You're asking her individually?

4 MR. MIHET: I'm asking her if she was part
5 of any discussions.

6 MS. FAHEY: Her individually? Dr. Ginsburg?

7 MR. MIHET: Is there any other way to
8 interpret that question?

9 MS. FAHEY: Dr. Ginsburg is appearing today
10 as a 30(b)(6) notice. I'm just making clear for the
11 record.

12 BY MR. MIHET:

13 Q. My question is, again, Dr. Ginsburg: Were you
14 ever part of any discussions prior to the enactment of
15 the ordinance with respect to whether or not the
16 ordinance should ban only forced therapy or whether it
17 should also ban voluntary therapy?

18 A. I, in my individual capacity, was not asked that
19 question.

20 Q. How about in any capacity have you ever been part
21 of a discussion?

22 A. No. The question -- clarifying that I'm not
23 answering for the County, that I'm answering as Shayna
24 right now.

25 Q. Okay.

1 A. And I was not asked that question.

2 Q. And were you aware of that issue ever being
3 considered by the Commission prior to the enactment of
4 the ordinance?

5 MS. FAHEY: Scope.

6 THE WITNESS: Can you repeat the question,
7 please?

8 BY MR. MIHET:

9 Q. Were you aware of that issue ever being
10 considered by the Commission prior to the enactment of
11 the ordinance? And by, "that issue" --

12 A. Thank you.

13 Q. -- I mean, whether or not to ban only forced
14 conversion therapy or whether to also ban voluntary
15 Sexual Orientation or Gender Identity Change Efforts.

16 A. I don't know if that was considered. What I --
17 only what I know is how conversion therapy was defined
18 in the ordinance.

19 Q. And, since you brought that up, does the
20 ordinance make a distinction between conversion therapy
21 that is forced and involuntary and conversion therapy
22 that is voluntary or assented to by the minor?

23 A. Conversion therapy is -- hold on. The way it's
24 defined in the ordinance is the practice of seeking to
25 change an individual's sexual orientation or gender

1 identity.

2 Q. So is the answer to my question a yes or a no?

3 A. You'll have to rephrase the question for me.

4 Repeat the question for me.

5 MR. MIHET: Are you able to read it back to
6 her?

7 (Requested portion read back by the court reporter)

8 THE WITNESS: It does not make that
9 distinction.

10 MR. MIHET: Okay.

11 BY MR. MIHET:

12 Q. You had a chance to sit throughout -- sit here
13 throughout Ms. Hvizd's testimony today. Was there
14 anything that she said that you wanted to correct or
15 clarify or that you thought, that's not quite right,
16 that needs to be corrected?

17 MS. FAHEY: Form.

18 Ms. Ginsburg's personal feelings about what
19 needs to be corrected are not relevant.

20 THE WITNESS: Ms. Hvizd and I were given
21 different things to -- to talk about today.

22 MR. MIHET: Yes.

23 THE WITNESS: So what she -- I wasn't
24 familiar with many of the things that she presented on
25 to you.

1 BY MR. MIHET:

2 Q. Is the answer to my question no?

3 A. No.

4 Q. Okay. That would have been simpler.

5 MS. FAHEY: The witness can't be expected to
6 have remembered absolutely everything of the first six
7 hours --

8 MR. MIHET: I didn't ask --

9 MS. FAHEY: -- of this deposition.

10 MR. MIHET: I didn't ask her if she
11 remembered absolutely everything. I asked her simply if
12 there was anything that she heard that she felt that she
13 needed to correct or amplify or change, and she answered
14 no. And I think I'm satisfied with that.

15 Let me just take another three-minute break.
16 I think we may be just about there.

17 (Recess)

18 BY MR. MIHET:

19 Q. I just have a couple of more questions for you,
20 Dr. Ginsburg. And I'm sorry if you've already said
21 this. But how many individuals work with you or for you
22 in your department?

23 MS. FAHEY: Scope.

24 THE WITNESS: In my department?

25 MR. MIHET: Yes.

1 THE WITNESS: I couldn't tell you the number
2 in my entire department.

3 MR. MIHET: Okay.

4 THE WITNESS: I could tell you an average.

5 MR. MIHET: Okay.

6 THE WITNESS: I'd say there's probably a
7 hundred people in the department, slightly less maybe.

8 BY MR. MIHET:

9 Q. Generally, who are those -- what types of
10 positions do they have?

11 A. The department consists of three different
12 divisions.

13 Q. Okay.

14 A. So we have my division, the residential treatment
15 and family counseling division; and we provide direct
16 clinical services. So we have mental health
17 professionals. We have trainees that are training to
18 become mental health professionals. And we have some
19 nurses. We have some youth counselors.

20 Q. Okay. And the other two divisions?

21 A. The other division is the outreach and community
22 programming. They facilitate -- they utilize grant
23 money to facilitate other programs in the community that
24 provide direct services to individuals.

25 Q. And the third division?

1 A. And the third division a finance, contracting and
2 administration.

3 Q. Now, you said your division has counselors and
4 therapists in it?

5 A. Correct.

6 Q. Do the other two divisions have counselors and
7 therapists in them?

8 A. Not to my knowledge.

9 Q. And about how many counselors and therapists are
10 there in your division?

11 A. I also -- I don't know the exact number.

12 Q. Estimate.

13 A. Well, let me ask you just to clarify, when you
14 say, "counselors" --

15 Q. Yes.

16 A. -- do you mean someone providing therapy?

17 Q. How about somebody licensed by the State of
18 Florida to provide --

19 A. Somebody licensed?

20 Q. -- therapy or counseling services?

21 A. Approximately -- give me just a minute. Maybe
22 fifteen.

23 Q. Okay. And are all of those individuals involved
24 in the residential treatment program that you mentioned?

25 A. Residential treatment and family counseling

1 division.

2 Q. Okay.

3 A. Within that division, there are three sections.

4 Q. Okay.

5 A. We have the education and training program that I
6 oversee. We have Highridge Family Center which provides
7 residential treatment to adolescents ages eleven to
8 sixteen. And then we have youth and family counseling,
9 and they provide outpatient therapy services and
10 school-based services.

11 Q. Okay. What kinds of professional licensures do
12 the fifteen or so people hold?

13 MS. FAHEY: Scope.

14 THE WITNESS: To my -- best of my knowledge,
15 we have psychologists. We have social workers. We have
16 mental health counselors. And I don't -- there are
17 currently no licensed marriage and family therapists.
18 But we have some unlicensed marriage and family
19 therapists that are licensed in a different discipline.

20 BY MR. MIHET:

21 Q. Does your division or anyone working in your
22 division have any responsibilities with respect to the
23 enforcement of the conversion therapy ordinance?

24 MS. FAHEY: Scope.

25 THE WITNESS: Can you repeat that one more

1 time?

2 MR. MIHET: Yes.

3 BY MR. MIHET:

4 Q. Does your division --

5 A. Uh-huh.

6 Q. -- or anyone working in your division have any
7 responsibilities with respect to the enforcement of the
8 conversion therapy ordinance?

9 A. With the enforcement, no.

10 Q. With any other aspect of the ordinance?

11 A. Well, we are bound by the details of the
12 ordinance.

13 Q. Yes.

14 A. So we cannot provide conversion therapy.

15 Q. Okay. Was there any discussion or consideration
16 given to having your division or the licensed personnel
17 in your division play a role in the enforcement of the
18 ordinance?

19 MS. FAHEY: Outside her scope.

20 THE WITNESS: Not to my knowledge.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. Do you think that you have requisite -- or the
24 sufficient expertise to look at what a therapist was
25 alleged to do in a therapy session and to determine

1 whether or not that was a -- an acceptable mode of
2 therapeutic practice or whether it was a violation of
3 the conversion therapy ordinance?

4 MS. FAHEY: Scope.

5 THE WITNESS: I'm not sure I fully
6 understand what you're asking.

7 MR. MIHET: Okay.

8 BY MR. MIHET:

9 Q. You heard the earlier questions that I posed to
10 Ms. Hvizd --

11 A. Uh-huh.

12 Q. -- about what might need to happen when a
13 complaint is made about conversion therapy under the
14 ordinance, right?

15 A. (The witness nods head).

16 Q. And you heard that we were discussing back and
17 forth the fact that either a minor child or some other
18 person would complain that certain things were done or
19 said within the context of a therapy session that are
20 alleged to violate the ordinance, right?

21 MS. FAHEY: Form.

22 BY MR. MIHET:

23 Q. So the question for you is: Do you feel like you
24 have the expertise that would be needed in order to
25 evaluate what was alleged to have done or said in a

1 therapy session and to either make a determination or
2 provide a recommendation as to whether or not that
3 constitutes conversion therapy or whether that's an
4 acceptable mode of practice that licensed mental health
5 professionals routinely engage in?

6 MS. FAHEY: Scope.

7 THE WITNESS: Part of my job as a supervisor
8 of Doctoral trainees is to assess whether or not they're
9 providing effective treatment, evidenced-based
10 treatment, treatment that's not harmful.

11 MR. MIHET: Okay.

12 THE WITNESS: So I feel qualified to do
13 that.

14 MR. MIHET: Okay. That's all I have.

15 MS. FAHEY: Okay. I have a few questions
16 for Dr. Ginsburg.

17 CROSS EXAMINATION

18 BY MS. FAHEY:

19 Q. Dr. Ginsburg, what is the County's position as to
20 whether a minor can voluntarily consent to a harmful
21 practice?

22 A. Minors generally cannot consent at all. They can
23 assent. And can you ask me the question one more time?

24 Q. What is the County's position as to whether a
25 minor can consent to a harmful practice?

1 A. And, as far as harmful practice goes, one cannot
2 consent, minor or not a minor, to anything that is known
3 to be harmful.

4 Q. Why not?

5 A. It is -- they're just not able to consent to
6 something that's harmful. It's found in several of the
7 research documents that were referenced in the drafting
8 of the ordinance.

9 Q. What is the County's position as to whether a
10 minor can consent to ineffective practices?

11 A. Once again, a minor cannot consent, generally.
12 They can assent. And you want to repeat the rest of it?
13 I want to make sure I answer --

14 Q. I asked you about ineffective practices.

15 A. Ineffective practices.

16 If we know that a practice is ineffective or, you
17 know, not evidence based, the minor cannot -- would not
18 assent to -- to that.

19 Q. Can talk therapy be harmful?

20 A. What do you mean by, "talk therapy"?

21 Q. So as I've -- I heard earlier in today's
22 deposition, talk therapy was limited to the use of only
23 words --

24 A. Uh-huh.

25 Q. -- so therapy that's only words being used.

1 Can words be harmful to a child?

2 A. Words certainly can be harmful to a child.

3 Q. Did other people speak of harm at the Board of
4 County Commissioner meetings -- I understand you've
5 talked about Rand Hoch, and we've covered the
6 Nick Sofoul e-mail. But were there any other people who
7 spoke more generally about the harm of conversion
8 therapy to children?

9 A. Yes. There were several individuals that made
10 comments at the Board of County Commissioners indicating
11 that there is harm associated with conversion therapy.

12 Q. Would you be able to identify who those people
13 were?

14 A. Yes. Dr. Rachel Needle was one of them. And I
15 just want to look for the rest quickly, make sure I get
16 it. Dr. Rachel Needle, Dr. Elizabeth Bassette and
17 Andres Torrens.

18 Q. Were their comments found in the transcripts of
19 the BCC meeting?

20 A. Yes, both meetings.

21 MS. FAHEY: That's all I have for
22 Dr. Ginsburg at this time.

23 MR. MIHET: Okay. Give me just one minute,
24 please.

25 THE WITNESS: Am I able to add a response to

1 a question that you asked me before that I -- I didn't
2 answer with before?

3 BY MS. FAHEY:

4 Q. Do you need to clarify?

5 A. I would like to.

6 Q. What do you need to clarify?

7 A. I wasn't sure if I should have asked for
8 clarification before. You said why not to a question.

9 Q. Uh-huh.

10 A. I believe it was why -- why couldn't they not
11 consent.

12 Q. Yes.

13 A. And I think that -- you know, that speaks to
14 minors not being fully cognitively and emotionally
15 developed. Their prefrontal cortex, their frontal lobes
16 are -- are not fully developed. And so they're not able
17 to engage in consequential thinking and executive
18 functions that would be needed to make informed
19 decisions.

20 Q. Does that complete your clarification?

21 A. Yes.

22 Q. Thanks.

23 REDIRECT EXAMINATION

24 BY MR. MIHET:

25 Q. A couple of follow-up questions.

1 Dr. Ginsburg, you said that you hold a license
2 in --

3 A. Psychology.

4 Q. -- psychology?

5 A. Yes.

6 Q. Are you affiliated in any way with the American
7 Psychological Association?

8 A. I'm a member of the American Psychological
9 Association.

10 Q. Is that a mainstream credible organization?

11 A. Yes.

12 Q. Are there any findings or conclusions of the
13 American Psychological Association with respect to
14 sexual orientation or gender identity that you take
15 issue with or that you disagree with?

16 MS. FAHEY: Form. Scope.

17 THE WITNESS: If you're referring to the
18 2009 report by the American Psychological Association,
19 it's a very lengthy report; and I think the report
20 speaks for itself.

21 BY MR. MIHET:

22 Q. Are there any findings or conclusions in that
23 report that you take issue with or disagree with?

24 A. I would need to really go through it page by
25 page. But --

1 Q. Have you ever taken --

2 A. -- No.

3 Q. No?

4 A. Yeah.

5 Q. Have you ever taken the opportunity to go through
6 it and determine whether or not there's anything in
7 there that you do not subscribe to or agree with?

8 MS. FAHEY: Form. Scope.

9 THE WITNESS: I have read the report.

10 MR. MIHET: Okay.

11 THE WITNESS: And it's -- I -- I support its
12 conclusions.

13 MR. MIHET: Okay.

14 (Plaintiffs' Exhibit No. 22 marked for identification)

15 BY MR. MIHET:

16 Q. I've handed you what we have marked as Exhibit
17 22. And I trust that you recognize this to be the APA
18 2009 report that you just mentioned?

19 A. Yes.

20 Q. Flip over to page forty-two of the report,
21 please.

22 A. Okay.

23 Q. I'm going to read the paragraph that sits just
24 about -- just above the summary --

25 A. Okay.

1 Q. -- in the right-hand column. Do you see that?
2 Starts with "overall."

3 A. Uh-huh, yes.

4 Q. Follow along with me, please.

5 Overall, the recent studies do not give an
6 indication of the client characteristics that would lead
7 to perceptions of harm or benefit. Although the nature
8 of these studies precludes causal attributions for harm
9 or benefit to SOCE, these studies underscore the
10 diversity of and range in participants' perceptions and
11 evaluations of their SOCE experiences.

12 Did I read that correctly?

13 A. You did.

14 Q. And you agree with that statement?

15 MS. FAHEY: Form. Scope.

16 THE WITNESS: I agree that's what's written
17 here.

18 MR. MIHET: Okay.

19 BY MR. MIHET:

20 Q. You agree that there cannot be determined a
21 causal attribution for harm to SOCE practices
22 according --

23 MS. FAHEY: Form.

24 BY MR MIHET:

25 Q. -- according to the APA?

1 MS. FAHEY: Scope.

2 THE WITNESS: It precludes a causal
3 attribution for harm or benefit to --

4 MR. MIHET: Right.

5 THE WITNESS: -- SOCE.

6 MR. MIHET: Okay.

7 BY MR. MIHET:

8 Q. You agree with that statement?

9 MS. FAHEY: Form. Scope.

10 THE WITNESS: That is what the APA wrote in
11 their report.

12 MR. MIHET: Right.

13 BY MR. MIHET:

14 Q. And it's not like you're going to dispute the
15 conclusion that they make?

16 MS. FAHEY: Form. Scope.

17 THE WITNESS: Again, I am prepared to answer
18 questions on behalf of the County today. You're asking
19 me as an individual if I agree or not --

20 MR. MIHET: No.

21 THE WITNESS: -- with this statement?

22 BY MR. MIHET:

23 Q. I'm asking you as the County's representative
24 whether you or the County, by extension, agrees or
25 disagrees with the APA's conclusion that there cannot be

1 a causal attribution for harm to SOCE?

2 A. I would agree with this statement. I would also
3 say that this is one sentence in a very lengthy
4 document. So --

5 Q. Sure.

6 A. -- taken out of context, I think there's --
7 there's a lot of other conclusions --

8 Q. And I'm certain --

9 A. -- that are made.

10 Q. -- that you or your attorneys will have plenty of
11 chances to discuss those.

12 But my question is: According to the APA, can
13 there be a causal attribution made for harm to SOCE?

14 A. That's what it says.

15 Q. And the answer is, no, there cannot be, correct?

16 MS. FAHEY: Form.

17 Mischaracterizes the statement.

18 THE WITNESS: I'm not sure how else to
19 respond. That's what it says here.

20 MR. MIHET: Okay.

21 BY MR. MIHET:

22 Q. Moving on in the summary, it says: We conclude
23 that there is a dearth of scientifically-sound research
24 on the safety of SOCE.

25 The County agrees with that, correct?

1 MS. FAHEY: Form.

2 Outside the scope of the redirect
3 examination.

4 THE WITNESS: That is what the APA found.

5 BY MR. MIHET:

6 Q. And the County agrees with that, correct?

7 A. What do you mean by, "the County agrees with
8 that"?

9 Q. Does the County have any reason to dispute the
10 finding of the APA?

11 MS. FAHEY: Form. Scope.

12 THE WITNESS: No.

13 MR. MIHET: Okay.

14 BY MR. MIHET:

15 Q. It goes on to say: Early and recent research
16 studies provide no clear indication of the prevalence of
17 harmful outcomes among people who have undergone efforts
18 to change their sexual orientation or the frequency of
19 occurrence of harm because no study to date of adequate
20 scientific rigor has been explicitly designed to do so.

21 Did I read that correctly?

22 A. You read it correctly.

23 Q. Does the County have any reason to doubt or
24 dispute that finding of the APA?

25 MS. FAHEY: Form.

1 Outside the scope. And this is outside the
2 scope of my cross examination.

3 THE WITNESS: The County has no reason to
4 dispute this. But I would point out that this is
5 talking about SOCE. And the County's ordinance is only
6 referring to conversion therapy as defined in the
7 ordinance.

8 MR. MIHET: Okay.

9 BY MR. MIHET:

10 Q. The County relied on this report in enacting the
11 ordinance, correct?

12 A. Along with other items, yes.

13 Q. Okay. Last question here, two questions from one
14 sentence in continuation of where I stopped last time.

15 The APA says: Thus, we cannot conclude how
16 likely it is that harm will occur from SOCE.

17 Did I read that correctly?

18 A. You read it correctly.

19 Q. Okay. And does the County have any reason to
20 doubt or dispute the APA's finding that it cannot
21 conclude how likely it is that harm will occur from
22 SOCE?

23 MS. FAHEY: Form. Outside the scope.

24 THE WITNESS: The -- this document was
25 produced in 2009.

1 MR. MIHET: Okay.

2 THE WITNESS: I am prepared to speak about
3 documents that were used to draft the ordinance, which
4 this was. There are potentially other studies that show
5 that conversion therapy is harmful that were published
6 after this date.

7 BY MR. MIHET:

8 Q. So, with respect to the County, then, is the
9 County able to conclude how likely it is that harm will
10 occur from SOCE?

11 A. The County?

12 MS. FAHEY: Form.

13 THE WITNESS: No.

14 BY MR. MIHET:

15 Q. The County is not able --

16 MS. FAHEY: Form. Scope.

17 THE WITNESS: The County cannot -- right,
18 can conclude they did not conduct any studies.

19 BY MR. MIHET:

20 Q. And, even as we sit here today, the County cannot
21 conclude how likely it is that harm will occur from
22 SOCE?

23 MS. FAHEY: Form. Scope.

24 THE WITNESS: What we know is that
25 conversion therapy is not evidence based. And it is --

1 MR. MIHET: That's not what I asked.

2 THE WITNESS: -- and it is harmful. So...

3 BY MR. MIHET:

4 Q. Well, a minute ago you said that there's no
5 ability to draw a causal attribution for harm with
6 respect to SOCE. We've already covered that. I don't
7 want to have to go back into it.

8 MS. FAHEY: Form.

9 Mischaracterizes her testimony.

10 THE WITNESS: If I could just refer to the
11 abstract, which is just a, basically, synopsis of what
12 this entire lengthy document is about, it's saying that
13 -- concluded that efforts to change sexual orientation
14 are unlikely to be successful and involve some risk of
15 harm contrary to the claims of SOCE practitioners and
16 advocates.

17 MR. MIHET: That's all good and well. But
18 that's not what I asked you, Miss -- Dr. Ginsburg.

19 BY MR. MIHET:

20 Q. My question to you is: The APA has said that it
21 cannot conclude how likely it is that harm will occur
22 from SOCE. On that much we can agree because it's in
23 black and white in this report, right? Yes?

24 A. Yes.

25 Q. Can the County conclude how likely it is that

1 harm will occur from SOCE notwithstanding the fact that
2 the APA organization to which you belong cannot make
3 that conclusion?

4 MS. FAHEY: Form. Scope.

5 THE WITNESS: The County can conclude that
6 it is likely.

7 BY MR. MIHET:

8 Q. Can it conclude how likely it is?

9 MS. FAHEY: Form. Scope.

10 THE WITNESS: I'm not sure I know what you
11 mean by, "how likely."

12 BY MR. MIHET:

13 Q. Well, can the County conclude that engaging in
14 SOCE is fifty percent more likely to result in harm than
15 not engaging in SOCE?

16 MS. FAHEY: Form.

17 THE WITNESS: It's not possible to put a
18 statistic like that on it.

19 BY MR. MIHET:

20 Q. The County can't conclude that it's a hundred
21 percent more likely to result in harm than not engaging
22 in SOCE, correct?

23 MS. FAHEY: Form.

24 THE WITNESS: Correct.

25 BY MR. MIHET:

1 Q. That is because there are no empirical studies
2 from which harm can causally be attributed to SOCE; is
3 that a fact?

4 MS. FAHEY: Form. Scope.

5 THE WITNESS: Based on what's written here,
6 that is what this statement is saying from 2009.

7 BY MR. MIHET:

8 Q. Well, you're not saying that, since 2009, there
9 have been empirical studies that attribute a causal
10 relation between SOCE and harm, are you?

11 MS. FAHEY: Form. Scope.

12 THE WITNESS: I would need to review all of
13 the studies after 2009, which I'm not prepared to -- I
14 have not prepared. So I'm not able to do that right
15 now.

16 Q. So, as you sit here today, you cannot identify a
17 single empirical study since 2009 such that would allow
18 you or the County to attribute a causal relationship
19 between harm and SOCE, can you?

20 MS. FAHEY: Form.

21 Scope. This is outside of what she's
22 designated to talk about.

23 THE WITNESS: Am I required to answer these
24 questions if my attorney does not think that I am -- I
25 should be answering them?

1 MR. FAHEY: You're only answering them in
2 your individual capacity if it's outside the scope.
3 We're also well beyond the time spending that your
4 examination has far exceeded my cross examination.

5 MR. MIHET: I don't think that it has.

6 If the witness would just answer the
7 question, I think we could be done.

8 THE WITNESS: I don't even know what the
9 question is anymore. I'll need to hear it.

10 BY MR. MIHET:

11 Q. Well, as you sit here today, are you able to
12 identify a single empirical study since 2009 based upon
13 a causal attribution could be made between SOCE and
14 harm?

15 A. I can cite at least -- I could cite a study that
16 shows a lack of efficacy of conversion therapy.

17 Q. That's great. But that's not my question.

18 A. Then no.

19 Q. That's why -- no? That's the answer to my
20 question?

21 A. I am not able to recall any studies right now.

22 Q. If you had given me that answer ten minutes
23 ago --

24 MS. FAHEY: Okay.

25 MR. MIHET: -- we wouldn't have --

1 MS. FAHEY: We don't need to hear that.

2 MR. MIHET: Well --

3 MS. PHAN: We don't need your commentary.

4 Okay.

5 MR. MIHET: It's my deposition, and I can
6 decide what's necessary.

7 MS. PHAN: That's not a question. That
8 wasn't a question. It's just -- you're harassing her.

9 MR. MIHET: We've gotten along very well all
10 day long --

11 MS. PHAN: I know.

12 MR. MIHET: -- let's not ruin it in the
13 last --

14 MS. PHAN: Yes, I agree.

15 MS. FAHEY: Did you ask your last question?

16 MR. MIHET: I did.

17 MS. FAHEY: Oh, okay.

18 MR. MIHET: Unless you have more questions
19 that might --

20 MS. FAHEY: Yeah. We just want to finish
21 that paragraph that you have been reading with her.

22 RECROSS EXAMINATION

23 BY MS. FAHEY:

24 Q. If you could look back at page forty-two,

25 Dr. Ginsburg. We left off at that sentence: Thus, we

1 cannot conclude how likely it is that harm will occur
2 from SOCE, period, right?

3 A. Yes.

4 Q. Is that the end of that summary?

5 A. No. There is additional --

6 Q. Will you please read into the record the rest of
7 that summary.

8 A. However, studies from both periods indicate that
9 attempts to change sexual orientation may cause or
10 exacerbate distress and poor mental health in some
11 individuals, including depression and suicidal thoughts.
12 The lack of rigorous research on the safety of SOCE
13 represents a serious concern, as do studies that report
14 perceptions of harm.

15 MS. FAHEY: Thank you. That's all I have
16 for the redirect -- the cross examination of
17 Dr. Ginsburg.

18 (Proceedings concluded at 6:03 o'clock p.m.)
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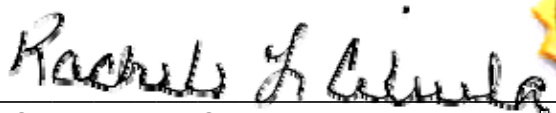
CERTIFICATE OF OATH

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele L. Cibula, the undersigned authority,
certify that DR. SHAYNA GINSBURG personally appeared
before me and was duly sworn.

Witness my hand and official seal this 26th day of
September, 2018.


RACHELE L. CIBULA
Notary Public, State of Florida
My Commission #FF 936928
Expires: December 14, 2019



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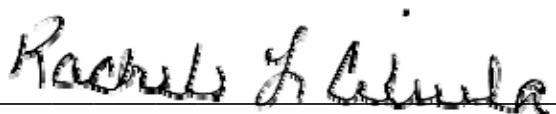
THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele Lynn Cibula, Notary Public, State of
Florida at Large,

DO HEREBY CERTIFY that I was authorized to and did
stenographically report the foregoing deposition; and
that the transcript is a true and correct transcription
of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee,
attorney or counsel connected with the action, nor am I
financially interested in the action.

