

No. 19-10604

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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,
Plaintiffs–Appellants

v.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA
Defendants–Appellees

On Appeal from the United States District Court
for the Southern District of Florida
In Case No. 9:18-cv-80771-RLR before the Honorable Robin L. Rosenberg

**PLAINTIFFS-APPELLANTS' APPENDIX
VOLUME VI**

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INDEX OF APPENDIX

Dkt./Tab Number

VOLUME I

District Court Docket SheetA

Verified Complaint 1

Plaintiff’s Motion for Preliminary Injunction with Incorporated
Memorandum of Law.....8

2009 Report of the American Psychological Association Task Force on
Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) 85-5

American School Counselor Association Position Paper (2014) 85-11

VOLUME II

Substance Abuse and Mental Health Services Administration (SAMHSA),
Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth
(2015) 85-12

American College of Physicians Position Paper, *Lesbian, Gay, Bisexual, and
Transgender Health Disparities* (2015)..... 85-13

Declaration of Plaintiff Julie H. Hamilton, Ph.D., LMFT 96-1

Palm Beach County Ordinance 2017-046 121-1

VOLUME III

Deposition of Robert W. Otto, Ph.D., LMFT 121-7

VOLUME IV

Deposition of Julie H. Hamilton, Ph.D., LMFT (Vol. I) 121-8

VOLUME V

Deposition of Julie H. Hamilton, Ph.D., LMFT (Vol. II)..... 121-8

VOLUME VI

Deposition of Helene C. Hvizd, Esquire (pp. 1–250)..... 121-9

VOLUME VII

Deposition of Helene C. Hvizd, Esquire (pp. 251–291, Exs. 1–21)..... 121-9

Deposition of Dr. Shayna Ginsburg..... 121-10

Declaration of Helene Hvizd 121-11

Statement of American Academy of Child & Adolescent Psychiatry
(AACAP), *Practice Parameter on Gay, Lesbian, or Bisexual Sexual
Orientation, Gender Nonconformity, and Gender Discordance in Children
and Adolescents* (2012)..... 121-17

Plaintiff Julie H. Hamilton, Ph.D., LMFT’s Objections and Responses to the
Preliminary Injunction Interrogatories of Defendant Palm Beach County 121-24

Plaintiff Robert W. Otto, Ph.D., LMFT’s Objections and Responses to the
Preliminary Injunction Interrogatories of Defendant Palm Beach County 121-28

SDG Counseling, LLC’s Informed Consent Forms 121-33

December 5, 2017 Palm Beach County Commission Meeting Transcript
Excerpt 126-2

December 19, 2017 Palm Beach County Commission Meeting Transcript
Excerpt 126-3

June 10, 2016 E-mail from Rand Hoch to Palm Beach County
Commissioners..... 126-6

VOLUME VIII

August 26, 2016 E-mail from Denise Marie Nieman to Rand Hoch (thread)... 126-9

August 29, 2016 E-mail from Denise Marie Nieman to Helene Hvizd, Rand
Hoch (thread) 126-11

September 8, 2017 E-mail rom Rand Hoch to Denise Marie Nieman
(thread) 126-16

Palm Beach County Senior Code Enforcement Officer Job Description 126-18

Palm Beach County Ordinance 2017-046 126-20

December 11, 2017 E-mail from Helene Hvizd to Julie Hamilton, Todd Bonlarron (thread)..... 126-21

2009 Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) . 126-22

August 17, 2017 Memorandum from Diana Grub Frieser, City Attorney to Mayor and City Council..... 126-23

Digital Media File (placeholder)..... 126-24

July 18, 2017 E-mail from George S. Brown to Diana Grub Frieser (thread) 126-25

July 21, 2017 E-mail from Paul Schofield to George S. Brown (thread)..... 126-26

City of Boca Raton Ordinance 5407 126-27

American Psychologist Association, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015) 126-30

VOLUME IX

Deposition of Michael Woika..... 126-41

VOLUME X

Transcript of Preliminary Injunction Hearing, October 18, 2018129

VOLUME XI

[Plaintiffs’ Proposed Post-Hearing] Findings of Fact and Conclusions of Law on Plaintiffs’ Motion for Preliminary Injunction134

Order Denying Plaintiffs’ Motion for Preliminary Injunction141

Notice of Appeal142

121-9

Otto v. City of Boca

Helene Hvizd

Defendant County of Palm Beach

9/20/2018

Page 1

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 2

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23

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

Shayna Ginsburg, Psy.D.

25 Michael Woika, Assistant City Manager for the

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 3

1	INDEX	
2		PAGE
3	HELENE C. HVIZD, ESQUIRE	6
4	DIRECT EXAMINATION BY MR. MIHET	7
5	CROSS EXAMINATION BY MS. FAHEY	283
6	REDIRECT EXAMINATION BY MR. MIHET	287
7	EXHIBITS	
8		PAGE
9	Plaintiffs' Exhibit No. 1 marked for identification	10
10	(Plaintiffs' Second Amended Notice of Taking Depositions of Defendants)	
11	Plaintiffs' Exhibit No. 2 marked for identification	34
12	(Excerpt of transcript of County Commission Meeting dated December 5, 2017)	
13	Plaintiffs' Exhibit No. 3 marked for identification	54
14	(Excerpt of transcript of County Commission Meeting dated December 19, 2017)	
15	Plaintiffs' Exhibit No. 4 marked for identification	73
16	(Affidavit of Pablo Rivera)	
17	Plaintiffs' Exhibit No. 5 marked for identification	88
18	(Article referencing Samuel Brinton)	
19	Plaintiffs' Exhibit No. 6 marked for identification	94
20	(E-mail chain starting with e-mail from Rand Hoch to County Commissioners dated 6/20/2016)	
21	Plaintiffs' Exhibit No. 7 marked for identification	98
22	(E-mail chain starting with e-mail from Rand Hoch to County Commissioners dated 7/31/16)	
23	Plaintiffs' Exhibit No. 8 marked for identification	104
24	(E-mail chain starting with e-mail from Rand Hoch to Denise Marie Neiman dated	
25		

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 4

1	EXHIBITS CONTINUED	
2	Plaintiffs' Exhibit No. 9 marked for identification	111
3	(E-mail chain starting with e-mail written by Denise Marie Nieman to Rand Hoch dated	
4	8/26/16)	
5	Plaintiffs' Exhibit No. 10 marked for identification	120
6	(E-mail chain starting with e-mail written by Rand Hoch to Denise Marie Nieman dated	
7	8/28/16)	
8	Plaintiffs' Exhibit No. 11 marked for identification	126
9	(E-mail chain starting with e-mail written by Denise Marie Nieman to Helene Hvizd and	
10	Rand Hoch dated 8/29/16)	
11	Plaintiffs' Exhibit No. 12 marked for identification	138
12	(E-mail chain starting with e-mail written by Rand Hoch to Helene Hvizd dated	
13	8/30/16)	
14	Plaintiffs' Exhibit No. 13 marked for identification	147
15	(E-mail chain starting with e-mail written by Denise Marie Nieman to Rand Hoch dated	
16	3/5/17)	
17	Plaintiffs' Exhibit No. 14 marked for identification	158
18	(E-mail chain starting with e-mail written by Rand Hoch to Denise Marie Nieman dated	
19	4/12/17)	
20	Plaintiffs' Exhibit No. 15 marked for identification	164
21	(E-mail chain starting with e-mail written by Rand Hoch to Denise Marie Nieman dated	
22	9/20/17)	
23	Plaintiffs' Exhibit No. 16 marked for identification	177
24	(E-mail chain starting with e-mail written by Rand Hoch to Denise Marie Nieman dated	
25	9/8/17)	

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS CONTINUED

Plaintiffs' Exhibit No. 17 marked for identification	212
(E-mail chain starting with e-mail written by Helene Hvizd to Rand Hoch dated 8/9/17)	
Plaintiffs' Exhibit No. 18 marked for identification	223
(Job description for a Senior Code Enforcement Officer)	
Plaintiffs' Exhibit No. 19 marked for identification	236
(E-mail chain starting with e-mail written by Rand Hoch to Denise Marie Nieman dated 12/12/17)	
plaintiffs' Exhibit No. 20 marked for identification	246
(Ordinance Number 2017-046)	
Plaintiffs' Exhibit No. 21 marked for identification	272
(E-mail chain starting with e-mail written by Helene Hvizd to Dr. Julie Hamilton and Todd Bonlarron)	

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 6

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 7

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

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Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 8

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 9

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 11

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 12

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 13

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

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Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 14

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 15

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 16

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 17

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 18

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 19

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 20

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 21

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 22

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 23

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 24

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 25

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

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 26

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 27

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 inquires 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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 28

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 29

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 30

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 31

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 32

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 33

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 34

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 35

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 36

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 37

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 38

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 39

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 40

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 41

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 42

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 43

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 44

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 45

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 46

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 47

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 48

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 49

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 50

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 51

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 52

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 53

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 54

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)

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 55

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 56

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 57

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.

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 58

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 59

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 60

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 61

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 62

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 63

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 64

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 65

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 66

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 67

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 68

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 69

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 70

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 --

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 71

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 72

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 73

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: (Handing).

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 74

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 75

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 76

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 77

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 78

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 79

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 80

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 81

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 82

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 83

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 84

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 85

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 86

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 87

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?

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 88

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 89

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 90

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 91

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 92

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)

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 93

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 94

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 95

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 96

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:

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 97

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 98

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 99

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 100

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 101

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 102

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 103

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 104

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 105

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 106

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 107

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 --

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 108

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 109

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 110

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 111

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 112

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 113

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 114

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 115

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 116

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 117

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 --

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 118

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 119

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 120

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 121

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 122

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 123

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 124

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 125

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 126

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 127

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 128

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 129

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 130

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 131

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 132

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 133

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 134

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 135

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 136

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 137

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 138

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 139

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 140

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 141

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 142

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 143

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 144

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 145

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 146

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 147

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 148

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 149

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 150

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 151

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 152

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 153

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 154

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 155

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 156

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 157

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 158

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 159

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 160

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 161

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 162

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 163

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 164

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 165

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 166

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 167

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 168

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 169

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 170

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 171

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 172

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 173

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 174

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 175

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 176

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 177

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 178

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 179

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 180

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 181

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 182

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 183

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 184

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 185

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 186

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 187

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 188

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 189

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 190

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 191

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 192

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

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 193

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 194

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 195

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 196

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 197

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 198

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 199

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 200

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 201

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 202

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 203

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 204

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 205

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 206

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 207

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 208

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 209

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 210

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 211

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 212

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 213

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 214

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 215

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 216

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 217

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 218

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 219

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 --

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 220

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 221

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 222

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 223

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 224

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 225

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 226

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 227

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 228

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 229

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 230

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 231

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 232

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 233

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 234

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 235

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 236

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 237

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 238

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 239

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 240

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 241

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 242

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 243

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 244

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 245

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 246

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 247

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 248

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 249

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 250

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

No. 19-10604

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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,
Plaintiffs–Appellants

v.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA
Defendants–Appellees

On Appeal from the United States District Court
for the Southern District of Florida
In Case No. 9:18-cv-80771-RLR before the Honorable Robin L. Rosenberg

**PLAINTIFFS-APPELLANTS' APPENDIX
VOLUME VII**

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INDEX OF APPENDIX

Dkt./Tab Number

VOLUME I

District Court Docket SheetA

Verified Complaint 1

Plaintiff’s Motion for Preliminary Injunction with Incorporated
Memorandum of Law.....8

2009 Report of the American Psychological Association Task Force on
Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) 85-5

American School Counselor Association Position Paper (2014) 85-11

VOLUME II

Substance Abuse and Mental Health Services Administration (SAMHSA),
Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth
(2015) 85-12

American College of Physicians Position Paper, *Lesbian, Gay, Bisexual, and
Transgender Health Disparities* (2015)..... 85-13

Declaration of Plaintiff Julie H. Hamilton, Ph.D., LMFT 96-1

Palm Beach County Ordinance 2017-046 121-1

VOLUME III

Deposition of Robert W. Otto, Ph.D., LMFT 121-7

VOLUME IV

Deposition of Julie H. Hamilton, Ph.D., LMFT (Vol. I) 121-8

VOLUME V

Deposition of Julie H. Hamilton, Ph.D., LMFT (Vol. II)..... 121-8

VOLUME VI

Deposition of Helene C. Hvizd, Esquire (pp. 1–250)..... 121-9

VOLUME VII

Deposition of Helene C. Hvizd, Esquire (pp. 251–291, Exs. 1–21)..... 121-9

Deposition of Dr. Shayna Ginsburg..... 121-10

Declaration of Helene Hvizd 121-11

Statement of American Academy of Child & Adolescent Psychiatry
(AACAP), *Practice Parameter on Gay, Lesbian, or Bisexual Sexual
Orientation, Gender Nonconformity, and Gender Discordance in Children
and Adolescents* (2012)..... 121-17

Plaintiff Julie H. Hamilton, Ph.D., LMFT’s Objections and Responses to the
Preliminary Injunction Interrogatories of Defendant Palm Beach County 121-24

Plaintiff Robert W. Otto, Ph.D., LMFT’s Objections and Responses to the
Preliminary Injunction Interrogatories of Defendant Palm Beach County 121-28

SDG Counseling, LLC’s Informed Consent Forms 121-33

December 5, 2017 Palm Beach County Commission Meeting Transcript
Excerpt 126-2

December 19, 2017 Palm Beach County Commission Meeting Transcript
Excerpt 126-3

June 10, 2016 E-mail from Rand Hoch to Palm Beach County
Commissioners..... 126-6

VOLUME VIII

August 26, 2016 E-mail from Denise Marie Nieman to Rand Hoch (thread)... 126-9

August 29, 2016 E-mail from Denise Marie Nieman to Helene Hvizd, Rand
Hoch (thread) 126-11

September 8, 2017 E-mail rom Rand Hoch to Denise Marie Nieman
(thread) 126-16

Palm Beach County Senior Code Enforcement Officer Job Description 126-18

Palm Beach County Ordinance 2017-046 126-20

December 11, 2017 E-mail from Helene Hvizd to Julie Hamilton, Todd Bonlarron (thread)..... 126-21

2009 Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation (“APA Report”) . 126-22

August 17, 2017 Memorandum from Diana Grub Frieser, City Attorney to Mayor and City Council..... 126-23

Digital Media File (placeholder)..... 126-24

July 18, 2017 E-mail from George S. Brown to Diana Grub Frieser (thread) 126-25

July 21, 2017 E-mail from Paul Schofield to George S. Brown (thread)..... 126-26

City of Boca Raton Ordinance 5407 126-27

American Psychologist Association, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015) 126-30

VOLUME IX

Deposition of Michael Woika..... 126-41

VOLUME X

Transcript of Preliminary Injunction Hearing, October 18, 2018129

VOLUME XI

[Plaintiffs’ Proposed Post-Hearing] Findings of Fact and Conclusions of Law on Plaintiffs’ Motion for Preliminary Injunction134

Order Denying Plaintiffs’ Motion for Preliminary Injunction141

Notice of Appeal142

121-9

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 259

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 260

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 261

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 262

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 263

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 264

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 265

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,

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 266

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 --

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 267

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 268

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 269

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 270

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 271

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.

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 272

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)

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 273

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 274

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 275

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 276

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 277

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 278

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 279

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:

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 280

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 281

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 282

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 283

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 284

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?

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 285

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 286

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 287

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 288

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 289

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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Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 290

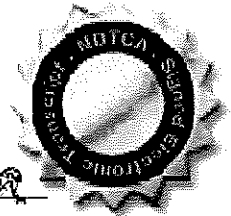

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CERTIFICATE OF OATH

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

Otto v. City of Boca

Helene Hvizd

9/20/2018

Page 291

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C E R T I F I C A T E

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 24th day of September, 2018.


RACHELE LYNN CIBULA, NOTARY PUBLIC

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

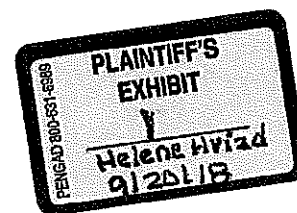
ROBERT W. OTTO, PH.D. LMFT,)	
individually and on behalf of his patients,)	
JULIE H. HAMILTON, PH.D., LMFT,)	
individually and on behalf of her patients,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF BOCA RATON, FLORIDA, and)	
COUNTY OF PALM BEACH, FLORIDA,)	
)	
Defendants.)	

**PLAINTIFFS' SECOND AMENDED
NOTICE OF TAKING DEPOSITIONS OF DEFENDANTS**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, the Court's Amended Discovery Plan for Preliminary Injunction Motion (DE 50, "Discovery Plan"), and the agreement of the parties, Plaintiffs will take the following depositions upon oral examination before a court reporter or some other officer duly authorized by law to take depositions, at the dates, times, and locations shown for the witnesses (or at such other date(s), time(s), and location(s) as to which the parties may mutually agree), for the purpose of discovery or as evidence in this action, which depositions will be recorded by stenographic means:

WITNESS	DATE, TIME	LOCATION
COUNTY OF PALM BEACH, FLORIDA	September 20, 2018 9:00 A.M.	Palm Beach County Attorney's Office 300 North Dixie Highway, Suite 359 West Palm Beach, FL 33401
CITY OF BOCA RATON, FLORIDA	September 21, 2018 9:00 A.M.	Boca Raton City Hall 201 West Palmetto Park Road Boca Raton, FL 33432

Each deposition will commence on the date and time specified and continue thereafter until the deposition has been completed.



DESCRIPTION OF MATTERS FOR EXAMINATION

Each Defendant, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, will designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on the Defendant's behalf, regarding the matters for examination set forth below, subject to the definitions also set forth below.

DEFINITIONS

The following definitions apply to the matters for examination below:

- A. **"Minor"** means an individual under eighteen (18) years of age.
- B. As directed to Defendant City of Boca Raton, Florida, the **"Ordinance"** means City of Boca Raton Ordinance 5407, adopted by the City Council of the City of Boca Raton, Florida on October 10, 2017.
- C. As directed to Defendant County of Palm Beach, Florida, the **"Ordinance"** means Palm Beach County Ordinance No. 2017-046, adopted by the Board of County Commissioners of Palm Beach County, Florida on December 19, 2017.
- D. **"SOCE"** means sexual orientation change efforts, including without limitation any counseling, practice, or treatment that assists an individual in changing his or her sexual orientation or gender identity, and further including without limitation any efforts to change behaviors, gender identity, or gender expression, or to eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender or sex.

MATTERS FOR EXAMINATION

1. Defendant's purported interest in banning SOCE counseling for minors, including without limitation any complaint or other evidence of alleged harm Defendant sought, obtained, received, or considered prior to enacting the Ordinance.
2. Any evidence that any minor within Defendant's jurisdiction was subjected to SOCE counseling against his or her will, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.
3. Any evidence of alleged harm posed by voluntary SOCE counseling for minors who desire, request, or willingly consent to SOCE counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.
4. Any evidence of alleged harm caused by voluntary SOCE counseling for minors within Defendant's jurisdiction who desired, requested, or willingly consented to SOCE

counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

5. Any evidence that minors lack the ability to consent to voluntary SOCE counseling, or have the ability to consent to other treatments or procedures such as abortions, gender transition/reassignment, or same-sex relationship-affirming counseling, which Defendant sought, obtained, received, or considered prior to enacting the Ordinance.

6. Any ~~less restrictive~~ alternative to the Ordinance which Defendant considered prior to adopting the Ordinance, and all reasons for rejecting any such alternative.

7. All communications and coordination, between Defendant and Equality Florida or any other advocacy group, regarding the Ordinance or any other effort to ban SOCE for minors.

8. Defendant's consideration, debate, enactment, interpretation, application, and enforcement of the Ordinance, including Defendant's internal and external communications regarding same.

9. **The factual matters disclosed in any declaration or affidavit filed by Defendant in opposition to Plaintiffs' Motion for Preliminary Injunction (DE 8).**

10. [Deleted].

11. [Deleted].

12. **Defendant's document production efforts and sources, for any document production pursuant to Rule 26(a)(1) or any written discovery requests, including without limitation—**

- a. **the physical or digital/electronic locations of the documents produced;**
- b. **the time period(s) covered by the documents produced;**
- c. **the search terms used to locate potentially responsive, electronically stored documents; and**
- d. **the document custodian(s) consulted for responsive documents or from whom the documents were obtained for production.**

13. The extent to which Defendant regulates: (a) any other clinical practice methods besides SOCE counseling; (b) any other types of clients or services that mental health professionals are permitted to serve or offer, besides SOCE counseling or clients who seek SOCE counseling; (c) any other mental health professionals or professions, besides marriage and family therapy or marriage and family therapists; or (d) any other professions, professionals or professional conduct,

besides mental health professions, mental health professionals or SOCE counseling. Without limitation, this topic includes any other ordinances or regulations that Defendant has considered, enacted or enforced as to sub-topics (a)-(d).¹

/s/ Roger K. Gannam
Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Fax: (407) 875-0770
Email: rgannam@LC.org
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this September 13, 2018, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

Rachel Fahey
Primary Email: rfahey@pbcgov.org
Secondary Email: dfishel@pbcgov.org
Kim Phan, Esquire
Primary Email: kphan@pbcgov.org
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PALM BEACH COUNTY ATTORNEY OFFICE
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WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
Attorneys for Defendant City of Boca Raton, Florida

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Plaintiffs

¹ Judge Reinhart sustained Defendants' respective objections to this topic in his bench ruling on September 12, 2018 (DE 87). Plaintiffs, however, will file an objection to the ruling in due course, and retain this topic pending Judge Rosenberg's disposition of Plaintiffs' objection.