Dated this 26th day of September, 2018.


RACHELE LYNN CIBULA, NOTARY PUBLIC

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MICHAEL WOIKA

09-21-18

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

CASE NO. 9:18-cv-80771-RLR

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,

vs.

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

Defendants.

* * * * *

DEPOSITION OF MICHAEL WOIKA
TAKEN AT THE INSTANCE OF THE PLAINTIFFS

* * * * *

DATE: September 21, 2018
PLACE: 201 West Palmetto Park Road
Boca Raton, Florida 33432
TIME: 10:02 - 4:02 o'clock p.m.

FLORIDA COURT REPORTING
561-689-0999

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25

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1 The deposition of MICHAEL WOIKA, witness, was taken
2 before me, Rachele Cibula, Notary Public, State of
3 Florida at large, at 201 West Palmetto Park Road, in the
4 City of Boca Raton, County of Palm Beach, State of
5 Florida, pursuant to notice in said cause for the
6 purpose of taking said deposition at the instance of the
7 Plaintiffs in the above-styled action pending in the
8 above-styled court.

9 THE COURT REPORTER: Raise your right hand,
10 Please, sir.

11 THEREUPON,

12 MICHAEL WOIKA,
13 being by me first duly sworn to testify the whole truth
14 as is hereinafter certified, testifies as follows:

15 THE WITNESS: Yes.

16 * * * * *

17 DIRECT EXAMINATION

18 BY MR. MIHET:

19 Q. Good morning, Mr. Woika.

20 A. Good morning.

21 Q. We've already met. And you know that we're here
22 to take your deposition this morning -- actually, the
23 City of Boca Raton's deposition through you, its
24 designee. Just a couple of ground rules that you heard
25 yesterday to make sure we're on the same page.

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1 Everything that you or I say today is being
2 transcribed by the nice reporter sitting here next to
3 us. So it's important for us to speak one at a time.
4 Okay?

5 A. Yes.

6 Q. It's important for you to verbalize your answers
7 because the reporter cannot accurately transcribe
8 nonverbal communications. Is that okay?

9 A. Yes.

10 Q. I very much doubt this is going to happen today;
11 but, if I do happen to ask you an inarticulate
12 question --

13 A. Okay.

14 Q. -- that you don't understand, will you ask me to
15 rephrase it?

16 A. Of course.

17 Q. If you answer my question, I'm going to
18 understand that you understood it; and you intended to
19 provide the response that you did. Is that fair?

20 A. Yes.

21 Q. I'm hoping we won't be here nearly as long as we
22 were together yesterday, but we probably will spend a
23 little time together. So, if you should need a break at
24 any time, please ask; and we will accommodate you so
25 long as a question is not pending. Is that good?

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1 A. Sounds great.

2 Q. Excellent.

3 Throughout the day today, I may refer for short
4 to the City. Will you know I'm talking about the City
5 of Boca Raton?

6 A. Yes.

7 Q. And, if I refer for short to the ordinance,
8 you'll know I'm referring to the Conversion Therapy Ban
9 Ordinance that the City of Boca Raton has enacted which
10 is the subject of this lawsuit?

11 A. Yes.

12 Q. I'm going to show you what we marked yesterday as
13 Plaintiffs' Exhibit 1. You've seen this document
14 before?

15 A. Yes.

16 Q. This is a copy of Plaintiffs' Second Amended
17 Notice of Taking Depositions of Defendants, right?

18 A. Yes, it is.

19 Q. And you'll notice, on pages two and three, there
20 are thirteen matters for examination that are
21 identified?

22 A. Yes.

23 Q. Now, it's my understanding that you have been
24 designated by the City of Boca Raton to provide
25 testimony as to each one of those matters except for

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1 matter number thirteen; is that accurate?

2 A. Yes, noting that ten and eleven are deleted, as
3 well.

4 Q. Sure. I suspect your testimony on topics ten and
5 eleven is going to be very brief or maybe nonexistent
6 today.

7 A. Sure.

8 Q. And so you understand that, as to the topics on
9 which you are designated, you will be providing the
10 City's knowledge and the City's position?

11 A. Yes.

12 Q. What did you do to prepare for today's
13 deposition?

14 A. Did a number of things. I spoke to a number of
15 individuals. I looked at -- and I'm sure you're going
16 to ask me whose those are. I looked at the documents,
17 including the ordinance, all of the backup material,
18 e-mails that were produced. I looked at the videos of
19 the public hearing for the ordinance. Individuals I
20 talked with include the attorneys who framed and -- not
21 framed but drafted the document. I talked with
22 George Brown who is the Deputy City Manager. I spoke
23 with Doug Sheedy who is our code compliance manager. I
24 believe that's the -- the main -- the main parts of it.

25 Q. Okay. Which of the attorneys that drafted the

1 ordinance did you speak with?

2 A. Chris Fernandez.

3 Q. I believe he's with us today?

4 A. He is.

5 Q. Anyone else?

6 A. Our City Attorney.

7 Q. Who is that?

8 A. Diana Grub Frieser.

9 Q. Anyone else?

10 A. Outside counsel.

11 Q. That would be Mr. Abbott or his colleagues?

12 A. Correct.

13 Q. When did you begin your preparation for the
14 deposition?

15 A. Several weeks ago. Two, three weeks ago.

16 Q. Can you give me a rough idea of how much total
17 time you spent preparing? Is it a couple hours? Is it
18 ten hours? Is it five minutes?

19 A. It's more than a couple hours. And, not
20 including yesterday's deposition at the County, probably
21 ten hours. Eight, ten, twelve hours.

22 Q. You would consider attending yesterday's
23 deposition as preparation for today?

24 A. Perhaps. It was instructive.

25 Q. You said you reviewed a number of documents. I

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1 believe you referred to the ordinance, and you referred
2 to materials, and you referred to e-mails. Do you know
3 if those documents have all been provided to the
4 Plaintiffs in this case?

5 A. I believe, yes.

6 Q. Okay. And did you review any documents that have
7 not been provided to the Plaintiffs in this case?

8 A. No. I believe everything that I looked at was --
9 had been provided.

10 Q. Okay. Did you speak with anyone who is not an
11 attorney or not employed by the City of Boca Raton to
12 prepare for today's deposition?

13 A. No.

14 Q. Did you speak with Mr. Hoch?

15 A. No.

16 Q. Have you ever spoken with Mr. Hoch?

17 A. Perhaps as a greeting but nothing substantial.

18 Q. Ever spoken with Mr. Hoch about conversion
19 therapy ban?

20 A. No.

21 Q. Ever spoke with Mr. Hoch about this litigation?

22 A. No.

23 Q. Have you had a chance to give deposition
24 testimony before?

25 A. Yes.

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1 Q. Several times?

2 A. Yes.

3 Q. About how many?

4 A. A dozen.

5 Q. Okay.

6 A. Maybe not quite that many. It seems like a lot
7 more.

8 Q. That was in the course of your employment for the
9 City of Boca Raton?

10 A. Yes.

11 Q. And what position do you hold with the City?

12 A. I'm the Assistant City Manager.

13 Q. And how long have you held that position?

14 A. Since 2004. So almost fourteen years.

15 Q. Are you the only Assistant City Manager?

16 A. Yes.

17 Q. What is Mr. Brown's position?

18 A. He's the Deputy City Manager.

19 Q. So, in the hierarchy of things, are you lateral
20 colleagues; or is one a little higher than the other?

21 A. We're more or less lateral. He has a little bit
22 more seniority, so he's technically a bit more senior.

23 Q. What is the difference between an Assistant City
24 Manager and a Deputy City Manager?

25 A. We each have a group of departments that we

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1 liaison with. And so, if you look at the hierarchy, we
2 have a City Manager; and then there are our levels,
3 assistant and the deputy. And then the different
4 departments and divisions are categorized kind of split
5 between the two.

6 Q. And who is the City Manager?

7 A. Leif Ahnell, A-h-n-e-l-l.

8 Q. And so, if I understand what you just told me
9 correctly, you have Leif Ahnell sitting at the top; and
10 then we have you and Mr. Brown underneath him, more or
11 less lateral?

12 A. That's correct.

13 Q. And what departments would be under your
14 leadership?

15 A. I'll go through them. There's a number of
16 departments, number of divisions. The departments are
17 recreation services, municipal services, utility
18 services. And then the divisions: Information
19 technology; management services, which is risk and HR;
20 community relations; communications; economic
21 development. I think that's all.

22 Q. Okay. And what about under Mr. Brown's
23 supervision?

24 A. He has the city clerk. I should start with
25 departments, again. Development services, police, fire

1 and then the city clerk as a division. Oh, and finance.

2 I'm sorry, financial services.

3 Q. Okay. I know we're not here to talk about you a
4 whole lot today. But, just so I have a better
5 understanding of who I'm talking to, briefly tell me
6 what your educational background is.

7 A. I've got a bachelor's and master's degree from
8 Penn State University in environmental engineering. And
9 I have an MBA from University of Phoenix at Denver.

10 Q. And do you happen to know what Mr. Brown's
11 educational background is? If you know.

12 A. He went to -- he went to Georgetown. I don't
13 know -- I believe he has a bachelor's in something from
14 Georgetown.

15 Q. Okay. Do you hold any professional licenses?

16 A. Yes.

17 Q. What are those?

18 A. I'm a professional engineer.

19 Q. Any others?

20 A. No.

21 Q. Do you know if Mr. Brown holds any professional
22 licenses?

23 A. I don't.

24 Q. Okay. When did the City of Boca Raton first
25 begin to consider a ban on conversion therapy?

1 A. There was correspondence, an e-mail from
2 Rand Hoch, Palm Beach County Human Rights Council
3 approximately July of 2017.

4 Q. And so is that how the issue of conversion
5 therapy first came about within the City of Boca Raton
6 was through this e-mail from Mr. Hoch?

7 A. To my understanding, yes. There may have -- that
8 was the first that the Council was -- as a whole was
9 brought into that subject.

10 Q. Was this e-mail sent to the Council as a whole or
11 to individual Council members?

12 A. Individual Council members were all addressed,
13 but it was the same e-mail.

14 Q. Okay. What was the need for the conversion
15 therapy ban that was being asserted by Mr. Hoch in this
16 communication?

17 A. In his e-mail correspondence, he had two
18 attachments. And his e-mail was rather terse, as I
19 recall. It just said, please see attached. One was a
20 memo from the Human Rights Council talking about the --
21 the -- I guess you could call it the need or his -- his
22 understanding of the need for conversion therapy within
23 Boca Raton. And the other was a -- a model ordinance
24 that he suggested that the City emulate and pass.

25 Q. Okay. Did Mr. Hoch claim that any citizens of

1 Boca Raton had been harmed or were being harmed by
2 conversion therapy?

3 A. Directly? No.

4 Q. Directly, no.

5 Had the City ever received --

6 A. By, "directly," I mean, he didn't mention
7 particular instances.

8 Q. He didn't mention anyone within the City that had
9 ever been harmed by conversion therapy?

10 A. That's correct.

11 Q. Did he mention any conversion therapy
12 practitioners in the City of Boca Raton?

13 A. In that e-mail, he did not.

14 Q. Okay. Did he subsequently mention any
15 practitioners in the City of Boca Raton?

16 A. I think there was an e-mail provided by Mr. Hoch
17 subsequent to this that did list a practitioner.

18 Q. Subsequent to the ordinance being enacted or
19 subsequent to the first communication?

20 A. Subsequent to the first communication.

21 Q. How many practitioners did he identify in that
22 e-mail?

23 A. One.

24 Q. And who was that partitioner?

25 A. I believe the last name was Gray. But, subject

1 to check, I believe that's the practitioner.

2 Q. It certainly was not Dr. Otto?

3 A. It was not.

4 Q. Or Dr. Hamilton?

5 A. It was not.

6 Q. And what did he say about Mister or Dr. Gray in
7 this e-mail?

8 A. I believe it was Gray. I don't know. But I
9 believe that that e-mail from -- from Rand Hoch
10 suggested that there was a practitioner who listed as
11 one of their services something to the effect of
12 unwanted or undesired sexual attractions or something.
13 It listed as one of the areas of behavior.

14 Q. Okay. It didn't say that they listed conversion
15 therapy as a service that they provided?

16 A. I think that's correct. They did not.

17 Q. Okay. You said that this practitioner advertised
18 that they could provide help for unwanted same-sex
19 attractions. And he considered that as a need for the
20 City to enact a conversion therapy ban? Is that the
21 gist?

22 A. No.

23 MR. ABBOTT: Object to the form.

24 MR. MIHET:

25 Q. No?

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1 A. No. I think, as you asked a question, he did not
2 identify any specific individuals or situations in that
3 original e-mail. In the subsequent one, I believe there
4 was -- a Council had asked for some clarification. And
5 he provided that to the council person but did not -- I
6 don't believe tried to characterize what that -- other
7 than to say, this is what the person listed on their --
8 on their -- as an area of practice.

9 Q. Do you know if those e-mails were provided to the
10 Plaintiffs in this case?

11 A. They were.

12 Q. They were? I don't recall seeing them. Maybe,
13 if you are able to refer us to a Bates number at some
14 point today.

15 MR. ABBOTT: When we take a break, I'll take
16 a peek and see if I can find it for you, sure.

17 MR. MIHET: Thank you.

18 BY MR. MIHET:

19 Q. Had the City of Boca Raton ever received any
20 complaints from -- let me strike that and try again.

21 Prior to enacting the ordinance, had the City of
22 Boca Raton ever received complaints that one of its
23 citizens had been or was being harmed by conversion
24 therapy?

25 A. No.

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1 Q. Prior to enacting the ban, had the City of Boca
2 Raton attempted to determine whether any of its citizens
3 had been or were being harmed by conversion therapy?

4 A. No, not to my knowledge.

5 Q. So that would include the time after Mr. Hoch
6 raised the issue of conversion therapy in or around
7 July 2017, correct?

8 A. Correct.

9 Q. Okay. Did the City of Boca Raton ever consider
10 or discuss whether it should attempt to determine if
11 conversion therapy was harming its own citizens?

12 MR. ABBOTT: Object to the form.

13 THE WITNESS: No.

14 BY MR. MIHET:

15 Q. How did the City's -- let me try that again.

16 How did the fact that no one within the City
17 complained about conversion therapy harm factor into the
18 City's decision on whether or not an ordinance was
19 necessary?

20 MR. ABBOTT: Object to the form.

21 THE WITNESS: If I understand your question
22 correctly, the City -- as part of the correspondence
23 from Rand Hoch, there were a number of reports that were
24 cited and a number of findings in those different
25 reports and statements. And that was used as the basis

1 for the need of the ordinance.

2 MR. MIHET: Okay.

3 THE WITNESS: So is that what you asked?

4 MR. MIHET: No. I guess that's one answer
5 to my question.

6 BY MR. MIHET:

7 Q. Did the City rely on anything other than what you
8 just mentioned?

9 A. No. That was the basis for the ordinance.

10 Q. Okay.

11 (Plaintiffs' Exhibit No. 23 marked for identification)

12 BY MR. MIHET:

13 Q. So, Mr. Woika, I have handed you an exhibit that
14 we have marked as No. 23. And, having looked at this
15 document, do you recognize it?

16 A. Yes.

17 Q. Is this one of the documents you reviewed in
18 preparation for today's deposition?

19 A. Yes, it is.

20 Q. What is this document?

21 A. This document -- there's really two pieces to it.
22 The first is a memorandum from the City Attorney to
23 members of the City Council regarding the conversion
24 therapy -- proposed draft conversion therapy ordinance.
25 And then the second part is that draft ordinance.

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1 Q. Okay. Now, this is dated August 17, 2017?

2 A. That is correct.

3 Q. And this is to the Mayor and the City Council of
4 Boca Raton?

5 A. That's correct.

6 And I should say that, when I say, "City
7 Council," it includes the Mayor. I consider the Mayor
8 to be part of the City Council.

9 Q. Sure. I guess I was just referring to the "to"
10 line that says Mayor and City Council.

11 So --

12 A. I just wanted to make sure, when I said, "City
13 Council," the Mayor was certainly included. And I
14 consider the Mayor to be part of the City Council. I
15 wasn't trying to exclude the Mayor.

16 Q. Excellent clarification. Thank you.

17 So this came in time chronologically after the
18 July 2017 e-mails from Mr. Hoch, right?

19 A. That's correct.

20 Q. And so was this memorandum occasioned by
21 Mr. Hoch's request to the Council to consider a
22 conversion therapy ban?

23 A. Yes. And if -- if I can elaborate further?

24 Q. Sure.

25 A. There was an earlier City Council meeting in

1 July --

2 Q. Okay.

3 A. -- by which the Mayor, during her opportunity,
4 said that she had received some e-mail from Rand Hoch
5 and -- and acknowledged the other Council members, as
6 well. And asked the City Attorney to take a look at the
7 draft ordinance and to review it and to prepare
8 something. And I believe this was in response to the
9 Mayor's request.

10 Q. "This," meaning, Exhibit 23?

11 A. Exhibit 23, yes.

12 Q. Okay. All right. I'm going to ask you some
13 questions about some things that are mentioned in this
14 memorandum. Looking at the second paragraph on the
15 first page, it says: Conversion therapy, also known by
16 various other names such as treatment for unwanted
17 same-sex attraction, is the practice of attempting to
18 change a person's sexual orientation through
19 psychological counseling.

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, the ordinance that was eventually enacted by
23 the City Council banned, not only Sexual Orientation
24 Change Efforts, but also Gender Identity Change Efforts,
25 correct?

1 A. That's correct.

2 Q. And yet, in this memorandum, the City Attorney
3 defines conversion therapy solely with respect to sexual
4 orientation. Am I reading that correctly?

5 A. I think, yes, that would be a way of reading and
6 reviewing that.

7 Q. Okay. Well, do you know why the conversion
8 therapy in this memorandum to the City Council was not
9 defined more broadly to include Gender Identity Change
10 Efforts?

11 A. No. To answer the question, I don't know what
12 the City Attorney was -- was thinking. Although, I
13 think, if you read it in its totality, it includes other
14 definitions or other -- other things that might be
15 included in conversion therapy.

16 Q. Okay. Continuing on in that same paragraph, it
17 says: The PBCHRC -- I don't know if we've already
18 established that's the Palm Beach County Human Rights
19 Commission, correct?

20 A. I believe so. Council.

21 Q. Council.

22 A. And I think it's in the first paragraph it
23 defines what that is.

24 Q. There it is.

25 And that is the organization that Mr. Hoch

1 represented or represents?

2 A. That's correct.

3 Q. Okay. So starting that sentence, again: The
4 PBCHRC and the model ordinance rely on and cite to
5 numerous scientific articles and studies that conclude
6 conversion therapy and other Sexual Orientation Change
7 Efforts, SOCE, are ineffective, erroneously presume that
8 homosexuality and gender nonconformity are mental
9 diseases or defects and may, in fact, cause
10 psychological harm particularly to children.

11 Did I read that correctly?

12 A. Yes, you did.

13 Q. And is that claim that Sexual Orientation Change
14 Efforts may, in fact, cause psychological harm,
15 particularly in children, a claim that the City Council
16 accepted and relied upon in enacting the ordinance?

17 A. I think the City Council, when they considered
18 this ordinance, looked, not only to this memo, but other
19 things. This was, I believe, something that they had
20 received and was part of their decision making process.

21 Q. Okay. But the claim that Sexual Orientation
22 Change Efforts may, in fact, cause psychological harm,
23 particularly in children, is that a claim that the City
24 Council accepted and relied upon in enacting the
25 ordinance?

1 A. I think that that was not a conclusion of the
2 City Attorney. I believe she says that the reference
3 materials indicate that. But I'm not sure that was your
4 question. I think your question is: Did they rely upon
5 this memo in that sentence to make their decision? I
6 think that was clearly something that they -- was part
7 of their information available to them as they
8 considered this ordinance.

9 Q. Well, I guess I'm not really asking you whether
10 they relied on this particular memo as much as I'm
11 asking you whether they relied on this proposition. So
12 let me try another way.

13 A. Okay.

14 Q. Does the City of Boca Raton believe that Sexual
15 Orientation Change Efforts may, in fact, cause
16 psychological harm, particularly to children?

17 A. I believe that, as the memo said, the reports
18 that were attached -- the reports that were cited down
19 below, that is the indication from a number of these
20 reports that that is the case.

21 Q. I understand that that's what Mr. Hoch or others
22 claim that that's what the reports show.

23 A. Sure.

24 Q. My question is, not what the reports show, but
25 what the City of Boca Raton believes or contends or what

1 its position is. And so let me try that one more time.

2 Does the City of Boca Raton believe that Sexual
3 Orientation Change Efforts may, in fact, cause
4 psychological harm, particularly to children?

5 A. Sure. And I understand what you're saying. And
6 I'm not trying to -- to avoid your question. But I
7 don't think it's quite as simple as that. I think that
8 there were information. There were studies presented.
9 There was facts and information presented as part of the
10 backup to the ordinance that the City Council reviewed
11 when they made their -- their decision to pass the
12 ordinance.

13 As a whole, I can't tell you what the City
14 Council believes the -- what each individual City
15 Council member believes is true or not true based on
16 those reports.

17 Q. And, just so we're clear, I'm not asking you what
18 an individual City Council member believes or doesn't
19 believe.

20 A. Uh-huh.

21 Q. I'm asking you what the position is of the City
22 of Boca Raton whose designee you are here today.

23 A. Sure.

24 Q. And so what I want to know is: Does the City of
25 Boca Raton take the position that Sexual Orientation

1 Change Efforts may, in fact, cause psychological harm,
2 particularly to children?

3 MR. ABBOTT: Objection. Asked and answered.

4 THE WITNESS: Maybe I wasn't explaining it
5 very well. But I think that, as the City Council
6 reviewed the information and passed the ordinance, they
7 believed that the information that was presented was
8 strong enough to move forward with the passing of the
9 ordinance.

10 BY MR. MIHET:

11 Q. I think we're getting closer.

12 So what I'm hearing you say is that the City
13 Council believes that Sexual Orientation Change Efforts
14 may, in fact, cause psychological harm, particularly in
15 children?

16 A. Based on the fact that they passed the ordinance,
17 based on the -- on these reports which had that as part
18 of their conclusions -- I don't think we're getting that
19 close. But -- as you say. But I think, if the idea is
20 that they reviewed these, those reports had that as one
21 of their conclusions and the City Council used that
22 conclusion as evidence to pass their -- the ordinance,
23 then I think that what you're saying is correct.

24 Q. As you sit here today, are you not able to tell
25 me yes or no in response to my question as to whether or

1 not the City of Boca Raton believes that Sexual
2 Orientation Change Efforts may, in fact, cause
3 psychological harm, particularly in children? Are you
4 able to answer that question with a yes or no today?

5 MR. ABBOTT: Object to the form.

6 Asked and answered.

7 THE WITNESS: I don't think a yes and no is
8 the proper response to that question.

9 MR MIHET: Okay.

10 BY MR. MIHET:

11 Q. You can't say yes or no?

12 A. I cannot say yes or no.

13 Q. Okay. How much more likely is an LGBT minor who
14 undergoes Sexual Orientation or Gender Identity Change
15 Efforts to experience depression versus an LGBT minor
16 who does not undergo those kinds of efforts?

17 A. I don't -- I don't think that I can give you a
18 good answer on that.

19 Q. Okay. The City --

20 A. I don't know.

21 Q. The City doesn't know?

22 A. No.

23 Q. The City doesn't know whether it's five percent
24 more likely, one percent more likely or zero point zero
25 one percent more likely?

1 A. That's correct.

2 Q. How much more likely is an LGBT minor who
3 undergoes Sexual Orientation Change Efforts or Gender
4 Identity Change Efforts to experience feelings of fear
5 or loneliness versus an LGBT minor who does not undergo
6 those kinds of efforts?

7 A. I don't know, and the City does not know.

8 Q. And, if I ask you that same question for
9 rejection, the answer would be the same? The City
10 doesn't know?

11 A. That's correct.

12 Q. And, if I ask you the same question with respect
13 to feelings of anger, the answer would be the same? The
14 City doesn't know?

15 A. That's correct.

16 Q. And, if I ask you the same question as to
17 suicidal thoughts, your answer would be the same? The
18 City doesn't know?

19 A. That's correct.

20 Q. And is it fair to say that the reason the City
21 doesn't know this is because no study has ever found a
22 causal connection between Sexual Orientation or Gender
23 Identity Change Efforts and any harm?

24 A. The reports and information that was -- that was
25 attached to this ordinance, the ones that was relied

1 upon for the ordinance, did not have any of those.

2 Whether one exists or not, I don't think we've done any
3 independent review of the literature or studies.

4 Q. And so --

5 A. So we do not know of any.

6 Q. Okay. And so the City doesn't know the answer to
7 the questions I just posed. And, because the City
8 doesn't know of any study, the City would be unable to
9 determine an answer to the question that I just posed,
10 correct?

11 MR. ABBOTT: Object to the form.

12 THE WITNESS: If you're asking are we
13 relying on any empirical studies, the answer is no.

14 MR. MIHET: Okay.

15 BY MR. MIHET:

16 Q. Continuing in the same memorandum to the next
17 paragraph, it says: The model ordinance is aimed at
18 protecting minors from being exposed to conversion
19 therapy. It contains a blanket prohibition on the
20 practice of conversion therapy on minors by state
21 licensed professionals, physicians, psychotherapists, et
22 cetera.

23 Did I read that correctly?

24 A. Yes.

25 Q. What does the term "blanket prohibition" mean in

1 that context?

2 A. While I have not spoke to the City Attorney on
3 her usage of that term, it appears, from the sentence --
4 just from the -- the sentence structure, it is an
5 umbrella, if you will, a total covering of the practice
6 of conversion therapy.

7 Q. A total ban?

8 A. A total ban.

9 Q. Did the City Council ever consider anything other
10 than a blanket prohibition or a total ban on Sexual
11 Orientation Change Efforts or Gender Identity Change
12 Efforts?

13 A. Are you referring to a ban on certain practices
14 or -- as opposed to a total ban? Is that the question?

15 Q. Yes.

16 A. I think the Council had really the option of
17 passing the ordinance, which is a total ban. And the
18 only other alternate they considered was no ban.

19 Q. Okay. So the answer to my question is, no, the
20 City has never considered anything other than a total
21 ban?

22 A. That's correct.

23 Q. Now, you said -- so, just to be clear, then, the
24 City never considered, for example, banning only
25 aversive therapy as opposed to non-aversive therapy?

1 A. That's correct.

2 Q. The City never considered banning only forced
3 involuntary therapy while allowing therapy that a minor
4 seeks out and voluntarily assents to?

5 A. That's correct.

6 Q. Now, you said in your earlier response that the
7 City's only option was to enact the ban that was
8 proposed or to reject it entirely. Did I understand
9 that correctly?

10 A. That wasn't their only. But that was the
11 decision that the Council was -- was deliberating in the
12 October 2017 meeting.

13 Q. Okay. Now, the Council could have requested
14 information on whether or not a ban that was short of a
15 total ban would still address the perceived problem,
16 correct?

17 A. They could have, yes.

18 Q. The Council could have requested information, for
19 example, on whether or not prohibiting only aversive or
20 forced therapy would still address the asserted harms of
21 conversion therapy?

22 A. They could have.

23 Q. But they never made that request, correct?

24 A. That's correct. They did not.

25 Q. The City Attorney received a model ordinance from

1 Mr. Hoch, correct?

2 A. That's correct.

3 Q. The City Attorney did make a couple of
4 modifications to that model ordinance, correct?

5 A. That's correct. The City Attorney's office.

6 Q. Right.

7 A. Yes.

8 Q. But the City Attorney's office didn't modify the
9 model ordinance that it received to make it less than a
10 total ban?

11 A. That's correct.

12 Q. Could they have done that if they had been
13 instructed to or if they wanted to?

14 A. Yes. The City Council certainly has the ability
15 to ask for modifications.

16 Q. Why didn't the City Council consider anything
17 other than a blanket prohibition or total ban?

18 A. Sure. Well, I can't speak to the Council or the
19 individuals. However --

20 Q. Did you say you cannot speak for the Council?

21 A. The individual Council members.

22 Q. And I'm not asking you --

23 A. Yes.

24 Q. I'm asking you --

25 A. Sure.

1 Q. -- for the Council as a whole, the City of Boca
2 Raton.

3 A. Sure. I believe that the City Council reviewed
4 the documents that were provided as part of the
5 ordinance and felt that the documents supported the
6 intent and the ordinance.

7 Q. Okay. But they never investigated whether or not
8 anything short of a total ban would still address the
9 problems that were being asserted?

10 A. That's correct.

11 Q. Okay. Speaking of the materials that were
12 presented, have you had a chance to review the stack of
13 studies and statements and position papers?

14 A. I have.

15 Q. Did you read them from cover to cover?

16 A. I did not.

17 Q. Okay. There may be a couple three hundred pages
18 or thereabouts?

19 A. Sure. I think one's a hundred and eighty. One's
20 sixty, seventy. Yes. So three hundred pages is
21 probably a fair estimate.

22 Q. Okay. How much time did you take to read them?

23 A. Probably -- probably the better part of an hour.

24 Q. Okay. And --

25 A. Little more, little less because I was referring

1 to other things during that.

2 Q. Sure. Now, I don't know whether you're a speed
3 reader or not. And, in an hour or so, I can probably
4 read about twenty pages or so. Do you have any idea
5 about how many pages of information you can read in an
6 hour?

7 A. I don't.

8 Q. Okay. Fair to say it's twenty, thirty, forty
9 pages, thereabouts?

10 A. Well, don't know. I really have never timed
11 myself. I don't know what I read per minute.

12 Q. Okay. Is it fair to say that, in the hour that
13 you spent reviewing that stack of three hundred pages,
14 you were not able to read all of it?

15 A. Clearly.

16 Q. Okay. How much --

17 A. And -- I'm sorry.

18 Q. Go ahead.

19 A. But, of course, there are some sections that
20 perhaps weren't as pertinent to the issue; and I didn't
21 look at those at all. I tried to focus on the areas
22 that -- that appeared to be pertinent to the ordinance
23 and to this matter.

24 Q. When did you read those materials?

25 A. First time was probably about a week ago, ten

1 days ago; and then I've looked at them periodically
2 throughout --

3 Q. Okay.

4 A. -- including yesterday.

5 Q. Okay. We spent a little bit of time on one of
6 those yesterday.

7 Now, with respect to the City Council, including
8 the Mayor, how much time did they spend reviewing the
9 actual studies and position papers themselves?

10 A. Again, they were provided that information. How
11 much each of them looked at those documents and studied
12 them, I don't know.

13 Q. Okay.

14 A. I'm unable to tell you.

15 Q. So that means the City doesn't know whether or
16 not the individual Councilmen read any of them?

17 A. The information was provided to them.

18 Q. Undoubtedly.

19 The question is: Does the City know whether the
20 members of the City Council actually read any of the
21 studies themselves?

22 A. I'm not sure how we would know that. But the
23 information was -- was presented to the City Council.
24 And, with all ordinances, with all actions they take,
25 they're provided with all information. The level of

1 their review is not something that we would know.

2 Q. So the answer to my question is no?

3 A. The answer to your question is I don't know.

4 Q. Okay. Continuing in the same memorandum we've
5 been discussing, Exhibit 23, the next sentence says: A
6 proposed ordinance would only apply to minors.

7 Did I read that correctly?

8 A. Yes.

9 Q. Why would the City exclude adults from the
10 coverage of the ordinance?

11 A. My understanding is that non-minors, adults, have
12 the -- can both legally consent and have the cognitive
13 ability to assent to that type of treatment.

14 Q. Okay. Is the City's position that a
15 seventeen-year-old cannot voluntarily assent to therapy
16 to assist that seventeen-year-old in changing their
17 gender identity?

18 A. I think --

19 MR. ABBOTT: Object to the form.

20 Go ahead.

21 THE WITNESS: I think the ordinance says
22 that anybody under eighteen, which would be a
23 seventeen-year-old. There would be a ban on conversion
24 therapy for that seventeen-year-old, yes.

25 BY MR. MIHET:

1 Q. Is it the City's position that a
2 seventeen-year-old cannot voluntarily assent to therapy
3 that would assist that seventeen-year-old with his or
4 her desire in changing their gender identity?

5 A. I think -- again, if you read the ordinance,
6 it -- seventeen is less than eighteen, obviously. So,
7 as a minor, they wouldn't -- there would be a ban from
8 that assent.

9 Q. Sure. I'm agreeing with you a hundred percent
10 that the ordinance would prohibit that minor from
11 seeking or engaging in that therapy. My question is
12 quite different, actually.

13 Separate and apart from what the ordinance allows
14 or prohibits --

15 A. Uh-huh.

16 Q. Okay?

17 -- is it the City's position that a
18 seventeen-year-old cannot voluntarily assent to therapy
19 that would assist that individual with their desire to
20 change gender identity?

21 A. Uh-huh. I understand --

22 MR. ABBOTT: Object to the form.

23 THE WITNESS: I'm sorry.

24 BY MR. MIHET:

25 Q. Go ahead.

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1 A. I think the -- the studies that were cited in the
2 responses say that a number of the organizations note
3 that minors, children under eighteen, do not have the
4 requisite cognitive ability to make those kind of
5 decisions. So, whether there is an individual at
6 seventeen who has those cognitive or a
7 seventeen-year-old who does not, I don't know that there
8 couldn't be cases on either side. But, in general, I
9 believe that the -- that the reports believe -- or
10 suggest that minors, children/minors are unable to make
11 such assents.

12 Q. Okay. Now, if a minor seeks to change their
13 gender identity -- say you have a seventeen-year-old boy
14 who decides that he is going to identify as a girl. Are
15 you with me?

16 A. Uh-huh.

17 Q. If this minor seeks therapy to affirm him in this
18 decision, the ordinance would permit that kind of
19 therapy, would it not?

20 A. If it's not a change of gender identification,
21 then the ban -- as a minor, there is a ban on people
22 trying to -- therapists trying to change gender
23 identity.

24 Q. Okay.

25 A. If the therapist is not trying to change, then,

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1 of course, there would be no violation of the ordinance.

2 Q. But, if the minor wishes for that change to take
3 place and is looking for affirmation therapy to assist
4 the minor with that change, would the ordinance allow
5 that?

6 MR. ABBOTT: Objection. Asked and answered.

7 THE WITNESS: The ban is for a conversion of
8 gender identity.

9 MR. MIHET: Okay.

10 THE WITNESS: And so, in your example, I
11 think you had said that this seventeen-year-old
12 individual born as a boy now wants to identify as a
13 girl; so their gender identity is female. So I'm not
14 sure what you're asking. If the therapist is affirming
15 their gender identity as a female, then they're not
16 converting the gender identity. So that would not be a
17 ban under this ordinance.

18 Q. This ordinance?

19 A. This ordinance.

20 Q. So --

21 A. If I understood you correctly.

22 Q. Right. So, if the minor has already adopted the
23 identity in their mind and comes to a therapist to
24 receive affirmation for that new identity, what I'm
25 hearing you say is that the ordinance would allow that?

1 A. As presented, I believe that's the case, yes.

2 Q. Okay. And, in that case, that particular
3 seventeen-year-old -- let's assume we're still talking
4 about that person --

5 A. Uh-huh.

6 Q. -- would, in the City's view, be able to
7 voluntarily assent to that kind of therapy, correct?

8 A. Yes.

9 Q. Okay. But, if the minor has not yet adopted the
10 new identity, they're maybe on the fence, they're
11 thinking about it, maybe exploring the options, testing
12 the waters and they come to the therapist seeking help
13 with the change that is not yet achieved but in
14 progress, what I'm hearing you say is that the ordinance
15 would prohibit that kind of therapy?

16 MR. ABBOTT: Object to the form.

17 Misstates the prior testimony.

18 And object to the hypothetical.

19 THE WITNESS: The situation that you're
20 talking about -- as I understand the ordinance and -- it
21 is a ban on conversion therapy, changing -- trying to
22 change someone's gender identity. The situation
23 hypothetically presented, I was unable to tell whether
24 or not they're changing their identity or not.

25 MR. MIHET: They're seeking to change. The

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1 seventeen-year-old is seeking to change, but they
2 haven't changed yet.

3 THE WITNESS: Then a conversion would be a
4 ban. If someone who is looking to change or looking --
5 if a therapist actively treats to convert their gender
6 identity, then I think that would be a ban of the
7 ordinance.

8 BY MR. MIHET:

9 Q. So if you -- okay.

10 Getting back to the memo that is Exhibit 23 and
11 focusing still on that same sentence that says that a
12 proposed ordinance would only apply to minors, leaving
13 adults -- meaning, adults are free to seek out such
14 therapy if they so choose. Putting aside the issue of
15 an adult's ability to consent, if the conversion therapy
16 is harmful, why would adults be allowed to seek out such
17 harm and to undergo that harm?

18 A. Uh-huh. Well, I think for both of those reasons
19 that we talked about earlier. Someone who is not a
20 minor can both assent and consent to -- to a treatment
21 in this case or to therapy. But that's not -- is that
22 your question?

23 Q. Well, I mean, I know that you can -- as an adult,
24 you can assent and consent to things that harm you,
25 right?

1 A. That's correct.

2 Q. So, for example, if I wanted to go out and shoot
3 heroin up my veins, I can consent and assent to that;
4 but that doesn't make that legal. The state isn't going
5 to allow me to do it just because I can. The state says
6 it's harmful; and so, even though you're a consenting
7 adult, we're going to ban you from doing that, correct?

8 A. Sure.

9 Q. Why doesn't the same logic apply to conversion
10 therapy with respect to adults?

11 A. Well, you brought up the example of heroin.
12 Let's look at smoking, for example. Smoking is
13 something that people generally believe is not healthy.
14 Yet adults can, not only consent, but they can assent;
15 and they can smoke. It's a matter of, even though it
16 might be harmful, there are things that adults can do
17 with their own decisions.

18 Q. Okay. And so are you attempting to say by that
19 example that conversion therapy, in the scheme of
20 things, is perhaps not as harmful as -- as heroin but,
21 you know, as harmful as smoking? I mean, are you --
22 are you --

23 A. No, not at all.

24 Q. Okay.

25 A. It had nothing to do with trying to equate

1 heroin, smoking and conversion therapy.

2 Q. No.

3 A. That was not -- you had brought up an example of
4 heroin. I just thought of the idea of smoking, some of
5 the same things where adults can consent and assent; but
6 it may not be -- it may be harmful to them and to
7 others.

8 Q. Okay. But some things that are harmful to adults
9 they can't legally do, correct?

10 A. You brought up heroin as an example.

11 Q. Okay. So why -- if conversion therapy is
12 harmful, why not prohibit adults from doing it?

13 A. I think your question is perhaps -- under the
14 ordinance, it talks about minors. It talks about trying
15 to protect minors for the reasons we just talked about,
16 consent and assent. In the case of adults, those --
17 those same conditions do not exist. And so I don't know
18 that -- if your question is how -- why doesn't the
19 ordinance cover adults as well as minors, it's for those
20 reasons.

21 Q. Okay. Just so we're on the same page, the City
22 of Boca Raton has the ability to prohibit adults from
23 engaging in harmful behavior even though they are able
24 to consent or assent to that behavior, correct?

25 A. That's correct.

1 Q. And so the City of Boca Raton has the ability to
2 prohibit adults, then, from engaging in conversion
3 therapy even if they have the ability to consent or
4 assent to it?

5 A. Within -- yes. I would think that's generally
6 the case.

7 Q. Okay. That being the case, if conversion therapy
8 is harmful, why not extend the ban to cover adults, as
9 well?

10 MR. ABBOTT: Objection.

11 I think that's the fourth time you asked him
12 that question.

13 THE WITNESS: I think, again, is the -- the
14 ordinance was looking at protecting children, minors
15 under eighteen, who don't have either the consent or
16 assent ability. And that's -- this is a protection for
17 minors.

18 BY MR. MIHET:

19 Q. Does the City of Boca Raton take the position
20 that conversion therapy is harmful enough to ban for
21 minors but not harmful enough to ban for adults?

22 MR. ABBOTT: Object to the form.

23 THE WITNESS: The documents that were
24 reviewed and included as part of the ordinance for the
25 most part deal with children, with minors, not with

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1 adults. And that's what the focus of the ordinance was
2 was looking at minors, not adults.

3 MR. MIHET: Okay.

4 THE WITNESS: In the future, could there be
5 ordinances? Could there be legislation with adults?
6 Certainly. But that was not the focus of this
7 ordinance.

8 MR. MIHET: Okay.

9 BY MR. MIHET:

10 Q. Back to the memo that is Exhibit 23 and
11 continuing with the next sentence, it says: It would
12 not apply to clergy or other religious leaders who are
13 acting in their roles as clergy or pastoral counselors
14 or are providing religious instruction to congregants so
15 long as they do not hold themselves out as operating
16 pursuant to a state-issued license.

17 Have I read that correctly?

18 A. Yes.

19 Q. What was the reason for excluding religious
20 practitioners, if you will, from the total ban?

21 A. Sure. The -- as you know, the model ordinance,
22 the one that was presented to the City back in July of
23 2017, included an exclusion for clergy, as well.

24 Q. Okay.

25 A. And that was not something that the City

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1 developed on their own. That was something that was
2 adopted by other cities, as you well know.

3 Q. Okay. The City could have --

4 A. Yes.

5 Q. -- amended the model ordinance as it did in other
6 respects to make it apply to religious practitioners, as
7 well?

8 A. Perhaps. But that was not something that was
9 considered as part of the ordinance to take that out.
10 And I believe, in talking with the people who prepared
11 the ordinance, there was a clarification, as you saw,
12 from the model ordinance that tried to clarify who was
13 covered by this, not just clergy, but other members of
14 the congregation who are involved with the religious
15 institutions. But it is something that was included, I
16 believe, originally in the model ordinance as, like, a
17 freedom of religion and not trying to infringe on that.
18 However, I don't know why the original model ordinance
19 was included with that. But that appears to be the
20 case.

21 Q. The model ordinance included already an exemption
22 for clergy, correct?

23 A. That's correct.

24 Q. And the City Attorney actually expanded that
25 exemption to make it clear that it's, not just clergy

1 that are exempted, but any religious --

2 A. Not just ordained because there could be some
3 question about someone who is working as a Sunday school
4 teacher, for example.

5 Q. Right.

6 A. They're not ordained. But are they a member of
7 the -- of the body of the organization.

8 Q. Sure. Fair to say that the City actually
9 broadened the religious exemption in the model
10 ordinance?

11 A. I'd like to say clarified. But perhaps included
12 other individuals than the model ordinance. That's
13 correct.

14 Q. Okay. It didn't remove the exemption altogether?

15 A. It did not.

16 Q. Okay. I believe you said the reason for that is
17 because they wanted to observe First Amendment
18 protections?

19 MR. ABBOTT: Object to the form.

20 THE WITNESS: I did not say that. I believe
21 that is the case. That's my understanding. I don't
22 believe that was clear in the -- in the model ordinance.
23 It didn't specifically say that.

24 MR. MIHET: Okay.

25 THE WITNESS: That's my understanding.

1 BY MR. MIHET:

2 Q. Is conversion therapy any less harmful to a minor
3 when it is provided by an unlicensed member of the
4 clergy as opposed to when it is provided by a licensed
5 therapist?

6 A. I don't know the answer.

7 Q. Does the City know the answer?

8 A. No. There has not -- my understanding, the City
9 has not reviewed any -- any information or any studies
10 on it.

11 Q. Okay. The City believes that, when practiced by
12 a licensed therapist, conversion therapy, including
13 Sexual Orientation Change Efforts and Gender Identity
14 Change Efforts, is harmful to minors, correct?

15 A. They follow the lead of these different -- of
16 these different organizations, yes.

17 Q. So they believe that to be the case?

18 A. That's correct.

19 Q. The City has no reason to believe that, when the
20 same kind of therapy is provided by an unlicensed person
21 such as a pastor, that it's any less harmful, correct?

22 A. There's no independ -- no studies that I know of
23 that the City has looked at that have addressed that.

24 Q. Did the City ever consider that a consequence of
25 banning Sexual Orientation or Gender Identity Change

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1 Efforts by licensed therapists would be for those who
2 are seeking that kind of therapy to end up in the hands,
3 so to speak, of unlicensed practitioners?

4 A. I don't believe that was discussed.

5 Q. Okay. The City didn't consider -- well, let me
6 withdraw that.

7 Does the City of Boca Raton have the ability to
8 prohibit members of religious organizations from harming
9 children?

10 MR. ABBOTT: Object to the form.

11 Exceeds the scope of the notice.

12 Calls for a legal conclusion.

13 THE WITNESS: I guess I'd need to know a
14 little bit more about your example, what we're talking
15 about. But...

16 BY MR. MIHET:

17 Q. Well, you know, I'd give you the example of
18 sexual abuse; but I'm not sure whether or not the City
19 passes any laws with respect to that. But, you know,
20 things along those lines. Assuming the City has
21 authority to stop other adults in the City from harming
22 children, would the City have the authority to stop
23 religious entities and their members from harming
24 children in the same way?

25 MR. ABBOTT: Same objection.

1 THE WITNESS: I think the City has --
2 certainly has authority to make rules, regulations,
3 policies that protect children or any citizen, any
4 resident or visitor, yes.

5 BY MR. MIHET:

6 Q. From harm whether or not that harm is caused by
7 an adult or by a member of a religious institution?

8 A. Yes.

9 Q. Okay. Going to the second page of Exhibit 23,
10 the memorandum starts at the top by saying: It is worth
11 noting that, although regulation of health professions
12 occurs through licensure at the state level, there is no
13 express statutory preemption regarding the states
14 regulation of licensed health professions nor any case
15 law finding an implied preemption. However, given the
16 extensive regulation of health professions by the state,
17 it is possible a court may in the future find the
18 regulatory field has been impliedly preempted to the
19 state, thereby prohibiting local regulation.

20 Did I read that correctly?

21 A. Yes, you did.

22 Q. And, if you would look down at the footnote four,
23 the last couple of sentences starting with "also the
24 PBCHRC." Do you see that?

25 A. No. Oh, I see, yes.

1 Q. Do you see that?

2 A. Yes.

3 Q. So follow along with me there.

4 A. Yes.

5 Q. Also the PBCHRC has recommended inclusion of the
6 following in a proposed ordinance. The ordinance shall
7 be automatically repealed should the Florida legislature
8 and/or any court determine that a regulation of
9 conversion therapy is preempted by the State of Florida.
10 We believe this language would be superfluous since the
11 establishment or finding of a preemption would render
12 the ordinance unenforceable by operation of law without
13 the need for an express provision in the draft
14 ordinance.

15 Did I read that correctly?

16 A. Yeah.

17 Q. So is it fair to say that, in looking at the
18 proposed ordinance, the City was concerned about the
19 issue of preemption?

20 A. The City -- preemption was something that the
21 City looked at during the drafting of the ordinance,
22 yes.

23 Q. Okay. Was the City concerned that the regulation
24 of mental health professionals was something that was a
25 state issue for the State of Florida to do as opposed to

1 the City of Boca Raton?

2 A. I think the answer to your question is no. I
3 think -- as phrased. I think that, when this came, as
4 with other jurisdictions, the City had some concerns
5 whether or not the regulation of a state licensed
6 profession was something that was preempted by the state
7 or not and did some research to see whether or not that
8 was the case.

9 As you can see from the memo that the -- neither
10 the case law nor -- there is no express preemption nor
11 did case law support that. And so I believe the City
12 Attorney said that this ordinance makes sense. However,
13 recognizing that in case future there was some implied
14 preemption by the state, that that would render this
15 ordinance pretty much unenforceable.

16 Q. Okay. This paragraph that I read back up in the
17 main text --

18 A. Yes.

19 Q. -- in the first -- in the first paragraph where
20 it says: However, given the extensive regulation of
21 health professions by the state.

22 A. Uh-huh.

23 Q. Does the City of Boca Raton take the position
24 that the State of Florida extensively regulates health
25 professions?

1 MR. ABBOTT: Object to the form.

2 THE WITNESS: I believe that's what it says,
3 and I believe the answer is yes.

4 MR. MIHET: Okay. I know I told you to feel
5 free to ask for breaks. Can I ask for a break?

6 THE WITNESS: Apparently, it's your depo.
7 You can do whatever you want.

8 MR. MIHET: Let's take a quick comfort
9 break.

10 (Recess)

11 BY MR. MIHET:

12 Q. Mr. Woika, I believe you said that the conversion
13 therapy ordinance came up at City Council meetings, at
14 one of them in particular where the -- was it the Mayor
15 asked for additional information to be provided?

16 A. No.

17 Q. Okay. I'm sorry.

18 A. I think the one you're talking about was in July
19 of 2017.

20 Q. Okay.

21 A. And the Mayor, during her portion of the -- of
22 the Council meeting, said that she had received some
23 information from Rand Hoch, from PBC Human Rights
24 Council, and asked the City Attorney to look into it and
25 to take a look at the -- really take a look at the

1 ordinance --

2 Q. Okay.

3 A. -- the draft ordinance.

4 Q. So that was the first Council meeting when the
5 conversion therapy ban came up?

6 A. That's correct.

7 Q. And then, after that, it came up at how many
8 additional council meetings?

9 A. Two.

10 Q. Two.

11 One where they had the first reading or the
12 introduction?

13 A. That's correct.

14 Q. And one where they had the final vote?

15 A. That's correct. September and October
16 respectively for the two meetings --

17 Q. Okay.

18 A. -- of 2017.

19 Q. So, altogether then, I'm counting three City
20 Council meetings where the ordinance was discussed?

21 A. Well, the concept was discussed. The ordinance
22 wasn't really --

23 Q. Right. The ordinance wasn't really the
24 ordinance --

25 A. That's right.

1 Q. -- at the first meeting?

2 A. That's correct.

3 Q. But the conversion therapy ban was discussed at
4 three City Council meetings?

5 A. That's correct.

6 Q. Were there any workshops or sessions other than
7 full blown City Council meetings where the conversion
8 therapy ban was discussed?

9 A. No.

10 Q. Any executive sessions or shade meetings?

11 A. No.

12 Q. Okay. Okay. We're going to have some video time
13 here and look at the videos. They're very short.

14 A. Sure.

15 Q. We're going to look at the video from the first
16 City Council meeting, which is July 25, 2017. And, just
17 for the record --

18 A. Are you going to use this, or do you --

19 Q. We're just going to flip one of these laptops
20 around so you can see it.

21 Just for the record, we're going to play from a
22 file that is titled CCR170725.MP4.

23 MR. GANNAM: And, just for the record, this
24 file was originally produced by the City with the file
25 name Boca Raton underscore CFCA and then a lot of other

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1 letters and numbers. We are using a different file name
2 just for simplicity.

3 MR. MIHET: And we're going to provide the
4 thumb drive to the court reporter so that these videos
5 can be appended as exhibits to the deposition.

6 So this first meeting, I've already
7 mentioned the file name, we're going to play from the
8 point in time on this video that is at hour two, minute
9 six, second fifty-nine. Can you see the --

10 THE WITNESS: Yes.

11 (Videotape starts)

12 MAYOR HAYNIE: Thank you very much,
13 Mr. Weinroth.

14 And I'll be very brief. I know many of us
15 have received e-mails and some suggested ordinances
16 regard -- regarding the prohibition of conversion
17 therapy on minors. And I just wanted to pass these on
18 to the City Attorney and just ask that she review our
19 code and see if -- if, perhaps, we already do this and,
20 if not, you know, perhaps some suggestions as to protect
21 the children in our community.

22 COUNCIL PERSON WEINROTH: And I would second
23 that. You know, we've been speaking individually with
24 the proponent of that. And, certainly, this is
25 something that I would like to hear more about and see

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1 if it's something that the City should be weighing in
2 on.

3 COUNCIL PERSON: And I also would like to
4 hear more.

5 MAYOR HAYNIE: Yeah. Thank you, Mister
6 (inaudible). I think we all do if it comes to the
7 safety of our children.

8 COUNCIL PERSON WEINROTH: Thank you.

9 MAYOR HAYNIE: Thank you.

10 And, if there's no further --

11 COUNCIL PERSON O'ROURKE: Madam Mayor --

12 (Videotape stopped)

13 BY MR. MIHET:

14 Q. Okay. Is that portion of the video that we
15 watched representative -- let me try that, again.

16 Does that portion of the video that we watched
17 fairly and accurately represent what transpired at the
18 July 25, 2017, City Council meeting with respect to
19 consideration of the ban on conversion therapy?

20 A. Yes.

21 Q. Now, by my count, that discussion spanned from
22 hour two, minute six, second fifty-nine to hour two,
23 minute seven, second forty-nine. So I'm counting about
24 fifty seconds; is that fair?

25 A. Your numbers -- I think that's approximate time,

1 about a minute, yeah.

2 Q. All right. And was there any other discussion at
3 that meeting regarding the subject of conversion
4 therapy?

5 A. No.

6 Q. Okay. And, if I heard correctly, the discussion
7 centered on a couple of the members saying that they
8 wanted more information about the subject?

9 A. Yes. I think that the Mayor is pretty clear that
10 they had received this information, wanted to know if
11 that was part of our existing code or if there should be
12 something that should be done with this ordinance. And
13 I think that's what Councilman Weinroth said, as well.