1 exist. There are, in fact, many people who desire
2 change, including many teenagers. Please don't
3 disregard this population. Please don't take away
4 the right of young people to seek licensed
5 professional counseling when they are distressed by
6 their unwanted attractions. Would you want this
7 for your child? Would you want your child to have
8 no other choice? Please vote no on this ordinance.
9 Thank you.

10 MR. HOCH: Hi. My name is Rand Hoch. I'm
11 president of -- and founder of the Palm Beach
12 County Human Rights Council. Mayor McKinlay and
13 Commissioners, thank you for taking a look at this
14 ordinance at our request.

15 Over the past two years we've heard from two
16 individuals, minors, who have been required to go
17 to conversion therapy by their parents. These are
18 kids with gay friends who are comfortable where
19 they are; It's their parents that have a problem
20 with their children being gay or lesbian.

21 I guess I'm the first lawyer other than Helene
22 to talk today. You've heard legal advice from a
23 bunch of psychologists and other people, but I have
24 to tell you, Helene has done an amazing job looking
25 at this for the past year and a half. She's read



1 every case that's out there. She has challenged
2 Trent Steele and I and Jamie Foreman from the
3 council on every section that might be a problem, a
4 year and a half of legal research, and she won most
5 of the arguments. Things --

6 When we first made the presentation, we were
7 overreaching. We knew that we wanted everything.
8 We wanted to prohibit advertising of conversion
9 therapy, which is illegal in two states because
10 conversion therapy is fraudulent. There is no
11 evidence that it works. Among the federal cases,
12 they wouldn't even allow one of the witnesses, who
13 was a conversion therapist, to testify because he
14 lacked scientific knowledge and reality that was
15 acceptable by the courts.

16 Our ordinance is different than the one in
17 Miami-Dade County. It's narrower because of
18 Helene. She took a look at what was going on there
19 and said, "This opens us up to a problem," so she
20 closed the gap.

21 Florida legislature has never had a hearing on
22 conversion therapy regardless of what you've been
23 told. Excuse me?

24 COMMISSIONER: Can you address that?

25 MR. HOCH: Okay. They've never had a hearing

1 on conversion therapy. Bills have been filed, but
2 they have refused to amend the sections of the law
3 that governs psychologists, psychiatrists, medical
4 providers, to specifically address conversion
5 therapy, and that's the problem and that's why
6 we're here today. That's why we've been to other
7 places throughout the county, and other groups have
8 been throughout Florida because there is a problem.
9 Conversion therapy causes harm. That is proven in
10 every one of the studies that we provided you.

11 And I apologize for giving you hundreds of
12 pages of things to review, but it's consistent.
13 And these are done by real groups. They're not
14 done by the American College of Pediatricians --
15 and I have ten seconds left -- so nothing affects
16 free speech. It affects conduct, and that has been
17 dealt with by the United States Supreme Court and a
18 lot of lower courts. Thank you.

19 COMMISSIONER BURDICK: Thank you.

20 That concludes the members of the public who
21 wish to speak, but we do have a number of cards
22 here that do not want to speak but wanted their
23 names read into the record.

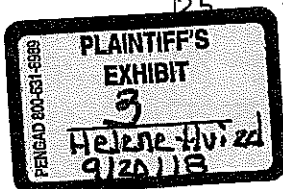
24 Amanda Canate is in support. Dylan Brocks is
25 in support. Carly Cass is in support. Sherman

1 MR. HOCH: Mayor McKinlay, Commissioners, my
2 name is Rand Hoch. I'm president and founder of
3 the Palm Beach County Human Rights Council.

4 For almost three decades county commissioners
5 and other public officials have enacted laws and
6 policies to protect LGBTQ people. As a result,
7 Palm Beach County is now one of the safest places
8 in the world for LGBTQ people to live, study, work,
9 create families, raise children, and retire, and I
10 want to thank you for that.

11 I also want to commend Helene for modifying
12 the ordinance to take into effect the concerns
13 raised by Commissioner Abrams at the last meeting.
14 Helene has gone to great lengths to balance the
15 interest of children, parents, and therapists. Not
16 a single word needs to be added or deleted from the
17 draft presented to you today. If enacted, this
18 ordinance will serve as a model for other counties
19 around the state and the nation.

20 For the past 18 months I've had to endure
21 people suggesting to elected officials that gay
22 people are God's mistakes, and then go on to say
23 that they are the ones who can fix the mistakes
24 through therapy. How arrogant. I have been taught
25 that each one of us is created in God's image.



1 I have been taught that God does not make
2 mistakes, and I believe those statements to be
3 true. I also believe the statements and
4 conclusions from virtually every mainstream
5 scientific, medical, psychiatric, and psychological
6 organization in this country that conversion
7 therapy is ineffective and it causes harm to
8 children.

9 So the choice before you today is clear. You
10 can vote to protect children from harm or you can
11 vote to protect these people who want to continue
12 to cause children harm. Basically the choice is
13 between kids and quacks. Please vote to protect
14 the kids. Thank you, and Happy Holidays, Happy New
15 Year.

16 COMMISSIONER BURDICK: Madam Mayor, we have 13
17 additional cards who do not wish to speak this
18 morning but are in opposition.

19 MAYOR MCKINLAY: And we will enter those into
20 the record. Commissioner Valeche.

21 COMMISSIONER VALECHE: Mr. Hoch, I just had
22 a -- you can go over there, I think.

23 Just in terms of the complaints, it was
24 mentioned earlier that there were two that the HRC
25 knows of. Could you give me an idea of who those

1 complaints were registered with, who they
2 originated from, what the disposition of them was,
3 et cetera?

4 MR. HOCH: Gladly.

5 COMMISSIONER VALECHE: Give us some color on
6 that, please.

7 MR. HOCH: Both of the complaints regard
8 children who live in your district.

9 COMMISSIONER VALECHE: Okay.

10 MR. HOCH: We received complaints from the
11 mothers of gay people because their friends, the
12 gay children's friends who also identified as gay,
13 were being subjected to conversion therapy.

14 COMMISSIONER VALECHE: And?

15 MR. HOCH: There's nothing we can do about
16 that unless you act today. So these kids are still
17 being forced to go to therapists who are telling
18 them that God does not love them --

19 COMMISSIONER VALECHE: Isn't there -- isn't
20 there some recourse for the parent if they feel
21 their child has been harmed by a professional?

22 MR. HOCH: The parents are the ones who are
23 causing the harm to the children by sending them to
24 therapy. The children are the ones being harmed by
25 the therapy. There is no recourse unless you pass

1 an ordinance and the child comes forward to the
2 county and says, "This is what's happening to me,"
3 and only a complaint is going to trigger this
4 ordinance from taking effect. It's not like
5 anyone's going to go into a therapist's office and
6 sit in with patients.

7 And the children are allowed to waive all of
8 the HIPAA requirements for their therapist. They
9 can tell them because the children are the
10 patients.

11 COMMISSIONER VALECHE: Okay. I understand.
12 But wouldn't the child in this instance, in these
13 two instances, have been able to register a
14 complaint?

15 MR. HOCH: With who? Well, that's the
16 problem.

17 COMMISSIONER VALECHE: Well --

18 MAYOR MCKINLAY: It's not banned.

19 COMMISSIONER VALECHE: -- I think there's a
20 licensing organization. There's a professional
21 organization.

22 MR. HOCH: There is no state law that
23 specifically prohibits therapists from doing
24 conversion therapy. That's the entire problem.
25 That's why 16 communities have already passed this.

1 That's why 10 states have already passed this.
2 That's why dozens of cities and counties around the
3 country have passed it. Without the law, these
4 kids are helpless.

5 COMMISSIONER VALECHE: Well, but there --
6 whether the statute or the regulatory body mentions
7 conversion therapy per se, there's still a
8 prohibition against the psychologist abusing his or
9 her professional position to do harm to a patient
10 and, you know, that can take in a wide range of
11 subjects beyond conversion therapy. And I think
12 there is recourse in those instances, isn't there?

13 MR. HOCH: These psychologists and therapists
14 don't think they're doing harm. That's a problem.
15 That is the problem. And you're dealing with
16 minors, so you're the only ones who can protect
17 them. It's up to the seven of you.

18 COMMISSIONER VALECHE: Well, but in this -- if
19 we were to pass the ordinance, it would be the
20 minors' perception that they were being harmed,
21 it's not the -- whether the psychologist believes
22 they're doing harm or not is totally irrelevant to
23 this, it's the patient who's -- who we're going to
24 be listening to.

25 MR. HOCH: That's correct.

1 COMMISSIONER VALECHE: So why isn't the
2 patient in this case, you know, responsible to --
3 not responsible, but why doesn't they -- why don't
4 they have the option of making the abusive therapy
5 known to the licensing authority?

6 MR. HOCH: I imagine they could, but I don't
7 know if the licensing authority will actually do
8 anything. I do have faith that Palm Beach
9 County --

10 COMMISSIONER VALECHE: Well, why would they be
11 more inclined to report it to the county than they
12 would to -- to the state?

13 MR. HOCH: Don't you get a lot of complaints
14 from people that should really go elsewhere? You
15 are the closest form of government to these kids.
16 They look to you. Don't send them elsewhere. Take
17 responsibility, protect these children.

18 COMMISSIONER VALECHE: All right. Okay.

19 MR. HOCH: Thank you.

20 MAYOR MCKINLAY: And let me add that this is
21 the same state legislature that has refused to hear
22 a ban on conversion therapy under the premise of
23 protection of privacy rights, but the same state
24 legislature that forces a female, who's seeking an
25 abortion, to have a six inch wand stuck between her

1 legs in a forced ultrasound before she can move
2 forward with that procedure.

3 COMMISSIONER BURDICK: Are you ready? I'd
4 like to move the adoption of the ordinance of the
5 Palm Beach County Commissioners, Palm Beach County,
6 Florida Establishing a Prohibition for Conversion
7 Therapy on Minors Ordinance.

8 COMMISSIONER KERNER: Second.

9 MAYOR MCKINLAY: I have a motion by
10 Commissioner Burdick to move the ordinance. I have
11 a second by Commissioner Kerner.

12 Commissioner Abrams, you are recognized.

13 COMMISSIONER ABRAMS: Well, I think in making
14 that motion, we don't want to just give short
15 shrift to the county attorney's caution/admonition
16 on this. You know, we'd be the first county, my
17 understanding, to pass such an ordinance.

18 There's -- it's a gray area. There's no doubt
19 that -- we've already been told there would be
20 lawsuits filed, and I have no doubt of that.
21 They're public-interest organizations that file
22 these lawsuits, such as the one in Tampa. That
23 would result in monetary exposure to the county. I
24 mean there's no doubt.

25 I'm mindful of the county attorney's

AFFIDAVIT OF PABLO RIVERA

BEFORE ME, the undersigned authority, personally appeared Pablo Rivera, who being first duly sworn, on oath, deposes and says:

1. My name is Pablo Rivera. I am over the age of 18 and have personal knowledge of the facts testified to herein.
2. I am currently serving as Senior Server Administrator for Palm Beach County.
3. My job responsibilities include technical and analytical work with responsibilities for technical consulting, server system configuration design, planning, implementation, management and operational support of servers. I have full access to the server operating system, programs, recovery and system utilities.
4. The attached email is a business record and is a true and correct copy of a record maintained in the ordinary course of business.
5. I have personal knowledge of the manner in which Palm Beach County maintains County employee emails. I am a records custodian for Palm Beach County.
6. Palm Beach County's Outlook emails are kept and stored by Palm Beach County in the regular, ordinary course of operations at or near the time the information was available by persons with knowledge of the facts recorded.
7. I personally searched and retrieved the attached email from Palm Beach County's server system.
8. Attached as Exhibit #1 is a true, complete and accurate copy of the December 18, 2017 email from Nick Soful to the Palm Beach County Board of County Commissioners [PBC002849].



FURTHER AFFIANT SAYETH NAUGHT.

Pablo Rivera, Senior Server Administrator
Palm Beach County Information Systems Services

The foregoing affidavit was sworn to and subscribed before me this 10th day of September, 2018.

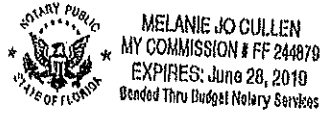
The Affiant is PABLO RIVERA.

Personally Known to me OR Produced Identification _____

Type of Identification Produced _____

{SEAL}

Notary Public, State of Florida



From: Nick Sofoul
 To: BCC-All Commissioners
 Cc: nsvlsm23@gmail.com
 Subject: Support for Conversion Therapy Ban
 Date: Monday, December 18, 2017 10:16:33 PM

Distinguished Commissioners,

I'm writing to you in SUPPORT of a the proposed ban on "conversion therapy" for minors. As a resident and a member of the LGBT community, I have personally heard and been moved by the horrific stories of friends that have been subject to these cruel and inhumane methods. Passing this ordinance would send a strong message that PBC stands with the LGBT community in protecting children from mental and physical abuse of these archaic and dangerous practices.

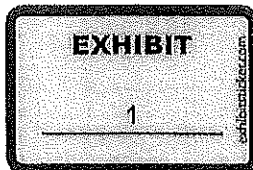
Thank you for your continued leadership. I am a proud PBC resident and hope that you will make the right choice and not be swayed by potential legal challenges by people who dedicate their lives to hatred and intolerance. Please vote in the affirmative.

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.nbcnews.com_feature_nbc-2Dout_outfront-2Dlgbtq-2Dactivist-2Dfights-2Dend-2Dconversion-2Dtherapy-2Dn708816&d=DwlFaQ&c=JM,xdiofvjJKeebMXBrln8vDKQGalrsQQJbzDQHviG0&r=Cu4R514FyZoqqp-Ua9A6wDw8514ndqSdV-oN8-a0jDA&m=i0Biz2omCJbIaeBh4Kpp4TZRYvN-hBE2rey3Riy9sOo&s=fDszZ2IzzAQHQZhA8mgJfifB0lqLqrQsKGO3o7divQbE&e=

Respectfully,

Nicholas A. Sofoul, AICP
 8151 Brigamar Isles Ave
 Boynton Beach, FL 33473

Cell: (407)267-6682





Samuel Brinton in front of the Capitol building in Washington, D.C. Courtesy of Samuel Brinton

Conversion therapy survivor Samuel Brinton wants to cure the world of the controversial practice aimed at changing a person's sexual orientation or gender identity.

Brinton said different conversion therapists use different techniques. From purely psychological methods to less common but more extreme techniques like electroshock therapy, the practice can take many forms, according to Brinton.

"[Conversion therapy] terrifies me, and it reminds me that the work never stops," said Brinton, who identifies as gender-fluid and prefers the non-binary pronouns they and them.

In December, Brinton helped launch 50 Bills 50 States, a grassroots campaign that aims for 2017 to be a year in which "every single state in the country submits a bill to protect LGBT youth from conversion therapy," according to its website.

Conversion therapy for minors is already banned in California, New Jersey, Illinois, Oregon, Vermont and Washington, D.C. So far, Brinton's campaign has raised more than \$11,000 from donors across the country to encourage lawmakers to submit bills in the 45 states where it remains legal. Brinton said their motivation is to spare others the pain they endured.

"Conversion therapy for me was nothing short of hell on earth," Brinton told NBC's Out.





Samuel Brinton Courtesy of Samuel Brinton

The 29-year-old activist said they are the child of Southern Baptist missionary parents who believed homosexuality is a sin.

"I came out without realizing I was coming out," Brinton said. "My friends had found a Playboy [magazine] ... and it didn't even really affect me. I told this to my dad. like, "Wow, I'm so proud I'm not having these thoughts and feelings [about women]. but sometimes I do have those feelings when I think about Dale.' [who] was a really good friend of mine ... and I came out without realizing that I was doing it."

Brinton said they were 11 years old when their parents sent them to see a conversion therapist.

"There were seven King James Bibles on a stack on the coffee table," Brinton said, recalling the conversion therapist's small office in an Orlando, Florida strip mall.

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

"First you're supposed to learn that it's painful to touch men, then you're supposed to learn that it's not painful to touch women. Then you're supposed to learn that it's excruciating if you're have sex with men," Brinton explained.

But none of this did anything to change Brinton's attraction to men.

"My parents and my therapist would tell me the reason I wasn't changing was because I didn't try hard enough. I didn't want it hard enough," Brinton said.

RELATED: [Trans Woman Spreads LGBTQ Awareness in Hasidic Community.](#)

After two years of trying to change with no results, Brinton said they climbed to the top of the apartment building where their family lived and looked over the edge.

Recommended



Trump attacks Jeff Sessions: "I don't have an attorney general"



Hillary Clinton: Trump will 'wholesale fire people' after midterm election

"I was going to jump off the roof, and my mom had found me, and I told her that God had changed me. That I was OK. I was going to be OK, because I basically just wanted the pain to stop," Brinton said.

"I knew it was a sin to lie, but I knew it was a greater sin to commit suicide, and I had to make that decision," Brinton explained.

Brinton stayed closeted until they went to Kansas State University, where Brinton made friends with a lesbian couple.

"They took me in," Brinton said. "And I started realizing no, I'm not alone. It's OK to be who you are."

But coming out had a price: Brinton's parents forbid Brinton from coming home.

"I'm sure they did what they did because they loved me, and I'm hoping that in the end it will all be OK," Brinton explained, adding that the relationship is "slowly on the mend." Brinton forgives them but still suffers the side effects of conversion therapy.

"I puked after about 15 seconds of my first gay kiss because ... My mind had so specifically associated what I was doing as wrong," Brinton explained, adding, "I still have pain every single time my boyfriend kisses me."



Samuel Brinton Courtesy of Samuel Brinton

Brinton doesn't let the trauma stop them from being out and proud. The non-binary activist and MIT grad is an engineer and a senior policy analyst in Washington D.C. who advises Congress on nuclear power issues. Brinton is known around the nation's capitol "as the red mohawk guy in stilettos."

"It is not uncommon to see me in a Congressional hearing with my stilettos," Brinton said. "People from both sides of the aisle take me quite seriously, because they know I'm good at what I do regardless of how I look."

When Brinton is not advising Congress on nuclear policy, they are fighting to end conversion therapy through 50 Bills 50 States. The activist realizes the fight to end the practice won't be easy, but is determined.

"I'm here to make sure no child has to go through that again," Brinton concluded.

OutFront is a weekly NBC *Out* series profiling LGBTQ people who are making a positive difference in the community

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8 Credit Cards You Should Not Ignore If You Own A Business

Nerdwallet

From: flagler400@gmail.com on behalf of Rand Hoch
To: [MaryLou Berger](#); [Hal Vateche](#); [Paulette Burdick P.](#); [Shelley Vana](#); [Steven Abrams](#); [Melissa McKinlay](#); [Priscilla Taylor A.](#)
Cc: [Verdenia Baker](#); [Denise Marie Nieman](#); [Carly Cass](#); [Chauncey Graham](#); [Dan Hall](#); [Hutch Floyd](#); [Jamie Todd Foreman-Plakas](#); [Jessica Blackman](#); [JP Sasser](#); [Matt McWatters](#); [Meredith Ockman](#); [Rae Franks](#); [Rand Hoch](#); [Reagan South](#); [Trent Steele](#)
Subject: PBCHRC - Request to enact a County Ordinance prohibiting conversion therapy for minors
Date: Monday, June 20, 2016 2:33:19 PM
Attachments: [BCC Conversion Therapy Ban memo 062016.pdf](#)

Attached please find a memorandum (with attachments) concerning enacting an ordinance to prohibit conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County. (A copy of the ordinance enacted earlier this month in Miami Beach is included in the packet.)

For more information concerning banning conversion therapy, please refer to an October 2015 report by the federal Substance Abuse and Mental Health Services Administration published which can be found at <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf> and a more recent report published by the Southern Poverty Law Center entitled "QUACKS: 'Conversion Therapists,' the Anti-LGBT Right, and the Demonization of Homosexuality" may be viewed by going to <https://www.splcenter.org/20160525/quacks-conversion-therapists-anti-lgbt-right-and-demonization-homosexuality>.

PBCHRC hopes that you will promptly take steps to prohibit the quackery in our county.

Thank you for your consideration.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
[561-358-0105](tel:561-358-0105)





Please respond to:

400 North Flagler Drive, #1402
West Palm Beach, Florida 33401
(561) 358-0105
rand-hoch@usa.net

Rand Hoch
President & Founder
WEST PALM BEACH

Jessica Blackman
Vice President
PALM BEACH GARDENS

Rae Franks
Secretary
WEST PALM BEACH

Daniel S. Hall
Treasurer
WEST PALM BEACH

Carly E. Cass
LAKE WORTH

Hutch Floyd
LAKE CLARKE SHORES

Jamie T. Foreman
LAKE WORTH

Chauncey Graham
WEST PALM BEACH

Matthew McWalters
PALM BEACH GARDENS

Meredith L. Ockman
WEST PALM BEACH

J. P. Sasser
PALM BEACH

Reagan South
BOCA RATON

W. Trent Steele
PALM BEACH GARDENS

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Florida 33402

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pbchr@aol.com
www.pbchr.org

MEMORANDUM (via e-mail)

To: Mayor Mary L. Berger
Vice Mayor Hal Valeche
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla Taylor

From: Judge Rand Hoch (retired), President and Founder *RV*

Re: Prohibiting conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County

Date: June 20, 2016

“Conversion therapy” (also known as “reparative therapy”) is counseling based on the erroneous assumption gay, lesbian, bisexual and transgender (LGBT) identities are mental disorders that can be cured through aversion treatment. These discredited practices have long been rejected by our nation’s leading medical and mental health organizations.

In 2001, David Satcher, U.S. Surgeon General during the administration of President George W. Bush, issued a report finding that “there is no valid scientific evidence that sexual orientation can be changed.” Years later, California Governor Jerry Brown stated that “[t]hese practices have no basis in science or medicine and they will now be relegated to the dustbin of quackery.”

Just last year, the federal Substance Abuse and Mental Health Services Administration concluded that “[d]irecting the child or adolescent to conform to any particular gender expression or identity, or directing parents and guardians to place pressure on the child or adolescent to conform to specific gender expressions and/or identities, is inappropriate and reinforces harmful gender stereotypes.” (The report, which called for the end of conversion therapy, can be found online at: <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>).

The Palm Beach County Human Rights Council, Inc. is dedicated to ending discrimination based on sexual orientation, gender identity, and gender expression. The Council promotes equality through education, advocacy, direct action, impact litigation and community outreach.

Palm Beach County Commissioners
June 20, 2016
Page two —

The Palm Beach County Human Rights Council ("PBCHRC") recognizes that the practice of conversion therapy, which is most often forced upon minors by their parents or guardians, is extremely harmful. The "treatment" frequently provokes guilt and anxiety. Moreover, it is not uncommon for the therapy to result in depression, self-destructive behavior and suicide.

PBCHRC believes that licensed professionals engaged in conversion therapy are committing fraud and therefore Palm Beach County should enact an ordinance banning the practice.

To date, California, Illinois, New Jersey, Oregon, Vermont, the District of Columbia, Cincinnati and most recently, Miami Beach, have enacted laws to prevent licensed mental health providers from offering conversion therapy to minors. In each of these jurisdictions, the ban applies only to state-licensed therapists. Unlicensed ones, such as those associated with faith-based groups, retain their religious freedom to engage in such work. Additionally, adults remain free to seek out such therapy.

Over the years, there have been several legal challenges to the constitutionality of these laws. However, *on three occasions*, the U.S. Supreme Court has declined to hear challenges to the constitutionality laws banning conversion therapy for minors.

As noted above, nearly every major medical and psychological association in the country has come out in opposition to conversion therapy. These include, but are not limited to,

- American Academy of Child Adolescent Psychiatry
- American Academy of Pediatrics
- American Association of School Administrators
- American Association for Marriage and Family Therapy
- American College of Physicians
- American Counseling Association
- American Federation of Teachers
- American Medical Association
- American Psychiatric Association
- American Psychoanalytic Association
- American Psychoanalytic Association
- American School Counselor Association
- American School Health Association
- National Association of Social Workers
- National Association of School Psychologists
- National Association of Secondary School Principals
- National Education Association
- Pan American Health Organization: Regional Office of the World Health Organization
- School Social Work Association of America
- World Psychiatric Association

Palm Beach County Commissioners
June 20, 2016
Page three —

On June 8, 2016, the City of Miami Beach became the first public employer in Florida to enact an ordinance banning conversion therapy for minors. I have attached a copy of the ordinance, along with the agenda backup and an article from *The Miami Herald*.

While the Palm Beach County Human Rights Council has asked West Palm Beach Mayor Jeri Muoio and the City Commission to enact an ordinance similar to the one in effect in Miami Beach, we hope that you will promptly take steps to ensure that the quackery known as conversion therapy is prohibited throughout Palm Beach County.

If you have any questions, please do not hesitate to contact me directly.

attachments

copies (w/attachments) via e-mail to: PBCHRC Board of Directors
County Administrator Verdenia Baker
County Attorney Denise Nieman

From: flagler400@gmail.com on behalf of Rand Hoch
To: Marylou Berger; Hal Valeche; Paulette Burdick P.; Shelley Vana; Steven Abrams; Melissa McKinlay; Priscilla Taylor A.
Cc: Denise Marie Nieman; Helene Hvizd; Todd J. Bonlarron; Carly Cass; Chauncey Graham; Dan Hall; Hutch Floyd; Jamie Todd Foreman-Plakas; Jessica Blackman; JP Sasser; Matt McWalters; Meredith Ockman; Rae Franks; Rand Hoch; Reagan South; Trent Steele
Subject: PBCHRC - Banning Conversion Therapy for Minors - Update
Date: Sunday, July 31, 2016 6:17:29 PM
Attachments: BCC Conv Ther Memo Update 073116.pdf

Please see attached memorandum dated July 31, 2016 which PBCHRC prepared in light of recent events.

Rand

On Mon, Jun 20, 2016 at 2:32 PM, Rand Hoch <rand-hoch@usa.net> wrote:

Attached please find a memorandum (with attachments) concerning enacting an ordinance to prohibit conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County. (A copy of the ordinance enacted earlier this month in Miami Beach is included in the packet.)

For more information concerning banning conversion therapy, please refer to an October 2015 report by the federal Substance Abuse and Mental Health Services Administration published which can be found at <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf> and a more recent report published by the Southern Poverty Law Center entitled "QUACKS: 'Conversion Therapists,' the Anti-LGBT Right, and the Demonization of Homosexuality" may be viewed by going to <https://www.splcenter.org/20160525/quacks-conversion-therapists-anti-lgbt-right-and-demonization-homosexuality>.

PBCHRC hopes that you will promptly take steps to prohibit the quackery in our county.

Thank you for your consideration.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105





Please respond to:

400 North Flagler Drive, #1402
West Palm Beach, Florida 33401
(561) 358-0105
rand-hoch@usa.net

Rand Hoch
President & Founder
WEST PALM BEACH

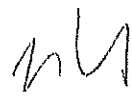
MEMORANDUM (via e-mail)

Jessica Blackman
Vice President
PALM BEACH GARDENS

To: Mayor Mary L. Berger
Vice Mayor Hal Valechke
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla Taylor

Rae Franks
Secretary
WEST PALM BEACH

Daniel S. Hall
Treasurer
WEST PALM BEACH

From: Judge Rand Hoch (retired), President and Founder 

Carly E. Cass
LAKE WORTH

Re: Banning conversion therapy for minors by state licensed professionals- UPDATE

Hutch Floyd
LAKE CLARKE SHORES

Date: July 31, 2016

Jamie T. Foreman
LAKE WORTH

Chauncey Graham
WEST PALM BEACH

Matthew McWatters
PALM BEACH GARDENS

Meredith L. Ockman
WEST PALM BEACH

J. P. Sasser
PALM BEACH

Reagan South
BOCA RATON

W. Trent Steele
PALM BEACH GARDENS

On August 1, our eyes will be on the Seattle (Washington) City Council which will consider a ban on conversion therapy, similar to the one that the Palm Beach County Human Rights Council ("PBC-HRC") has asked you, and the West Palm Beach City Commission, to enact. We expect the ban to be enacted, making Seattle the fourth local government (after Cincinnati, Washington, DC and Miami Beach) to ban conversion therapy. It is PBC-HRC's hope that once the County Attorney has offered an opinion concerning the legal aspects of enacting such a ban, the Board of County Commissioners will take prompt action to protect LGBTQ children throughout the County.

According to the media, Mat Staver of the Liberty Counsel has threatened to file suit in the event Palm Beach County follows the lead set by California, Illinois, New Jersey, Oregon, Vermont, the District of Columbia, Cincinnati and Miami Beach and enacts an ordinance preventing licensed mental health providers from offering conversion therapy to children.

P.O. BOX 267
WEST PALM BEACH
Florida 33402

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www.pbchr.org

The Liberty Counsel has been identified as a "hate group" by the Southern Poverty Law Center. For further information concerning the Liberty Counsel go to: www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel

Palm Beach County Commissioners
July 31, 2016
Page two —

On a personal note, I am very familiar with Mat, as he was a frequent litigator in my courtroom during the mid-1990s. Of the two cases he took to trial, he won one and lost one. Although he appealed the one he lost, my order was upheld by the First District Court of Appeal.

Mat and his Liberty Counsel have had a rough time recently. While he gained more notoriety representing Rowan County (Kentucky) Court Clerk Kim Davis, Liberty Counsel initiatives have not fared well in the courts. The U.S. Supreme Court has soundly rejected the Liberty Counsel's positions on marriage equality and abortion – and has repeatedly refused to overturn bans on conversion therapy.

No doubt, these rejections have impaired Mat's ability to raise funds for the Liberty Counsel. It appears to me that he is going to try raising money by attempting to preserve the rights of licensed therapists to subject minor children to what constitutes verbal, and sometimes physical child abuse known as conversion therapy. In my opinion, this is not a very wise decision in light of all of the court rulings on conversion therapy bans.

In his threat to file suit if Palm Beach County enacts a ban on conversion therapy, Mat emphasized the cost the taxpayers of Palm Beach County would have to bear to litigate his lawsuit.

While I trust that Palm Beach County would find the funds to protect minor children from the abuse of conversion therapy, the Palm Beach County Human Rights Council has sought – and has received – confirmation from the National Center for Lesbian Rights (NCLR), our partner in this initiative, that NCLR stands ready to pay for attorneys, expert witnesses, court costs and other litigation expenses that would otherwise have to come out of the County Attorney's budget. In addition, PBCHRC is awaiting response from the Southern Poverty Law Center (SPLC) regarding similar financial and legal assistance. Both the NCLR and the SPLC have litigated attempts to overturn conversion therapy bans before – and as Denise will point out, both have been successful. So, rest assured, in the event you enact the requested ban and Mat Staver carries out his threat, the taxpayers of Palm Beach County will not be burdened with the expense of litigation.

On another note, I just watched the video of the public comments made by Dr. Julie Hamilton (f/k/a/ Julie Harren) at the June 21 Commission meeting. I was fascinated.

While Dr. Hamilton identified herself as the former president of the Alliance for Therapeutic Choice and Scientific Integrity, she failed to inform you that from 2009 to 2011, she served as president of President of National Association for Research and Therapy of Homosexuality (NARTH).

Palm Beach County Commissioners
July 31, 2016
Page three —

NARTH was an extremely well-funded for-profit organization made up of therapists, like Dr. Hamilton, who sought to diminish the rights of LGBT people by singling us out as having mental disorders. The organization advocated conversion therapy for children as young as three years old! In addition, the organization encouraged parents to have their children marginalize and ridicule LGBT children:

"Don't interfere, and let the other children ridicule the child who has lost that clear boundary between play-acting at home and the reality needs of the outside world. Maybe, in this way, the child will re-establish that necessary boundary."

Psychiatrist Joseph Berger, a member of NARTH's Scientific Advisory Committee

In 2009, more than 100 of your constituents protested the NARTH conference organized by Dr. Hamilton in West Palm Beach. (In 2012, the organization's 501(c)(3) tax exempt status was revoked by the Internal Revenue Service.)

In her public comments before you last week, Dr. Hamilton stated that it is "not even debated any more by researchers that people are not simply born gay", that "[t]here is no such things as conversion therapy. It does not exist. That is a myth that there is something out there that is harming people." Moreover, she claimed that the therapies she and her colleagues would like to continue to use are "mainstream".

None of that is true.

What is true is that Dr. Hamilton, by selling her conversion therapy snake oil, has gotten rich by selling the quackery of conversion therapy to the parents of LGBTQ children – and by selling instructional materials to other therapists practicing conversion therapy. Within a very short period of time, she has gone from being a lowly paid counselor at a religious college in Chattanooga to living quite comfortably here in Palm Beach County. Therefore, Dr. Hamilton has a significant economic reason for opposing the ban: the more state and local governments impose bans on conversion therapy, the less income she and her colleagues will earn.

As no doubt Denise will tell you, courts across the nation have ruled that misrepresenting homosexuality as a disorder in marketing conversion therapy services is a violation of consumer protection laws.

Earlier this year, NCLR, SPLC and the Human Rights Campaign (which is not affiliated with PBCFRC) filed a federal consumer fraud complaint with the Federal Trade Commission seeking to ban conversion therapy nationwide. The complaint was filed against People Can Change, an organization which claims sexual orientation and gender identity can be changed through therapy and counseling. The complaint alleges that practitioners of conversion therapy defraud consumers into believing that being LGBT is a mental illness or emotional defect that needs to be cured. Moreover, the complaint alleges that the advertising of that false claim violates the Federal Trade Commission Act which prohibits unfair and deceptive practices.

Palm Beach County Commissioners
July 31, 2016
Page four ---

In addition, the Therapeutic Fraud Prevention Act has been introduced in Congress to empower the Federal Trade Commission to crack down on conversion therapy.

However, we can not wait for the federal government to take action. Since 1990, the Palm Beach County Board of County Commissioners has not waited for the federal government to take action. Not for the Civil Rights Act. Not for the Fair Housing Act. Not for the Consolidated Omnibus Budget Reconciliation Act. And not for the Family and Medical Leave Act. You -- and your predecessors -- have taken the necessary steps to protect women and minorities, while the federal government has remained deadlocked on LGBT rights legislation.

PBCHRC hopes you find this information helpful.

If you have any questions, please do not hesitate to contact me directly.

attachments

copies via e-mail to: PBCHRC Board of Directors
Assistant County Administrator Todd Bonlarton
County Attorney Denise Nieman
Assistant County Attorney Helene Hvizd

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: Conversion therapy ordinance
Date: Thursday, August 04, 2016 11:28:55 PM

No rush on this one.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Thu, Aug 4, 2016 at 6:09 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Hi Rand,

We had hoped to issue an opinion by week's end but that's not going to happen.

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

Enjoy your evening!

Denise Marie

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: Conversion Therapy
Date: Tuesday, August 09, 2016 1:10:37 PM

Works for me. And thanks.

On Tuesday, August 9, 2016, Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hi Rand,

A quick update. I know you said no rush at all, but wanted to let you know where I'm at since my last email.

Be on the lookout for our analysis the week of August 22nd.

Enjoy your day.

Denise Marie

Denise Marie Nieman
Palm Beach County Attorney
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
561.355.3389
dnieman@pbcgov.org

"Practicing Law with Civility is no longer just an option; in Florida, it is mandatory."

From: [Denise Marie Nieman](#)
To: [Rand Hoch](#)
Cc: [Helene Hvizd](#)
Bcc: [Denise-Marie NIEMAN](#)
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Friday, August 26, 2016 5:03:27 PM

Hey Rand,

Greetings from Detroit's airport.

It's fascinating how great lawyers can look at the exact same language and make completely opposite conclusions.

I appreciate that you know much more about the subject than we do, but as you can tell based on our convo yesterday, I made myself very familiar with the issue. On a very basic level, how can we say that CT is a local issue? The entire field of therapy regulation is conducted at the state level.

And if we moved away from regulations into what's ok to advertise as you suggested yesterday, the BCC would have to make significant assumptions that it's not qualified to make.

Helene, feel free to jump in here if any of the cases you found shed more light on the issue.

Rand, I was hoping you'd be able to provide us with something more factually specific. We're on standby.

I truly appreciate your openness and willingness to exchange information and understand where we're coming from. Yesterday's conversation suggested just that. Maybe your team has something at the ready. This is a classic non-localized issue in my view.

Ok, time for me to board. Bon voyage to you as well! My friend is on her way to Scotland right now.

Denise Marie

On Aug 26, 2016, at 3:40 PM, Rand Hoch <rand-hoch@usa.net> wrote:

Helene,

Denise advised me of her concern that "implied preemption" could be an obstacle in having the BCC move forward with PBCHRC's requested ordinance to prohibit conversion therapy on minors.

I have asked the national legal team PBCHRC has put together to looking at this more fully. However, having only briefly researched the issue, I am at a loss to



see how "implied preemption" could even be a valid concern, in light of the precedent set forth by the Florida Supreme Court in *Sarasota Alliance for Fair Elections v. Browning*, 28 So.3d 880 (Fla. 2010). Here are some excerpts from the opinion that I found persuasive:

Preemption is implied "when the legislative scheme is *so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.*" [citation omitted] Implied preemption is found where the state legislative scheme of regulation is pervasive **and the local legislation would present the danger of conflict with that pervasive regulatory scheme.** [citations omitted] In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." [citation omitted] . The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, **and the character of the obligations imposed by the statute are all vital to this determination.** [citation omitted] .

... **Florida courts have not found an implied preemption of local ordinances which address local issues.** As even the Second District explained in the instant case, "[i]t generally serves no useful public policy to prohibit local government from deciding local issues." [citation omitted]. For example, in *Phantom of Clearwater, Inc. v. Pinellas County*, the Second District concluded that a local ordinance regulating businesses that sold fireworks was not preempted by state statutes regulating both the sale and use of fireworks. [citation omitted] ... The court determined that this did not constitute a "pervasive scheme of regulation." Further, **it found "no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict" with the statutes.**[citation omitted] .

This statutory scheme undoubtedly recognizes that **local governments are in the best position to make some decisions for their localities.**

(all of the emphases has been added by me)

Having reviewed Chapters 458, 459, 490 or 491, Florida Statutes, I could find no legislative scheme that is "so pervasive" as to evidence an intent to preempt the requested county ordinance. Moreover, it is clear that there is no actual conflict between the proposed ordinance and *any* provision in Florida Statutes. Therefore, in light of the clear statements from the Florida Supreme Court, in order for me to understand where you are coming from, it would be beneficial for me to review the legal authority you have been relying upon that, at the moment, seems to be presenting an obstacle to moving forward with our requested ordinance to protect local minors from abuse.

Please let me know when we can get together.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of [Rand Hoch](mailto:Rand.Hoch)
To: [Denise Marie Nieman](mailto:Denise.Marie.Nieman)
Cc: [Helene Hvizd](mailto:Helene.Hvizd)
Subject: Re: PBCHRC - PBC Conversion Therapy Ban Ordinance - "Implied Preemption"; Proposed Ordinance DRAFT #3
Date: Sunday, August 28, 2016 5:22:09 PM

I know, I know. I'm hoping the better legal minds than mine in my group (the ones who don't open my emails on weekends and evenings), come up with something!

Anyway, my favorite ice cream/gelato place in Paris, Berthillon on Île Saint-Louis re-opens on September 1st. If you are an ice cream fan, it is worth a stop.

Enjoy!

Rand

On Sun, Aug 28, 2016 at 4:17 PM, Denise Marie Nieman <DNieman@pbccgov.org> wrote:
Bonsoir Rand and Helene,

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

Bonne nuit,
Denise Marie

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
[561.355.3389](tel:561.355.3389) (office)
[561.355.3600](tel:561.355.3600) (fax)
dnleman@pbccgov.org

From: flagler400@gmail.com [flagler400@gmail.com] on behalf of Rand Hoch [rand-hoch@usa.net]
Sent: Sunday, August 28, 2016 1:49 PM
To: Helene Hvizd
Cc: Denise Marie Nieman
Subject: PBCHRC - PBC Conversion Therapy Ban Ordinance - "Implied Preemption"; Proposed Ordinance DRAFT #3

Helene,

While I await more input from our legal team, I am still confused about your concern with "implied preemption". In Denise's recent response from the Detroit airport (she is always working!), she asked "how can we say that CT is a local issue? The entire field of therapy regulation is conducted at the state level." If that is the case, wouldn't the "entire field" of the regulation of discrimination in housing, public accommodations and employment also be "conducted at the state level"? if so, why would "implied preemption" not have applied in the years between 1990 and 2015 when the Board of County Commissioners:



- a. amended the Fair Housing Ordinance to include "sexual orientation and in 2007 to include "gender identity and expression" (1990);
- b. amended the Equal Employment Ordinance to prohibit discrimination based on "sexual orientation" and "gender identity and expression" (2002 and 2007); and or
- c. amended the the Palm Beach County Ordinance for Equal Opportunity to Housing and Places of Public Accommodation by extensively expanding the definition of "places of public accommodation" (2015).

Rand

P.S. To address the concern that the BCC would have to make significant assumptions that it's not qualified to make, it appears that other state and local governmental bodies have made those assumptions based on the existing scientific and medical information. They have put the bases therefor in their ordinances as statutes, just as PBCHRC is proposing the County do proposed in the attached DRAFT #3.

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From: Denise Marie Nieman
To: Helene Hvizd; Rand Hoch
Subject: RE: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Monday, August 29, 2016 7:17:17 PM

Thanks, Helene!

Rand, that sums it up.

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
561.355.3389 (office)
561.355.3600 (fax)
dnieman@pbcgov.org

From: Helene Hvizd
Sent: Monday, August 29, 2016 4:55 PM
To: Rand Hoch
Cc: Denise Marie Nieman
Subject: RE: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Hello Rand,

In follow-up to your email of Friday, I offer the following synopsis of legal research conducted on the question of whether a County may enact a conversion therapy ban. The dual considerations a local government must address when determining whether it is able to enact legislation in a particular area are preemption and conflict. The Florida Legislature's scheme of licensing and regulating businesses and professions is pervasive, (chapter 458, chapter 459, chapter 490, chapter 491), evidencing an intent that this area be preserved to the Legislature. Neither county nor municipal governments license counselors, and there is no support in the law for a conclusion that regulating counselors is a "local issue" as addressed in *Browning*. To the contrary, every indication is that regulation of businesses and professions, including counselors, is a state issue.