14 Q. Said, we would like to hear more? Yes?

15 A. Yes.

16 Q. All right. So next we are going to play the
17 video of the second City Council meeting. This is from
18 the September 26, 2017. And this is a video file that,
19 for the record, is titled CCR170926.MOV. And we're
20 going to play from hour one, minute seven, second two,
21 and on.

22 A. I think that's actually one hour -- is that what
23 you said? One hour and four minutes?

24 Q. Hour one --

25 A. Yeah. Okay.

1 Q. -- minute seven, second two.

2 A. Uh-huh.

3 (Videotape starts)

4 MAYOR HAYNIE: We'll move to introduction of
5 ordinances; and we have a lot, which means we're going
6 to have a very busy meeting next time.

7 So we will begin with Ordinance 5407.

8 Ms. Saxton, will you please read the title.

9 MS. SAXTON: Ordinance 5407, an Ordinance of
10 the City of Boca Raton amending Chapter 9, Code of
11 Ordinances, to create a new Article 6, Prohibition of
12 Conversion Therapy on Minors, prohibiting the practice
13 of conversion therapy on patients who are minors,
14 providing for severability, providing for repealer,
15 providing an effective date.

16 MAYOR HAYNIE: And who would like to
17 introduce Ordinance 5407?

18 COUNCIL PERSON WEINROTH: Madam Mayor, I'll
19 move 5407.

20 MAYOR HAYNIE: Thank you very much,
21 Mr. Weinroth. We'll now take up.

22 (Videotape stopped)

23 BY MR. MIHET:

24 Q. Okay. Was that video a fair and accurate
25 representation of what transpired at the second Council

1 meeting with respect to the ban on conversion therapy?

2 A. Yes. It's the introduction of ordinance.

3 Q. Okay. Was there any other discussion of
4 conversion therapy at this meeting besides what we just
5 watched?

6 A. No, I don't believe so.

7 Q. Now, by my count, that started at hour one,
8 minute seven, second two; and it went on to hour one,
9 minute seven, second thirty-six. So that's about
10 thirty-four seconds; is that about right?

11 A. It seems about right.

12 Q. Okay. So now we're going to watch the third and
13 final meeting where the subject of conversion therapy
14 was discussed. This is from the October 10, 2017, City
15 Council meeting. And, for the record, this is a video
16 that is labeled CCR171010. And we are going to play
17 beginning with minute three, second eleven.

18 (Videotape starts)

19 MAYOR HAYNIE: Or related public hearings.
20 So we will move directly to regular public hearings. At
21 this time, I'd like to ask the city clerk to please read
22 the title of Ordinance 5407.

23 CITY CLERK: Ordinance 5407, an ordinance of
24 the City of Boca Raton amending Chapter 9, Code of
25 Ordinances, to create a new Article 6, Prohibition of

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1 Conversion Therapy on Minors, prohibiting the practice
2 of conversion therapy on patients who are minors,
3 providing for severability, providing for repealer,
4 providing for codification, providing an effective date.

5 MAYOR HAYNIE: Thank you very much. And, as
6 you can see, on behalf of the Palm Beach County Human
7 Rights Council who reached out to me, they had asked
8 that we consider this ordinance. We're following in the
9 footsteps of many other Palm Beach County municipalities
10 that have passed a similar ordinance. They being
11 Wellington, Lake Worth, Delray Beach, Palm Beach
12 Gardens, West Palm Beach, Boynton Beach and Greenacres.
13 And, basically, it's protecting the youth of our
14 community from a rather serious possibility of harm.

15 So, Members, any questions? No? No one has
16 any questions? At this time, I'll open the public
17 hearing. Is there anyone present who would like to come
18 forward and address the City Council on this matter?
19 Seeing no one come forward, I'll close the public
20 hearing.

21 And, if there's no further discussion, at
22 this time, I'll entertain a motion.

23 COUNCIL PERSON WEINROTH: Madam Mayor, I'll
24 move Ordinance 5407.

25 MAYOR HAYNIE: Is there a second?

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1 COUNCIL PERSON O'ROURKE: I'll second.

2 MAYOR HAYNIE: Okay. So we have a motion by
3 Mr. Weinroth and a second by Ms. O'Rourke. Is there any
4 further discussion?

5 MR. RODGERS: Madam Chair?

6 MAYOR HAYNIE: Mr. Rodgers.

7 MR. RODGERS: Question for our City Manager.
8 How -- and I've looked through this, and I have some
9 concerns of language licensed practice versus
10 unlicensed. How would we enforce this? Would this be
11 like a code violation that we'd bring it forward or...

12 DEPUTY CITY MANAGER BROWN: It would be.
13 I'm not sure how we would enforce it. But it would be
14 in the code-related area.

15 Any other thoughts from the attorney? I
16 don't...

17 MAYOR HAYNIE: Ms. Frieser?

18 MS. FRIESER: That was a -- it's a Code
19 Enforcement process. I concede that it's -- there may
20 be difficulties in actual practical enforcement issue.
21 But it is a Code Enforcement process.

22 MAYOR HAYNIE: Okay. Any further
23 discussion?

24 DEPUTY MAYOR RODGERS: Madam Chair?

25 MAYOR HAYNIE: Mr. Rodgers.

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1 DEPUTY MAYOR RODGERS: Full disclosure. I
2 mean, I certainly won't argue health and high standard.
3 I see this as really a state issue. And I'm not going
4 to support it because of that.

5 MAYOR HAYNIE: Okay. Any further
6 discussion?

7 Seeing none, Ms. Saxton, will you please
8 call the roll on Ordinance 5407.

9 MS. SAXTON: Weinroth?

10 COUNCIL PERSON WEINROTH: Yes.

11 MS. SAXTON: Haynie?

12 MAYOR HAYNIE: Yes.

13 MS. SAXTON: O'Rourke?

14 COUNCIL PERSON O'ROURKE: Yes.

15 MS. SAXTON: Singer?

16 COUNCIL PERSON SINGER: Yes.

17 MS. SAXTON: Rodgers?

18 DEPUTY MAYOR RODGERS: No.

19 MS. SAXTON: The motion passes four votes to
20 one.

21 MAYOR HAYNIE: Very good. Thank you very
22 much. We'll --

23 (Videotape stops)

24 BY MR. MIHET:

25 Q. Was that video a fair and accurate representation

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1 of what transpired at the third City Council meeting on
2 the subject of this ordinance?

3 A. Yes.

4 Q. By my count, that started at minute three, second
5 eleven; and it went to minute six, second zero. So I'm
6 counting about two minutes and forty-nine seconds. Does
7 that sound about right?

8 A. Numbers seem about right.

9 Q. Was there any other discussion at this City
10 Council meeting on the subject of conversion therapy
11 other than the portion that we just watched?

12 A. No.

13 Q. So, when I'm adding my numbers together, I'm --
14 my math shows me that, between the three meetings
15 combined, there was approximately four minutes and fifty
16 seconds of total consideration that was given to the
17 issue of conversion therapy by the City Council at these
18 meetings. Does that sound about right?

19 A. During the active portion of the meeting, yes,
20 about thirty seconds -- yeah, about five minutes.

21 Q. Okay. And, at this last meeting, it seemed like
22 there were no questions from the members of the Council.
23 Was that -- was that what you saw, as well?

24 A. Well, I think Chair -- or Councilman Rodgers
25 voiced his opinion and said he had some -- some thoughts

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1 or some questions on the appropriateness. But,
2 during that other portion -- he was the only one that
3 had raised questions.

4 Q. I should have been a little more clear. By my
5 count, there were three portions of the meeting. There
6 were -- there was first a portion where there were
7 questions by members. Then there was a section for
8 public discussion, and then there was a section for
9 deliberation.

10 A. That's correct.

11 Q. In the first section with respect to questions by
12 members, there were none?

13 A. That's correct.

14 Q. And the public discussion there was none?

15 A. That's correct.

16 Q. In the deliberation section, there was a question
17 from one of the members regarding how this ordinance
18 would be enforced?

19 A. That was one of them, enforcement. Then I think
20 he had some thoughts about whether it should be a local
21 issue or a state issue.

22 Q. With respect to enforcement, he asked the City
23 Manager how this would be enforced. What I heard the
24 City Manager say is, I'm not sure how we would enforce
25 it.

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1 A. Uh-huh.

2 Q. But it's a -- it's a code-related area. Does
3 that sound about what he -- right?

4 A. That seems about right, yes.

5 Q. Okay. Why was the City Manager not sure about
6 how this ordinance that was being enacted would be
7 enforced?

8 A. Well, I think, as you well recognize, this is a
9 little bit different than some of the other code
10 enforcement matters that the City handles. And so I
11 think the -- while he recognized it as clearly a Code
12 Enforcement matter, how it would be done wasn't
13 something that wasn't clear.

14 Q. It wasn't something that had been thought out and
15 clearly delineated by that point?

16 A. That's correct.

17 Q. And the -- I think he turns to someone and asked
18 somebody else if they had any thoughts on enforcement.
19 And I'm not sure if that was another City Council member
20 or someone else that responded.

21 A. City Attorney.

22 Q. City Attorney. Is that Ms. Frieser?

23 A. It is.

24 Q. Now, the City Attorney, Miss Frieser says --

25 A. Ms. is probably a better term.

1 Q. Ms.?

2 A. Uh-huh.

3 Q. Ms. Frieser.

4 A. Uh-huh.

5 Q. Isn't that what I said?

6 A. Ms. as opposed to miss.

7 Q. Oh, okay.

8 A. I'm sorry.

9 Q. That's all right.

10 Attorney Frieser.

11 A. Perfect.

12 Q. I believe I heard her say that she also thought
13 that there would be difficulties in the practical
14 enforcement issues?

15 A. Uh-huh.

16 Q. Yes?

17 A. She did.

18 Q. And so what do you think she was referring to?

19 A. Well, again, it is -- a lot of our code
20 enforcement has to do with something that is very
21 visual, easily determined. This is a little bit
22 different; and so there's going to be some different
23 approaches, some different ways of addressing. But it's
24 still a Code Enforcement issue, which I believe is what
25 she had concluded, as well.

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1 Q. Okay. When you say that a lot of our Code
2 Enforcement has to do with things that are easily
3 determined, give me an example of what you're talking
4 about.

5 A. Going by a property and seeing that the grass is
6 too tall. It hasn't been cut properly.

7 Q. Okay. That's something that a code enforcement
8 officer can see and can issue a citation on the spot?

9 A. A notice of violation, yeah.

10 Q. In order for a notice of violation to be issued,
11 what does the code enforcement officer have to conclude?

12 A. It doesn't really have to -- it just has to
13 believe that there is a violation of the -- of the City
14 code.

15 Q. Okay. He has to believe that a violation has
16 occurred?

17 A. That's correct.

18 Q. And so he issues a citation?

19 A. Notice --

20 Q. Notice of violation?

21 A. -- of violation, that's correct.

22 Q. And what happens next in the code enforcement
23 process?

24 A. There is an opportunity for the property owner to
25 correct the -- the notice. And, if it's not, then it

1 goes to a special magistrate.

2 Q. And what happens at the special magistrate?

3 A. The special magistrate hears the testimony, hears
4 whatever evidence -- evidence that's presented and makes
5 a determination on the violation and what the remedies
6 could and should be --

7 Q. Okay.

8 A. -- and gives the property owner the opportunity
9 to correct before other penalties accrue.

10 Q. And how many special magistrates does the City of
11 Boca Raton have to deal with code enforcement
12 violations?

13 A. Several. It's a part-time job. And we --
14 there's a number that are rotated through. And there's
15 hearings that are monthly -- bimonthly and monthly.

16 Q. Okay. Now, the special magistrate, is that
17 something that's an elected position; or is it appointed
18 or hired or how is that --

19 A. It's appointed by City Council.

20 Q. And who can be a special magistrate for the City
21 of Boca Raton?

22 A. There is a -- there is a -- a process, an
23 application process and a selection process. I don't
24 know the -- the qualifications of the special
25 magistrates. But there is -- the process is one of

1 application and appointment.

2 Q. Okay. And that is a paid position?

3 A. It is.

4 Q. You said it's part-time, though?

5 A. Yes.

6 Q. About how many hours does a special magistrate
7 work?

8 A. A few hours a month.

9 Q. Okay. Does a special magistrate have to have a
10 minimum level of education?

11 A. I believe -- to check -- that they are required
12 to be attorneys.

13 Q. They are required to be attorneys?

14 A. Uh-huh.

15 Q. Are they required to be attorneys in any
16 particular --

17 A. I think that's the case. But, again, I have not
18 reviewed that as part of this.

19 Q. Okay. Are they required to be attorneys in a
20 particular area of law?

21 A. No, I don't believe so.

22 Q. Okay. So they could be a trust and estates
23 attorney or a property tax attorney or a divorce
24 attorney?

25 A. Again, I don't know the qualifications off the

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1 top of my head. However, there is a -- most of the
2 people who are selected are special magistrates in other
3 communities, as well. And they look, not only at their
4 experience professionally, but also as experience in
5 other communities.

6 Q. Okay. How many code enforcement officials are
7 there in the City of Boca Raton?

8 A. By, "officials," you mean, all code officers?

9 Q. Yes.

10 A. I believe there are twenty-one, and there are a
11 couple different categories. There's code -- code
12 compliance officer 1's and 2's. And I think there's
13 about seventeen. There are seventeen of those. I think
14 there are three senior code compliance officers and then
15 a code compliance manager.

16 Q. So that's twenty-one. And is there someone
17 that's sitting at the top of that department?

18 A. That's the code compliance manager is responsible
19 for -- for that group. The code compliance manager
20 reports to the chief building official which reports to
21 development services director.

22 Q. Okay. So who is the code compliance manager
23 currently?

24 A. His name is Doug Sheedy, S-h-e-e-d-y.

25 Q. And you said he reports to the?

1 A. Chief building official.

2 Q. And who is that?

3 A. His name is John Cosmo.

4 Q. Okay.

5 A. C-o-s-m-o-s -- excuse me -- C-o-s-m-o.

6 Q. And he reports to the?

7 A. Development services director.

8 Q. Who is?

9 A. His name is s-h-a-d -- S-c-h-a-a-d,
10 Brandon Schaad.

11 Q. And then Mr. Schaad reports to Mr. Brown?

12 A. That's correct.

13 Q. And Mr. Brown reports to Mr. Ahnell?

14 A. That's correct.

15 Q. What is the difference between the three senior
16 code enforcement officials and the seventeen level 1 or
17 2 officials?

18 A. The level 1 or 2 -- and that's based on
19 certifications. You start out as a 1. You get
20 certified. Then you go to the 2 level. So there could
21 be -- of the seventeen positions, there could be
22 seventeen 1's or seventeen 2's. It's just really based
23 on their own progression and their own certifications.
24 The three seniors are positions that are set. There's
25 only three. So it's not part of progression. But they

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1 have more responsibility, and they have some supervisory
2 lead-worker type responsibilities.

3 Q. Okay. Is there a difference in the educational
4 requirements that apply to the level 1 and 2 officials
5 versus the senior officials?

6 A. I don't believe so, no.

7 Q. The same requirements apply to all --

8 A. The same educational requirements?

9 Q. Yes.

10 A. Yes.

11 Q. And what are those educational requirements?

12 A. I believe it's high school required, associate's
13 recommended or suggested.

14 Q. Okay. So, if you have a high school diploma, you
15 could be eligible to be a code enforcement official in
16 the City of Boca Raton, including a senior enforcement
17 official?

18 A. That's correct.

19 The manager requires more. The manager requires
20 at least an associate's. In this case, Doug Sheedy has
21 a bachelor's degree.

22 Q. Okay.

23 A. From Iowa, if that matters.

24 Q. But an AA degree is required?

25 A. That's correct.

1 Q. Okay. Would a -- a GED certificate be
2 sufficient, or you have to have an actual high school
3 diploma?

4 A. No. A GED would be fine.

5 Q. Would be fine. Okay.

6 A. Again, that's the minimum level.

7 Q. Right.

8 A. But there are some who have other college -- of
9 our existing, there are people who have associate's and
10 other college grads.

11 Q. But they're not required to?

12 A. They're not required to. That's correct.

13 Q. Is there -- is there a distinction in the type of
14 code enforcement cases that an official can handle that
15 is based upon their educational experience?

16 A. No.

17 Q. So all code enforcement officers can handle all
18 code enforcement matters?

19 A. I think we call them code compliance officers.
20 But, yes, your basic premise is correct.

21 Q. Okay. And are there any written policies or --
22 or guidelines that the City of Boca Raton has with
23 respect to which code enforcement matters are assigned
24 to which code compliance officers?

25 A. No.

1 Q. Okay.

2 A. And a lot of times, it's geographical. They're
3 assigned geographical areas for the -- a lot of --
4 especially the 1's and the 2's.

5 Q. Okay. So they go out to a particular area, and
6 they're responsible for -- for violations that are
7 occurring in that --

8 A. That occur within that area. That's correct.

9 Q. Okay. With respect to --

10 A. The seniors are not, by the way. The seniors --
11 and some of the 1's and 2's are not geographical. But
12 that's generally how they're organized.

13 Q. Okay. With respect to the enforcement of code
14 violations, is there any custom or practice within Code
15 Enforcement that says these types of violations will be
16 assigned to these code enforcement officers other than
17 the geographical distinction that we just discussed?

18 A. No.

19 Q. Okay. And I take it that's the same, then, for
20 the conversion therapy ordinance? There is not any
21 policy or custom of assigning future alleged violations
22 of the ordinance to a particular code official?

23 A. There's no policies or procedures. But part of
24 my conversation -- I think we had talked earlier -- with
25 Doug Sheedy, who is the code compliance manager, we

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1 talked about the conversion therapy ordinance in
2 particular and how he believed it would be handled from
3 a -- if he did receive a complaint, how would it be
4 handled.

5 Q. Okay.

6 A. But there's no written policies or procedures.

7 Q. Okay. Is there any plan to issue any written
8 policies or procedures?

9 A. No.

10 Q. Okay. And I think I know the answer, but so
11 we're clear. Prior to today, have there been any
12 alleged violations of the ordinance?

13 A. No.

14 Q. Have there been any opportunity to have Code
15 Enforcement go through the process yet?

16 A. What do you mean? What process?

17 Q. Of enforcing the ordinance banning conversion
18 therapy.

19 A. No.

20 Q. Have there been any enforcement guidelines or
21 procedures promulgated specifically with respect to
22 enforcement of the ordinance?

23 A. Of the code -- of the conversion therapy
24 ordinance?

25 Q. Yes.

1 A. No.

2 Q. Is there any plan to issue such guidelines or
3 policies?

4 A. No. Although, that's not unique. There's -- for
5 many many of the ordinances, there are not specific
6 plans and procedures for them.

7 Q. But are there some ordinances for which there are
8 specific plans or procedures or guidelines in place?

9 A. There are -- I think, generally, no.

10 Q. Okay.

11 A. Now, there are -- in cases of clarifications,
12 there are some memos that are out defining how you
13 measure grass height, for example.

14 Q. That was exactly the example I was thinking
15 about.

16 A. Okay. And, since I brought that up, so, while
17 there's not a policy/procedure, there is a memo that
18 says, okay, when you -- when you are looking at height,
19 here's some things to consider --

20 Q. Okay.

21 A. -- in doing so.

22 Q. Okay. And these are written memos that any code
23 compliance officer can go and consult?

24 A. Sure. And there aren't very many of those.

25 Q. Okay. But there are some?

1 A. Yeah.

2 Q. Do others come to mind besides the tallness of
3 the grass?

4 A. No.

5 Q. Okay.

6 A. I can't think of anything.

7 Q. That's fine. So -- and I think you drew a
8 distinction between -- you said there are no formal
9 guidelines, but there are these memos. Is there a
10 distinction in your mind between -- between formal
11 guidelines and these -- these memos? Or...

12 A. Well, when you say, "formal guidelines," I'm
13 thinking that is there a laid-out procedure? Is there
14 a here's what you do should this happen? This is the
15 first step. This is the second step. This is the third
16 step. So, no, I don't believe there's any of those
17 exist. Some of those things I talked about are really
18 more clarifications of things that have come up where
19 there has been some question about the height. Where
20 should you measure that? What does that really mean?
21 And I think that there was some memos put out on those.
22 So I don't consider those to be procedures. They're
23 really more --

24 Q. Guidance?

25 A. -- guidance -- sure, guidance documents or

1 clarification documents.

2 Q. Okay. And, with respect to the conversion
3 therapy ordinance, there are no formal guidelines or
4 these -- these less formal guidance documents or memos?

5 A. That's correct.

6 Q. Okay. Now, earlier, you said that this ordinance
7 is -- I think you said a little bit different than other
8 matters because other matters are easily determinable --

9 A. Uh-huh.

10 Q. -- determined. Do you remember that?

11 A. I do.

12 Q. And what did you mean by that?

13 A. Well, as we briefly discussed, there are some
14 code matters that are easily discernable. A simple
15 drive-by observation can produce a notice of violation.
16 It's very easy to engage. It's very easy to determine
17 if it is in violation of the code. Of course, there's
18 others that are more difficult. And the conversion
19 therapy, it will be one that will be more difficult than
20 driving by and looking at the height of grass.

21 Q. Okay. With the driving by and looking at the
22 height of grass, the City has no concerns that that's
23 something that someone with a GED or a high school
24 diploma can do accurately and fairly?

25 A. I think someone who is trained, yes, can

1 certainly be a code compliance officer.

2 Q. Okay. In order for a code compliance officer to
3 issue a notice of violation --

4 A. Uh-huh.

5 Q. -- does a compliance officer have to witness the
6 violation occurring?

7 A. No.

8 Q. Okay. So, if, for example, a neighbor complains
9 that the yard next door has grass that's really tall,
10 hasn't been cut in months --

11 A. Uh-huh.

12 Q. -- makes that complaint by telephone to the
13 compliance officer --

14 A. Uh-huh.

15 Q. -- right, can the compliance officer issue a
16 notice of violation without first going to investigate
17 and confirm that, in fact, the grass is as tall as is
18 being reported?

19 A. Yes.

20 Q. He can?

21 A. Uh-huh.

22 Q. Does that actually happen in practice?

23 A. I think it depends a little on the infraction.

24 In the case of grass, which is, as we talked about, very
25 easily discernible, I would think the code officer would

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1 go out and see if that's -- and do some investigation to
2 see what he can observe, to see if that is -- the
3 complaint is something worth issuing a notice of
4 violation for.

5 Q. So, in that example at least, the enforcement
6 officer would not issue a notice of violation without
7 visually confirming the violation?

8 A. They could. I would think, in that case, they
9 probably would verify.

10 Q. Okay. In what instances would they issue the
11 notice of compliance -- sorry -- the notice of violation
12 without first confirming the existence of the violation?

13 A. There could be instances where it is not -- you
14 talked about whether or not they witnessed. Here's an
15 example -- and it may not be a great example. Someone
16 reports an illegal dumping on a lot next to them --

17 Q. Okay.

18 A. -- and they see what the -- what the truck name
19 is and the company name. We don't see them do it. We
20 see -- and we get a complaint. That may be something
21 that we don't have the visual for, but we could issue
22 the NOV.

23 Q. Okay. Now, would you have to go out and see the
24 evidence of the dumping to confirm that a dumping
25 actually took place?

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1 A. In that case, would you have to? No. In this
2 case, would they probably? Yes.

3 Q. Okay.

4 A. But it would not be a requirement.

5 Q. In practice, the code compliance officer would
6 not issue a citation to the company alleged to have
7 dumped without at least confirming that the -- that
8 there's a pile of stuff that's been dumped?

9 A. Sure.

10 Q. Okay.

11 A. And, again, that was my off-the-top example. But
12 could there be other cases in which there wasn't
13 something visual to check? Of course. And they could
14 issue without having the opportunity to look at
15 something.

16 Q. Okay.

17 A. Yes.

18 Q. What -- can you give me an example?

19 A. I knew you were going to ask that. Give me a sec
20 to think about it. But, clearly, there are things in
21 the code that violate the code that do not require a
22 visual.

23 Q. Okay.

24 A. I'm blank right now.

25 Q. Can't think of any. If you think of any --

1 A. Sure.

2 Q. -- before we finish our time today --

3 A. Of course.

4 Q. -- would you remember to tell me? Thank you.

5 A. I'll just say, I'm a little focused on what
6 you're saying. I'm not really thinking about other
7 things. But perhaps, during lunch, I'll give it some
8 thought.

9 Q. Are you able to understand what I'm asking today?

10 A. Yes. You're fine so far.

11 Q. Good. My confidence was suffering a little bit.

12 What happens in a situation where -- for example,
13 a neighbor complains about the grass and the code
14 enforcement officer is busy today. He can't go out
15 there until tomorrow. He goes out there tomorrow, and
16 the grass has been cut.

17 A. Uh-huh.

18 Q. What would happen in that case when he gets there
19 and the grass is code compliant?

20 A. Uh-huh.

21 Q. What would happen?

22 A. In that case, there would not be a notice of
23 violation. In most cases, notices of violation are to
24 enforce code, to try to have people follow the code.
25 It's not really a punitive process as much as it is just

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1 preventing people from violating code. So, in the case
2 of a grass or a sidewalk or something issued, the code
3 violation is corrected, then the code compliance officer
4 has -- has no need to issue a notice of violation.

5 Q. Okay. And, with the dumping example, if the code
6 officer is busy today and goes out tomorrow and the
7 matter that was dumped was already cleaned up, would he
8 have reason to issue a notice of violation in that case?

9 A. I think they could depending on the situation.
10 If the neighbor said, you know what, I'm going to suck
11 it up and just throw away the stuff myself, there could
12 still be a violation. Depends who picked it up. I'm
13 not sure if that's the greatest example that I picked.
14 If the answer is does the material still have to be
15 there for them to issue a notice? No, it wouldn't
16 necessarily have to be that way.

17 Q. Okay.

18 A. Now, I think that the -- before a matter is
19 brought to the special magistrate, I think that they try
20 to have some kind of backup to it; but it's not a
21 requirement.

22 Q. Okay. Now, you said that the ordinance with
23 respect to the conversion therapy ban is a little bit
24 different than these other matters we discussed --

25 A. Yes.

1 Q. -- right?

2 And it's different how?

3 A. Well, as we just eluded to, it's easy to --
4 something that is very physically, very easily
5 discernible. The grass as you're driving by, that's
6 something that's very visual; and it's easily
7 documented. It's easily determined if it's a violation
8 or not. Something that is part of the conversion
9 therapy, there would have to be a complaint, which is
10 not unusual. A good portion of our code cases stem from
11 initial complaint. But the -- the manner of proceeding
12 next is a little bit different than some of the easily
13 discernible visual things.