As to conflict, a local ordinance regulating the treatment available to patients would conflict with Florida's broad Patients' Bill of Rights, section 381.026(4)(d), and section 456.41 of the Florida Statutes. Counties are prohibited from enacting an ordinance that conflicts with general law.

The Federal Courts addressing conversion therapy bans in California and New Jersey have examined state statutes, and upheld them, in part, on the basis that those laws were rationally related to a legitimate state interest. The state is charged with regulating and licensing businesses and professions, including counselors, thus they are more readily able to satisfy this test than the County would be. The County plays no part in regulating counselors.

Thank you,



Helene

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch
Sent: Friday, August 26, 2016 3:40 PM
To: Helene Hvizd
Cc: Denise Marie Nieman
Subject: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Helene,

Denise advised me of her concern that "implied preemption" could be an obstacle in having the BCC move forward with PBCHRC's requested ordinance to prohibit conversion therapy on minors.

I have asked the national legal team PBCHRC has put together to looking at this more fully. However, having only briefly researched the issue, I am at a loss to see how "implied preemption" could even be a valid concern, in light of the precedent set forth by the Florida Supreme Court in *Sarasota Alliance for Fair Elections v. Browning*, 28 So.3d 880 (Fla. 2010). Here are some excerpts from the opinion that I found persuasive:

Preemption is implied "when `the legislative scheme is *so pervasive* as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature." [citation omitted] Implied preemption is found where the state legislative scheme of regulation is pervasive **and the local legislation would present the danger of conflict with that pervasive regulatory scheme.** [citations omitted] In determining if implied preemption applies, the court must look "to the provisions of the whole law, and to its object and policy." [citation omitted] . The nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, **and the character of the obligations imposed by the statute are all vital to this determination.** [citation omitted] .

... Florida courts have not found an implied preemption of local ordinances which address local issues. As even the Second District explained in the instant case, "[i]t generally serves no useful public policy to prohibit local government from deciding local issues." [citation omitted]. For example, in *Phantom of Clearwater, Inc. v. Pinellas County*, the Second District concluded that a local ordinance regulating businesses that sold fireworks was not preempted by state statutes regulating both the sale and use of fireworks. [citation omitted] ... The court determined that this did not constitute a "pervasive scheme of regulation." Further, it found **"no strong public policy reason that would prevent a local government from enacting ordinances in this area so long as they do not directly conflict" with the statutes.**[citation omitted] .

This statutory scheme undoubtedly recognizes that **local governments are in the best position to make some decisions for their localities.**

(all of the emphases has been added by me)

Having reviewed Chapters 458, 459, 490 or 491, Florida Statutes, I could find no legislative scheme that is "so pervasive" as to evidence an intent to preempt the requested county ordinance. Moreover, it is clear that there is no actual conflict between the proposed ordinance and *any* provision in Florida Statutes. Therefore, in light of the clear statements from the Florida Supreme Court, in order for me to understand where you are coming from, it would be beneficial for me to review the legal authority you have been relying upon that, at the moment, seems to be presenting an obstacle to moving forward with our requested ordinance to protect local minors from abuse.

Please let me know when we can get together.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Helene Hvizd](#)
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County
Date: Tuesday, August 30, 2016 12:36:05 PM

Bummer.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Tue, Aug 30, 2016 at 10:37 AM, Helene Hvizd <HHvzid@pbcgov.org> wrote:

Hi Rand,

No, our emails are not exempt from a public records request. The work product exemption contained in Chapter 119 that applies to litigation work product of agency attorneys is waived when the work product is disclosed. *See Lightbourne v. McCollum*, 969 So. 2d 326, 333 (Fla. 2007).

Helene

From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch
Sent: Tuesday, August 30, 2016 5:56 AM
To: Denise Marie Nieman; Helene Hvizd
Subject: Re: PBCHRC - Implied Preemption - Proposed ban on conversion therapy on minors throughout Palm Beach County

Since The Liberty Counsel has threatened litigation, I trust that all of our e-mail concerning the litigation are temporarily exempt from public records requests in accordance with Chapter 119.

Is that your understanding as well?

Rand



From: Denise Marie Nieman
To: Rand Hoch
Bcc: Denise Marie Nieman
Subject: Re: CT Opinion
Date: Sunday, March 05, 2017 7:33:32 AM

Good morning Rand!

I was tempted to respond from Miami but knew I'd focus too much on the awesome VC event and didn't want you to have regrets for not going. Definitely go next year!

I suggested that it was a state issue which would eliminate any discussion at the local level so I'm not sure where the working work the cities came in. I also mentioned working with the state association governing therapists to mandate compliance with the national APA code of conduct. That seems to have the most teeth.

As for the other, cities have shared with is their concerns about implied preemption and other areas that we've discussed with you. It's not just a county issue. What I said is that cities are willing to take greater risks with ordinances, they're smaller, know their constituents in a different more hometown way, sign-off on things we wouldn't, etc. We can discuss further on the phone if you wish, but there's a whole different dynamic at play. Panhandling is a great example. Lots of cities did what we told the bcc they couldn't.

We'll keep it in "still researching" mode, but know that nothing will change just because more cities enact ordinances, unless one is tested and upheld on issues of concern to us. It would also be helpful to see how they're enforcing the ordinances and the results of their efforts. Any info you can gather along these lines would be helpful.

By the way, we did confirm with the property appraisers office that the CT therapists you shared with us all work in incorporated areas.

Have a great Sunday!

DM

On Mar 4, 2017, at 09:43, Rand Hoch <rand-hoch@usa.net> wrote:

The Veuve Clicquot Carnival sounded tempting, but I passed up on it (probably a big mistake). Have fun there.

When we first started talking about the county ordinance, you suggested we work on the state level, as well as work with the 39 municipalities. So I thought that the legal concerns you had were unique to counties. Please correct me if I am wrong. And if I am wrong, perhaps your staff needs to take a lot more time in working on this issue so that we can rack up a few more cities, since none of the city attorneys so far seem to be concerned about implied preemption, etc. I'd hate for your opinion to bring our municipal efforts to a "screeching halt" (a favorite term of my Bankruptcy professor, te late Judge Alexander Paskay).

Thanks!



On Sat, Mar 4, 2017 at 9:22 AM, Denise Marie Nieman

<DNieman@pbcbgov.org> wrote:

Good morning, Rand!

Ok, that's good to know because I thought there was some urgency when we last met.

As for my opinion, I may not reference Jeff by name but certainly will emphasize that it's a state issue. As for the cities, there's no stopping them from using my opinion. Maybe you don't want it at all? You're not racking up any counties...maybe continue with your city focus? Something to consider. It has been mentioned to us before that cities were waiting for us to issue an opinion...but since it hasn't come out yet, some went ahead anyway.

Let me know.

On a bubblier note, any chance that you're heading to Miami today for Veuve Clicquot Carnaval? Sounds like something up your alley. If so, I'll see you there!

Enjoy your weekend no matter where and how...just make sure champagne comes into play at some point.

Denise Marie

On Mar 4, 2017, at 08:52, Rand Hoch <rand-hoch@usa.net> wrote:

Denise,

No rush on this at all. The longer we wait, the more local ordinances will be enacted - or at least in the pipeline. And I'm sure your office has more pressing matters.

I'm hoping that your opinion includes your recommendation that the state enact Jeff Clemens bill S, 578 (<https://www.flsenate.gov/Session/Bill/2017/00578>) to address the issue statewide -- and that municipalities in the County continue to enact local ordinances. PBCHRC does not want anything in your opinion to be perceived as discouraging municipalities from taking action similar to what has been done (so far) in West Palm Beach, Lake Worth, Boynton Beach and Riviera Beach.

Enjoy the weekend.

Rand

P.S. It looks like we've still got 5 solid votes and we still have not spoken directly with Steve and Hal.

On Fri, Mar 3, 2017 at 5:52 PM, Denise Marie Nieman

<DNieman@pbcgov.org> wrote:

Hey Rand!

I still intend to send out the opinion before the next bcc meeting 3/14, but the Mayor won't be there. Not sure where your 12 floor discussions ended up...if it matters. Just wanted to let you know.

If it does matter, I'd welcome the extra time...next meeting is 4/4.

Let me know.

Have a great weekend!!!

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From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: PBCHRC - Countywide Conversion Therapy Ban
Date: Wednesday, April 12, 2017 5:53:21 PM

Thanks.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Wed, Apr 12, 2017 at 5:41 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Hi Rand,

Of course! In fact I told the comm'rs why I haven't issued an opinion yet after you and I spoke...that we didn't want what I had to say to impact your efforts with the cities. I'm surprised you are getting questions unless they didn't want to take my word for it. In any event, I was holding off indefinitely. Let me know when you want it to go, keeping in mind that nothing that happens with cities holds much persuasive value unless a court rules on the exact issues I'm concerned about.

I'll be on standby...

> On Apr 12, 2017, at 17:30, Rand Hoch <rand-hoch@usa.net> wrote:

>

> Denise,

>

> Can we put off your memo until July? We've got a Final Hearing in July in one of the municipalities, and it would be a big help. (I've explained to the Commissioners who have inquired why we aren't moving forward quickly with the County Ordinance, and they are on board).

>

> Thanks!

>

> Rand

>

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From: [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Subject: Re: PBCHRC - Directing the County Attorney to draft a countywide ordinance to ban conversion therapy for minors by licensed professionals
Date: Wednesday, September 20, 2017 5:49:04 PM

We really need it to include both incorporated and unincorporated.

I don't foresee the League's process to be lengthy. The topic was brought up earlier in the year by Lake Worth City Commissioner Andy Amoroso on the only opposition came from Wellington Mayor Anne Gerwig. If you can get a draft done soon, I think the League should be able to get it on the agenda for their meeting in October which should allow the BCC to hold the two hearings in November.

On Wed, Sep 20, 2017 at 5:14 PM Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hey Rand,

When you say countywide, you mean countywide applicable in the unincorporated and incorporated areas? I ask because many people use it just to mean throughout the county's jurisdiction. You have so many cities who moved forward already and I still have enforcement concerns...which I mentioned in my BCC email (being relieved that none of the 6 were in the unincorporated area). Please clarify, yet know that I'll be recommending unincorporated only. Besides, that way we won't have to go through the potentially lengthy league of cities process.

Thanks!

Denise Marie

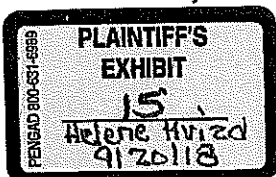
From: flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch

Sent: Wednesday, September 20, 2017 2:49 PM

To: Paulette Burdick P. <PBurdick@pbcgov.org>; Melissa McKinlay <MMcKinlay@pbcgov.org>; Hal Valeche <HValeche@pbcgov.org>; Mack Bernard <MBernard@pbcgov.org>; MaryLou Berger <MBerger@pbcgov.org>; Steven Abrams <SAbrams@pbcgov.org>; Dave Kerner M. <DKerner@pbcgov.org>

Cc: Todd J. Bonlarron <TBonlarr@pbcgov.org>; Denise Marie Nieman <DNieman@pbcgov.org>; Trent Steele <trent@trentsteele.com>

Subject: PBCHRC - Directing the County Attorney to draft a countywide ordinance to ban



conversion therapy for minors by licensed professionals

Dear colleagues,

First of all, let me congratulate you on the excellent job done by the County in dealing with Hurricane Irma. We dodged a huge bullet, your work clearly demonstrated to the public that the County was fully prepared for whatever was coming our way. Kudos to you and to county staff.

Over the past few weeks, Denise and I have spoken concerning banning conversion therapy countywide. It is my hope that you will give her direction at next week's BCC meeting to draft an ordinance to prohibit both the practice and the advertising of conversion therapy, as outlined in PBCHRC's e-mail dated August 28, 2017 (See below).

PBCHRC's Board hopes that the vote to direct -- as well as the votes to enact -- will be unanimous, just as the votes by the Miami-Dade County Commissioners have been. They are expected to unanimously vote on Final Reading on October 3 to enact a countywide ordinance to ban conversion therapy for minors by licensed professionals.

Thank you.

Judge Rand Hoch (retired)

President and Founder

Palm Beach County Human Rights Council

400 North Flagler Drive, #1402

West Palm Beach, FL 33401

561-358-0105

pbchrc.org

----- Forwarded message -----
From: **Rand Hoch** <rand-hoch@usa.net>

Date: Mon, Aug 28, 2017 at 4:58 PM

Subject: PBCHRC - Moving forward with a countywide ordinance to ban conversion therapy for minors by licensed professionals

To: Denise Nieman <dnieman@pbcgov.org>

Cc: "Todd J. Bonlarron" <TBonlarr@pbcgov.org>, Paulette Burdick <pburdick@pbcgov.org>, Melissa McKinlay <mmckinlay@pbcgov.org>, Hal Valeche <hvaleche@pbcgov.org>, Mack Bernard <Mack@mackbernard.com>, Mary Lou Berger <mberger@pbcgov.org>, Steve Abrams <sabrams@pbcgov.org>, Dave Kerner <dkerner@pbcgov.org>, Trent Steele <trent@trentsteele.com>

Denise,

On behalf of the Board of Directors of PBCHRC, I want to thank you for delaying moving forward with the direction received from the County Commissioners last summer regarding providing information concerning our request that the Commissioners enact a countywide ordinance to ban conversion therapy for minors by licensed professionals.

Over the past year, conversion therapy bans have been enacted in Florida in West Palm Beach, Lake Worth, Boynton Beach, Riviera Beach, Delray Beach, Wellington, Greenacres, Miami, Wilton Manors, Miami Beach, Bay Harbor Islands, El Portal, Key West and Tampa. And on September 9, the Miami-Dade County Board of County Commissioners will have Final Reading on their ordinance banning conversion therapy for minors. From what I have been told, it appears that the vote will be unanimous, just as it was on First Reading earlier this summer.

In addition the the Florida laws, across the nation, California, Connecticut, Illinois, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, the District of Columbia, Pima County (AZ), Cincinnati (OH), Seattle (WA), Pittsburgh (PA), Toledo (OH), Columbus (OH), Philadelphia (PA), Allentown (PA), Dayton (OH) and Athens (OH) also have laws preventing licensed mental health providers from offering conversion therapy to minors.

At this time, PBCHRC would like you to move forward with providing your office's opinion concerning enacting a countywide ordinance to ban conversion therapy for minors by licensed professionals. As we have discussed, your staff's legal opinions may well not be in agreement with that of PBCHRC and the 12 municipal attorneys (and one County Attorney) in Florida whom have addressed these matters, but be that as it may, we would like to move forward at this time.

The purpose of the ordinance we are requesting is to protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, from exposure to the serious harms caused by conversion therapy. Due to the serious harms to minors caused by conversion therapy/reparative therapy/sexual orientation change efforts, it should be prohibited for a licensed therapist to provide conversion therapy/reparative therapy/sexual orientation change efforts services to minors throughout Palm Beach County. Additionally, the County has an interest in protecting all of its residents from unfair or

deceptive trade practices, and advertising that a person provides conversion therapy/reparative therapy/sexual orientation change efforts to minors should specifically constitute false and deceptive acts. Enacting these provisions would be exercises of police power of the County for the public safety, health, and welfare; and its provisions shall be liberally construed to accomplish that purpose.

In the event you do receive direction from the BCC, it is PBCHRC's hope that an **ORDINANCE RELATED TO PROHIBITION OF UNFAIR OR DECEPTIVE TRADE PRACTICES AND TO PROHIBIT OF CONVERSION THERAPY ON MINORS** which your office will draft will serve as a model for other counties throughout Florida. PBCHRC would like it to cover the following revisions to the County's Code of Ordinances:

I. PROHIBITION OF CONVERSION THERAPY

Chapter 18, Miscellaneous Provisions and Offenses would be amended to prohibit conversion therapy on minors by licensed practitioners for monetary compensation. Unlicensed practitioners (e.g., clergy) are specifically excluded from the ordinance). Civil penalties payable to Palm Beach County are \$500.00 for the first violation and \$1,000.00 for each repeat violation. Each day that a violation occurs constitutes a separate offense.

II. ADVERTISING OF CONVERSION THERAPY PROHIBITED

Chapter 9, Consumer Affairs would be amended to prohibit advertising by any provider of conversion therapy, where such advertising claims—

- (1) to change another individual's sexual orientation or gender identity;
- (2) to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender; or
- (3) that such efforts are harmless or without risk to individuals receiving such therapy.

It is PBCHRC's hope that should the BCC give you direction to draft an ordinance, that First Reading would occur at the first BCC meeting in November. Hopefully, that timeframe will provide your staff with adequate time to put everything together.

Again, thank you for extending PBCHRC the courtesy of waiting until significant progress has been made in Florida before moving forward.

Judge Rand Hoch (retired)

President and Founder

Palm Beach County Human Rights Council

400 North Flagler Drive, #1402

West Palm Beach, FL 33401
561-358-0105

pbchrc.org

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--
Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

From: flagler400@gmail.com on behalf of Rand Hoch
To: [Denise Marie Nieman](mailto:Denise.Marie.Nieman)
Subject: Re: Conversion Therapy
Date: Friday, September 08, 2017 7:40:06 AM

Thank you -- and keep safe.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Thu, Sep 7, 2017 at 6:52 PM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:
Dear Commissioners,

This is in response to the BCC's direction last summer to research the viability of the adoption of a County ordinance banning "Conversion Therapy", a form of counseling that attempts to change one's sexual orientation. The direction was given at the request of Rand Hoch on behalf of the PBC Human Rights Council.

We strongly believe that this area should be regulated by the state since it is the state who licenses and otherwise governs therapists. However, we are cognizant of the likelihood of that happening after Senator Clemens made numerous attempts to enact state law, all of which failed. I am also of the opinion that professional oversight organizations should mandate compliance with their guidelines instead of making them aspirational, which would allow for a more direct consequence to the therapist than attempting to enforce a local ordinance. That method of addressing the issue also seems futile, thus the plea for local governments to step in.

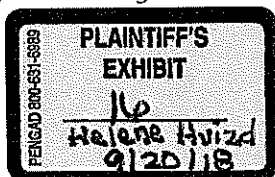
Our initial research revealed a number of significant legal issues that would have prevented my office from signing off for legal sufficiency. Assistant County Attorney Helene Hvizd and I reviewed our concerns with Mr. Hoch and ultimately mutually agreed to hold off issuing an unfavorable opinion to give us time to monitor how the pending cases evolve and to see how the jurisdictions who did move forward with an ordinance administered and enforced same. We also wanted to see if any of the new enactments would be challenged. To the best of our knowledge, none have been.

As Mr. Hoch pointed out in his recent email, a number of cities in Florida did adopt ordinances. At the time of the BCC's directive, the City of Miami Beach was the only city in Florida to ban conversion therapy. Further, Miami-Dade is close to final adoption of its ordinance, making it the only county in Florida to have such a prohibition.

While we still have legal concerns including, but not limited to, implied preemption, the Florida Patients' Bill of Rights, conflicting federal circuit court opinions, and parental rights, there were some arguments that advanced to a point where we were able to move from a definite "no" to a "maybe" (I use this term since the case law can go either way), clearing the path for an ordinance should a majority of the BCC so directs.

In addition to the legal issues, after researching the history of conversion therapy, I felt it important to bring to your attention some general observations, as well as some practical concerns. Most of the universal complaints seem to be about religious organizations that the ordinance would not legally be able to address. Further, all of the six therapists who have been identified to us as practicing conversion therapy in PBC are located in the incorporated areas of the County, which I suppose is a plus because one of the main concerns is enforcement. It's difficult to imagine how a County Code Enforcement Officer would be able to issue a citation for a violation. How would an officer determine if a violation occurred? The ordinances play more of a deterrent role.

In any event, we can bring back an ordinance banning conversion therapy if directed.



Should you have any questions, please let me know.

Denise Marie

Denise Marie Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401
561.355.3389 (office)
561.355.3600 (fax)
dnieman@pbcgov.org

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From: Helene Hvizd
To: Rand Hoch
Cc: Trent Steele; Denise Marie Nieman; Robert Santos-Alborna; Shannon Fox
Subject: Re: PBCHRC -- Countywide Conversion Therapy Ban
Date: Wednesday, August 09, 2017 9:15:57 PM

Hello Rand,

I am thorough in advising my clients.

Our Code Enforcement Division will be relying on complaints to begin their investigation. We may not, in fact likely will not, have a minor's consent, (of course, we would likely need a minor's parent's consent, correct?), to rely on in order to secure a minor's medical records.

Your help in addressing this concern is greatly appreciated.

Thank you,

Helene

----- Original message -----

From: Rand Hoch <rand-hoch@usa.net>
Date: 8/9/17 8:47 PM (GMT-05:00)
To: Helene Hvizd <HHvizd@pbcgov.org>
Cc: Rand Hoch <rand-hoch@usa.net>, Trent Steele <trent@trentsteele.com>, Denise Marie Nieman <DNieman@pbcgov.org>, Robert Santos-Alborna <RSantosAlborna@pbcgov.org>, Shannon Fox <SXfox@pbcgov.org>
Subject: PBCHRC -- Countywide Conversion Therapy Ban

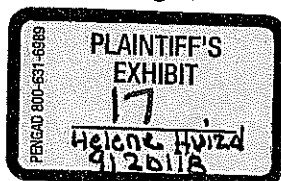
Helene,

I truly do not understand why you are making this so complicated -- and why more than a dozen municipal attorneys in the state of Florida (as well as the Miami-Dade County Attorney) have not seen any of the concerns you have been raising for more than a year as being obstacles for protecting children in Palm Beach County from the harms being inflicted on them by at least five licensed counselors who are advertising that they perform conversion therapy in Palm Beach County..

For the ordinance to be enforced, the minor has to come forward and file a complaint, so the minor can clearly waive confidentiality of his or her own medical records. For the same reason, there are no problems with HIPPA.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Wed, Aug 9, 2017 at 2:47 PM, Helene Hvizd <HHvizd@pbcgov.org> wrote:



PBC 015551

Hello Rand,

A question has occurred regarding enforcement of a conversion therapy ban ordinance. Enforcement of such an ordinance necessarily implicates review of a minor's medical records. Will you please address how a conversion therapy ban ordinance can be enforced given the protections afforded a minor's medical records and the patient/therapist privilege?

I am copying Robert Santos-Alborna, the County's Code Enforcement Director, and Shannon Fox, the Assistant County Attorney who represents code-enforcement. If we are given direction to draft a conversion therapy ban ordinance, Robert and Shannon will be involved in the process.

Thank you, Rand,

Helene

1366

SENIOR CODE ENFORCEMENT OFFICER

NATURE OF WORK

This is technical and supervisory work in the enforcement of the County's Building and Zoning related codes and ordinances.

An employee in a position allocated to this class is responsible for planning, assigning and supervising the work of subordinate code enforcement officers in addition to performing field work requiring the application of all such codes and ordinances. Work involves consulting with code enforcement officers in matters of code interpretations and enforcement procedures, supervising investigations in process, responding to citizen complaints concerning subordinates, conducting field investigations relating to construction projects, land use situations and minimum Housing Code Standards. A superior reviews work through an analysis of work reports.

EXAMPLES OF WORK

Writes performance evaluations; issues counseling forms/disciplinary actions; handles employee complaints and grievances; recommends the hiring, termination and promotion of staff.

Supervises and reviews the investigation of complaints involving land usage, noise, fences and related matters arising from enforcement of the Zoning and accessory codes; insures that timely action is taken on all complaints.

Prepares evidence against violators and presents cases at meetings of the Code Enforcement Board.

Investigates citizen complaints to determine validity; issues violation notices, notices to correct and citations.

Makes follow-up inspections to determine progress of compliance.

Inspects sites to determine compliance with landscaping and property development regulations; Occupational License approval.

Assists public with information on Building and Zoning related matters; attends public meetings for purposes of providing information regarding Code Enforcement Division functions.

Provides training for code enforcement officers.

Performs related work as needed.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES

Thorough knowledge of County Building and Zoning related codes and ordinances.

Thorough knowledge of Departmental and Divisional policies and procedures and ability to comply with same.

Considerable knowledge of administrative and procedural requirements pertaining to area of responsibility, office and supervisory procedures and practices.

Ability to read and interpret codes, maps and legal descriptions.

Ability to communicate effectively, both verbally and in writing, with staff and the general public; and submit reports and maintain regulatory records.



1366

SENIOR CODE ENFORCEMENT OFFICER - CONT'D

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES - CONT'D

- Ability to supervise and train subordinates.
- Ability to make decisions in the field consistent with code requirements, policies and procedures.
- Ability to compose clear and concise reports.
- Ability to meet and deal with the public in a professional manner; maintain a pleasant and calm demeanor with upset or irate citizens.
- Ability to use various research materials with proficiency.

MINIMUM ENTRANCE REQUIREMENTS

Graduation from high school or an equivalent recognized certification; preferably supplemented with college level course work in Public or Business Administration or a closely related field; three (3) years experience in the interpretation and enforcement of land use regulations as a code enforcement officer, including one (1) year experience in a supervisory capacity; or any equivalent combination of related training and experience.

Rev. 9/93

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [Denise Marie Nieman](#)
Cc: [Todd J. Bonlarron](#); [Helene Hvizd](#)
Subject: Re: PBCHRC - Please keep the Conversion Therapy Ordinance on the agenda for 12/19
Date: Tuesday, December 12, 2017 11:36:03 AM

If the ordinance is not passed on the 19th, the County Commissioners will be seen as giving credence to The Liberty Counsel, the Florida Family Association and the other anti-LGBTQ hate groups who will run with this far and wide. Remember, these groups have to publish the real reasons why the BCC took this action (if they do) -- and they won't.

Personally, if I was on the BCC, I would not enjoy being recognized as a "champion" of these hate groups, but ...

Anyway, I'll start making calls and see if I can count to four.

In the event I can't get the votes, can we just have it pulled from the agenda at the meeting without explanation? Broward County is set to move forward on their ordinance on second reading in January and I wouldn't want your recommendation to also carry over to a large county with a lot of at-risk kids.

Please let me know.

Rand Hoch
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
561-358-0105

On Tue, Dec 12, 2017 at 11:24 AM, Denise Marie Nieman <DNieman@pbcbgov.org> wrote:
It has to stay on the agenda because it was advertised, so no worries there.

Rand, I have never and would never recommend that our county move forward with something under judicial review. This is the ideal issue to go to school on some other local government. Of course, they don't have to accept my recommendation. That has happened before.

I'm surely in favor of doing whatever we can to help any child, adult or animal. You should know this by now. But...this is an enforceable ordinance anyway. So we're assuming it will have a deterrent effect. Why risk taxpayer exposure now?

You got a 6-1 vote on first reading. That's something to be proud of. We went from no way to we can now sign off to let's wait a bit...if it's as clear as some believe, we'll be able to move forward after sum J or dismissal.



Denise Marie Nieman
Palm Beach County Attorney

On Dec 12, 2017, at 11:04, Rand Hoch <rand-hoch@usa.net> wrote:

Todd,

Please keep the Conversion Therapy Ordinance on the agenda for 12/19. The County Attorney's office will make whatever recommendation they see appropriate and PBCHRC would like to have the opportunity to make our case as well.

The harm being done to children in Palm Beach County is real. To let this continue for years while the federal courts consider a civil case should be a decision left to the BCC.

Thanks

Rand

On Tue, Dec 12, 2017 at 10:19 AM, Denise Marie Nieman <DNieman@pbcgov.org> wrote:

Hi Rand,

I know a lot of work has gone into the ordinance and that efforts are still being made now to make changes acceptable to both sides, but the ordinance up for final reading is what was before the BCC on first reading with some changes based on BCC comments.

The Tampa challenge of an ordinance that's practically identical to ours changes things now.

I will be recommending that the BCC not move forward until a determination is made in that case. It would be crazy to adopt an ordinance that is under review. Surely you understand. When the court rules, assuming all's well, we'll bring it back for first and second reading again, eliminating all the questions about its legality. We'll be on very solid ground. I trust you understand.

If the BCC doesn't accept my recommendation, the other changes being worked on now can be recommended at the hearing. They have to be anyway, so it's all good.

Denise Marie Nieman
Palm Beach County Attorney

1

ORDINANCE NO. 2017-046

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE "PROHIBITION OF CONVERSION THERAPY ON MINORS ORDINANCE"; PROVIDING FOR INTENT; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR VIOLATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 WHEREAS, as recognized by major professional associations of mental health
2 practitioners and researchers in the United States and elsewhere for nearly 40 years, being
3 lesbian, gay, bisexual, transgender or gender nonconforming, or questioning (LGBT or
4 LGBTQ) is not a mental disease, disorder, illness, deficiency or shortcoming; and

5 WHEREAS, the American Academy of Pediatrics in 1993 published an article in its
6 Journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is
7 contraindicated, since it can provoke guilt and anxiety while having little or no potential for
8 achieving changes in orientation;" and

9 WHEREAS, the American Psychiatric Association in December 1998 published its
10 opposition to any psychiatric treatment, including reparative or conversion therapy, which
11 therapy regime is based on the assumption that homosexuality is a mental disorder per se or
12 that a patient should change his or her homosexual orientation; and

13 ~~WHEREAS, the American Psychological Association's Task Force on Appropriate~~
14 ~~Therapeutic Responses to Sexual Orientation conducted a systematic review of peer-reviewed~~
15 ~~journal literature on Sexual Orientation Change Efforts ("SOCE") and issued its report in 2009,~~
16 ~~citing research that SOCE can pose critical health risks to lesbian, gay, and bisexual people,~~
17 ~~including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal,~~
18 ~~suicidality, substance abuse, stress, disappointment, self blame, decreased self-esteem and~~
19 ~~authenticity to others, increased self hatred, hostility and blame towards parents, feelings of~~
20 ~~anger and betrayal, loss of friends and potential romantic partners, problems in sexual and~~
21 ~~emotional intimacy, sexual dysfunction, high risk sexual behaviors, a feeling of being~~
22 ~~dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and~~
23 ~~resources; and~~



1 WHEREAS, The American Psychological Association in 2009 issued a resolution on
2 Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts,
3 advising parents, guardians, young people, and their families “to avoid sexual orientation
4 change efforts that portray homosexuality as a mental illness or developmental disorder and to
5 seek psychotherapy, social support, and educational services that provide accurate information
6 on sexual orientation and sexuality, increase family and school support, and reduce rejection of
7 sexual minority youth”; and

8 WHEREAS, The American Psychoanalytic Association in June 2012 issued a position
9 statement on conversion therapy efforts, articulating that “As with any societal prejudice, bias
10 against individuals based on actual or perceived sexual orientation, gender identity or gender
11 expression negatively affects mental health, contributing to an enduring sense of stigma and
12 pervasive self-criticism through the internalization of such prejudice” and that psychoanalytic
13 technique “does not encompass purposeful attempt to ‘convert,’ ‘repair,’ change or shift an
14 individual’s sexual orientation, gender identity or gender expression,” such efforts being
15 inapposite to “fundamental principles of psychoanalytic treatment and often result in
16 substantial psychological pain by reinforcing damaging internalized attitudes”; and

17 WHEREAS, the American Academy of Child & Adolescent Psychiatry in 2012
18 published an article in its Journal, Journal of the American Academy of Child and Adolescent
19 Psychiatry, stating that “[c]linicians should be aware that there is no evidence that sexual
20 orientation can be altered through therapy and that attempts to do so may be harmful. There is
21 no empirical evidence adult homosexuality can be prevented if gender nonconforming children
22 are influenced to be more gender conforming. Indeed, there is no medically valid basis for
23 attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may
24 encourage family rejection and undermine self-esteem, connectedness and caring, important
25 protective factors against suicidal ideation and attempts. Given that there is no evidence that
26 efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that
27 they carry the risk of significant harm, such interventions are contraindicated”; and

28 WHEREAS, the Pan American Health Organization, a regional office of the World
29 Health Organization, issued a statement in 2012 stating: “These supposed conversion therapies
30 constitute a violation of the ethical principles of health care and violate human rights that are
31 protected by international and regional agreements.” The organization also noted that

1 reparative therapies “lack medical justification and represent a serious threat to the health and
2 well-being of affected people;” and

3 WHEREAS, in 2014 the American School Counselor Association issued a position
4 statement that states: “It is not the role of the professional school counselor to attempt to
5 change a student’s sexual orientation or gender identity. Professional school counselors do not
6 support efforts by licensed mental health professionals to change a student’s sexual orientation
7 or gender as these practices have been proven ineffective and harmful”; and

8 WHEREAS, a 2015 report of the Substance Abuse and Mental Health Services
9 Administration, a division of the U.S. Department of Health and Human Services, “Ending
10 Conversion Therapy: Supporting and Affirming LGBTQ Youth” further reiterates based on
11 scientific literature that conversion therapy efforts to change an individual’s sexual orientation,
12 gender identity, or gender expression, is a practice not supported by credible evidence and has
13 been disavowed by behavioral health experts and associations; perpetuates outdated views of
14 gender roles and identities, and negative stereotypes; and may put young people at risk of
15 serious harm. The report recognizes that same-gender sexual orientation (including identity,
16 behavior, and attraction) is part of the normal spectrum of human diversity and does not
17 constitute a “mental disorder; and

18 WHEREAS, the American College of Physicians wrote a position paper in 2015
19 opposing the use of “conversion,” “reorientation,” or “reparative” therapy for the treatment of
20 LGBT persons, stating that “[a]vailable research does not support the use of reparative therapy
21 as an effective method in the treatment of LGBT persons. Evidence shows that the practice
22 may actually cause emotional or physical harm to LGBT individuals, particularly adolescents
23 or young persons”; and

24 WHEREAS, two federal appeals courts found that a prohibition of SOCE does not
25 violate first amendment rights and noted that the subject laws only required mental health
26 providers who wish to engage in practices that seek to change a minor’s sexual orientation
27 either to wait until the minor turns 18 or be subject to professional discipline, leaving mental
28 health providers free to discuss or recommend treatment and to express their views on any
29 topic; and

30 WHEREAS, Palm Beach County does not intend to prevent mental health providers
31 from speaking to the public about SOCE; expressing their views to patients; recommending
32 SOCE to patients; administering SOCE to any person who is 18 years of age or older; or

1 referring minors to unlicensed counselors, such as religious leaders. This Ordinance does not
2 prevent unlicensed providers, such as religious leaders, from administering SOCE to children
3 or adults; nor does it prevent minors from seeking SOCE from mental health providers in other
4 political subdivisions outside of Palm Beach County, Florida; and

5 WHEREAS, Palm Beach County has a compelling interest in protecting the physical
6 and psychological well-being of minors, including but not limited to lesbian, gay, bisexual,
7 transgender and questioning youth, and in protecting its minors against exposure to serious
8 harms caused by sexual orientation and gender identity change efforts; and

9 WHEREAS, the Palm Beach County Board of County Commissioners hereby finds the
10 overwhelming research demonstrating that sexual orientation and gender identity change efforts
11 can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, and
12 that being lesbian, gay, bisexual, transgender or questioning is not a mental disease, mental
13 disorder, mental illness, deficiency, or shortcoming; and

14 WHEREAS, the Palm Beach County Board of County Commissioners finds minors
15 receiving treatment from licensed therapists in Palm Beach County who may be subject to
16 conversion or reparative therapy are not effectively protected by other means, including, but
17 not limited to, other state statutes, local ordinances, or federal legislation; and

18 WHEREAS, the Palm Beach County Board of County Commissioners desires to
19 prohibit, within the geographic boundaries of Palm Beach County, the practice of sexual
20 orientation or gender identity change efforts on minors by licensed therapists only, including
21 reparative and/or conversion therapy, that have been demonstrated to be harmful to the physical
22 and psychological well-being of lesbian, gay, bisexual, transgender and questioning persons.

23 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
24 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

25 SECTION 1. INTENT:

26 The intent of this Ordinance is to protect the physical and psychological well-being of
27 minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning
28 youth, from exposure to the serious harms and risks caused by conversion therapy or reparative
29 therapy by licensed providers, including but not limited to licensed therapists and the
30 unlicensed individuals who perform counseling as part of professional training to become a
31 licensed provider. This Ordinance is an exercise of the County's police power for the benefit

1 of the public health, safety, and welfare; and its sections are to be liberally construed to
2 accomplish that purpose.

3 **SECTION 2. TITLE:**

4 This Ordinance shall be titled "Prohibition of Conversion Therapy on Minors
5 Ordinance."

6 **SECTION 3. APPLICABILITY:**

7 This Ordinance shall be applicable within the unincorporated areas of Palm Beach
8 County, and in all municipalities that have not adopted an ordinance in conflict. Unless
9 otherwise provided, nothing in this Ordinance shall be construed to relieve any person from
10 compliance with any applicable county or municipal regulations.

11 **SECTION 4. DEFINITIONS:**

12 As used in this Ordinance, unless some other meaning is plainly intended:

13 *Conversion Therapy* means ~~the any counseling, practices or treatments that~~ of seeking
14 to change an individual's sexual orientation or gender identity, including but not limited to
15 efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce
16 sexual or romantic attractions or feelings toward individuals of the same gender or sex.
17 Conversion therapy does not include counseling that provides support and assistance to a
18 person undergoing gender transition, or counseling that provides acceptance, support, and
19 understanding of a person or facilitates a person's coping, social support, and identity
20 exploration and development, including sexual-orientation-neutral interventions to prevent or
21 address unlawful conduct or unsafe sexual practices; and, as long as such counseling does not
22 seek to change an individual's sexual orientation or gender identity.

23 *Minor* means any person less than eighteen (18) years of age.

24 *Provider* means any person who is licensed by the State of Florida to perform
25 counseling pursuant to Chapters 456, 458, 459, 490 or 491 of the Florida Statutes as such
26 chapters may be amended, including but not limited to medical practitioners, osteopathic
27 practitioners, psychologists, psychotherapists, social workers, marriage and family therapists,
28 and licensed counselors, or a person who performs counseling as part of the person's
29 professional training for any of these professions. A provider does not include members of the
30 clergy who are acting in their roles as clergy or pastoral counselors and providing religious
31 counseling to congregants, as long as they do not hold themselves out as operating pursuant to
32 any of the aforementioned Florida Statutes licensures.

1 SECTION 5. VIOLATIONS:

2 It shall be unlawful for any Provider to engage in conversion therapy on any minor
3 regardless of whether the Provider receives monetary compensation in exchange for such
4 services.

5 SECTION 6. PENALTIES:

6 Pursuant to section 125.69, Florida Statutes, a violation of this ordinance shall be
7 prosecuted in the same manner as misdemeanors are prosecuted. A violation of any provision
8 of this Ordinance shall be punished by a fine of \$250.00 for the first violation and \$500.00 for
9 each repeat violation.

10 SECTION 7. ENFORCEMENT

11 In addition to the penalties set forth in Section 6 of this Ordinance, pursuant to section
12 125.69(4), Florida Statutes, this Ordinance is enforceable by the County's Code Enforcement
13 Officers and by all means provided by law. Additionally, Palm Beach County may choose to
14 enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

15 SECTION 8. REPEAL OF LAWS IN CONFLICT:

16 All local laws and ordinances in conflict with any provision of this Ordinance are
17 hereby repealed to the extent of such conflict.

18 SECTION 9. SEVERABILITY:

19 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
20 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
21 such holding shall not affect the remainder of this Ordinance.

22 SECTION 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

23 The provisions of this Ordinance shall become and be made a part of the Palm Beach
24 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
25 such, and the word ordinance may be changed to section, article, or other appropriate word.

26 SECTION 11. CAPTIONS:

27 The captions, section headings, and section designations used in this Ordinance are for
28 convenience only and shall have no effect on the interpretation of the provisions of this
29 Ordinance.

30 SECTION 12. EFFECTIVE DATE:

31 The provisions of this Ordinance shall become effective upon filing with the
32 Department of State.

1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
2 County, Florida, on this the ____ day of _____, 20__.