14 Q. Okay. And what is that matter of proceeding next
15 in the context of the conversion therapy ordinance?

16 A. Sure. Well, the code compliance officer -- and I
17 think earlier as I talked to our manager --

18 Q. Mr. Sheedy?

19 A. Mr. Sheedy.

20 I had asked, if there were to be a complaint,
21 would the code person -- code compliance person handle
22 it; or what would be the process? He thought that,
23 because we have not had any yet, that at least the
24 initial would go to him for his review and management.
25 But what would happen I think would still be very

1 similar is that the code compliance officer or the
2 manager, whomever was handling it, would take the
3 complaint, do whatever investigation or not as they felt
4 appropriate before it went to the special magistrate.

5 In the meantime, if there was enough to go to the
6 magistrate, then they would issue a notice of violation
7 to address the issue.

8 Q. Okay. So a complaint regarding a potential
9 violation of the conversion therapy ordinance could go
10 either to a code compliance officer or perhaps to the
11 manager?

12 A. Yeah. I would think that it would initially go
13 to the code compliance officers. That's typically the
14 case. But, when it came to them, they may choose -- and
15 I think they've been instructed to -- to -- on cases
16 where it's outside their normal operation, to ask for
17 the assistance of the code compliance manager.

18 Q. Okay. So take an example. Code compliance
19 officer receives a telephone call from someone --

20 A. Uh-huh.

21 Q. -- who heard it from a friend who heard it from a
22 friend who heard it from another that Dr. Otto has been
23 messing around with conversion therapy.

24 A. Uh-huh.

25 Q. Would that compliance officer believe it?

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1 A. I think that that's a pretty tough hypothetical
2 to opine on. I think, for any violation, the code --
3 the code compliance officer has to look at their --
4 their belief if there is a violation that has occurred.
5 And that could happen from visual concurrence or
6 corroboration from others or -- but they would have to
7 believe that the code was violated.

8 Now, if a friend of a friend of a friend of a
9 friend reported it, they may not take that as being
10 something -- taking it forward without some further
11 information, corroboration.

12 Q. Okay.

13 MR. MIHET: Can we go off the record for a
14 sec.

15 (Recess)

16 MR. MIHET: We're back on the record.

17 And, for the record, the jump drive with the
18 three videos that we discussed earlier in the testimony
19 is going to be marked as Plaintiffs' Exhibit 24.

20 (Plaintiffs' Exhibit No. 24 marked for identification)

21 BY MR. MIHET:

22 Q. All right. So you said that the -- the example
23 or the hypothetical I gave you last time was a little --
24 a tough one. Let me try another one and see if it's a
25 little easier.

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1 You have a minor calling a code enforcement
2 officer; and, he says, hey, you know, I'm -- I'm a boy
3 and -- but I like to do things that girls like to do. I
4 like to play with dolls and do other things. And I went
5 to Dr. Hamilton, and she told me that I really should
6 focus on being a boy and that I should be proud of my
7 boyhood and that I should do boy things. And, you know,
8 I told her that I wanted to do girl things. And it just
9 -- the whole thing made me feel really sad and
10 depressed. Okay? That's the information that's relayed
11 to the code enforcement officer.

12 A. Uh-huh.

13 Q. Does the code enforcement officer -- well, what
14 does he do?

15 MR. ABBOTT: Object to the hypothetical.

16 THE WITNESS: How old of a person are we
17 talking?

18 MR. MIHET: Well, let's say this is a
19 nine-year-old boy.

20 THE WITNESS: Okay. I'm not sure I can
21 answer directly. I know generally what would happen.
22 The -- in answer to your earlier question could the code
23 enforcement officer write a notice of violation based on
24 the complaint, the answer is, if he felt that it
25 violated this ordinance -- or that ordinance, the answer

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1 is he could -- he or she could do so at that point.

2 Having that lack of details, they may chose,
3 in conjunction with the manager, to do some additional
4 work; whether to talk to the therapist, whether to talk
5 to the parents or something else to determine if that
6 violation occurred.

7 MR. MIHET: Okay.

8 BY MR. MIHET:

9 Q. So, in this particular case, the code enforcement
10 officer calls the parents and the parents say, oh, we
11 didn't know he made that call. We prefer not to speak
12 with you.

13 A. Uh-huh.

14 Q. And then he calls Dr. Hamilton. And, she says, I
15 can't speak with you about this. This is covered by my
16 patient/client privilege.

17 A. Sure.

18 Q. What would the code enforcement officer do in
19 that case?

20 A. I think --

21 MR. ABBOTT: Object to the hypothetical.

22 THE WITNESS: Again, the hypothetical that
23 -- not knowing all the facts, they could chose to do one
24 of a couple things. They --

25 MR. MIHET: Let me just interrupt you for a

1 second.

2 BY MR. MIHET:

3 Q. Those are the facts that he has available, the
4 ones that I've just described.

5 A. Sure. But he didn't -- we don't know the
6 conversation with the parents. We don't know the
7 conversation with Dr. Hamilton. We don't know the
8 specifics of what was said, what was asked in order to
9 make that determination. I know that those are the
10 general facts.

11 Q. Okay.

12 A. But, obviously, there are more things that are
13 going to be included in their deliberation.

14 Q. Except, in this particular case, they weren't
15 able to get anything from the parents or --

16 A. So the parents have hung up on them?

17 Q. Right.

18 A. And Hamilton hung up on them?

19 Q. Right.

20 But the only thing they have now is what the
21 nine-year-old boy reported about his interaction --
22 alleged interaction --

23 A. Sure.

24 Q. -- with Dr. Hamilton.

25 A. So, based on the hang up of everybody else and

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1 the terse conversation that the nine-year-old had, the
2 code officer would have to make the call on whether or
3 not that he believed that the code was violated. And,
4 if so, then he'd write a notice of violation to
5 Dr. Hamilton. And, if not -- and I'm guessing, as part
6 of that, he would also talk with the manager and try to
7 get some kind of a collaborative decision on what the
8 next steps would be.

9 Q. Okay.

10 A. But if they -- but if they felt there was a
11 violation, then they could certainly right up the NOV.

12 Q. So the code compliance officer would have to make
13 a determination on whether or not the therapist
14 encouraging the boy to do boy things and discouraging
15 the boy from doing girl things amounts to what the
16 ordinance defines and prohibits as conversion therapy?

17 A. Yeah. They would not be the final arbitrator.
18 But they would be someone who would determine in their
19 judgment if it violated and, if so, write the NOV and
20 deliver the NOV. The magistrate would be the person who
21 would be, if you will, the -- the arbitrator of whether
22 or not that violation really was a violation and what
23 needs to be done to remedy if it is or if it gets
24 tossed.

25 Q. As in all other cases?

1 A. As in all other cases, exactly.

2 Q. Sure. But, in terms of initiating the process of
3 the -- the state, so to speak -- not the state. That's
4 the wrong word. In terms of initiating the process of
5 the government --

6 A. Yes.

7 Q. -- it's the code compliance officer that would
8 have to make the determination as to whether or not a
9 violation took place?

10 A. Sure. Now, there's always resources available if
11 -- in this case, if they -- if there was a question,
12 they could certainly call the City Attorney's office.
13 They could certainly call others in the City for some
14 guidance on that matter.

15 Q. Okay.

16 A. But, yeah, I don't want to portray that this
17 person -- that this code enforcement officer, that she's
18 out there or he's out there by himself doing this.
19 There are other resources available. So it's not
20 necessarily their call.

21 Q. Okay.

22 A. But, ultimately, it's the code compliance section
23 that would issue the NOV.

24 Q. Okay. Now, with respect to other violations like
25 the grass or the dumping example, the code compliance

1 officer handles that on his own?

2 A. Absolutely.

3 Q. Okay.

4 A. Because it's something that happens on a
5 relatively frequent basis. They're comfortable with it.
6 They know what code to cite. They're familiar with
7 the -- because it happens on a relatively frequent
8 basis. This would be -- as we talked about, this is not
9 a frequent occurrence.

10 Q. Okay. Nevertheless, because the ordinance is on
11 the books, the City has to be prepared to enforce it?

12 A. That's correct.

13 Q. Is there any policy by the City as to whether or
14 not it would enforce a violation of the ordinance?

15 A. There's been nothing that said that they
16 wouldn't.

17 Q. Okay.

18 A. Because it passed and is now codified, it is part
19 of the code; and it's to be enforced.

20 Q. Okay. And so does it give the City any pause
21 that a code compliance officer with a high school
22 diploma or the GED equivalent would be called upon to
23 determine whether or not a professional therapist
24 licensed by the state and subject to the state's
25 guidelines violated an ordinance of the City through the

1 professional speech and advice of that therapist?

2 MR. ABBOTT: Object to the form.

3 THE WITNESS: I think -- I'm not sure giving
4 pause. But, clearly, there are things in our code that
5 are not something that they do on a regular basis that
6 would be -- for example, there is a -- a fertilizer
7 ordinance that we have. And so people who apply
8 fertilizer have to be certified. They all have to do it
9 in a certain way. Our code people with -- you're saying
10 your -- with our GED requirement, even though I think a
11 lot of them are more knowledgeable than just their just
12 high school diploma, would now have to understand
13 fertilizer, fertilizer application, which might be
14 outside their background, as well.

15 So there are certainly instances or
16 certainly code provisions that don't come up very
17 frequently that are going to be -- might be difficult
18 for them to come to some kind of a notice. But that's
19 why we have the managers. That's why we have other
20 resources available to help them when they go through
21 that.

22 BY MR. MIHET:

23 Q. Now, in the fertilizer example that you gave, the
24 ordinance that you are referring to requires that
25 certain fertilizer be applied by licensed applicators --

1 A. Uh-huh.

2 Q. -- for lack of a better term?

3 A. Yes.

4 Q. And, in order for a licensed -- I'm sorry. If
5 someone applies that fertilizer without the proper
6 license, they would be in violation of the ordinance?

7 A. That's correct.

8 Q. So, in that particular example, the code
9 compliance officer would have to determine whether or
10 not the person applying the fertilizer has the requisite
11 license?

12 A. Or whether they believe they have it or not,
13 that's correct.

14 Q. Right. So --

15 A. Whether they believe that the code was violated.

16 Q. Right.

17 A. Yes.

18 Q. So, to determine whether or not the alleged
19 violator is properly licensed, they would consult a City
20 roll or some other database of licensed fertilizer
21 applicators?

22 A. If one existed, yes, they could; or they could
23 ask for that certification. But, if the person wasn't
24 around, they could issue the notice of violation without
25 knowing, without being able to determine. And then the

1 magistrate could then sort it out at that point.

2 Q. And the alleged violator could come in and say,
3 hey, here's my license; and the whole thing goes away?

4 A. That's correct.

5 Q. Now, that doesn't strike me like a very difficult
6 enforcement decision for the GED-trained code compliance
7 officer to make. He can simply determine whether or not
8 an applicator has the requisite license or not?

9 A. Sure. And I wasn't really talking about the
10 application but the types of fertilizer they have to go
11 down. They have to be a certain phosphorous/nitrogen
12 ratios that can go down at certain times and under
13 certain conditions. And knowing whether something is an
14 11-to-1 or 20-to-5 ratio is not something that might be
15 easily discernible by a code enforcement officer.

16 Q. Well, he can look at the ingredient list for the
17 particular fertilizer, right?

18 A. If he had the bag, if he had the fertilizer.

19 If he gets a complaint from a neighboring
20 property saying, hey, some guy was just here; and he put
21 down fertilizer that I think is not appropriate for the
22 fertilizer ordinance --

23 Q. Okay.

24 A. -- how would he go about making that -- if he
25 goes there and the applicator is there, they can talk.

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1 They can evaluate whether or not -- if there is the bag
2 in the trash, they can look at it to evaluate. But, if
3 they don't, then they certainly are able to write the
4 NOV based on what they know, what they've heard and then
5 let the magistrate determine whether or not that
6 fertilizer was applied properly. That's the point I was
7 trying to make. And, again, it's probably not -- not
8 the best analogy. But it's one that we've recently
9 passed, that discussion.

10 MR. ABBOTT: Is that a good spot?

11 MR. MIHET: I think that's a good spot to
12 stop for lunch.

13 (Recess)

14 BY MR. MIHET:

15 Q. Mr. Woika, are you ready to proceed?

16 A. I am.

17 Q. Just a reminder that you're still under oath.

18 And we will try to see if we can wrap up before too long
19 here.

20 A. Great.

21 Q. Is there a particular standard that applies with
22 respect to when a code compliance officer can issue a
23 notice of violation? I'm thinking probable cause or
24 something along those lines.

25 A. There is not. I think that there is -- for the

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1 notice to go to the magistrate, they obviously want to
2 have enough information, enough of a case to be able to
3 prove up. But I don't know that there's a -- a
4 threshold of probable cause like you might have on the
5 criminal side. I don't think that there's anything
6 that's been established for the code.

7 Q. But, at a minimum, the code compliance officer
8 has to believe that a violation has occurred and that he
9 has enough evidence to prove the violation so that he's
10 not wasting the special master's time?

11 A. I think that's fair.

12 Q. There's not a policy or even a practice where the
13 code compliance officer can just say, well, I'm not too
14 sure about this; but let me just write it up and we'll
15 let the master sort it out?

16 A. No. That -- I mean, I think they could do that;
17 but that would not be encouraged and --

18 Q. That's not what they do in practice?

19 A. That's correct.

20 Q. Okay. And we're in agreement that, for a code
21 compliance officer to determine whether or not a
22 violation of the conversion therapy ordinance has taken
23 place, he would have to make some type of a judgment
24 call? It's not as simple as going to measure the height
25 of the grass or to check the County rolls to see if a

1 license is in place, correct?

2 A. That's correct.

3 Q. Okay. At the beginning of the deposition, you
4 listed a number of departments and divisions that are
5 under your supervision.

6 A. Uh-huh.

7 Q. What kind of supervisory authority, if you will,
8 do you exercise over those departments and divisions?

9 A. It depends.

10 Q. Okay.

11 A. Some divisions I have direct supervisory. Others
12 I'm more of a coordinating -- a liaison, if you will.

13 Q. Okay. And, over the divisions -- let me strike
14 that and try again.

15 Over the ones that you are more of a coordinating
16 liaison, is there somebody else at your level that has
17 supervisory authority; or is it still you that's the
18 supervisor?

19 A. It's still me. For example, utility services.
20 Utility services is a separate department. And the
21 department director for utility services reports to the
22 City Manager. However, they report to the City Manager
23 through me. Even though I'm not their direct
24 supervisor, we still talk. We still -- the documents
25 would come to me before they went to the City Manager.

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1 We have discussions on projects and things. So I'm kind
2 of the filter between the utilities and the City
3 Manager. There's not another report -- technically, I'm
4 not Chris Helfrich's supervisor. But I am the person
5 from the City Manager's office who is assigned to his
6 department.

7 Q. Got it.

8 Which of the departments and divisions that you
9 identified are ones that you do have direct
10 supervisory --

11 A. It would be easier to say the ones that I don't.

12 Q. Okay.

13 A. The ones that I don't are utility services,
14 recreational services and municipal services. Those are
15 the ones that have department directors. They have
16 their own operation. They report supervisory to the
17 City Manager. However, they go kind of through me as
18 liaison, as coordinator.

19 Q. Okay.

20 A. All the ones that -- other ones there is, I am
21 their department director.

22 Q. Okay. Over on Mr. Brown's side of the equation,
23 does the same structure apply? There are some divisions
24 or departments that he has direct supervisory authority
25 over and some where he is more of a liaison?

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1 A. Yes.

2 Q. And which ones would be the ones where he does
3 not have direct supervisory?

4 A. Police, fire. And we're currently transitioning,
5 so development won't be. We -- for a while, he was the
6 department director for development services.

7 Q. Okay.

8 A. But we now have a development services director.
9 And so we're phasing out of him being department head
10 and having our development services director be that
11 entity.

12 Q. When did that start -- that process start?

13 A. About six, eight months ago.

14 Q. Okay. So, up until six or eight months ago, he
15 was the direct supervisor of development services?

16 A. That's correct.

17 Q. Is he still to a certain extent but gradually
18 less so or --

19 A. Yes.

20 Q. So we said police and fire he is not the direct
21 supervisor. Development services he is kind of
22 releasing the reins?

23 A. That's correct.

24 Q. Are there any others where he is not the direct
25 supervisor?

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1 A. No.

2 Q. Does the code enforcement division fall under
3 development services?

4 A. It does.

5 Q. It does.

6 So, up until six or eight months ago, he was the
7 direct supervisor of Code Enforcement?

8 A. That's correct.

9 Q. Okay. Today, is -- is Code Enforcement still
10 under his direct supervision; or has that already been
11 transitioned off?

12 A. Been transitioned off.

13 Q. When was that transition?

14 A. Started, like, I want to say six, seven -- five,
15 six, seven, eight months ago.

16 Q. Okay. And who has been sort of placed under him
17 or -- or in charge of the development services?

18 A. Just a bit of explanation. We hired a new chief
19 building official --

20 Q. Okay.

21 A. -- who had some code experience. And the same --
22 at or about the same time, we hired a new development
23 services director about maybe a year -- maybe six months
24 before that. And so, with those two new people, the new
25 structure is that the Code Enforcement, who used to work

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1 directly for George Brown, now works for Cosmo,
2 John Cosmo, as the chief building official --

3 Q. Okay.

4 A. -- who then reports through development to
5 George. So it's -- there's another few intermediary
6 levels between Code Enforcement and George Brown.

7 Q. Got it.

8 Getting back to the departments and divisions
9 over which you have direct supervisory capacity --

10 A. Uh-huh.

11 Q. -- what kind of supervision do you exercise?

12 A. Not -- in what way?

13 Q. I guess I'm wanting to get a general idea of how
14 you exercise supervision over them.

15 A. We meet. We go over things. I sign leave slips,
16 valuations for those different groups.

17 Q. Okay. How familiar do you have to be with the
18 departments and divisions that you directly supervise in
19 order for you to be able to adequately fulfill your
20 responsibilities as supervisor?

21 A. I think, certainly, the more knowledgeable the --
22 that probably the easier it is. I don't know if you
23 need to be an expert but certainly have an idea of what
24 the functions are and how it works. It certainly helps
25 to be a manager, of course.

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1 Q. Okay. And do you feel like you have pretty good
2 command of what happens in the departments and divisions
3 that you directly supervise?

4 A. I'd like to think so, yes.

5 Q. As between you and your counterpart, Mr. Brown,
6 which one of you two do you think would have a better
7 understanding and knowledge of the inner workings of the
8 departments and divisions that you directly supervise?

9 A. It's a little bit different because George has
10 been here a long time, and he has supervised a lot of
11 the departments that I have currently liaison with. And
12 I've had some of the ones that he has. So I think, if
13 your question is who, for example, knows municipal
14 services, the functions, better? I have done it for the
15 last couple of years. But I think that both of us are
16 familiar with a lot of the operations of the City.

17 Q. Okay. With respect to the departments and
18 divisions that Mr. Brown directly supervises or
19 supervised, as between you and him, who would have a
20 better understanding and knowledge of the inner workings
21 of those departments?

22 A. Again, because I used to supervise the financial
23 services -- he has it currently now. So they're --
24 they're -- I don't know if either one has a little
25 better idea. The police/fire I've never supervised. So

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1 he probably has a little better idea of functions, even
2 though, of course, as -- in both of our roles, it would
3 be nice if we were able to say this is siloed and we
4 never do the other. But, in our organization,
5 fortunately or unfortunately, we end up being part of
6 projects across all departments.

7 Q. Okay. With respect to Code Enforcement, as
8 between you and Mr. Brown, who has a better
9 understanding of the inner workings of that department?

10 A. Probably George.

11 Q. Okay.

12 (Plaintiffs' Exhibit No. 25 marked for identification)

13 BY MR. MIHET:

14 Q. Mr. Woika, I've handed you a document that we
15 have marked as Exhibit 25. You can take a minute to
16 familiarize yourself with it. I'll be asking you some
17 specific questions about its contents.

18 A. Yes. I've seen this.

19 Q. Okay. When is the last time you saw this
20 document before just now?

21 A. This morning.

22 Q. Okay. This is a chain of e-mail communications
23 between it looks like yourself and Mr. Brown and the
24 City Attorney and perhaps the City Manager, correct --

25 A. That's correct.

1 Q. -- dated July 18, 2017?

2 Now, in the first e-mail in the chain, which is
3 in the bottom half of the document, it appears that
4 Mr. Hoch is transmitting some materials wherein he says,
5 please see attached.

6 A. Uh-huh.

7 Q. And --

8 A. Right. I think we talked about that e-mail.
9 That was the first e-mail under which there were two
10 attachments. One was the -- his memo from the Human
11 Rights Council. The other one was that draft ordinance.

12 Q. Got it.

13 This is the e-mail that started it all?

14 A. It is.

15 Q. Okay.

16 A. Maybe not started it all. But, yes, that was
17 that e-mail we talked about.

18 Q. Okay. And so, on -- on the top of this page, we
19 see Mr. Brown's response, correct?

20 A. Yes.

21 Q. All right. And so he says: While I find
22 so-called conversion therapy inherently wrong and
23 totally abhorrent, a local ordinance banning such
24 practice would be extremely difficult, if not
25 impossible, to enforce.

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1 Did I read that correctly?

2 A. Yes.

3 Q. What was Mr. Brown saying or referring to in that
4 statement?

5 A. I think his -- that statement is not much
6 different than the statement we talked about earlier
7 from Council Person Rodgers and City Attorney and City
8 Manager at the council meeting that we looked at talking
9 about enforcement and difficulties with enforcement of
10 this ordinance.

11 Q. Like you said, you don't think it's much
12 different. Would you agree with me that it is different
13 in degree? I mean, as I recall, the City Manager said
14 something to the effect of I'm not sure how we would
15 enforce it, right?

16 A. That's correct.

17 Q. The City Attorney said something to the effect of
18 that there may be difficulties in practical enforcement
19 issues?

20 A. That's correct.

21 Q. Mr. Brown, the direct supervisor of the Code
22 Compliance Department at that time, right?

23 A. Uh-huh, yes.

24 Q. He seems to go a lot further to say it would be
25 extremely difficult, if not impossible, to enforce.

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1 Would you agree with me that that is different than the
2 statements that the others made?

3 A. Yes. That's what it says. And I think you --
4 you've identified the quotes --

5 Q. Okay.

6 A. -- close -- closely.

7 I guess my point, not to say that they were the
8 same quote, to say that they all recognized the
9 difficulty in enforcement of this ordinance for the
10 reasons that we talked about earlier.

11 Q. Sure. I understand.

12 I guess the reason I felt it necessary to follow
13 up with you is it seemed to me like you were stating or
14 perhaps implying that they were not much different in
15 degree. And I think we've established that they are?

16 A. Yes.

17 Q. Okay. Now, he goes on to say: Proving a
18 violation before the special magistrate would
19 necessarily require public disclosure by a patient or
20 credible witness that the treatment had been
21 administered in violation of the ordinance.

22 Do you see that?

23 A. Yes.

24 Q. What do you think he is attempting to convey
25 there?

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1 A. I think the same things we've been talking about,
2 that, when you get before a special magistrate, in order
3 to prove your case, in order to be successful in your
4 case, you'd have to have enough evidence to weigh in
5 your favor in front of a special magistrate. And I
6 believe what he is saying -- what it says is that it
7 would require some disclosure by the patient or
8 patient's family or therapist in order to prove the case
9 up before the magistrate.

10 Q. Or some credible witness?

11 A. Or credible witness.

12 Q. Okay.

13 A. Some kind of firsthand evidence I believe is what
14 he is saying.

15 Q. Right. And that particularly as to whether the
16 treatment had been administered in violation of the
17 ordinance, right?

18 A. Yes. That's what it says.

19 Q. Okay. Now, he goes on to say: The City has not
20 adopted ordinances limiting or regulating professions
21 otherwise regulated by the state.

22 Do you see that?

23 A. I do.

24 Q. What do you think he was trying to say there?

25 MR. ABBOTT: Counsel, we can cover this

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1 briefly. But I think this is the category that the
2 judge has limited discovery on.

3 But why don't you answer that question, and
4 I assume we're going to move on pretty quickly.

5 MR. MIHET: Yes.

6 THE WITNESS: I think it has to do with the
7 preemption that we talked about earlier. I think it has
8 to do with local regulation of professions that are also
9 regulated by the state.

10 BY MR. MIHET:

11 Q. Was Mr. Brown on -- on July 18, 2017, in a
12 position to know whether or not the City had adopted
13 ordinances limiting or regulating professions otherwise
14 regulated by the state?

15 MR. ABBOTT: Objection.

16 Exceeds the proper scope of the deposition.

17 THE WITNESS: Mr. Brown had the same
18 position he is now. He is Deputy Manager. And he
19 has -- he's familiar with the -- the code then as he is
20 now.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. After Mr. Brown sent this communication, was
24 there additional discussion between him and you and/or
25 others with respect to whether or not this proposed

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1 local ordinance would be extremely difficult, if not
2 impossible, to enforce? And, by that, I mean,
3 discussion that is not reflected on this Exhibit 25.

4 A. I don't know of any.

5 Q. Okay. In terms of the experience or expertise of
6 the code compliance officers, do they have any
7 experience or expertise in enforcing ordinances against
8 licensed professionals?

9 A. I don't know that -- that there is -- let me ask
10 you a question. Are you wondering if there's policies
11 or procedures against code, against -- no, there's
12 not --

13 Q. Okay.

14 A. -- against licensed professionals. However, if
15 licensed professionals violate the code, there's no
16 reason why they can't enforce.

17 Q. If a licensed professional has grass that's too
18 tall at his house or at his place of business, there's
19 no reason why a code enforcement --

20 A. Sure, that too.

21 Q. Okay.

22 A. But, if there was a provision in the code that
23 dealt with professional standards or that they felt was
24 being violated, they could certainly do so. I can't
25 think of anything top of head. It wouldn't necessarily

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1 have to be just limited to their property. It could be
2 their practice. It could be their --

3 Q. But, in terms of the experience or expertise that
4 they already have --

5 A. Uh-huh.

6 Q. -- in enforcing regulations against licensed
7 professionals, I understood you to say that they don't.

8 A. They don't have specific ones. This is not
9 exactly on point. But, if there is a requirement for
10 medical offices to have some kind of something and they
11 don't have that, they can certainly come in and -- as
12 I'm explaining it, that doesn't even sound close to
13 being what you say. But they do have the authority to
14 be able to do that.

15 Q. Sure. And, just so we're clear, I'm not asking
16 about authority. I'm asking about practical --

17 A. Sure.

18 Q. -- experience or expertise. And I understand you
19 to say that they don't have that.

20 A. They don't have procedures. I'm not sure that
21 they don't have experience. But they don't have
22 procedures or practical guides, if you will, written
23 guidelines.

24 Q. Okay. Well, you say you're not sure whether they
25 have experience.

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1 A. Sure.

2 Q. Do they have experience or expertise? I mean,
3 have they been doing this a lot or enough to develop
4 experience and expertise?

5 A. Besides having the certifications through
6 whatever professional organization, others -- they have
7 worked at other -- other communities. They have worked
8 at other professions. So I don't know what their level
9 -- and it's individual what their level of experience
10 working with professional licensed professions are.

11 But, from a City standpoint, we do not -- we have
12 not provided training specifically to professional --

13 Q. Regulations.

14 A. Thank you.

15 (Plaintiffs' Exhibit No. 26 marked for identification)

16 BY MR. MIHET:

17 Q. So now I'm showing you a document that we have
18 marked as Exhibit 26. Take just a minute to familiarize
19 yourself with it. I'll ask you a few questions about
20 this one. And we're going to go through it sort of step
21 by step. So if you just want to --

22 A. Sure. Yes, I've seen it.

23 Q. Okay. When is the last time you saw this
24 document?

25 A. This morning.

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1 Q. Okay. Starting with the -- and, just for the
2 record, this is a chain of e-mail communications
3 spanning from July 21, 2017, to July 21, 2017, so same
4 date. And there's the Bates number City 991 through
5 993. Starting with the last page, City 993, and with
6 the bottom e-mail which is the first e-mail in this
7 chain of communications. Are you there?

8 A. I am.

9 Q. This is an e-mail from Mr. Brown to it looks like
10 three individuals; a Lori LaVerriere, an M. Bornstein
11 and a P. Schofield. Do you see that?

12 A. Yes.

13 Q. Do you know who those three individuals are?

14 A. I do.

15 Q. Who are they?

16 A. Lori is the City Manager of Boynton Beach.
17 Mike Bornstein is the City Manager of Lake Worth, and
18 Paul is the City Manager of Wellington.

19 Q. Okay. So Mr. Brown is communicating with them.
20 And, he says, colleagues: Each of your cities has
21 adopted a conversion therapy prohibition ordinance
22 according to information we have been provided. Have
23 any of you established specific enforcement procedures?
24 What methods of investigation are utilized to determine
25 if a violation is occurring/has occurred? Have any

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1 cases been prosecuted? Please let me know when you have
2 time. Thanks.

3 Did I read that correctly?

4 A. Uh-huh, yes.

5 Q. Why did Mr. Brown send this inquiry to his
6 colleagues at these other cities?

7 A. There was an e-mail that came out just before
8 this -- it might have been the day before. I think it
9 was the day before -- from Rand Hoch to the same group
10 that was sent, the first one, a couple days earlier.

11 Q. Okay.

12 A. And it had a listing of the ordinances that had
13 been passed by other cities in Palm Beach County
14 including Wellington, Lake Worth and Boynton Beach. And
15 I believe what George was asking, because of his earlier
16 questions -- earlier thoughts about enforcement, was
17 finding out what others were doing regarding enforcement
18 of the ordinances that they had already passed.

19 Q. Okay. Do you know whether anyone had asked
20 Mr. Brown to make this inquiry or whether he did so on
21 his own initiative?

22 A. I think there's an e-mail that came out before
23 this one that said I will check with the other
24 municipalities or something along those lines. I don't
25 remember what the exact wording was. But it was

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1 follow-up to one of these e-mails. There's one that
2 said he would do so.

3 Q. Do you recall who he sent that e-mail to?

4 A. I think it was to Frieser, Leif and I. I think
5 it was part of that chain. I think it was follow-up
6 after -- after this one.

7 Q. Okay. Do you know if that particular e-mail was
8 produced to the Plaintiffs in this case?

9 A. That's why I looked at it this morning. So I
10 believe it was. And it might be on the tail end of
11 another e-mail. But I remember seeing something that he
12 would contact other jurisdictions.

13 Q. Okay. That's a document that -- well, let me ask
14 your attorney.

15 MR. MIHET: Do you know if that document has
16 been produced?

17 MR. ABBOTT: I'm virtually sure it has.
18 What I candidly asked the witness to review was -- was a
19 subset of the material that has been produced. But let
20 me know if you can't find it or if I've made an error.
21 But we'll certainly get you a copy.

22 MR. MIHET: All right. I don't recall
23 seeing it. So...

24 THE WITNESS: It was a one-line e-mail. And
25 it was I believe at the end of this chain or as part of

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1 this one.

2 MR. MIHET: Okay.

3 BY MR. MIHET:

4 Q. Do you recall if somebody was asking him, hey,
5 what are other people doing; and he responds saying,
6 I'll check? Or whether he volunteered to say, I'll
7 check to see what others were doing?

8 A. I don't believe it was a response. I believe he
9 just said, I will check what other jurisdictions are
10 doing.

11 Q. Okay.

12 A. It might be after the one -- there was an e-mail
13 that came to -- and it's probably there. There was an
14 e-mail that came from Rand Hoch that listed six or seven
15 different ordinances from the different municipalities
16 that had -- and it went to the City Council and Attorney
17 and City Manager. And I believe it got forwarded to
18 George and I. And I believe the next one from George
19 said -- or from George said, I'll check other -- these
20 other jurisdictions.

21 Q. Okay. And that's an e-mail that you looked at
22 this morning in preparation for this deposition?

23 A. Yes, I believe so.

24 Q. Okay. And --

25 A. I think that was on the production e-mail one.

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1 Q. Okay. And looking at that e-mail refreshed your
2 recollection or informed your recollection about the
3 matters you're testifying here today?

4 A. What's that?

5 Q. Looking at that e-mail --

6 A. Yes. Yes, exactly.

7 MR. MIHET: Okay. Well, we'll look in the
8 production again to double check. But, if we don't have
9 it, we would ask that we receive that, as well.

10 MR. ABBOTT: Sure. In fact, do you think we
11 could find -- if you wanted to take a break, we might be
12 able to find another copy.

13 MR. MIHET: Maybe on the next --

14 THE WITNESS: I'm sure I can.

15 MR. MIHET: Yeah, on the next break. Let's
16 keep going, and we'll look for it.

17 MR. ABBOTT: Okay.

18 BY MR. MIHET:

19 Q. All right. So he sends out this communication.
20 The first response appears to be the one that is
21 immediately above that, still on page 993. And it's
22 from Lori LaVerriere. I'm probably butchering that
23 pronunciation. But it looks like it comes back three
24 minutes or so after he sent his response. Do you see
25 that?

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1 A. Uh-huh, yes.

2 Q. And, she says, Hi George, we have not established
3 any enforcement procedures or methods of investigation.
4 I'm thinking we will more likely be responding to a
5 specific complaint.

6 Do you see that?

7 A. Yes.

8 Q. Now, Mr. Brown responds immediately to that,
9 looks like two minutes later. It begins -- the header
10 is on the bottom of the previous page, 992.

11 A. Uh-huh.

12 Q. But the substance is at the very top of 993. He
13 says, thanks Lori, that is what I expected to hear.

14 Do you see that?

15 A. Uh-huh, yes.

16 Q. What is he saying when he says, "that is what I
17 expected to hear"?

18 A. I think, again, speaking -- I don't -- I can't
19 say exactly what George -- but my interpretation, after
20 reading this, would be is that George has already
21 expressed his -- his belief that it would be a difficult
22 thing to enforce. And so, when she said that she will
23 be -- she'll be looking at complaint-based violations, I
24 think he would agree -- he agreed that that would
25 probably be the only way that you could reasonably

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1 expect to enforce this. You're not going to be sitting
2 in on sessions. We're not going to do some kind of a
3 sweep or break-in on somebody. It's really just going
4 to be based on complaints.

5 Q. Okay. So then it looks like Lori LaVerriere
6 responds back same minute. And that's at the bottom of
7 992. And, she says, are you contemplating procedures,
8 enforcement, et cetera? Do you see that?

9 A. Yes.

10 Q. And then he writes back about six minutes later
11 right above that. And, he says: I have recommended we
12 adopt a resolution stating our position against it
13 rather than an ordinance making it an offense because we
14 would not want to get between a family and its child
15 based on a complaint from a child or a third party. We
16 are in the early stages of considering the matter. I
17 consider it a more or less unenforceable ordinance and a
18 matter that is not something our local government should
19 take up.

20 Did I read that correctly?

21 A. Yes.

22 Q. So what was he talking about when he said, I've
23 recommended we adopt a resolution instead of the
24 ordinance?

25 A. I think just what he said is --

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1 Q. Okay.

2 A. I think, at this point, he believed, for the
3 reasons you had talked about earlier, that he thought a
4 -- a better alternative to this would be to have a
5 resolution as opposed to an ordinance with enforcement.

6 Q. And the reason for that -- or one of the reasons
7 for that is because he, as the supervisor of the Code
8 Compliance Department, believed that the ordinance as
9 proposed would be more or less unenforceable, correct?

10 A. He considered it to be more or less
11 unenforceable. That's what he wrote, yes.

12 Q. Okay. And the "he" here is the direct supervisor
13 of the Code Compliance Department at that time?

14 A. That's correct.

15 Q. Okay. Now, what -- who did he make the
16 recommendation to with respect to a resolution being the
17 better approach rather than the ordinance?

18 A. I think really the only people that he could talk
19 to -- reasonably talk to -- and I don't recall him
20 talking to me about it. He may have -- would probably
21 be the City Attorney's Office and the City Manager.

22 Q. Okay. And was his recommendation ever considered
23 by the City Council?

24 A. No, not that I know of.

25 Q. Why not?

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1 A. That was never presented to them. They were
2 presented the -- the ordinance as -- as suggested or as
3 passed on by the Mayor to the City Attorney's Office who
4 prepared the ordinance. And the Mayor elected to go
5 forward with that ordinance.

6 Q. Why was Mr. Brown's recommendation not presented
7 to the City Council?

8 A. In this case or in general?

9 Q. In this case.

10 I mean, he -- I believe you said that he made a
11 recommendation perhaps to the City Manager or the City
12 Attorney?

13 A. Sure.

14 Q. Why did either one of those two people not take
15 that recommendation and make it to the City Council?

16 A. Sure. Well, as I'm sure you're aware from how
17 the organization, the two people that work for City
18 Council are the City Manager and the City Attorney.
19 Almost everything we do funnels through one of those two
20 individuals. It is not unusual -- it's not common but
21 it's not unusual for people who are involved with new
22 ordinances, new resolutions, new developments, new
23 actions not to like all or part of a resolution. And
24 they make recommendations.

25 I make recommendations all the time to the

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1 Manager. He may or may not like them. If he doesn't, I
2 don't say, "and stop doing whatever." I go with what he
3 thinks is the right approach, and I work hard to make
4 sure that happens. So to have someone not agree with a
5 draft ordinance, draft resolution, development project,
6 work order doesn't necessarily mean that -- that that --
7 that disagreement is manifested in a change.

8 Q. Okay. Now, did Mr. Brown's statement or opinion,
9 if you will, that the ordinance as proposed would be
10 more or less unenforceable, did that make it to the City
11 Council as part of its deliberation of the ordinance?

12 A. I'm looking. I thought I saw it in this earlier
13 memo. No. If the question is did this e-mail chain get
14 to -- or the content of this e-mail chain get to the
15 City Council, I think the answer is no.

16 Q. Well, that covers part of my question. My
17 question was a little broader than this particular
18 e-mail to ask whether the opinion of Mr. Brown that this
19 proposed ordinance was more or less an unenforceable
20 one, did that make it to the Commission for its
21 consideration, whether as expressed in this e-mail or
22 some other document or testimony or statement?

23 A. I want to say, no, because I think the --

24 Q. And I think I said Commission; but I meant
25 Council, City Council.

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1 A. Thank you. I took it as that.

2 Q. Okay.

3 A. I don't know that it was.

4 Q. Okay. Certainly, it was not covered or discussed
5 during any of the three meetings that we watched video
6 of today?

7 A. Yes, it was. It was certainly mentioned when we
8 were -- when they were talking. And I think we talked
9 about it earlier when the City Manager said, I'm not
10 sure how we would enforce. And the City Attorney said
11 she concedes that there -- it might be difficult to
12 enforce. So that clearly was talked about at that
13 meeting.

14 Q. Right. The issue of enforceability was
15 discussed?

16 A. Yes.

17 Q. What I meant to say -- and I apologize if I
18 wasn't clear -- that, certainly, Mr. Brown's opinion
19 that this was more or less an unenforceable ordinance,
20 that wasn't presented to the City Council in any of the
21 three meetings, correct?

22 A. I think that's correct.

23 Q. Okay. Would it have been important -- and strike
24 that just for clarity.

25 A. At least not in the public meetings as you -- as

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1 you have framed it, yes.

2 Q. Okay. We've already covered the other
3 alternatives earlier when I asked you if -- if the --
4 the opinion that he expressed here, if that had made it
5 to the Council. And I believe you said that you did not
6 believe that it did.

7 A. I did not believe that it did.

8 Now, I'll caveat that slightly in that there may
9 have been conversations between the City Attorney and
10 individuals --

11 Q. Okay.

12 A. -- but I don't know of those. But, as a Council
13 as a whole, I don't believe anything was transmitted.

14 Q. Okay. Now, at the third meeting of the City
15 Council at which the ordinance was discussed and where
16 the final vote ultimately occurred, we've already
17 established that at least two people there were -- were
18 expressing some concerns or doubts -- I don't want to
19 get hung up on the terminology -- but some concerns
20 about the enforceability of the ordinance through the
21 Code Compliance division.

22 A. Sure. I would suggest actually three because the
23 question came from a Council member and then answered by
24 the two staff members. So, yes, two that -- two staff
25 members talked about it, yes.

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1 Q. Correct.

2 Wasn't it important for them -- as they were
3 considering whether or not or how the Code Compliance
4 division could enforce this ordinance, wasn't it
5 important for them to hear from the direct supervisor of
6 that division and to get his thoughts or input on the
7 enforceability of the ordinance?

8 A. No. And I say the -- it is unusual -- it would
9 be very unusual if anybody -- people who were in the
10 organization to address the Council, to have internal
11 memos or e-mails being presented as part of a package to
12 City Council.

13 Q. Okay.

14 A. That's not the way the procedure generally works.
15 Everything's worked out through the staff, through the
16 Attorney's office, through the City Manager's side. And
17 that is presented to Council for their review, for their
18 decision to go forward, not to go forward or to modify.

19 Q. Sure. But we saw an example where, at the first
20 Commission meeting -- Commission. I keep saying
21 Commission. At the first Council meeting, the City
22 Council decided that it wanted more information; and it
23 asked for more information, right?

24 A. Uh-huh. Yes, I heard that.

25 Q. So, if the City Council was having concerns or

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1 doubts about whether or not the enforcement -- the Code
2 Enforcement division could enforce this ordinance, they
3 could have asked for additional or more information from
4 the direct supervisor of that department, correct?

5 A. No. They would have asked for the City Manager
6 and asked for more information. And, if the City
7 Manager felt that he needed to talk to George or to Doug
8 or to someone else, he could certainly do so. But the
9 Council only works through, as we talked about, the
10 Attorney and the Manager.

11 MR. MIHET: Okay. It looks like we found
12 that e-mail. So --

13 MR. ABBOTT: Okay. Good.

14 MR. MIHET: -- we'll call off the search
15 party.

16 MR. ABBOTT: Okay.

17 BY MR. MIHET:

18 Q. All right. In the same exhibits, same page,
19 looking at the e-mail right above the one we just
20 discussed, we see about seventeen minutes later
21 Lori LaVerriere responds back to Mr. George; and, she
22 says, agreed. Do you see that? It's difficult --

23 A. Yes, yes.

24 Q. -- to see but --

25 A. Yes.

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1 Q. -- it's there.

2 So the first sentence is agreed, period, right?

3 A. Uh-huh.

4 Q. She is agreeing with Mr. George --

5 A. Mr. Brown.

6 Q. I'm sorry, Mr. Brown.

7 -- that, among other things, ordinances like this
8 are more or less unenforceable?

9 A. I don't think that's what -- if you look at the
10 previous e-mail, I'm not sure what she's agreeing with
11 is that he has recommended a resolution.

12 Q. Okay.

13 A. Then their early stages of considering this
14 matter.

15 Q. Okay.

16 A. So I'm not sure what she's agreed with.

17 Q. Well, the reason he wrote to Ms. LaVerriere is
18 that --

19 A. Yes.

20 Q. -- her city had already passed the resolution,
21 right?

22 A. Sure.

23 Q. So --

24 A. But there's also --

25 MR. ABBOTT: Excuse me. I'm sorry.

1 Objection.

2 Did you mean to say a resolution?

3 MR. MIHET: No, an ordinance.

4 BY MR. MIHET:

5 Q. Right?

6 A. Yes. I think you're -- I'm sorry, I interrupted
7 you; and I shouldn't have.

8 Q. I guess my question was: She wouldn't be
9 agreeing with him that they're in the early stages of
10 the process. Her jurisdiction had already passed the
11 ordinance, right?

12 A. It did.

13 Q. Okay. So I guess we can't really get into her
14 mind then. We don't know whether she agreed with only a
15 sentence or all of it. But she agreed?

16 A. In concept. I don't know if she agreed that the
17 matter is not something that our local government should
18 take up, that it's unenforceable, that it is --

19 Q. Okay.

20 A. I'm not sure what she's agreeing to.

21 Q. She certainly didn't write back and say, oh, the
22 enforcement is a breeze here, this is what we're doing;
23 and you'll have no problems?

24 A. Clearly.

25 Q. Okay. Now, she continues to say: Elected

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1 received a lot of pressure from Rand Hoch. Do you see
2 that?

3 A. I do.

4 Q. When she says, "elected," is she talking about
5 the City Commissioners in her jurisdiction?

6 A. I believe she's talking about elected officials.

7 Q. Is elected sort of a -- a usual way to refer to
8 them?

9 A. It can be, yes.

10 Q. Okay. So then Mr. Brown responds about three
11 minutes later right above that message at the very top
12 of 992. Do you see that?

13 A. I do.

14 Q. And, he says: As are ours. Do you see that?

15 A. Yes.

16 Q. What do you think he's saying there?

17 A. I believe he is agreeing that the elected
18 officials in Boca Raton are getting --

19 Q. A lot of pressure from Rand Hoch?

20 A. I'm not sure pressure. But, certainly, Rand Hoch
21 is communicating with them, as well.

22 Q. Well, now --

23 A. Okay. You could certainly --

24 Q. -- she said to him that the electeds are getting
25 a lot of pressure, right?

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1 A. Yes, it does.

2 Q. And so he doesn't respond back and say ours are
3 getting some communications too?

4 A. You're right.

5 Q. He says, "as are ours"?

6 A. Yes, it does.

7 Q. So what he's saying to her is our elected
8 officials are also getting a lot of pressure from
9 Rand Hoch, essentially?

10 A. That's what it -- appears that it says, yes.

11 Q. What pressure were the Boca Raton elected
12 officials getting from Rand Hoch?

13 A. Well, I think he's talking the e-mails -- they
14 had gotten a number of e-mails from him the previous.
15 And I believe that there were evidence of phone calls,
16 individual meetings with the Council members and
17 Rand Hoch.

18 Q. Okay. And what was the general nature of those
19 meetings and -- of the pressure that was being applied?

20 A. I was not present at the meetings. I don't know.
21 Or the phone calls. I think there were more phone calls
22 than meetings.

23 Q. Okay.

24 A. I do not know what the discussion was during
25 those phone calls.

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1 Q. Okay. Would Mr. Brown presumably because he's
2 representing that a lot of pressure has been applied?

3 A. No. Generally, when outside people call the
4 Council, there's no one from staff. It's a one-on-one
5 conversation.

6 Q. Okay. So, understanding that you weren't privy
7 to those particular communications, have you had any
8 discussions since then to familiarize or to inform you
9 as to what the particulars were of the pressure that was
10 being applied? And what I'm asking is, you know -- I
11 wasn't there either; so I'm just hypothesizing. But,
12 you know, was Mr. Hoch talking about, you know, mounting
13 an election campaign to replace an elected official with
14 someone else that would be more, you know, friendly to
15 what he was proposing? Or was he proposing to have
16 telephone calls coming in? What sort of pressure was
17 being applied?

18 A. Yeah, I understand the question. I don't.
19 Haven't talked to anybody, the Council or otherwise,
20 that has relayed any of the discussion that happened
21 with Rand Hoch.

22 Q. Okay. And so if I wanted --

23 A. Which, by the way, is not unusual for third
24 parties who are -- have a suggestion for an ordinance or
25 a resolution or a development to talk to Council

1 directly.

2 Q. Right. Or to apply a lot of pressure?

3 A. To apply -- yes.

4 Q. Okay. So, if I wanted to find out what the
5 particular -- what the particulars are of the pressure
6 that Mr. Hoch was applying, who would I talk to other
7 than Mr. Hoch, of course?

8 MR. ABBOTT: Object to the form.

9 THE WITNESS: I think Mr. Hoch is probably
10 the best.

11 MR. MIHET: Right. He may not want to tell
12 me.

13 BY MR. MIHET:

14 Q. So in terms of the City of Boca Raton?

15 A. I think he would be the better person. I don't
16 know of anybody else staff-wise who could --

17 Q. All right. The Council members, themselves?

18 A. They're the ones who spoke with him, yes.

19 Q. Okay. All right. At the top of the first page
20 of this Exhibit 26, which is 991, you'll see that
21 another of the three recipients also responded to
22 Mr. Brown's same e-mail. Do you see that?

23 A. Yes.

24 Q. And this is a Paul Schofield?

25 A. Uh-huh.

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1 Q. And, I'm sorry, I forget. Which municipality was
2 he with?

3 A. Wellington.

4 Q. Wellington.

5 A. Village of Wellington, not the City of
6 Wellington.

7 Q. Yeah. Actually, it says right there in his
8 signature line, doesn't it? It does.

9 A. Oh, yes. Yes, it does.

10 Q. All right. And he writes back and he says: Good
11 morning, George. I would prefer to discuss that
12 ordinance in person, period. What do you think -- why
13 do you think that he would have preferred to discuss it
14 in person?

15 A. I don't know.

16 Q. Okay. Having said that, we do have a specific
17 enforcement mechanism. And I don't have any clear idea
18 how we could train either our code enforcement staff or
19 law enforcement staff to actually enforce it.

20 Did I read that correctly?

21 A. Yes.

22 Q. So we had Ms. LaVerriere writing back. Now we
23 have Mr. Schofield writing back. And it appears that he
24 also is having a hard time imaging how this type of
25 ordinance would be enforced by Code Enforcement?

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1 A. Uh-huh.

2 Q. Yes?

3 A. Yes.

4 Q. She goes on to -- he goes on to say: If we
5 receive a complaint, we'll deal with it individually and
6 most likely referee it to one of the state governing
7 bodies. The MD's, DO's and clinicians all have their
8 own State Boards.

9 Do you see that?

10 A. Yes.

11 Q. What was Mr. Schofield conveying to Mr. Brown
12 there?

13 A. I'll give it my best interpretation. And I think
14 the word referee is probably refer.

15 Q. Yes.

16 A. And I believe what he is suggesting is that --
17 from Wellington that, if they receive a complaint, they
18 will -- instead of prosecuting it through their Code
19 Enforcement or law enforcement, that they would refer it
20 to one of the state regulating Boards.

21 Q. So he's saying, we don't think we could train our
22 Code Enforcement staff to enforce this kind of
23 ordinance. So we will send it --

24 A. Code Enforcement or law enforcement.

25 Q. Or law enforcement.

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1 So we'll send it up to Tallahassee and see if
2 they can deal with it?

3 A. Essentially. Those are the words. But, yes,
4 that concept.

5 Q. Okay. Now, did either Ms. LaVerriere or
6 Mr. Schofield's opinions with respect to the
7 enforceability of these kinds of ordinances make it to
8 the Boca Raton City Council for its consideration?

9 A. Not that I know of, no.

10 Q. Okay. So, when they voted on the particular
11 ordinance banning conversion therapy, they didn't --
12 they were not aware that Mr. Brown had solicited and
13 received this input from the neighboring municipalities?

14 A. That's correct.

15 Q. Has the City of Boca Raton considered an option
16 whereby complaints would be referred to the state
17 governing bodies in Tallahassee?

18 A. No, not that I know of. Not yet.

19 Q. Okay. Is there a reason for that?

20 A. No. I think -- I think the ordinance, as it was
21 enacted, as it was passed, empowered -- authorized Code
22 Enforcement. There really wasn't another mechanism
23 outlined in that ordinance.

24 Q. Right. To your knowledge or the City's
25 knowledge, if you know, does -- do the state Governing

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1 Boards in Tallahassee get involved in enforcing local
2 city ordinances in Florida?

3 A. Generally, no.

4 Q. Okay. You said --

5 A. You're talking about, like, not just licensing?
6 You're talking about DEP, DOH, all state agencies?

7 Q. Yeah.

8 A. Or licensing groups?

9 Q. Well, I mean, I guess I'm wondering. I don't --

10 A. I think -- I think I can answer the question
11 probably more clearly --

12 Q. Okay.

13 A. -- that they -- the state agencies and regulatory
14 bodies do not enforce local ordinances.

15 Q. That's what I was trying to determine. Thank
16 you.

17 A. Uh-huh.

18 Q. And so the option that Mr. Schofield was
19 considering for Wellington would not appear to be a
20 viable option for that reason?

21 A. Unless he felt that the infraction violated some
22 other tenets of their -- of their licensure, then,
23 certainly, they could pass it on.

24 Q. Okay.

25 A. But, yes, to -- and try to have them enforce a

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1 local ordinance is probably not going to be very
2 successful.

3 Q. Okay.

4 (Plaintiffs' Exhibit No. 27 marked for identification)

5 BY MR. MIHET:

6 Q. So I've handed you now a document that we have
7 marked as Exhibit 27. And do you recognize this one?

8 A. Yes. This is Ordinance 5407.

9 Q. This is the conversion therapy ordinance that was
10 enacted by the City of Boca Raton and that we've been
11 discussing throughout the day today?

12 A. That's correct.

13 Obviously, the stamp on the top is not part of
14 that document. But --

15 Q. Okay.

16 A. -- I'm not sure what that is.

17 Q. Right. By, "the stamp on the top," you mean, the
18 one that says case --

19 A. Yeah. Yeah, yeah, yeah.

20 Q. Okay. That's from a filing in the case that
21 we're --

22 A. Yes.

23 Q. -- we're in right now.

24 A. Yes.

25 Q. But the City of Boca Raton insignia at the top --

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1 A. Of course.