3
4 SHARON R. BOCK, CLERK PALM BEACH COUNTY, FLORIDA, BY ITS
5 BOARD OF COUNTY COMMISSIONERS
6

7 By: _____ By: _____
8 Deputy Clerk Mayor
9

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY

12
13 By: _____
14 County Attorney
15

16 EFFECTIVE DATE: Filed with the Department of State on the ____ day of
17 _____, 20__.

1

ORDINANCE NO. 20 _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE "PROHIBITION OF CONVERSION THERAPY ON MINORS ORDINANCE"; PROVIDING FOR INTENT; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR VIOLATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 WHEREAS, as recognized by major professional associations of mental health
2 practitioners and researchers in the United States and elsewhere for nearly 40 years, being
3 lesbian, gay, bisexual, transgender or gender nonconforming, or questioning (LGBT or
4 LGBTQ) is not a mental disease, disorder, illness, deficiency or shortcoming; and

5 WHEREAS, the American Academy of Pediatrics in 1993 published an article in its
6 Journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is
7 contraindicated, since it can provoke guilt and anxiety while having little or no potential for
8 achieving changes in orientation;" and

9 WHEREAS, the American Psychiatric Association in December 1998 published its
10 opposition to any psychiatric treatment, including reparative or conversion therapy, which
11 therapy regime is based on the assumption that homosexuality is a mental disorder per se or
12 that a patient should change his or her homosexual orientation; and

13 WHEREAS, The American Psychological Association in 2009 issued a resolution on
14 Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts,
15 advising parents, guardians, young people, and their families "to avoid sexual orientation
16 change efforts that portray homosexuality as a mental illness or developmental disorder and to
17 seek psychotherapy, social support, and educational services that provide accurate information
18 on sexual orientation and sexuality, increase family and school support, and reduce rejection of
19 sexual minority youth"; and

20 WHEREAS, The American Psychoanalytic Association in June 2012 issued a position
21 statement on conversion therapy efforts, articulating that "As with any societal prejudice, bias
22 against individuals based on actual or perceived sexual orientation, gender identity or gender
23 expression negatively affects mental health, contributing to an enduring sense of stigma and

1 pervasive self-criticism through the internalization of such prejudice” and that psychoanalytic
2 technique “does not encompass purposeful attempt to ‘convert,’ ‘repair,’ change or shift an
3 individual’s sexual orientation, gender identity or gender expression,” such efforts being
4 inapposite to “fundamental principles of psychoanalytic treatment and often result in
5 substantial psychological pain by reinforcing damaging internalized attitudes”; and

6 WHEREAS, the American Academy of Child & Adolescent Psychiatry in 2012
7 published an article in its Journal, Journal of the American Academy of Child and Adolescent
8 Psychiatry, stating that “[c]linicians should be aware that there is no evidence that sexual
9 orientation can be altered through therapy and that attempts to do so may be harmful. There is
10 no empirical evidence adult homosexuality can be prevented if gender nonconforming children
11 are influenced to be more gender conforming. Indeed, there is no medically valid basis for
12 attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may
13 encourage family rejection and undermine self-esteem, connectedness and caring, important
14 protective factors against suicidal ideation and attempts. Given that there is no evidence that
15 efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that
16 they carry the risk of significant harm, such interventions are contraindicated”; and

17 WHEREAS, the Pan American Health Organization, a regional office of the World
18 Health Organization, issued a statement in 2012 stating: “These supposed conversion therapies
19 constitute a violation of the ethical principles of health care and violate human rights that are
20 protected by international and regional agreements.” The organization also noted that
21 reparative therapies “lack medical justification and represent a serious threat to the health and
22 well-being of affected people;” and

23 WHEREAS, in 2014 the American School Counselor Association issued a position
24 statement that states: “It is not the role of the professional school counselor to attempt to
25 change a student’s sexual orientation or gender identity. Professional school counselors do not
26 support efforts by licensed mental health professionals to change a student’s sexual orientation
27 or gender as these practices have been proven ineffective and harmful”; and

28 WHEREAS, a 2015 report of the Substance Abuse and Mental Health Services
29 Administration, a division of the U.S. Department of Health and Human Services, “Ending
30 Conversion Therapy: Supporting and Affirming LGBTQ Youth” further reiterates based on
31 scientific literature that conversion therapy efforts to change an individual’s sexual orientation,
32 gender identity, or gender expression, is a practice not supported by credible evidence and has

1 been disavowed by behavioral health experts and associations; perpetuates outdated views of
2 gender roles and identities, and negative stereotypes; and may put young people at risk of
3 serious harm. The report recognizes that same-gender sexual orientation (including identity,
4 behavior, and attraction) is part of the normal spectrum of human diversity and does not
5 constitute a "mental disorder; and

6 WHEREAS, the American College of Physicians wrote a position paper in 2015
7 opposing the use of "conversion," "reorientation," or "reparative" therapy for the treatment of
8 LGBT persons, stating that "[a]vailable research does not support the use of reparative therapy
9 as an effective method in the treatment of LGBT persons. Evidence shows that the practice
10 may actually cause emotional or physical harm to LGBT individuals, particularly adolescents
11 or young persons"; and

12 WHEREAS, two federal appeals courts found that a prohibition of Sexual Orientation
13 Change Efforts (SOCE) does not violate first amendment rights and noted that the subject laws
14 only required mental health providers who wish to engage in practices that seek to change a
15 minor's sexual orientation either to wait until the minor turns 18 or be subject to professional
16 discipline, leaving mental health providers free to discuss or recommend treatment and to
17 express their views on any topic; and

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

25 WHEREAS, Palm Beach County has a compelling interest in protecting the physical
26 and psychological well-being of minors, including but not limited to lesbian, gay, bisexual,
27 transgender and questioning youth, and in protecting its minors against exposure to serious
28 harms caused by sexual orientation and gender identity change efforts; and

29 WHEREAS, the Palm Beach County Board of County Commissioners hereby finds the
30 overwhelming research demonstrating that sexual orientation and gender identity change efforts
31 can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, and

1 that being lesbian, gay, bisexual, transgender or questioning is not a mental disease, mental
2 disorder, mental illness, deficiency, or shortcoming; and

3 WHEREAS, the Palm Beach County Board of County Commissioners finds minors
4 receiving treatment from licensed therapists in Palm Beach County who may be subject to
5 conversion or reparative therapy are not effectively protected by other means, including, but
6 not limited to, other state statutes, local ordinances, or federal legislation; and

7 WHEREAS, the Palm Beach County Board of County Commissioners desires to
8 prohibit, within the geographic boundaries of Palm Beach County, the practice of sexual
9 orientation or gender identity change efforts on minors by licensed therapists only, including
10 reparative and/or conversion therapy, that have been demonstrated to be harmful to the physical
11 and psychological well-being of lesbian, gay, bisexual, transgender and questioning persons.

12 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
13 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

14 SECTION 1. INTENT:

15 The intent of this Ordinance is to protect the physical and psychological well-being of
16 minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning
17 youth, from exposure to the serious harms and risks caused by conversion therapy or reparative
18 therapy by licensed providers, including but not limited to licensed therapists and the
19 unlicensed individuals who perform counseling as part of professional training to become a
20 licensed provider. This Ordinance is an exercise of the County's police power for the benefit
21 of the public health, safety, and welfare; and its sections are to be liberally construed to
22 accomplish that purpose.

23 SECTION 2. TITLE:

24 This Ordinance shall be titled "Prohibition of Conversion Therapy on Minors
25 Ordinance."

26 SECTION 3. APPLICABILITY:

27 This Ordinance shall be applicable within the unincorporated areas of Palm Beach
28 County, and in all municipalities that have not adopted an ordinance in conflict. Unless
29 otherwise provided, nothing in this Ordinance shall be construed to relieve any person from
30 compliance with any applicable county or municipal regulations.

31 SECTION 4. DEFINITIONS:

32 As used in this Ordinance, unless some other meaning is plainly intended:

1 *Conversion Therapy* means the practice of seeking to change an individual's sexual
2 orientation or gender identity, including but not limited to efforts to change behaviors, gender
3 identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or
4 feelings toward individuals of the same gender or sex. Conversion therapy does not include
5 counseling that provides support and assistance to a person undergoing gender transition, or
6 counseling that: provides acceptance, support, and understanding of a person or facilitates a
7 person's coping, social support, and identity exploration and development, including sexual-
8 orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual
9 practices; and does not seek to change an individual's sexual orientation or gender identity.

10 *Minor* means any person less than eighteen (18) years of age.

11 *Provider* means any person who is licensed by the State of Florida to perform
12 counseling pursuant to Chapters 456, 458, 459, 490 or 491 of the Florida Statutes as such
13 chapters may be amended, including but not limited to medical practitioners, osteopathic
14 practitioners, psychologists, psychotherapists, social workers, marriage and family therapists,
15 and licensed counselors, or a person who performs counseling as part of the person's
16 professional training for any of these professions. A provider does not include members of the
17 clergy who are acting in their roles as clergy or pastoral counselors and providing religious
18 counseling to congregants, as long as they do not hold themselves out as operating pursuant to
19 any of the aforementioned Florida Statutes licensures.

20 **SECTION 5. VIOLATIONS:**

21 It shall be unlawful for any Provider to engage in conversion therapy on any minor
22 regardless of whether the Provider receives monetary compensation in exchange for such
23 services.

24 **SECTION 6. PENALTIES:**

25 Pursuant to section 125.69, Florida Statutes, a violation of this ordinance shall be
26 prosecuted in the same manner as misdemeanors are prosecuted. A violation of any provision
27 of this Ordinance shall be punished by a fine of \$250.00 for the first violation and \$500.00 for
28 each repeat violation.

29 **SECTION 7. ENFORCEMENT**

30 In addition to the penalties set forth in Section 6 of this Ordinance, pursuant to section
31 125.69(4), Florida Statutes, this Ordinance is enforceable by the County's Code Enforcement

1 Officers and by all means provided by law. Additionally, Palm Beach County may choose to
2 enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

3 **SECTION 8. REPEAL OF LAWS IN CONFLICT:**

4 All local laws and ordinances in conflict with any provision of this Ordinance are
5 hereby repealed to the extent of such conflict.

6 **SECTION 9. SEVERABILITY:**

7 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
8 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
9 such holding shall not affect the remainder of this Ordinance.

10 **SECTION 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

11 The provisions of this Ordinance shall become and be made a part of the Palm Beach
12 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
13 such, and the word ordinance may be changed to section, article, or other appropriate word.

14 **SECTION 11. CAPTIONS:**

15 The captions, section headings, and section designations used in this Ordinance are for
16 convenience only and shall have no effect on the interpretation of the provisions of this
17 Ordinance.

18 **SECTION 12. EFFECTIVE DATE:**

19 The provisions of this Ordinance shall become effective upon filing with the
20 Department of State.

21

1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
2 County, Florida, on this the 19th day of December, 2017.

3
4 SHARON R. BOCK, CLERK PALM BEACH COUNTY, FLORIDA, BY ITS
5 BOARD OF COUNTY COMMISSIONERS
6
7 By: [Signature] By: [Signature]
8 Deputy Clerk Mayor Melissa McKinlay
9

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY
12
13 By: [Signature]
14 County Attorney
15

16 EFFECTIVE DATE: Filed with the Department of State on the 21st day of
17 December, 2017.

STATE OF FLORIDA
I, SHARON R. BOCK, Clerk of the Board of County Commissioners,
certify that the foregoing resolution was
filed in my office on this 19th day of December, 2017
dated at West Palm Beach, Florida.
By: [Signature]
Deputy Clerk

From: [Helene Hvizd](#)
To: "julie@drjuliehamilton.com"; [Todd J. Bonlarron](#)
Cc: [Erin Taylor](#)
Subject: RE: Tightening the ordinance
Date: Monday, December 11, 2017 12:40:48 PM
Attachments: [PBC Prohibition of Conversion Therapy on Minors Ordinance Final 12.6.17 Strike-Through.pdf](#)

Hello Dr. Hamilton,

Thank you for your suggested edits to the ordinance. We made a couple of amendments to the ordinance (copy attached), and it is currently circulating for agenda approval.

I see that you copied Todd. He would be the person to give me final approval to make your suggested edits, so I will await Todd's direction.

Thank you again for taking the time to send your suggestions. I appreciate your professionalism!

Helene

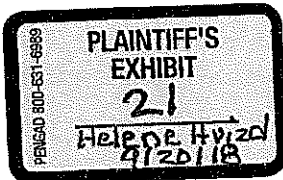
From: julie@drjuliehamilton.com [mailto:julie@drjuliehamilton.com]
Sent: Monday, December 11, 2017 12:22 PM
To: Helene Hvizd <HHvzd@pbcgov.org>; Todd J. Bonlarron <TBonlarr@pbcgov.org>
Subject: Tightening the ordinance

Dear Helene,

Commissioner Abrams suggested tightening the language in the ordinance, and you said that we could send you suggestions. So, I am sending some ideas. As you know, I am completely opposed to the ordinance for a number of reasons. Instead of your current ordinance, I would recommend the attached resolution. I believe this one is reasonable and defensible. However, if the HRC or Commissioners are not willing to consider the attached resolution, would you consider making the following changes to the current ordinance (which again, I believe, is unwarranted, harmful, and unlawful).

Suggested changes: Add the word "coercive" before the word "counseling" on page 5, section 4, line 13, and adding "against the individual's will" on line 16 and at the end of the paragraph:

Conversion Therapy means any **coercive** counseling, practices or treatments that seek to change an individual's sexual orientation or gender identity **against the individual's will**, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-



orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity **against the individual's will**.

Again, I do not support this ordinance at all, but this change might make it less harmful to minors.

Thank you for your consideration of this,
Julie Hamilton

ORDINANCE NO. 20__ - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE "PROHIBITION OF CONVERSION THERAPY ON MINORS ORDINANCE"; PROVIDING FOR INTENT; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR VIOLATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 WHEREAS, as recognized by major professional associations of mental health
2 practitioners and researchers in the United States and elsewhere for nearly 40 years, being
3 lesbian, gay, bisexual, transgender or gender nonconforming, or questioning (LGBT or
4 LGBTQ) is not a mental disease, disorder, illness, deficiency or shortcoming; and

5 WHEREAS, the American Academy of Pediatrics in 1993 published an article in its
6 Journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is
7 contraindicated, since it can provoke guilt and anxiety while having little or no potential for
8 achieving changes in orientation;" and

9 WHEREAS, the American Psychiatric Association in December 1998 published its
10 opposition to any psychiatric treatment, including reparative or conversion therapy, which
11 therapy regime is based on the assumption that homosexuality is a mental disorder per se or
12 that a patient should change his or her homosexual orientation; and

13 ~~WHEREAS, the American Psychological Association's Task Force on Appropriate~~
14 ~~Therapeutic Responses to Sexual Orientation conducted a systematic review of peer-reviewed~~
15 ~~journal literature on Sexual Orientation Change Efforts ("SOCE") and issued its report in 2009,~~
16 ~~citing research that SOCE can pose critical health risks to lesbian, gay, and bisexual people,~~
17 ~~including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal,~~
18 ~~suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and~~
19 ~~authenticity to others, increased self-hatred, hostility and blame towards parents, feelings of~~
20 ~~anger and betrayal, loss of friends and potential romantic partners, problems in sexual and~~
21 ~~emotional intimacy, sexual dysfunction, high risk sexual behaviors, a feeling of being~~
22 ~~dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and~~
23 ~~resources; and~~

1 **WHEREAS.** The American Psychological Association in 2009 issued a resolution on
2 Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts,
3 advising parents, guardians, young people, and their families “to avoid sexual orientation
4 change efforts that portray homosexuality as a mental illness or developmental disorder and to
5 seek psychotherapy, social support, and educational services that provide accurate information
6 on sexual orientation and sexuality, increase family and school support, and reduce rejection of
7 sexual minority youth”; and

8 **WHEREAS.** The American Psychoanalytic Association in June 2012 issued a position
9 statement on conversion therapy efforts, articulating that “As with any societal prejudice, bias
10 against individuals based on actual or perceived sexual orientation, gender identity or gender
11 expression negatively affects mental health, contributing to an enduring sense of stigma and
12 pervasive self-criticism through the internalization of such prejudice” and that psychoanalytic
13 technique “does not encompass purposeful attempt to ‘convert,’ ‘repair,’ change or shift an
14 individual’s sexual orientation, gender identity or gender expression,” such efforts being
15 inapposite to “fundamental principles of psychoanalytic treatment and often result in
16 substantial psychological pain by reinforcing damaging internalized attitudes”; and

17 **WHEREAS.** the American Academy of Child & Adolescent Psychiatry in 2012
18 published an article in its Journal, Journal of the American Academy of Child and Adolescent
19 Psychiatry, stating that “[c]linicians should be aware that there is no evidence that sexual
20 orientation can be altered through therapy and that attempts to do so may be harmful. There is
21 no empirical evidence adult homosexuality can be prevented if gender nonconforming children
22 are influenced to be more gender conforming. Indeed, there is no medically valid basis for
23 attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may
24 encourage family rejection and undermine self-esteem, connectedness and caring, important
25 protective factors against suicidal ideation and attempts. Given that there is no evidence that
26 efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that
27 they carry the risk of significant harm, such interventions are contraindicated”; and

28 **WHEREAS,** the Pan American Health Organization, a regional office of the World
29 Health Organization, issued a statement in 2012 stating: “These supposed conversion therapies
30 constitute a violation of the ethical principles of health care and violate human rights that are
31 protected by international and regional agreements.” The organization also noted that

1 reparative therapies “lack medical justification and represent a serious threat to the health and
2 well-being of affected people;” and

3 **WHEREAS**, in 2014 the American School Counselor Association issued a position
4 statement that states: “It is not the role of the professional school counselor to attempt to
5 change a student’s sexual orientation or gender identity. Professional school counselors do not
6 support efforts by licensed mental health professionals to change a student’s sexual orientation
7 or gender as these practices have been proven ineffective and harmful”; and

8 **WHEREAS**, a 2015 report of the Substance Abuse and Mental Health Services
9 Administration, a division of the U.S. Department of Health and Human Services, “Ending
10 Conversion Therapy: Supporting and Affirming LGBTQ Youth” further reiterates based on
11 scientific literature that conversion therapy efforts to change an individual’s sexual orientation,
12 gender identity, or gender expression, is a practice not supported by credible evidence and has
13 been disavowed by behavioral health experts and associations; perpetuates outdated views of
14 gender roles and identities, and negative stereotypes; and may put young people at risk of
15 serious harm. The report recognizes that same-gender sexual orientation (including identity,
16 behavior, and attraction) is part of the normal spectrum of human diversity and does not
17 constitute a “mental disorder; and

18 **WHEREAS**, the American College of Physicians wrote a position paper in 2015
19 opposing the use of “conversion,” “reorientation,” or “reparative” therapy for the treatment of
20 LGBT persons, stating that “[a]vailable research does not support the use of reparative therapy
21 as an effective method in the treatment of LGBT persons. Evidence shows that the practice
22 may actually cause emotional or physical harm to LGBT individuals, particularly adolescents
23 or young persons”; and

24 **WHEREAS**, two federal appeals courts found that a prohibition of SOCE does not
25 violate first amendment rights and noted that the subject laws only required mental health
26 providers who wish to engage in practices that seek to change a minor’s sexual orientation
27 either to wait until the minor turns 18 or be subject to professional discipline, leaving mental
28 health providers free to discuss or recommend treatment and to express their views on any
29 topic; and

30 **WHEREAS**, Palm Beach County does not intend to prevent mental health providers
31 from speaking to the public about SOCE; expressing their views to patients; recommending
32 SOCE to patients; administering SOCE to any person who is 18 years of age or older; or

1 referring minors to unlicensed counselors, such as religious leaders. This Ordinance does not
2 prevent unlicensed providers, such as religious leaders, from administering SOCE to children
3 or adults; nor does it prevent minors from seeking SOCE from mental health providers in other
4 political subdivisions outside of Palm Beach County, Florida; and

5 **WHEREAS**, Palm Beach County has a compelling interest in protecting the physical
6 and psychological well-being of minors, including but not limited to lesbian, gay, bisexual,
7 transgender and questioning youth, and in protecting its minors against exposure to serious
8 harms caused by sexual orientation and gender identity change efforts; and

9 **WHEREAS**, the Palm Beach County Board of County Commissioners hereby finds the
10 overwhelming research demonstrating that sexual orientation and gender identity change efforts
11 can pose critical health risks to lesbian, gay, bisexual, transgender or questioning persons, and
12 that being lesbian, gay, bisexual, transgender or questioning is not a mental disease, mental-
13 disorder, mental illness, deficiency, or shortcoming; and

14 **WHEREAS**, the Palm Beach County Board of County Commissioners finds minors
15 receiving treatment from licensed therapists in Palm Beach County who may be subject to
16 conversion or reparative therapy are not effectively protected by other means, including, but
17 not limited to, other state statutes, local ordinances, or federal legislation; and

18 **WHEREAS**, the Palm Beach County Board of County Commissioners desires to
19 prohibit, within the geographic boundaries of Palm Beach County, the practice of sexual
20 orientation or gender identity change efforts on minors by licensed therapists only, including
21 reparative and/or conversion therapy, that have been demonstrated to be harmful to the physical
22 and psychological well-being of lesbian, gay, bisexual, transgender and questioning persons.

23 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
24 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

25 **SECTION I. INTENT:**

26 The intent of this Ordinance is to protect the physical and psychological well-being of
27 minors, including but not limited to lesbian, gay, bisexual, transgender and/or questioning
28 youth, from exposure to the serious harms and risks caused by conversion therapy or reparative
29 therapy by licensed providers, including but not limited to licensed therapists and the
30 unlicensed individuals who perform counseling as part of professional training to become a
31 licensed provider. This Ordinance is an exercise of the County's police power for the benefit

1 of the public health, safety, and welfare; and its sections are to be liberally construed to
2 accomplish that purpose.

3 **SECTION 2. TITLE:**

4 This Ordinance shall be titled "Prohibition of Conversion Therapy on Minors
5 Ordinance."

6 **SECTION 3. APPLICABILITY:**

7 This Ordinance shall be applicable within the unincorporated areas of Palm Beach
8 County, and in all municipalities that have not adopted an ordinance in conflict. Unless
9 otherwise provided, nothing in this Ordinance shall be construed to relieve any person from
10 compliance with any applicable county or municipal regulations.

11 **SECTION 4. DEFINITIONS:**

12 As used in this Ordinance, unless some other meaning is plainly intended:

13 *Conversion Therapy* means ~~the any counseling, practices or treatments that~~ of seeking
14 to change an individual's sexual orientation or gender identity, including but not limited to
15 efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce
16 sexual or romantic attractions or feelings toward individuals of the same gender or sex.
17 Conversion therapy does not include counseling that provides support and assistance to a
18 person undergoing gender transition, or counseling that provides acceptance, support, and
19 understanding of a person or facilitates a person's coping, social support, and identity
20 exploration and development, including sexual-orientation-neutral interventions to prevent or
21 address unlawful conduct or unsafe sexual practices; ~~and, as long as such counseling~~ does not
22 seek to change an individual's sexual orientation or gender identity.

23 *Minor* means any person less than eighteen (18) years of age.

24 *Provider* means any person who is licensed by the State of Florida to perform
25 counseling pursuant to Chapters 456, 458, 459, 490 or 491 of the Florida Statutes as such
26 chapters may be amended, including but not limited to medical practitioners, osteopathic
27 practitioners, psychologists, psychotherapists, social workers, marriage and family therapists,
28 and licensed counselors, or a person who performs counseling as part of the person's
29 professional training for any of these professions. A provider does not include members of the
30 clergy who are acting in their roles as clergy or pastoral counselors and providing religious
31 counseling to congregants, as long as they do not hold themselves out as operating pursuant to
32 any of the aforementioned Florida Statutes licensures.