2 Q. -- that's part of the document?

3 A. Of course.

4 Q. Okay. Now, this document -- this ordinance,
5 according to the information on the last page, was
6 passed and adopted by the City Council on October the
7 10th of 2017?

8 A. That's correct.

9 Q. And we see here that we have the four -- or
10 rather three Commissioners and the Mayor who -- three
11 Council people and the Mayor who voted in favor. And we
12 have the Deputy Mayor, Jeremy Rodgers, voting against?

13 A. That's correct.

14 Q. And that's what we saw reflected in the video
15 that we watched, as well?

16 A. Exactly. I mean, yes.

17 Q. If you'll flip over to page five of the
18 ordinance. And, when I say, "page five," I mean, page
19 five at the bottom of the ordinance.

20 And, if you'll look over at -- beginning on line
21 three, it says: Whereas, City of Boca Raton has a
22 compelling interest in protecting the physical and
23 psychological wellbeing of minors, including, but not
24 limited to, lesbian, gay, bisexual, transgender and
25 questioning youth, and in protecting its minors against

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1 exposure to serious harms caused by sexual orientation
2 and gender identity efforts.

3 Did I read that --

4 A. Change efforts.

5 Q. Change efforts.

6 Did I read that correctly with that modification?

7 A. Yes.

8 Q. Okay. Why does this recitation of the City of
9 Boca Raton's interest appear in the ordinance?

10 A. Well, there are two reasons; one minor one, one
11 more important. The first is that I believe this
12 recital or one similar to it was part of the model
13 ordinance that was the basis for this ordinance.

14 Q. Is that the minor reason?

15 A. Yes.

16 Q. Okay. And what's the major reason?

17 A. I think the major reason is anytime that we have
18 an ordinance or a resolution, the reasons for
19 promulgating such ordinance or resolution are tried to
20 be laid out in the recitals. And so the reasons for the
21 background are all part of the whereas clauses before
22 you get to the substantive what's -- what now is going
23 to be the action of the ordinance or resolution.

24 Q. Okay. And so, with respect to stating what the
25 interest is of the City in enacting a particular

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1 ordinance, is that important to have in there for
2 subsequent purposes like enforcement or litigation or --
3 or -- or why?

4 A. Or just -- yes. Those, plus just explaining
5 why -- you know, this is what the Council feels. This
6 is why they're acting the way that they do by passing
7 this ordinance.

8 Q. Okay.

9 A. This sets the stage for the reasoning, the
10 thought process, why the Council is voting to do what's
11 in the -- in the action portion of the ordinance or
12 resolution.

13 Q. How important is it for the listing of the City's
14 interest to be complete. That is, to include all of the
15 asserted interests of the City in passing the ordinance?

16 A. I'm not sure you can have all. But I think the
17 primary ones, the ones that are most important -- while
18 I did not draft this one, I do draft a lot of ordinances
19 and resolutions. And we try to tell the stories so that
20 the Council can follow along and see if this makes sense
21 as they review the resolution, as they review the
22 ordinance, to see the thought process, to see the
23 reasoning, to see why the actions follow the -- to make
24 sure that the actions follow the reasons.

25 Q. Okay. Now, this particular ordinance says that

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1 the interest that's being asserted by the City is to
2 protect its minors against exposure to serious harms
3 caused by Sexual Orientation and Gender Identity Change
4 Efforts?

5 A. It does say that.

6 Q. Were there other interests that the City was
7 asserting besides the one that's mentioned here?

8 A. Other -- ones that aren't mentioned in the
9 ordinance?

10 Q. Right.

11 A. Other compelling reasons?

12 Q. Compelling or otherwise or not compelling, I
13 guess, is what I'm asking. Were there other things that
14 the -- other interests that the City was trying to
15 address or vindicate with this ordinance that are not
16 listed in this outlining of the compelling interest?

17 MR. ABBOTT: I'm sorry. Just so I'm clear,
18 you're asking if there are any interests outside of this
19 single whereas clause or any interest outside of the
20 language contained in the ordinance as a whole?

21 BY MR. MIHET:

22 Q. Well, I guess, since this clause deals with the
23 asserted interest specifically -- and, just for clarity,
24 if there are other interests that the City was trying to
25 address that are not listed in this clause, I'd like to

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1 identify those.

2 A. I think this is the stated interest for this
3 ordinance.

4 Q. Okay. So the answer to my question is that there
5 were not other ones?

6 A. This is the only one listed in the ordinance,
7 yes.

8 Q. Okay. Are you aware of any other ones besides
9 the one that's listed in the ordinance?

10 A. No.

11 Q. Okay.

12 A. There may be. But I can't think of -- I think,
13 if there was other -- I can't think of any other
14 interests, I guess.

15 Q. Okay. Well, just for clarity in the record, the
16 first of the deposition topics on which you were
17 designated to testify is Defendant's -- that's the City
18 of Boca Raton -- purported interest in banning SOCE
19 counseling for minors. So, when you say you can't think
20 of any, I guess I'd like to -- to try to --

21 A. Sure.

22 Q. -- exhaust you a little bit. If you can tell me
23 that, you know, having prepared for that topic, you --
24 there are no others, I'll accept that. But --

25 A. I think the ordinance does speak for itself. It

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1 lists the rationale for why this ordinance is being
2 enacted. And that is listed as the compelling. I
3 believe that's the only one listed in the ordinance.

4 Q. Okay. I guess what I'm trying to avoid is a
5 situation where we've addressed this one in litigation.
6 And then the City of Boca Raton comes back and says, oh,
7 yeah, but we've got six other ones here that we also
8 were trying to vindicate that we forgot or for whatever
9 reason we didn't put in there.

10 A. Understood.

11 Q. Okay? So, as you sit here today as the designee
12 on the City of Boca Raton on the subject of its interest
13 being vindicated by this ordinance, this is the only one
14 that you're aware of?

15 A. Yes, as described by the document, itself,
16 between studies and the following whereas clause which
17 kind of equates the two.

18 Q. Okay. Now, the clause that we just read says
19 that the compelling interest is in protecting its
20 minors. Do you see that?

21 A. Yes.

22 Q. So what does the "its" modify or mean there?

23 A. I believe it refers to within the City of Boca
24 Raton --

25 Q. Okay.

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1 A. -- which is where the ban is. It's only the
2 jurisdictional boundaries of the City.

3 Q. Okay. So the City of Boca Raton doesn't have an
4 interest in protecting the minors of Broward County?

5 A. An interest. Perhaps the ability to legislate,
6 the ability to govern the actions of Broward County not
7 so much. I believe this -- what it refers to is the
8 just jurisdictional opportunities that are available to
9 the City.

10 Q. Okay. So protecting the minors that are
11 residents of Boca Raton?

12 A. That is correct.

13 Q. And, in fact, the ordinance does not purport to
14 prohibit any therapist that resides or works in the City
15 of Boca Raton from traveling to another municipality and
16 providing what the order defines as conversion therapy
17 in that other locality?

18 A. I believe the -- I know I'm sure you've read the
19 prohibition. It's for treatment within the City
20 boundaries.

21 Q. Okay.

22 A. I don't believe, as we just talked, the City has
23 the wherewithal to govern the operations of another
24 jurisdiction.

25 Q. Okay. Now, does the City have an interest in

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1 protecting minors from another County like Broward
2 County who wish to come in and visit a therapist whose
3 office is in the City of Boca Raton?

4 A. I think, if your question is: Can a therapist
5 who resides in the City treat someone from outside the
6 City under -- under this ordinance? Is that your
7 question?

8 Q. Well, let's start with that.

9 A. I think the answer is this ban's treatment of
10 anybody -- any minor within City boundaries.

11 Q. Okay. So the ordinance then would prohibit a
12 minor from Broward County from coming into Boca Raton
13 and receiving therapy services here?

14 A. I believe so, yes.

15 Q. Okay. And so then the question is: What
16 interest does the City have in protecting that minor who
17 does not reside in the City of Boca Raton? I mean, does
18 "that minor" refer to when it says protecting its
19 minors?

20 A. I understand your question. You're trying to
21 determine whether "its" is limiting to only residents of
22 the City. And I don't think that the ban is limited to
23 just residents of the City. The ban is of conversion
24 therapy practices within the City. And it doesn't
25 specify only for City residents or only for visitors and

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1 residents. It's a ban of the -- so I'm not sure those
2 two are on -- are -- you can equate the two.

3 Q. Uh-huh. Does Code Enforcement enforce -- well,
4 strike that.

5 The whereas clause that's immediately under the
6 one we just discussed which begins on line seven of this
7 page five, it says: Whereas, the City Council hereby
8 finds the overwhelming research demonstrating that
9 Sexual Orientation and Gender Identity Change Efforts
10 can pose critical health risks. Do you see that?

11 A. I do.

12 Q. Okay. The overwhelming research that's being
13 referred to here and that the City Council was referring
14 to is the research that is described in the preceding
15 whereas clauses of this ordinance?

16 A. That's correct.

17 Q. There is not some other research that the City
18 Council was considering and that it found to also
19 demonstrate the -- the things that are being asserted
20 here that was not included in the previous whereas
21 clauses?

22 A. As a body, the research that was included as part
23 of the ordinance is the -- the documentation that they
24 used to determine if this ordinance should be passed.

25 Q. All right. So the overwhelming research that's

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1 being referred to on line seven refers to the previous
2 whereas clauses?

3 A. That's correct.

4 Q. Okay. Now, this ordinance bans both Sexual
5 Orientation Change Efforts as well as Gender Identity
6 Change Efforts?

7 A. It does.

8 Q. And we see that in the definition of conversion
9 therapy which is on page six beginning with line ten,
10 correct?

11 A. That's correct.

12 Q. That definition says: Conversion therapy or
13 reparative therapy means interchangeably any counseling,
14 practice -- I'm sorry. I think I misread that with a
15 comma. So let me try again.

16 Conversion therapy or reparative therapy means
17 interchangeably any counseling, practice or treatment
18 performed with the goal of changing an individual's
19 sexual orientation or gender identity, including but not
20 limited to efforts to change behaviors, gender identity
21 or gender expression or to eliminate or reduce sexual or
22 romantic attractions or feelings towards individuals of
23 the same gender or sex.

24 Did I read that correctly?

25 A. Yes.

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1 Q. The terms counseling, practice or treatment, are
2 they intended to all mean the same thing; or is there a
3 distinction between the three?

4 A. There probably is a similarity, but there
5 probably are distinctions between each of those terms.

6 Q. And what is that distinction, in general?

7 A. I'm not sure I'm the best person to define that.
8 However, to me, just by the look of those, I
9 think treatment probably has a different -- different
10 definition than counseling.

11 Q. Okay.

12 A. I think they all have probably different --
13 they're probably very similar in definitions. But
14 there's probably aspects of one that don't fall into the
15 other.

16 Q. Okay. Now, you mentioned that you may not be the
17 best person to ask. For the record, you have been
18 designated by the City to provide us its position with
19 respect to the interpretation of the ordinance, correct?

20 A. Yes.

21 Q. Okay. And you feel capable of providing that
22 position?

23 A. Best I can.

24 Q. Okay. That's all we can ask for.

25 A. Uh-huh.

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1 Q. So does the City then see a difference between
2 treatment and counseling?

3 A. I think, as I mentioned, those words are similar.
4 But, the exact definition, they're -- I'm sure is
5 different. And so they're related, but there may be
6 activities that fall under one or not under the other.

7 Q. Okay. Now, those -- can you think of some
8 activities that might fall under one but not the other?

9 A. No.

10 Q. Okay. Now, those words are not defined in the
11 ordinance, correct?

12 A. Uh-huh. No, they're not.

13 Q. Okay. In order for one of the City's code
14 enforcement officers to determine whether or not he or
15 she believes that a violation of the ordinance has
16 occurred, they would first have to determine whether or
17 not something that is described to them that took place
18 in the confines of a therapist's office amounts to
19 counseling, practice or treatment, correct?

20 A. To determine if the conversion therapy is
21 happening, yes, that is part of the definition, yes.

22 Q. Okay. And, without a definition of those terms
23 being provided to them and without any enforcement
24 memorandum or guidelines being provided to them, how
25 would you expect someone with a GED equivalent to

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1 determine whether or not a course of communication
2 between Dr. Hamilton and one of her patients is
3 counseling or is practice or is treatment or is none of
4 those three?

5 A. I think the -- as you well know, in a lot of
6 documents, that because the -- it's hard to sometimes
7 capture in a definition what an activity might be. I
8 think these three together form a -- a pretty good
9 handle on the types of activities that a therapist or
10 licensed therapist might do in their office or outside
11 their office.

12 So to know whether a -- a code -- a compliance
13 officer to determine whether something is counseling or
14 practice or treatment I'm not sure is necessary, if
15 that's your question. But I think it gives a fairly
16 good idea of the types of things that would -- would be
17 something that they could hang their hat on when they're
18 -- when they're looking to see whether something would
19 be conversion therapy. And I realize that's a bit of a
20 rambling answer; so let me try it, again.

21 The -- these three concepts together I think are
22 meant to give a little bit of latitude. If someone
23 says, well, I wasn't counseling, I was -- I was
24 providing treatment and -- or I wasn't doing treatment.
25 I was counseling. But, together, those three seem to

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1 represent the type of activities that might be going on
2 in a therapist's or licensed office.

3 Q. Okay. But you would recognize that it is
4 possible for a therapist and a minor to interact,
5 whether in the office or at the ice cream parlor or at
6 the basketball court or at the city park without being
7 engaged in counseling, practice or treatment, correct?

8 A. Of course.

9 Q. And so, you know, if the two of them have a
10 conversation, you know, it could be talking about -- for
11 example, you know, with a minor client that's interested
12 in basketball --

13 A. Uh-huh.

14 Q. -- they could be talking about the basketball
15 game that took place last night on TV, right?

16 A. Sure.

17 Q. And it's possible that that could just be a
18 conversation about basketball without any counseling or
19 therapeutic component?

20 A. Of course.

21 Q. But it's also possible that that conversation may
22 have been brought up by the therapist for a therapeutic
23 purpose. For example, to point out how masculine those
24 guys are who are, you know, running around the court --

25 A. Uh-huh.

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1 Q. -- correct?

2 A. Sure.

3 Q. And so, in order for a code enforcement officer
4 to decide whether or not a violation of the ordinance
5 has likely taken place such that a notice of violation
6 can or should be issued, he or she would have to
7 determine whether or not that conversation about
8 basketball was merely a conversation or whether it
9 constituted counseling, practice or treatment?

10 A. Sure. I think you might be coming at it in the
11 wrong direction.

12 Q. Okay.

13 A. And -- or maybe not. You certainly have thought
14 longer and harder than I have. But the -- as I
15 understand this ordinance, it bans conversion therapy.
16 So, if you were having a conversation, whether or not
17 that was considered to be counseling or a conversation,
18 as long as it didn't cross that threshold of trying to
19 change a gender identity or -- or -- then that would be
20 fine.

21 And even counseling that doesn't change --
22 obviously, the key things are gender. What are the --
23 changing an individual's sexual orientation or gender
24 identity. That's kind of the key. So you start with
25 that, I would think. And then, if that becomes an

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1 issue, then you look to see how was that done. So the
2 counseling, practice or treatment is really just the
3 delivery mechanism to this change behaviors, change
4 identity, change gender expression.

5 Q. So the code enforcement officer would or would
6 not have to decide whether or not a particular statement
7 or statements that are alleged to have been made in
8 violation of the ordinance constitutes counseling,
9 practice or treatment?

10 A. I think --

11 MR. ABBOTT: Objection. Asked and answered.

12 THE WITNESS: I think they would. But the
13 first step would be to say: Was there gender identity?
14 Was there sexual orientation? An attempt to change the
15 individual's sexual identity, gender -- sexual
16 orientation, gender identity? And, if that's the case,
17 could you -- would that be considered a counseling,
18 practice or treatment performed?

19 MR. MIHET: Okay.

20 THE WITNESS: And I would suggest that, if
21 that were the -- if there was an attempt to change
22 sexual orientation/gender identity, then it would be
23 fairly easy to say that falls into the counseling,
24 practice or treatment category.

25 BY MR. MIHET:

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1 Q. And --

2 A. So -- go ahead. I'm sorry.

3 Q. And so what would you have to know whether or not
4 the discussion about basketball that we just
5 referenced --

6 A. Uh-huh.

7 Q. -- is part of -- you know, is counseling,
8 practice or treatment to change gender identity or is it
9 not?

10 A. So, again, I think what I've said is that the
11 determination initially has to be about trying to change
12 gender identity or sexual orientation.

13 Q. Okay.

14 A. So, if that decision -- if that judgment is that
15 that was not the case, then it doesn't really matter
16 what that -- what that interaction was.

17 Q. Okay.

18 A. If it was something that judgment-wise was
19 intended to be a change in gender identity or sexual
20 orientation, then I think it is likely that you could
21 determine whether that happened as counseling, practice
22 or treatment.

23 Q. Okay. So, if a minor is interested in changing
24 sexual orientation or gender identity and is looking to
25 receive some assistance in that area and goes to

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1 Dr. Otto's office and Dr. Otto decides that, on this
2 particular session, what they should do is watch a
3 basketball game so that he can point out to this
4 particular minor client how men can be comfortable with
5 their masculinity and try to provide strong, you know,
6 male role models and examples of, you know, males -- you
7 know, guys doing what guys like to do on a basketball
8 court --

9 A. Uh-huh.

10 Q. -- how would a code enforcement officer who
11 received a -- who receives that complaint decide whether
12 or not that interaction constitutes counseling, practice
13 or treatment for the purpose of changing gender identity
14 or sexual orientation?

15 A. I think you've asked the same question a couple
16 of times now, so I guess I'm not being clear. So let me
17 try one more time -- although, I think it's going to be
18 repetitious -- is that, as with any complaint, the code
19 officer I think will look to first see not if it's a
20 practice, a counseling or a treatment being performed.
21 I think they're going to look to see if that threshold
22 of conversion therapy was reached. And I think that is
23 the operative part of this, not whether it was done
24 counseling, practice or treatment.

25 So, in your instance of your hypothetical, if

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1 they've got a complaint from a third party, from the
2 minor, from the family that the -- that Dr. Otto was
3 practicing conversion therapy and it involved watching
4 basketball, I don't think that basketball is the
5 operative. I don't know that treatment, counseling --
6 it's that conversion therapy that would be the key. And
7 I think the code compliance officer or the code
8 compliance manager, once receiving that complaint, would
9 look to see best they could if this complaint was
10 something that was worth -- not was worth -- something
11 that was due additional investigation and an NOV.

12 Q. So I guess this is what I'm trying to get at.
13 And it wasn't the same question I was asking because I
14 had added to it the fact that the minor in this case
15 wasn't just there to kill time but was there with the
16 actual intent to try to change that minor's sexual
17 orientation or gender identity. I had added that to --

18 A. I don't think -- I don't think that changes the
19 response.

20 Q. Okay. Why not?

21 A. I think that, no matter what the activity is;
22 watching basketball, getting zapped on the wrist with a
23 band or electrical or therapy, whatever that might be,
24 if the goal of that is to change gender identity, then
25 that would be covered by this ban.

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1 Q. Okay. And, when you say, "the goal," whose goal
2 are we talking about?

3 A. I'm sorry. I don't know what I said.

4 Q. You said, if the goal of that activity is --

5 A. Oh, the intent. If the intent of the activity is
6 to change sexual identity -- or gender identity/sexual
7 orientation, then --

8 Q. It's prohibited?

9 A. -- then it's prohibited.

10 Q. And so my question is: Whose intent does the
11 code enforcement officer have to look at? The minor's
12 or the therapist's or both?

13 A. I think it's a ban on therapists. It's not --
14 it's not governing the youth. It's governing the
15 therapist's activities.

16 Q. Okay. So, if a minor shows up and the minor has
17 the intent of changing their sexual orientation or
18 gender identity --

19 A. Uh-huh.

20 Q. -- but the therapist engages in counseling,
21 practice or treatment and the therapist doesn't share
22 that intent, then that would not be a violation of the
23 ordinance?

24 A. I think it would. I think that, if the therapist
25 treats -- if the practice is gender identity conversion

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1 or sexual orientation conversion, whether or not it's
2 prompted by the parents, by the therapist, by the child,
3 themselves, that is banned by the ordinance.

4 Q. Okay.

5 A. That's my understanding.

6 Q. Okay. And so, just so we're clear then, if the
7 minor wishes to receive this type of counseling and the
8 therapist wishes to provide the minor with that which
9 the minor seeks, which is to assist the minor with the
10 minor's goals, if those goals are to change sexual
11 orientation or gender identity, then that would be
12 prohibited by the ordinance?

13 A. That's my understanding, yes.

14 Q. Okay. Now, the ordinance says -- when it defines
15 conversion therapy, it says: Counseling, practice or
16 treatment performed with the goal of changing an
17 individual's sexual orientation or gender identity
18 including but not limited to efforts to change
19 behaviors, gender identity or gender expression.

20 Do you see that?

21 A. I do.

22 Q. So, within the context of gender identity, what
23 types of efforts to change behaviors or -- or feelings
24 would be prohibited by the ordinance?

25 MR. ABBOTT: Object to the form.

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1 THE WITNESS: I'm not -- it seems rather
2 straightforward --

3 MR. MIHET: Okay.

4 THE WITNESS: -- that a child identifies
5 with a particular orientation. The efforts to convince,
6 to treat, to change that would be something that would
7 be prohibited under the ordinance.

8 BY MR. MIHET:

9 Q. Okay. Now, you heard a couple of these examples
10 yesterday; and we heard what the County's position was
11 as to them. And I'm interested in hearing the City's
12 position, as well.

13 A. I can't guarantee I was paying close attention.
14 You may have to repeat them.

15 Q. I will do just that.

16 If a prepubertal child, say a ten-year-old, was
17 born as a boy --

18 A. Uh-huh.

19 Q. -- but has now expressed a female gender
20 identity --

21 A. Uh-huh.

22 Q. -- would the ordinance prohibit a therapist from
23 encouraging that child to embrace his given male body
24 and to align with his assigned gender role, that is, his
25 boyhood?

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1 A. If the child identifies as a female and the goal
2 of the therapy is to change their identity back to a
3 male, then, yes, I think that would be prohibited by the
4 ordinance --

5 Q. Okay.

6 A. -- which I believe is what your example was.

7 Q. So that's part of the example. And, you know,
8 you added, if the goal is to change the identity back to
9 male, that would be prohibited. But if -- let's take it
10 this way.

11 A. Uh-huh.

12 Q. There's a complaint made to code enforcement by
13 either the child or the child's parent and they say,
14 this is a ten-year-old prepubertal child born as a boy,
15 identifies as a female. He has visited Dr. Hamilton,
16 and Dr. Hamilton encouraged this child to embrace his
17 given male body and to align with his assigned gender
18 role.

19 A. So in that -- in doing that, is Dr. Hamilton
20 trying to change the identification of that individual
21 from female, which they're currently identifying with,
22 to identifying as a male?

23 Q. Let's say, in the first example or in option A,
24 yes, she is.

25 A. Then I think that that would be a clear --

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1 clearly a violation of the ordinance.

2 Q. Okay. And another variant, let's say that that
3 information is not provided to the code enforcement
4 officer.

5 A. Which information?

6 Q. Whether or not Dr. Hamilton, what her intent was.
7 All that is provided to the code enforcement officer is
8 that this particular prepubertal ten-year-old child,
9 born as a boy, identifies as a female, visited
10 Dr. Hamilton; and she encouraged the child to embrace
11 his given male body and to align with his assigned
12 gender role.

13 A. Uh-huh.

14 Q. We don't know why she did it. Is that a
15 violation of the ordinance?

16 A. I'm assuming you're kind of going back to your
17 statement of this morning, your hypothetical of this
18 morning where that's the only information the code
19 officer has. The parents have hung up. Dr. Hamilton
20 has hung up on. And so that's the only information they
21 have.

22 Q. Yes.

23 A. So, as I think we talked before, they could make
24 the determination based on the facts they know and
25 decide whether or not that covered or not.

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1 Q. Okay.

2 A. I think, with a nine- or ten-year-old -- what did
3 you say?

4 Q. Ten-year-old.

5 A. Ten-year-old.

6 That might be a difficult thing to go forward.
7 Now, when they talk with the ten-year-old, maybe the
8 ten-year-old is someone who they feel is a -- can
9 present a good case, it -- has a clear idea; and they
10 can go with that. But I would suggest, as we talked
11 earlier, trying to make that case, trying to present
12 something to the special magistrate without the
13 corroboration of the therapist or the parents or another
14 party, another witness, that would be a tough thing to
15 do on its own. But, yes, they could as a code -- as a
16 code compliance person.

17 Q. Okay.

18 A. If nothing else, it could be the start of -- of
19 an investigation.

20 Q. Okay.

21 A. But they have to look at other factors, as well.

22 Q. If the -- if the child or the parent were to say
23 to the code enforcement officer that the child was
24 looking for help to change back to, you know, a male
25 gender identity and that that information was shared

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1 with Dr. Hamilton, how would that impact the analysis?

2 A. I think you're trying to give different examples.
3 But I think the ordinance pretty much speaks for itself.
4 No matter what the consent, no matter what the assent is
5 by the child or the parents, this prohibits Dr. Hamilton
6 from performing conversion therapy within the City.

7 Q. Okay. Now, for that same child, would the
8 ordinance prohibit a therapist from verbally endorsing
9 or supporting behaviors and attitudes that align with
10 the child's sex assigned at birth?

11 A. Is the goal to make them feel better? Is the
12 goal to change their sexual -- I mean, if the goal is to
13 change --

14 Q. Uh-huh.

15 A. -- if the goal is conversion therapy, then it
16 would be a -- it would violate.

17 Q. So you have a ten-year-old prepubertal child --

18 A. Uh-huh.

19 Q. -- and he was born as a boy; and he presents to
20 Dr. Otto and says, you know, that he is really
21 interested in girls, wants to play with dolls, wants to
22 hang out with friends that are girls, wants to dress up
23 as a girl, wants to do things that girls want to do and
24 he has no interest in things that boys want to do and is
25 experiencing distress as a result of the fact that he

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1 wants to do all these things that girls want to do and
2 yet, you know, he has a male anatomy. When he shows
3 up --

4 A. So, to me -- and, clearly, I'm not a clinician in
5 any event. But what you just explained to me sounds
6 like someone who is identifying with -- as a female.
7 But, again, I am not the best person to make that call.
8 Perhaps someone, you know, who's a therapist could do
9 so.

10 Q. Okay.

11 A. And, if that were the case and the goal of
12 Dr. Otto -- I think was your example of this case --
13 tried to change that identity, the gender identity to a
14 male, then, yes, that would be a violation of this
15 ordinance.

16 Q. Okay. So what if the ten-year-old prepubertal
17 child hasn't progressed far enough into the exploration
18 of gender identity to say clearly I now identify as a
19 girl --

20 A. Uh-huh.

21 Q. -- but still, nonetheless, experiences all of the
22 inclinations that I've just talked about in terms of
23 wanting to do --

24 A. I would --

25 Q. Let me just finish for the record.

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1 -- wanting to do all the things that girls want
2 to do and not wanting to do things that boys want to do.
3 So, without a clear declaration that I identify as a
4 girl, is it still a violation of the ordinance for
5 Dr. Otto to do the things that we talked about, that is,
6 to verbally endorse and support behaviors and attitudes
7 that align with the male biology of the child while to
8 verbally discourage behaviors and attitudes that align
9 with the female identity?

10 A. I would guess that, whether or not the child
11 declares that they have a different -- or are
12 identifying as one or the other, their actions would
13 really put them in the category of one or the other or
14 both or -- and so, whether they declare it or not, I
15 think it's -- that gender identity as presented is one
16 that this ordinance would prohibit the attempt to
17 convert through therapy, counseling -- or counseling,
18 practice or treatment.

19 Q. Okay. So, if the child doesn't declare it, you
20 know, I identify as a girl --

21 A. And not being a counselor, but I don't suspect
22 that is an uncommon event.

23 Q. Right. That happens a lot.

24 A. Could happen.

25 Q. So the child doesn't declare it. The therapist

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1 doesn't declare it. Is a code enforcement officer able
2 to make that determination that this child has
3 progressed far enough along in the gender identity
4 exploration process to where this child now identifies
5 as a girl, notwithstanding the failure to so declare;
6 and so, therefore, the efforts that have been engaged in
7 amount to conversion therapy?

8 A. I understand the question. Now, in that case, as
9 we've talked about, this is going to be a
10 complaint-based process.

11 Q. Okay.

12 A. So, if the child is -- has not come forward, if
13 the therapist hasn't come forward, if the parents
14 haven't come forward, it is unlikely that we would know
15 what's going on as a City, as a code. So until --
16 unless and until there is a complaint, which means
17 someone believes that there is a -- an attempt, a goal
18 of trying to change gender identity, that would be the
19 trigger for someone to take a look at. And, at that
20 point, then what you're talking about would have to be
21 part of that judgment.

22 Q. Now, I probably wasn't as clear as I should have
23 been with the example. I wasn't suggesting that the
24 child hadn't declared to a code enforcement officer
25 that, you know, these things took place. I was

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1 suggesting that, in discussing with a code enforcement
2 officer what took place in the therapy sessions with the
3 therapist, the child doesn't declare that -- that he now
4 identifies as a girl. The child hasn't reached that
5 level in the exploration of gender identity yet.

6 A. Uh-huh.

7 Q. How is the code enforcement officer able to
8 determine whether the child was far enough along in the
9 gender identity exploration such that the efforts of the
10 therapist are conversion therapy or that the child was
11 still male in both biological sex and identity and yet
12 was merely exploring these things but no actual
13 conversion took place?

14 A. Sure. I think I understood. That was a long
15 question, but I think I got the gist of it. I think
16 that kind of goes back to the question that we had gone
17 over a few times this morning and this afternoon. Let's
18 say that that child talks to a code officer and
19 describes just what you're saying --

20 Q. Okay.

21 A. -- and that code officer evaluates it and says,
22 you know, I'm not clear. I'm going to talk to the
23 parents. I'm going to -- and they hang up. Talk to --
24 I'm not sure who to use as an example. The professional
25 hangs up. So they're only looking at that description.

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1 Q. Yes.

2 A. Could they write an NOV? The answer is they
3 probably could, but they probably would look for more
4 corroboration. They're not going to take this nine,
5 eight, ten-year-old, whatever, and use that unless, for
6 some reason, that nine, ten-year-old was very -- was
7 able to describe, was able to put into words their
8 feelings, the treatment and how it -- and, as they
9 described it, if the code compliance officer felt that
10 that covered this, then they could go over. But I think
11 that would be unlikely, as we talked before, without
12 some other information or evidence.

13 Q. And you have no concerns about entrusting a code
14 enforcement officer with a high school diploma with
15 making that judgment call?

16 A. You know, you keep talking about high school
17 diplomas as -- I mean, that's certainly a level of
18 education. But I would suggest that there are people of
19 high school educations who are very astute and very --
20 and -- and --

21 Q. And I did not mean to use that in a derogatory
22 sense at all.

23 A. And I would suggest that there are PhD's who
24 don't.

25 Q. Right.

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1 A. But I think, if your question is, are code
2 officers the people who are entrusted to make that call?
3 Yes.

4 Q. And you don't have any concerns about whether or
5 not they are capable of making that call rightly?

6 A. I am concerned about every call they make
7 rightly, whether it has to do with grass or whether it
8 has to do with -- certainly, the concerns of children
9 are paramount. That's the reasons that we passed the
10 ordinance in the first place is to try to have
11 protections against -- for the children in the City.

12 But, to answer your question, anytime anybody's
13 making those kind of judgments, it's a concern. Do I
14 feel that they are able to make that? Yes.

15 Q. So, again, when I was using high school diploma,
16 I was not using that in a derogatory sense. I want to
17 contrast that with someone who has both a BS degree or a
18 BA degree and professional licensure from the state as a
19 licensed mental health therapist. Would not a licensed
20 mental health therapist be much better equipped to make
21 these types of judgment calls as to, for example,
22 whether or not a minor patient had sufficiently
23 progressed in the gender identity exploration such that
24 the efforts we've been talking about amount to
25 conversion therapy or not?

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1 A. Sure.

2 MR. ABBOTT: Objection. Asked and answered.

3 THE WITNESS: And I think that someone who
4 is trained in a field, no matter what that field is,
5 certainly has some advantages. Now, I would also
6 suggest that, in an investigation, I think it is
7 doubtful that Dr. Hamilton or Dr. Otto will hang up on
8 our code officer, would provide the information that
9 would allow them to make a better call. Maybe not. But
10 I'm hoping that's the case. And I'm hoping the parents
11 don't hang up, as well.

12 So there would not be -- I think all the
13 instances that we're talking about where you're
14 wondering whether a code officer, based on one set of
15 facts, another set of facts from a nine-year-old child
16 is going to know whether we're going to have a NOV or a
17 special magistrate is very hypothetical and I think
18 maybe not as realistic as some other examples.

19 BY MR. MIHET:

20 Q. Well, you don't think it would be realistic for
21 the City to expect a therapist to cooperate with the
22 City in investigating that therapist for possible code
23 violations, do you?

24 A. I think, if they knew about the ban and they were
25 doing something that was well within their practice,

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1 they would be willing to talk about it, maybe not
2 divulging the specifics -- the HIPAA, the other things
3 that might be going on. But, yes, I would expect that
4 professionals would cooperate with the City.

5 Q. And the code enforcement officers, they don't
6 receive training in issues of child development or
7 exploration or gender identity or things along those
8 lines, do they?

9 A. No, not formally.

10 Q. Okay.

11 A. No. Not by the City, I should say.

12 Q. Okay. And it's not a requirement of their job
13 that they receive that kind of training from anywhere
14 else, is it?

15 A. No, it's not.

16 Q. Okay. So would the answer be any different to
17 the -- the question if, instead of using a prepubertal
18 child, a ten-year-old, we would use a six-year-old who
19 was born as a boy, identifies as a girl, likes to dress
20 as a girl and likes to do things that girls do, doesn't
21 show any interest in things that boys do, would the
22 ordinance allow a therapist to seek to help this
23 six-year-old boy embrace his boyhood and feel good about
24 being a boy through talk therapy that encourages
25 masculine activities, increased relationships with male

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1 role models, play dates with other boys, et cetera, and
2 discourages cross gender behavior?

3 MR. ABBOTT: Object to the form.

4 THE WITNESS: I think the question is very
5 similar to the one you asked before, and I think the
6 answer would be very similar. If the goal was to try to
7 change gender identity, then it would be prohibited by
8 this ordinance.

9 BY MR. MIHET: Okay.

10 BY MR. MIHET:

11 Q. What about an adolescent -- so now we're talking
12 about someone, you know, between thirteen and eighteen.

13 A. Uh-huh.

14 Q. Born as a female but has been identifying as a
15 male for some time. Okay?

16 A. Uh-huh.

17 Q. If that minor seeks therapeutic help in changing
18 gender identity behaviors and expressions back to match
19 her biological body, would the ordinance prohibit a
20 therapist from providing talk therapy to assist with
21 that identity change back?

22 A. I think that the same process we've talked about
23 with the ten, the six and now the thirteen, fifteen,
24 it's the same -- same ordinance; and it covers minors
25 the same way.

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1 Q. Okay. So the answer to the question is: Yes,
2 the example I just gave would be conversion therapy
3 prohibited by the ordinance?

4 A. Yes, I believe.

5 Q. You say you believe?

6 A. Yes.

7 Q. The City believes?

8 A. Yes.

9 Q. Okay.

10 MR. MIHET: Take another quick break.

11 THE WITNESS: Of course.

12 (Recess)

13 BY MR. MIHET:

14 Q. Okay. Mr. Woika, I've got one more example that
15 I want to run by you.

16 A. Sure.

17 Q. We have a sixteen-year-old boy who comes to see
18 Dr. Otto because he's having difficulty at school with
19 schoolwork and friends and just feels a lot of stress
20 and distress that he wants help with. In the process of
21 talking with this minor, Dr. Otto determines -- or
22 learns that the minor is spending an inordinate amount
23 of time on technology, you know, surfing the web and
24 video games and doing things other than homework and,
25 you know, more productive things. He shares that

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1 concern with the minor's parents. And, as a result, the
2 parents take away the Xbox and the telephone and the
3 other things that the sixteen-year-old enjoys using.
4 Are you with me?

5 A. So far.

6 Q. So now we have a very angry sixteen-year-old.
7 And he calls Code Enforcement; and, he says, I was with
8 Dr. Otto in therapy sessions. I told him that I was
9 gay, and he proceeded to engage in therapy with me to
10 try to convert me back to being straight. Are you with
11 me?

12 A. Uh-huh.

13 Q. How is Dr. Otto able to defend himself now in the
14 code enforcement process that ensues?

15 A. Sure. I think we've gone through this a couple
16 times that that call comes to the code officer, the code
17 compliance officer.

18 Q. Okay.

19 A. As we've talked about, the code person is going
20 to take the complaint, evaluate it and try to do things
21 like talk to the parents. And I'm guessing, in this
22 case, the parents would not just hang up but would say,
23 no, that's not the case. This is what happened. And
24 that would go into the investigation. Similarly, I
25 think, if the code person called -- I'm sorry. This is

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1 Dr. Otto?

2 Q. Dr. Otto, yes.

3 A. Otto.

4 And called Dr. Otto and said, we have this
5 complaint. Do you care to talk about it? Now, they --
6 he may or may not be able to based on the privacy.

7 Q. HIPAA?

8 A. What's that?

9 Q. The privacy laws, you mean?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes.

13 Q. Okay.

14 A. But if both Otto and parents hang up and we're
15 left with just the complaint of the --

16 Q. Sixteen-year-old.

17 A. -- sixteen-year-old, then the code enforcement
18 person would have to decide whether or not that, by
19 itself, warrants having a notice of violation or not.

20 Q. So, in this particular case, the parents would
21 say, well, we weren't part of the sessions --

22 A. Uh-huh.

23 Q. -- with Dr. Otto, so we can't say what actually
24 took place in those sessions. And Dr. Otto says, I'd
25 love to tell you something; but I can't because of HIPAA

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1 and other, you know, state laws.

2 A. Sure.

3 Q. So now the code enforcement officer has only what
4 the sixteen-year-old tells him. Does he issue a --

5 A. I'm guessing that -- I'm sorry.

6 Q. Does he issue a notice of violation or no?

7 MR. ABBOTT: Object to the hypothetical.

8 THE WITNESS: In that case, as we just
9 talked about, the parents I would say would -- even
10 though they would say they weren't part of the session
11 say, as a result of all of this, yes, he has no more
12 Xbox. We've taken away the cell phone and whatever. I
13 think that would go into the weight of the decision of
14 the code compliance officer and/or the manager to take a
15 look at that.

16 But, absent all that, I think we're back
17 where we were this morning, which is it's really up to
18 the code compliance officer to determine if that -- if
19 that complaint by itself was valid enough to issue the
20 NOV.

21 Q. Sure. And I understand it would be up to his
22 discretion.

23 I guess my question is: What would he do? Would
24 he issue the citation or not?

25 A. I don't know the answer. I mean, I don't think

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1 you can make that based on that hypothetical. Without
2 having a discussion with the sixteen-year-old, without
3 having the benefit of talking -- what the parents said
4 and without talking to what the treatment professional
5 said, I think it would be hard to know what that answer
6 is.

7 Q. Okay. And you believe that a level 1 or 2 code
8 compliance officer has the requisite skill and training
9 to be able to interview that minor, to interview the
10 minor's parents, to assess the facts that we've just
11 discussed and to make a judgment call as to whether or
12 not this minor is telling the truth with respect to
13 conversion therapy actually has been attempted on him or
14 whether he is merely acting out of revenge?

15 A. Sure. I understand that question.

16 And one of the things that you keep saying is
17 that this code compliance officer is going to make
18 decisions almost like they're in a vacuum, and they're
19 not. We've talked a little bit about the manager that's
20 available. We've talked about the City Attorney that's
21 available. We talked about other professionals. We
22 have the ability to go through any one of our
23 departments and -- and offer assistance if that were to
24 be the case. If it's this touchy, perhaps we need to
25 have one of our other professionals get involved with

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1 it. It's not just that person's decision on some of
2 these cases where this is a fair amount of judgment in
3 it.

4 Q. Ultimately, it's the compliance officer that
5 decides whether or not a notice of violation has to be
6 issued?

7 A. Through the manager, yes.

8 Q. And the City Attorney that you mentioned I
9 believe two or three times as being an available
10 resource, would it be the same City Attorney that we
11 heard on the video say that she didn't know exactly how
12 this -- this ordinance would be enforced in practice?

13 MR. ABBOTT: Object to the form.

14 THE WITNESS: Yeah. I think, something
15 along those lines. I'm not sure what were her exact
16 words. But, yes, her office. That is the City
17 Attorney. We only have one.

18 BY MR. MIHET:

19 Q. Okay. As you might appreciate, Mr. Woika, this
20 subject matter that we've been discussing today creates
21 a lot of strong emotions and feelings on both sides
22 of -- of the issue. Would you agree with me?

23 A. By whom? By --

24 Q. Well, by people who think that conversion therapy
25 is harmful and should be prohibited versus those who

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1 feel that, you know, talk therapy should be permitted
2 for individuals who seek and request it.

3 A. The reason I ask that is we had a public hearing.
4 No one showed either side. It didn't look like it was
5 very hotly contested. And, until this lawsuit, we
6 really haven't heard much about it. So I'm not sure
7 that I would agree that it's a hotly-contested dividing
8 subject.

9 Q. Okay. Are you aware of whether or not this issue
10 was hotly contested at the county level when it occurred
11 there?

12 A. Peripherally.

13 Q. Okay. What are you aware of?

14 A. Just the fact that their ordinance, there was a
15 lot more discussion regarding their passing of the
16 ordinance than happened here or other communities.

17 (Plaintiffs' Exhibit No. 28 marked for identification)

18 BY MR. MIHET:

19 Q. Okay. I've shown you a document that we have
20 marked as Exhibit 28. You've had a chance to peruse it.
21 Do you recognize this document?

22 A. Yes.

23 Q. When is the last time that you've seen this prior
24 to just now?

25 A. This morning.

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1 Q. Okay. Seems like you looked at a lot of
2 documents this morning.

3 A. I was up early.

4 Q. Looking at the message that starts on the bottom
5 of page one, which is Tuesday, June 19, 2018, message
6 from Diana Frieser -- am I saying that right, by the
7 way?

8 A. It's Diana --

9 Q. Oh.

10 A. -- Diana Frieser, as in, like, the bottom half of
11 a refrigerator.

12 Q. Got it. Diana Frieser, that's the City Attorney,
13 right?

14 A. Yes, it is.

15 Q. She writes to Rand Hoch. We know it's Rand Hoch
16 because, if you look at the message that follows it
17 beginning on the middle of the next page, you'll see
18 that she was responding to something that Mr. Hoch had
19 written her. Do you see that?

20 A. Yes.

21 Q. And, for the record, this is City 492, 493 and
22 494 that comprises Exhibit 28.

23 So she writes to Mr. Hoch. And, evidently, this
24 is after this particular lawsuit has been filed,
25 correct?

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1 A. Yes.

2 Q. Okay. First line on the -- I'm sorry. Last line
3 on the bottom of the first page, she says: We
4 appreciate the interest from you and the Palm Beach
5 County Human Rights Council regarding this newly-filed
6 litigation.

7 Do you see that?

8 A. Yes.

9 Q. She goes on and says: We recall the assurances
10 and support pledged by the PBCHRC during the City's
11 consideration of the ordinance prohibiting conversion
12 therapy with respect to minors, which is the focus of
13 the complaint, and believe those resources will be
14 valuable.

15 Did I read that correctly?

16 A. You did.

17 Q. What assurances and support pledged was
18 Ms. Frieser referring to?

19 A. There was correspondence from Rand Hoch and the
20 PBC Human Rights Council sometime back when the
21 ordinance was being considered. And I don't remember
22 the -- which correspondence there was. But there was a
23 pledge that, hey, we're in this with you as the Council.
24 If things happen, we're here to -- to help you fight off
25 anybody who's trying to take down the ordinance. And

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1 that may not have been a great paraphrase, but it's
2 something along those lines. And I think that the City
3 Attorney was saying, hey, remember those correspondence?
4 What do you -- what are you willing to bring to the
5 table?

6 Q. You said you'd take care of us. Now here's your
7 chance?

8 A. Something along those lines, yes.

9 Q. Did the assurances and support that was pledged
10 by Mr. Hoch's organization play any part in the City
11 Council's decision as to whether or not to enact the
12 ordinance?

13 A. It was something that they had. I don't know to
14 the extent that that played into their decision making.

15 Q. Okay. How often does the City of Boca Raton get
16 sued for civil rights or, you know, Constitutional First
17 Amendment violations, if you know? Is that a very rare
18 thing, or is it a common occurrence?

19 MR. ABBOTT: Object to the form.

20 THE WITNESS: I don't believe it's common.

21 MR. MIHET: Okay.

22 THE WITNESS: We have had some.

23 MR. MIHET: Okay.

24 BY MR. MIHET:

25 Q. Ms. Frieser goes on in the next sentence to say:

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1 I believe it would be appropriate for us to touch base
2 regarding the defense of the ordinance once the City is
3 served; and, at that time, we can discuss coordination
4 of the financial and legal resources PBCHRC is prepared
5 to provide the City to supplement the City's efforts.

6 Do you see that?

7 A. I do.

8 Q. What financial or legal resources is PBCHRC
9 providing for the City's defense of the ordinance?

10 MR. ABBOTT: Objection.

11 This exceeds the scope of any topic that was
12 identified for the deposition. But go ahead and answer.

13 MR. MIHET: For the record, I disagree. I
14 think there is a topic that does seek the City's -- the
15 extent of the City's coordination with advocacy groups
16 with respect to the ordinance. And I think this is
17 fairly covered. Go ahead.

18 THE WITNESS: The Human Rights Council is
19 not contributing any financial contributions to the
20 defense.

21 MR. MIHET: Okay.

22 BY MR. MIHET:

23 Q. How about legal resources?

24 A. I think they've identified attorneys in other
25 jurisdictions that are either being sued or have been

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1 served. And I think they may have sent a position paper
2 or two.

3 Q. Okay. Are those attorneys involved actively in
4 defending the City of Boca Raton?

5 A. No.

6 Q. They're just providing their input or knowledge?

7 A. Not even that. They've just been identified.

8 Q. Okay. The statement you made earlier where you
9 say they're not providing any financial resources, can I
10 understand that to mean that they -- they're not paying
11 for attorney's fees; and they're not paying for any fees
12 by consultants or experts or otherwise?

13 A. I don't believe that they are -- have paid for
14 any of our legal or other fees.

15 Q. To include experts or consultants?

16 A. That's correct.

17 Q. Okay. Is there any expectation of future payment
18 from Mr. Hoch's organization with respect to the defense
19 of the ordinance?

20 A. No. I think, if it turns out that he does, I
21 don't believe the City will turn the money away. But
22 there's -- at this point, I don't believe anybody
23 expects that they will take over defense or paying for
24 defense.

25 Q. There's not any kind of indemnification agreement

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1 or promises or anything along those lines whether
2 formally in writing or verbally?

3 A. No.

4 Q. And is there any understanding with Mr. Hoch
5 whether or not his organization would either be
6 responsible or help with any damages or attorney's fee
7 judgments that the City might incur as a result of this
8 litigation?

9 A. I have not seen anything to that.

10 Q. Okay. Now, if we look at the message that's just
11 above the one we discussed which begins at the top of
12 the first page of this Exhibit 28, this appears to be
13 the response from Ms. Frieser back to -- well --

14 A. I'm sorry. Which one are you on?

15 Q. I take that back. This appears to be Mr. Hoch's
16 response to Ms. Frieser.

17 MR. ABBOTT: He's at the top of page one.

18 MR. MIHET: Yeah. At the top of page one.

19 THE WITNESS: Okay. Front page?

20 MR. MIHET: Yeah.

21 THE WITNESS: Okay.

22 BY MR. MIHET:

23 Q. Message from Ms. Frieser to Rand Hoch on June 19,
24 2018, at eight-oh-seven p.m. Do you see that?

25 A. Yes, I do.

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1 Q. And she's responding to the message that we just
2 read?

3 A. Yes.

4 Q. So she -- he says in the second full paragraph
5 that: I have asked Denise if the County was interested
6 in seeing if we could secure outside counsel on a pro
7 bono basis. They declined.

8 Do you see that?

9 A. I do.

10 Q. Do you know who is -- who he is referring to
11 there?

12 A. I believe the County Attorney, Denise Nieman.

13 Q. "County," meaning Palm Beach County?

14 A. Yes. Denise Marie Nieman, as I believe we
15 clarified yesterday.

16 Q. Yes. Then he goes on and says: We also reminded
17 them that we can pay for experts' expenses, et cetera;
18 and they took us up on that one.

19 Do you see that?

20 A. I do.

21 Q. Are you familiar with any of those arrangements?

22 A. I am not.

23 Q. Okay. Then he continues to say: We'll do the
24 same for Boca, but I trust you'll be coordinating with
25 the County.

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1 A. It says that, yes.

2 Q. Okay. Then skipping down to the PS, do you see
3 that underneath his name?

4 A. Yes.

5 Q. It says: PS, we were fortunate to get
6 Judge Robin Rosenberg on the case.

7 Do you see that?

8 A. I do.

9 Q. Do you know why he considers himself fortunate to
10 get Judge Robin Rosenberg?

11 A. I don't.

12 Q. Okay. You don't know what he's referring to?

13 A. I don't.

14 Q. However, he continues, PBCHRC Voters Alliance has
15 endorsed her husband, Michael McAuliffe, in his campaign
16 for Circuit Court Judge. So PBCHRC will be working
17 behind the scenes with the parties on the case so that
18 Judge Rosenberg does not get recused.

19 Do you see that?

20 A. I do.

21 Q. Do you know what he was referring to when he said
22 that PBCHRC would be working behind the scenes?

23 A. No. And, as you can see from Diana's -- I don't
24 think that was anything that she asked or wanted to
25 know. I think that was something that he volunteered.

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1 And I'm not sure that we know what the ramifications of
2 Judge Rosenberg slash Michael McAuliffe, how that works
3 or how they're going to be working behind the scenes.

4 Q. Okay. What work behind the scenes is PBCHRC
5 providing?

6 A. I don't know. I don't think -- the City does not
7 know what he's doing.

8 Q. Okay. Because it's behind the scenes?

9 A. Apparently so.

10 Q. So I think you may have answered this question.
11 I was going to ask: Does the City share Mr. Hoch's
12 concern that PBCHRC's open involvement would lead to
13 Judge Rosenberg's recusal? And I think kind of
14 addressed this --

15 A. We're not working with them and certainly don't
16 know -- not working to get Rosenberg not recused.

17 Q. Not working to get her not recused. I'm trying
18 to work through --

19 A. Yeah. We're not -- we're not -- I was trying to
20 read that. We are not working for or against Rosenberg
21 to get her on or off the case.

22 Q. Okay. You're not cooperating with Mr. Hoch's
23 effort to stay behind the scenes so as to avoid recusal?

24 A. That's correct.

25 Q. Okay. Has anyone from the City communicated with

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1 Mr. Hoch to -- to tell him that he should keep his
2 involvement out in the open and not behind the scenes?

3 A. I don't believe so.

4 Q. Okay. Does the City have any plans to -- to
5 bring Mr. Hoch's involvement, whether behind the scenes
6 or in the open, to the attention of Judge Rosenberg?

7 A. No.

8 Q. Okay. Is there any other questions that you'd
9 like for me to ask?

10 A. Where's the quickest exit?

11 MR. MIHET: I think those are all the
12 questions that I have. You've been very helpful. Thank
13 you.

14 MR. ABBOTT: Rachel, anything from you?

15 MS. FAHEY: No.

16 MR. ABBOTT: And no questions from the City.
17 We'll read.

18 (Proceedings concluded at 4:02 o'clock p.m.)
19
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CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Rachele L. Cibula, the undersigned authority,
certify that MICHAEL WOIKA personally appeared before me
and was duly sworn.

Witness my hand and official seal this 30th day of
September, 2018.



Rachele L. Cibula
RACHELE L. CIBULA
Notary Public, State of Florida
My Commission #FF 936928
Expires: December 14, 2019

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1 C E R T I F I C A T E

2 THE STATE OF FLORIDA)

3 COUNTY OF PALM BEACH)

4

5 I, Rachele Lynn Cibula, Notary Public, State of
6 Florida at Large,

7 DO HEREBY CERTIFY that I was authorized to and did
8 stenographically report the foregoing deposition; and
9 that the transcript is a true and correct transcription
10 of the testimony given by the witness.

11 I FURTHER CERTIFY that I am not a relative, employee,
12 attorney or counsel connected with the action, nor am I
13 financially interested in the action.

14 Dated this 30th day of September, 2018.

15

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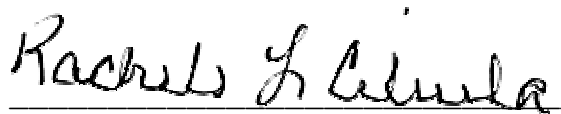
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RACHELE LYNN CIBULA, NOTARY PUBLIC

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