1 **SECTION 5. VIOLATIONS:**

2 It shall be unlawful for any Provider to engage in conversion therapy on any minor
3 regardless of whether the Provider receives monetary compensation in exchange for such
4 services.

5 **SECTION 6. PENALTIES:**

6 Pursuant to section 125.69, Florida Statutes, a violation of this ordinance shall be
7 prosecuted in the same manner as misdemeanors are prosecuted. A violation of any provision
8 of this Ordinance shall be punished by a fine of \$250.00 for the first violation and \$500.00 for
9 each repeat violation.

10 **SECTION 7. ENFORCEMENT**

11 In addition to the penalties set forth in Section 6 of this Ordinance, pursuant to section
12 125.69(4), Florida Statutes, this Ordinance is enforceable by the County's Code Enforcement
13 Officers and by all means provided by law. Additionally, Palm Beach County may choose to
14 enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County.

15 **SECTION 8. REPEAL OF LAWS IN CONFLICT:**

16 All local laws and ordinances in conflict with any provision of this Ordinance are
17 hereby repealed to the extent of such conflict.

18 **SECTION 9. SEVERABILITY:**

19 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
20 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
21 such holding shall not affect the remainder of this Ordinance.

22 **SECTION 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

23 The provisions of this Ordinance shall become and be made a part of the Palm Beach
24 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
25 such, and the word ordinance may be changed to section, article, or other appropriate word.

26 **SECTION 11. CAPTIONS:**

27 The captions, section headings, and section designations used in this Ordinance are for
28 convenience only and shall have no effect on the interpretation of the provisions of this
29 Ordinance.

30 **SECTION 12. EFFECTIVE DATE:**

31 The provisions of this Ordinance shall become effective upon filing with the
32 Department of State.

1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
2 County, Florida, on this the ____ day of _____, 20__.

3
4 SHARON R. BOCK, CLERK PALM BEACH COUNTY, FLORIDA, BY ITS
5 BOARD OF COUNTY COMMISSIONERS
6

7 By: _____ By: _____
8 Deputy Clerk Mayor
9

10 APPROVED AS TO FORM AND
11 LEGAL SUFFICIENCY

12
13 By: _____
14 County Attorney
15

16 EFFECTIVE DATE: Filed with the Department of State on the ____ day of
17 _____, 20__.

From: julie@drjuliehamilton.com
To: [Helene Hvizd](mailto:Helene.Hvizd@pbcgov.org); [Todd J. Bonlarron](mailto:TBonlarr@pbcgov.org)
Cc: [Erin Taylor](mailto:ETaylor2@pbcgov.org)
Subject: RE: Tightening the ordinance
Date: Tuesday, December 12, 2017 3:14:46 PM

Helene,

In Wellington, the commissioner who is a defense attorney for malpractice suits suggested using wording from the APA task force. He said that in line 22 of page 5 in the definition section at the end of that paragraph you could add the line "as long as such counseling does not impose a specific sexual identity outcome" (A quote taken from the APA task force report) to replace the line that currently reads "as long as such counseling does not seek to change an individuals sexual orientation or gender identity". He said that therapists should still have the option of helping clients accomplish their goals of change, as long as those goals were not imposed on the client. To accomplish that, I think you would still have to add the words "against the clients will" to the end of the sentence in line 16 as I noted in my original email to you.

Thank you again for your willingness to consider this!
Julie

----- Original Message -----

Subject: RE: Tightening the ordinance
From: Helene Hvizd <HHvizd@pbcgov.org>
Date: Mon, December 11, 2017 11:21 am
To: "julie@drjuliehamilton.com" <julie@drjuliehamilton.com>, "[Todd J. Bonlarron](mailto:TBonlarr@pbcgov.org)" <TBonlarr@pbcgov.org>
Cc: Erin Taylor <ETaylor2@pbcgov.org>

Fantastic, Dr. Hamilton! Thank you!

From: julie@drjuliehamilton.com [<mailto:julie@drjuliehamilton.com>]
Sent: Monday, December 11, 2017 1:19 PM
To: Helene Hvizd <HHvizd@pbcgov.org>; Todd J. Bonlarron <TBonlarr@pbcgov.org>
Cc: Erin Taylor <ETaylor2@pbcgov.org>
Subject: RE: Tightening the ordinance

Helene,

Thank you for sending the revised ordinance and for your kind words. Thank you for taking the Whereas clause containing the APA misquote out of the ordinance. And thank you for trying to make it more clear. My concern with the current change is that the word "practice" would still apply to speech because the only "practice" that a counselor has is conversation.

I hope Todd will consider the change that I suggested. But if for some reason the change that I recommended is unacceptable, I might have another suggestion. There was a change that was recommended by a commissioner in Wellington. He is a defense attorney for malpractice cases, so he understands healthcare roles and rights. I will try to find that language and send it to you. I might not be back on line until this evening or tomorrow. But I will get that to you as soon as I locate it. Thank you again for considering input!!
Julie

----- Original Message -----

Subject: RE: Tightening the ordinance
From: Helene Hvizd <HHvizd@pbcgov.org>
Date: Mon, December 11, 2017 10:40 am
To: "julie@drjuliehamilton.com" <julie@drjuliehamilton.com>,
"Todd J. Bonlarron" <TBonlarr@pbcgov.org>
Cc: Erin Taylor <ETaylor2@pbcgov.org>

Hello Dr. Hamilton,

Thank you for your suggested edits to the ordinance. We made a couple of amendments to the ordinance (copy attached), and it is currently circulating for agenda approval.

I see that you copied Todd. He would be the person to give me final approval to make your suggested edits, so I will await Todd's direction.

Thank you again for taking the time to send your suggestions. I appreciate your professionalism!

Helene

From: julie@drjuliehamilton.com [mailto:julie@drjuliehamilton.com]
Sent: Monday, December 11, 2017 12:22 PM
To: Helene Hvizd <HHvizd@pbcgov.org>; Todd J. Bonlarron <TBonlarr@pbcgov.org>
Subject: Tightening the ordinance

Dear Helene,

Commissioner Abrams suggested tightening the language in the ordinance, and you said that we could send you suggestions. So, I am sending some ideas. As you know, I am completely opposed to the ordinance for a number of reasons. Instead of your current ordinance, I would recommend the attached resolution. I believe this one is reasonable and defensible. However, if the HRC or Commissioners are not willing to consider the attached resolution, would you consider making the following changes to the current ordinance (which again, I believe, is unwarranted, harmful, and unlawful).

Suggested changes: Add the word "coercive" before the word "counseling" on page 5, section 4, line 13, and adding "against the individual's will" on line 16 and at the end of the paragraph:

Conversion Therapy means any **coercive** counseling, practices or treatments that seek to change an individual's sexual orientation or gender identity **against the**

individual's will, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex. Conversion therapy does not include counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity **against the individual's will**.

Again, I do not support this ordinance at all, but this change might make it less harmful to minors.

Thank you for your consideration of this,
Julie Hamilton

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

121-10

Otto v. City of Boca

Shayna Ginsburg

Defendant County of Palm Beach

9/20/2018

Page 1

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 2

1 APPEARANCES:
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22 Email: Cfernandez@myboca.us
23 Also Present:
24 Robert W. Otto, Ph.D., LMFT
Julie H. Hamilton, Ph.D., LMFT
25 Michael Woika, Assistant City Manager for the

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 3

1	INDEX	
		PAGE
2	DR. SHAYNA GINSBURG	4
	DIRECT EXAMINATION BY MR. MIHET	4
3	CROSS EXAMINATION BY MS. FAHEY	25
	REDIRECT EXAMINATION BY MR. MIHET	28
4	RECROSS EXAMINATION BY MS. FAHEY	41

5	EXHIBITS	
		PAGE
6	Plaintiffs' Exhibit No. 22 marked for identification	30
7	(Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation)	

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Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 4

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

Florida Court Reporting
561-689-0999

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 5

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 6

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 7

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 --

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 8

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 9

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 10

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 11

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 12

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 13

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 14

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 15

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 16

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 17

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 18

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 19

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 20

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 21

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 22

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 23

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 24

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 25

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 26

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 27

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 28

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 29

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 --

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 30

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 31

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 32

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 33

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 34

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 35

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.

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 36

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 --

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 37

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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 38

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:

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 39

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?

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 40

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 --

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 41

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 RE CROSS 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

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 42

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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Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 43

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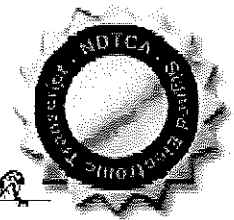
CERTIFICATE OF OATH

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



RACHELE L. CIBULA
Notary Public, State of Florida
My Commission #FF 936928
Expires: December 14, 2019

Otto v. City of Boca

Shayna Ginsburg

9/20/2018

Page 44

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C E R T I F I C A T E

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

121-11

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 9:18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO, PH.D., LMFT, and
JULIE H. HAMILTON, PH.D., LMFT,

Plaintiffs,

v.

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

Defendants.

DECLARATION OF HELENE HVIZD

I, Helene Hvizd, declare:

1. I am a Senior Assistant County Attorney with the Palm Beach County Attorney's office. I submit this declaration in support of Defendant Palm Beach County's Reply to Plaintiffs' Consolidated Response in Opposition to Defendants' Motions to Dismiss. I have personal knowledge of the information set forth herein.

2. I drafted Palm Beach County's Ordinance No. 2017-046 ("Ordinance") and have personal knowledge of which documents the Ordinance cites.

3. Attached hereto as Exhibit 1 is a true and correct copy of Ordinance No. 2017-046 [PBC 000001 – PBC 000014].

4. Attached hereto as Exhibit 2 is the 1993 American Academy of Pediatrics Position Statement [PBC 000015 – PBC 000020] and is a true and correct copy of the article referred to in the second Whereas clause of the Ordinance.

5. Attached hereto as Exhibit 3 is the 1998 American Psychiatric Association Position Statement [PBC 000021] and is a true and correct copy of the opposition paper referred to in the third Whereas clause of the Ordinance.

6. Attached hereto as Exhibit 4 is the 2009 American Psychological Association Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation [PBC 007493 – PBC 007632] and is a true and correct copy of the resolution referred to in the fourth Whereas clause of the Ordinance.

7. Attached hereto as Exhibit 5 is the American Psychological Associations August 2009 Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts [PBC 000022 – PBC 000026] and is a true and correct copy of the research summary referred to in the fifth Whereas clause of the Ordinance.

8. Attached hereto as Exhibit 6 is the June 2012 American Psychoanalytic Association Position Statement [PBC 000027] and is a true and correct copy of the position statement referred to in the sixth Whereas clause of the Ordinance.

9. Attached hereto as Exhibit 7 is the 2012 American Academy of Child & Adolescent Psychiatry Position Statement [PBC 000028 – PBC 000045] and is a true and correct copy of the article referred to in the seventh Whereas clause of the Ordinance.

10. Attached hereto as Exhibit 8 is the 2012 Pan American Health Organization news release [PBC 000046 – PBC 000050] and is a true and correct copy of the news release referred to in the eighth Whereas clause of the Ordinance.

11. Attached hereto as Exhibit 9 is the 2012 Pan American Health Organization Position Statement [PBC 015765 – PBC 015768] and is a true and correct copy of the position statement referred to in the eighth Whereas clause of the Ordinance.

12. Attached hereto as Exhibit 10 is the 2014 American School Counsel Association Position Statement [PBC 015763 – PBC 015764] and is a true and correct copy of the statement referred to in the ninth Whereas clause of the Ordinance.

13. Attached hereto as Exhibit 11 is the 2015 Substance Abuse and Mental Health Services Administration Position [PBC 000053 – PBC 000128] and is a true and correct copy of the report referred to in the tenth Whereas clause of the Ordinance.

14. Attached hereto as Exhibit 12 is the 2015 American College of Physicians Position Statement [PBC 000129 – PBC 000163] and is a true and correct copy of the position paper referred to in the eleventh Whereas clause of the Ordinance.

15. On September 10, 2018, I accessed www.aamft.org/About_AAMFT/Position_On_Couples.aspx and Exhibit 13 [PBC 015783 – PBC 015785] is a true and correct copy of what was found at that website.

Pursuant to Fla. Stat. 92.525, under penalty of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.



Helene Hvizd, Esquire
Senior Assistant County Attorney
Florida Bar No. 868442

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 10, 2018, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to the authorized CM/ECF filers.

/s/ Rachel Fahey

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**SERVICE LIST
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 18-CIV-80771-RLR**

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121-17

Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents

Children and adolescents who are growing up gay, lesbian, bisexual, gender nonconforming, or gender discordant experience unique developmental challenges. They are at risk for certain mental health problems, many of which are significantly correlated with stigma and prejudice. Mental health professionals have an important role to play in fostering healthy development in this population. Influences on sexual orientation, gender nonconformity, and gender discordance, and their developmental relationships to each other, are reviewed. Practice principles and related issues of cultural competence, research needs, and ethics are discussed. *J. Am. Acad. Child Adolesc. Psychiatry*, 2012;51(9):957–974. **Key Words:** sexual orientation, homosexuality, bisexuality, gender identity disorder, gender discordant.

Scientific studies demonstrating the healthy, adaptive functioning of the great majority of gay and lesbian adults paved the way toward removal of homosexuality as an illness from the *DSM* in 1973.¹ Homosexuality is now recognized as a nonpathological variant of human sexuality. Although the great majority of gay and lesbian individuals have normal mental health, as a group they experience unique stressors and developmental challenges. Perhaps in part as a consequence of these challenges, adult and adolescent members of sexual minorities (defined below) develop depression, anxiety disorders, substance abuse, and suicidality at rates that are elevated in comparison with those in the general population.^{2,3} Thus, psychosocial distress may account for the different rates in depression, hopelessness, and current suicidality seen between gay, lesbian, and bisexual adolescents and their heterosexual peers.⁴ Studies in the U.S. and the Netherlands document this problem continuing into adulthood, and show a significant association among stigma, prejudice, discrimination, and poor mental health.^{2,5,6}

Sexual development comprises biological, psychological, and social aspects of experience. Extensive scientific research, described below, has been conducted on the influence of these factors on sexual orientation and gender in recent years.

Much of what has been learned scientifically about sexual orientation and gender development in the last generation has occurred in parallel with societal changes in attitudes toward sexual orientation and gender roles. While bias against sexual minorities is declining in many segments of society, intolerance is still widespread. Children and adolescents are exposed to these negative attitudes and are affected by them. This Practice Parameter is intended to foster clinical competence in those caring for children and adolescents who are growing up to be gay, lesbian, bisexual, gender variant, or transgender, reflecting what is currently known about best clinical practices for these youth.

METHODOLOGY

The list of references for this Practice Parameter was developed by online searches of Medline and PsycINFO. A search of PsycINFO articles published since 1806 and Medline articles published from 1950 through April 27, 2010, of key-word terms “sexual orientation,” “gay,” “homosexuality,” “male homosexuality,” “lesbianism,” “bisexuality,” “transgender,” “transsexualism,” “gender variant,” “gender atypical,” “gender identity disorder,” and “homosexuality, attitudes toward” limited to English language, hu-

man subjects, and ages 0–17 years (PsycINFO) or 0–18 years (Medline) produced 7,825 unique and 967 duplicate references.

To take full advantage of the MeSH Subject Headings database, a subsequent search was conducted of articles in the Medline database through May 3, 2010 using MeSH Subject Headings terms “homosexuality,” “male homosexuality,” “female homosexuality,” “bisexuality,” “transsexualism,” and limiting articles to those written in English and related to human subjects, all child and adolescent ages (0–18 years). This search produced 2,717 references.

Similarly, to take full advantage of the Thesaurus Terms (Descriptors) database, a subsequent search was conducted of articles in the PsycINFO articles through May 14, 2010 using Thesaurus Terms (Descriptors) “sexual orientation,” “homosexuality,” “male homosexuality,” “female homosexuality,” “lesbianism,” “bisexuality,” “transgender,” “transsexualism,” “gender identity disorder,” and “homosexuality (attitudes toward)” and limiting articles to those written in English and related to human subjects of childhood age (0–12) and adolescent age (13–17). This search produced 1,751 references.

The combined search in Medline MeSH Subject Headings and PsycINFO Thesaurus Terms (Descriptors) databases produced 4,106 unique references and 361 duplicate references. Of the 4,106 unique references, the following were winnowed out: 345 books or book sections; 94 dissertation abstracts; 18 editorials; 13 articles whose focus was primarily historical; 104 theoretical formulation or comment without peer review; 163 case reports or brief series; 32 related primarily to policy or law; 19 related to news; 74 related primarily to research methods; 736 primarily about human immunodeficiency virus (HIV)/acquired immune deficiency syndrome (AIDS) and an additional 404 about early HIV/AIDS or other sexually transmitted illness; one each related to an award, book review, or interview; 168 that dealt primarily with diseases, reproduction, paraphilia or intersex conditions beyond the scope of the Parameter; an additional 8 that fell outside the specified age range; an additional 26 duplicates that were found; and 10 dating from 1960 to 1975 related to aversive or “reparative” techniques intended to change sexual orientation that are inconsistent with current ethical position statements of the American Psychiatric Association.⁷

This winnowing process yielded 1,889 references.

To help ensure completeness of the search strategies, the search results using Medline MeSH terms and PsycINFO Thesaurus terms (Descriptors) were compared to key-word terms of the Medline and PsycINFO databases. This comparison demonstrated 1,113 overlapping references, with 6,712 unique to the key-word search and 2,993 unique to the combined Thesaurus Term (Descriptor) and MeSH searches.

An updated Medline search of articles through March 3, 2011, of the MeSH database using the same Subject Headings and limits used in the previous search produced 138 references. An updated PsycINFO search of articles through March 3, 2011, of the Thesaurus database using the same Terms (Descriptors) and limits used in the previous search produced 107 references.

Throughout the search, the bibliographies of source materials including books,^{8–10} book chapters,¹¹ and review articles.^{12–14} were consulted for additional references that were not produced by the online searches. Bibliographies of publications by the following experts were also examined to find additional pertinent articles not produced by online searches: Jennifer I. Downey, M.D., Jack Drescher, M.D., Richard C. Friedman, M.D., Gilbert Herdt, Ph.D., Richard Isay, M.D., Ellen Perrin, M.D., Heino F. L. Meyer-Bahlburg, Dr. rer. nat., Gary Remafedi, M.D., M.P.H., and Kenneth Zucker, Ph.D. Recent studies and discussions at scientific meetings in the past decade were considered for inclusion.

From the list of references assembled in this way, references were selected whose primary focus was mental health related to sexual orientation, gender nonconformity, and gender discordance in children and adolescents. References that were not a literature review, published in peer-reviewed literature, or based on methodologically sound strategies such as use of population-based, controlled, blinded, prospective, or multi-site evidence were eliminated. References were selected that illustrated key points related to clinical practice. When more than one reference illustrated a key point around which there is general consensus, preference was given to those that were more recent, relevant to the U.S. population, most illustrative of key clinical concepts, based upon larger samples, prospective study design, or meta-analysis. When discussing issues around which consensus is not yet established,

citations illustrating a representative sample of multiple viewpoints were selected.

DEFINITIONS

Many terms related to sexual development are being continually updated. The following definitions reflect current terminology, and are used in this Practice Parameter.

- *Sex*, in the sense of being male or female, refers to a person's anatomical sex. (Although usually considered dichotomously male or female, disorders of sex development can lead to intersex conditions, which are beyond the scope of this Practice Parameter).
- *Gender* refers to the perception of a person's sex on the part of society as male or female.
- *Gender role behavior* refers to activities, interests, use of symbols, styles, or other personal and social attributes that are recognized as masculine or feminine.
- *Gender identity* refers to an individual's personal sense of self as male or female. It usually develops by age 3, is concordant with a person's sex and gender, and remains stable over the lifetime. For a small number of individuals, it can change later in life.
- *Identity* refers to one's abstract sense of self within a cultural and social matrix. This broader meaning (equivalent to ego identity) is distinct from gender identity, and usually consolidated in adolescence.
- *Sexual orientation* refers to the sex of the person to whom an individual is erotically attracted. It comprises several components, including sexual fantasy, patterns of physiological arousal, sexual behavior, sexual identity, and social role.
 - *Homosexual* people are attracted erotically to people of the same sex, and are commonly referred to as gay in the case of males, and gay or lesbian in the case of females.
 - *Heterosexual* people are attracted erotically to people of the other sex.
 - *Bisexual* people are attracted erotically to people of both sexes.
- *Sexual minority* refers to homosexual and bisexual youth and adults.
- *Sexual prejudice* (or more archaically, *homophobia*) refers to bias against homosexual people. "Homophobia" is technically not a phobia; like other prejudices, it is characterized by hostility and is thus a misnomer, but the term is used colloquially.¹⁵

- *Internalized sexual prejudice* (or colloquially, *internalized homophobia*) is a syndrome of self-loathing based upon the adoption of anti-homosexual attitudes by homosexual people themselves.
- *Heterosexism* refers to individual and societal assumptions—sometimes not explicitly recognized—promoting heterosexuality to the disadvantage of other sexual orientations.
- *Childhood gender nonconformity* refers to variation from norms in gender role behavior such as toy preferences, rough-and-tumble play, aggression, or playmate gender. The terms *gender variance* and *gender atypicality* have been used equivalently in the literature.
- *Gender discordance* refers to a discrepancy between anatomical sex and gender identity. The term *gender identity variance* has been used to denote a spectrum of gender-discordant phenomena in the literature.
 - *Transgender* people have a gender identity that is discordant with their anatomical sex.
 - *Transsexuals* are transgender people who make their perceived gender and/or anatomical sex conform with their gender identity through strategies such as dress, grooming, hormone use and/or surgery (known as *sex reassignment*).
- *Gender minority* refers to gender nonconforming and gender-discordant children, adolescents, and adults.

HOMOSEXUALITY

Homosexuality comprises multiple components, and can refer to several aspects of same-sex attraction, including physiological arousability, erotic fantasy, sexual behavior, psychological identity, or social role. These facets of homosexuality can be congruent or incongruent in any given person.^{9,16} Many men and women with homosexual desire suppress their feelings or behavior, agonize over sexual orientation, or have homosexual relationships they keep secret while maintaining a heterosexual public identity.

Not surprisingly, rates of homosexuality vary depending upon definition and study method. In one study, adult males reported same-sex experience rates of 2.7% for the past year, 4.9% since age 18 years, and approximately 7–9% since puberty; for women, rates were 1.3%, 4.1%, and approximately 4%, respectively.¹⁶ Homosexual-

ity was correlated with higher education and urban residence. In another study, rates of lifetime same-sex experience were 6.7% for men and 14.2% for women, and 3% of men and 4% of women reported a same-sex partner in the preceding 12 months.¹⁷

One large sample of predominantly white but geographically and socioeconomically diverse junior and senior high school students found that 10.1% of males and 11.3% of females were “unsure” of their sexual orientation, and 1.5% of males and 1.1% of females said they were “bisexual or predominantly homosexual.” Same-sex attractions were reported by 4.5% of males and 5.7% of females, same-sex fantasies by 2.2% of males and 3.1% of females, and same-sex sexual behavior by 1.6% of males and 0.9% of females. Of youth with homosexual experience, only 27.1% identified themselves as gay, consistent with a struggle with identity and group affiliation.¹⁸

Influences on Sexual Orientation

There is evidence that biological factors influence sexual orientation.¹⁹ Evidence from a variety of animal and human studies indicate that prenatal neuroendocrine factors, including levels of sex hormones, influence sexual organization of the brain in utero when neuronal patterns are laid down, and activate their sexual function beginning in puberty.

Neuroendocrine Factors. The *neurohormonal theory* of sexual orientation posits that prenatal sex hormone levels influence development of gender role behavior in childhood and sexual orientation in adulthood.²⁰ However, evidence of the organizing effects of sex hormones in females, and of the degree to which animal studies may be relevant to humans is limited.²¹ Although sex hormone levels during fetal brain development may influence childhood gender variance and adult sexual orientation, neither homosexuality nor gender variance is an indication for endocrine, genetic, or any other special medical evaluation.

Genetic Factors. There is evidence of a genetic influence on gender role behavior in childhood and sexual orientation in adulthood from family, twin, and molecular studies.¹⁹ One study found that, among gay adult males, 52% of monozygotic co-twins were homosexual, whereas only 22% of dizygotic co-twins and 11% of adoptive

brothers were homosexual.²² Another study found that, among adult lesbians, 48% of monozygotic co-twins, 16% of dizygotic co-twins, and 6% of adoptive sisters were also lesbian.²³ These data suggest a substantial heritable influence on sexual orientation.

Neuroanatomy. Limited evidence suggests that the size of certain neuroanatomical features may correlate with sexual orientation. In males, these may include the third anterior interstitial nucleus of the hypothalamus (INAH-3)²⁴ and the supra-chiasmatic nucleus (SCN).¹⁹ Further research is needed to confirm these results and to establish their significance. When used appropriately, information about biological influences on sexual orientation can be relevant to patients, families, and clinicians. However, such influences do not constitute an illness.

Psychological and Social Factors. Before the shift to empirically based psychiatry following the publication of *DSM-III*, prevailing psychiatric theory ascribed homosexuality to character pathology.¹ However, this view was revised because of a lack of empirical evidence. Although homosexuality is associated with somewhat elevated rates of certain psychiatric disorders such as depression and anxiety, there is no evidence from any controlled scientific study that most gay and lesbian people suffer from character pathology, or from any other mental illness; on the contrary, the vast majority do not.^{2,3} In addition, studies of character profiles and defense mechanisms have found no differences between nonheterosexuals and the general population.^{25,26} Another theory, that male homosexuality resulted from overly close mothers and hostile or distant fathers, was similarly not supported by empirical study of nonclinical populations.²⁷ Rather, nonclinical groups of gay adults, especially males, appear to have childhood histories of gender nonconformity; their family relationships may be the result rather than the cause of gender nonconformity, and may possibly be subject to a degree of recall bias.^{28,29}

Social learning does not appear to influence sexual orientation at the level of erotic fantasy or physiological arousal, although it can influence identity and social role in both positive and negative ways. Knowledge of other homosexual people is not necessary for the development of a homosexual orientation.⁹ The effect of parents’

sexual orientation on their children's own gender development and sexual orientation has been investigated in longitudinal studies of community samples in the U.S. and the United Kingdom.³⁰⁻³³ Parents' sexual orientation had no effect on gender development in general. This was true even though tolerance for gender nonconformity was more common among lesbian parents than among heterosexual ones. Boys raised by lesbian couples demonstrated greater gender role flexibility such as helping with housework, on average, a social strength that was also observed in some heterosexual-parent families, and that appears to be influenced more by parental attitudes than by parental sexual orientation. Regarding sexual orientation in adolescents who were raised by same-sex parents (including same-sex attraction, same-sex relationships, and gay identity), compared with the general population, no differences in sexual attraction are found; the large majority of adolescents raised by lesbian couples identify as heterosexual. However, in the minority of cases, when they do experience same-sex attractions, adolescent girls raised by lesbian parents appear to experience less stigma about acting on those feelings than those raised by heterosexual parents, and are accordingly slightly more likely to identify as bisexual.³³ Data on children raised by gay male couples is relatively lacking, but preliminary evidence appears to be consistent with the findings in children raised by lesbian couples.³⁰

Exposure to anti-homosexual attitudes can induce shame and guilt in those growing up gay, leading them to suppress a gay identity or same-sex behavior; conversely, well-adjusted gay or lesbian adults can provide positive role models for youth.⁷ There is no rational basis for depriving gay youth of such role models, as stereotyped views of homosexual adults as being more likely to commit sexual abuse of minors is not supported by evidence.^{34,35}

Psychosexual Development and Homosexual Orientation

Children display aspects of sexuality from infancy, and develop sexual feelings almost universally by adolescence or earlier. Although most people are predominantly heterosexual, some develop predominantly same-sex attractions and fantasies in or before adolescence. Most boys, whether heterosexual or homosexual, experience

a surge in testosterone levels and sexual feelings in puberty, and almost all begin to masturbate then.³⁶ Most girls experience more gradually increasing sexual desires. A majority of girls, although a smaller majority than among boys, also begin to masturbate, and they do so over a broader age range. Erotic fantasizing often accompanies masturbation, and may crystallize sexual orientation.³⁷ Whether heterosexual or homosexual, most men experience more frequent interest in sex and fantasies involving explicit sexual imagery, whereas women's sexual fantasies more often involve romantic imagery.³⁸ Sexual behavior with others typically begins in or after mid-to-late adolescence, although the age of onset of activity, number of partners, and practices vary greatly among individuals.¹⁶

One possible developmental pathway of male homosexuality proceeds from same-sex erotic fantasy to same-sex experience, then homosexual identity (self-labeling as gay), and finally a homosexual social role (identifying oneself as gay to others).³⁹ In comparison with those who first identify as gay in adulthood, those who identify as gay in adolescence may be somewhat more likely to self-label as gay before same-sex experience, and to achieve the foregoing gay developmental milestones earlier. This developmental path appears to be more common in recent cohorts than it once was,⁴⁰ perhaps reflecting the consolidation of a gay identity earlier in recent generations as the result of the increasing visibility of gay role models for adolescents. Developmental pathways may be more variable in females, whose sexuality is generally more fluid than that of males.⁴¹ Compared with men, women are more likely to experience homosexual as well as heterosexual attraction across the lifespan.¹² This may occur only in youth, may emerge in adulthood, or may be stable through life.⁴²

Certainty about sexual orientation and identity—both gay and straight—increases with age, suggesting “an unfolding of sexual identity during adolescence, influenced by sexual experience and demographic factors.”¹⁸ Although it may be difficult to tell which developmental path a particular adolescent is on at a given moment, a consistently homosexual pattern of fantasy, arousal, and attraction suggests a developmental path toward adult homosexuality. Retrospectively, many gay men and lesbians report same-sex erotic attraction from youth onward.²⁸

Development of Gender Role Behavior. Boys and girls generally exhibit different patterns of gender role behavior. These are quite distinct from erotic feelings, instead involving such areas as toy preferences, play patterns, social roles, same-sex or opposite-sex peer preferences, gesture, speech, grooming, dress, and whether aggression is expressed physically or through social strategies.^{43,44} For example, most boys are more likely than girls to engage in rough-and-tumble play. Most boys exhibit aggression physically, whereas most girls do so through verbal and social means. When given a choice, most boys are more likely to select conventionally masculine toys such as cars, trains, and adventure or fighting games, whereas most girls more frequently select conventionally feminine toys such as dolls, jewelry, and nurturing games. Most children exhibit a preference in middle childhood for same-sex playmates, or “sex-segregated play.”

Social, psychological, and biological factors, including genetic and environmental ones, interactively influence childhood gender role behavior and gender identity.^{45,46} Sex differences exist at multiple levels of brain organization, and there is evidence of neuroanatomic differences between gender-typical and gender-atypical individuals. At the same time, part of a developing child’s cognitive understanding of gender—for example, whether competitiveness and aggression can be feminine, or whether empathic, nurturing activities can be masculine—is related to societal norms.⁴⁷ As science has progressed, the complexity of the way in which factors related to gender role behavior such as genes, hormones, and the environment (including the social environment) interact have come to be better appreciated. Psychological experience is presumably reflected in brain structure or function, and each may influence the other. Previous questions about the roles of nature and nurture in causing childhood gender role differences have come to be understood as overly simplistic, and have been replaced by models showing biological and environmental factors influencing one another bidirectionally during critical periods in neurodevelopmental processes that are sometimes modifiable and sometimes fixed.

Gender Nonconformity and Its Developmental Relationship to Homosexuality. Most boys and girls display some variability in gender role behavior.

However, some children display toy, play, and peer preferences that are typical of the other gender. They have been referred to as “gender atypical,” “gender variant,” or, increasingly, “gender nonconforming” in scholarly literature. Childhood gender nonconformity often is a developmental precursor of homosexuality in males, and sometimes in females.⁴⁸

Although childhood gender nonconformity does not predict adult homosexuality with certainty, many gay men recall boyhood aversion to rough-and-tumble play, aggressive behavior, and competitive athletics.⁴⁹ In females, gender nonconformity (e.g., being a “tomboy”) is sometimes associated with adult homosexual orientation, although less consistently than in males.⁵⁰ Many gay people report having felt “different” from others long before the development of erotic feelings as such due to childhood gender nonconformity, which can elicit teasing, low peer status, and poor self-esteem; boys, who may particularly value adherence to gender norms, may be especially distressed.⁵¹

Although gender nonconforming children may experience discomfort or marked anxiety if forced to participate in gender-typical behaviors, their gender identity is entirely congruent with their sex. They do not express a wish to be, or belief they are, the other sex. On the contrary, gender nonconforming boys in particular may be upset by feelings they are insufficiently masculine, especially in contexts in which gender norms are highly valued.⁹

Adolescence, Sexual Orientation, and Identity Formation. Adolescence normally brings increased sexual and aggressive drives, social role experimentation, and separation and individuation for all youth. For those who are developing as gay, lesbian, bisexual, or transgender, the challenge of establishing one’s ego identity—including a sense of one’s sexual identity—is uniquely complex. Although most heterosexual youth take social acceptance of their sexual orientation for granted, sexual and gender minority youth usually cannot.⁹ They must cope with feeling different, ostracism, and dilemmas about revealing a sexual identity that is discrepant from family and social expectations (“coming out”).¹³ These adolescents are at somewhat elevated risk for having suicidal thoughts⁵²⁻⁵⁴; however, only a minority actually do, indicating a capacity for resilient coping in most.

Increasing social acceptance may encourage gay, lesbian, or bisexual adolescents to come out more frequently and at younger ages. However, some youth who become aware that they have homosexual feelings may be unprepared to cope with possible negative attitudes that they may encounter among their own family or peers.⁵⁵

Clinical Issues in Homosexuality

Effects of Stigma, Peer Rejection, Bias, and Bullying. Despite increasing tolerance, gender and sexual minority youth may experience criticism, ostracism, harassment, bullying, or rejection by peers, family, or others, even in relatively tolerant, cosmopolitan settings.⁵⁶ These can be associated with significant social problems, distress, and psychological symptoms.⁵⁷ They may be shunned or disparaged when they long for peer acceptance. A poor developmental fit between children's gender nonconformity or sexual orientation and parents' expectations can result in distress for both parent and child.¹¹

Internalized Sexual Prejudice. Even when not personally threatened, homosexual youths may be indirectly or overtly disparaged by family or peers. They may observe other gay people experiencing disrespect, humiliation, lower social status, or fewer civil rights. This experience may create difficulty reconciling the simultaneous developmental needs to form a sexual identity on the one hand and to feel socially acceptable on the other, typically a painful developmental conflict for gay youth.¹³ They may identify with others who are emotionally important to them but sexually prejudiced, leading to a syndrome of self-loathing (internalized sexual prejudice, or "internalized homophobia"). This may adversely affect self-esteem, lead to denial of same-sex attractions, cause difficulty identifying with other gay people, and prevent formation of healthy relationships.⁸

Revealing a Homosexual Orientation to Others. Many gay and lesbian youth hide their identity from others.⁵⁵ The dilemma over whether to reveal a homosexual orientation—to "come out of the closet" or "come out"—is a unique aspect of the psychological development of sexual and gender minority youth. They must decide whether to hide their sexual orientation (remain "in the closet," or "closeted") or risk rejection. Coming out is usually a highly significant event that may

be anticipated with dread. There is no single answer to the question whether a particular gay youth should come out, or to whom. This requires judgment about the youth's maturity and coping, as well as the social context. For some, coming out brings great relief. Others in hostile environments may come out with bravado before it is safe; for them, remaining closeted or in denial may be adaptive.

GENDER IDENTITY AND GENDER DISCORDANCE

For the vast majority of people, gender identity is established in toddlerhood, is consistent with biological sex, and remains fixed. This holds true for many children with gender-nonconformity in toy, play, and playmate preferences. However, some children experience not only gender nonconformity, but also discomfort with their biological sex. They derive comfort from being perceived as, or a wish to be, the other sex. The desire leads to discordance between gender identity and phenotypic sex, a core feature of gender identity disorder (GID) as conceptualized in the *DSM-IV*.⁵⁸ The diagnosis of GID in children is controversial, and the degree to which *DSM-IV* criteria reflect an illness or social bias against gender nonconformity has been debated.^{59,60}

Several different categories of gender discordance, each characterized by a unique developmental trajectory, have been described.⁶¹ They differ in regard to whether gender discordance emerges in childhood, adolescence or adulthood; whether the gender discordance is persistent or transient; and whether there is a post-transition homosexual or heterosexual orientation. These heterogeneous developmental trajectories may subsume different causes of gender discordance.

In follow-up studies of prepubertal boys with gender discordance—including many without any mental health treatment—the cross gender wishes usually fade over time and do not persist into adulthood, with only 2.2%⁶² to 11.9%⁶³ continuing to experience gender discordance. Rather, 75% become homosexual or bisexual in fantasy and 80% in behavior by age 19; some gender-variant behavior may persist.⁶³ The desistence of gender discordance may reflect the resolution of a "cognitive confusion factor,"⁶⁴ with increasing flexibility as children mature in thinking about gender identity and realize that one

can be a boy or girl despite variation from conventional gender roles and norms.

In contrast, when gender variance with the desire to be the other sex is present in adolescence, this desire usually does persist through adulthood.⁶⁵ This gender discordance may lead to life-long efforts to pass socially as the other sex through cross-dressing and grooming, or to seek sex reassignment through hormones or surgery.

Many of the clinical issues pertaining to gay and lesbian youth doubtlessly affect youth with gender discordance as well. In addition, children and especially adolescents with gender discordance have been found to have behavior problems and anxiety.^{66,67} Proposed causes include family and social opprobrium, the discrepancy between psychological and anatomic gender, and maternal and family psychopathology.^{65,68}

Factors Influencing Development of Gender Discordance

Causes of gender discordance may include biological factors.⁵⁹ Genetic males with gender discordance tend to have a later birth order, more male siblings, and lower birth weight, suggesting an influence of prenatal events that is poorly understood. Individuals with gender discordance may differ in central nervous system lateralization from the general population. Consistent with this hypothesis, they are more likely to be non-righthanded, to have abnormal EEG findings, and to have lateral otoacoustic processing consistent with their gender identity compared to a non-gender discordant population.⁵⁹ As with sexual orientation, variations in prenatal sex hormones may influence later gender identity, but do not appear to fully determine it.⁶⁹ There is evidence that the central bed nucleus of the stria terminalis (BSTc), a hypothalamic structure implicated in sexual behavior, is small in male to female transsexuals, similar to most females.⁷⁰

A hypothesis that inappropriately close maternal and overly distant paternal relationships causes gender discordance in boys was not borne out by empirical study, which found both mothers and fathers to be distant from sons with gender discordance, possibly a result, rather than the cause, of gender discordance.⁶² A theory that predisposing biological factors, temperamental anxiety, and parental tolerance for gender nonconformity interact to cause gender discordance has not been empirically tested.⁷¹ A controlled study found in-

creased rates of psychopathology in mothers of boys with gender discordance, but was not designed to assess a causal relationship.⁶⁸

PRINCIPLES

Principle 1. A comprehensive diagnostic evaluation should include an age-appropriate assessment of psychosexual development for all youths.

The psychiatric evaluation of every patient should take into consideration psychosexual development in a way that is appropriate to developmental level and the clinical situation. Questions about sexual feelings, experiences, and identity or about gender role behavior and gender identity can help clarify any areas of concern related to sexuality. The history should be obtained in a nonjudgmental way, for example without assuming any particular sexual orientation or implying that one is expected. This can be conveyed, for example, by the use of gender-neutral language related to the aim of affection (e.g., asking "is there someone special in your life?" rather than "do you have a boyfriend/girlfriend?") until the adolescent reveals a particular sexual orientation.

Sexual and gender minority adolescents very frequently face unique developmental challenges, as described above. If an initial screen indicates that issues of sexual orientation, gender nonconformity, or gender identity are of clinical significance, these challenges can be explored in greater depth.

Principle 2. The need for confidentiality in the clinical alliance is a special consideration in the assessment of sexual and gender minority youth.

Issues of confidentiality are important with all patients; they are particularly so with sexual and gender minority youth, who require a clinical environment in which they can explore their developing orientation and identity. Prior experiences of rejection and hostility may lead them to watch social cues vigilantly to determine whether they can safely reveal their sexual orientation to others without fear of bias or judgment. Any sign of these in a mental health professional may induce shame and undermine the clinical alliance.

Clinicians should bear in mind potential risks to patients of premature disclosure of sexual

orientation, such as family rejection or alienation from support systems, which might precipitate a crisis. They should be familiar with standard confidentiality practices for minors, and should protect confidentiality when possible to preserve the clinical alliance. This is particularly true when using media such as electronic health records, in which sensitive information can be easily disseminated. It is often helpful to emphasize reasonable expectations of privacy in the clinical relationship with sexual and gender minority youth—not to express shame, but to permit the exploration of sexual identity free from fear and with a sense of control over disclosure. As the development of sexual identity is variable, it is often desirable to allow youth to set the pace of self-discovery.

Principle 3. Family dynamics pertinent to sexual orientation, gender nonconformity, and gender identity should be explored in the context of the cultural values of the youth, family, and community.

Families of sexual or gender minority youth may consult mental health professionals for a variety of reasons, for example, to ask whether a disclosure of being gay represents a temporary stage, to request support for an adolescent, or to address problems such as bullying, anxiety, or depression. Just as some adults try to alter their sexual orientation,⁷² some parents may similarly hope to prevent their children from being gay. Difficulty coping with prejudice and stigma are often the appropriate focus of treatment.

Families treat gay or gender-discordant children with considerable variation. Whereas some accept their children, others explicitly or implicitly disparage or reject them, evoking shame and guilt; some force them to leave home. Although some are surprised by a child's coming out, others are not, and some are supportive. Families may have to fundamentally alter their ideas about a child who comes out, confront misconceptions, and grieve over lost hopes and/or expectations. Most parents experience distress following a child's coming out, frequently experiencing cognitive dissonance or feelings of anxiety, anger, loss, shame, or guilt; despite this, over time the majority become affirming and are not distressed.⁷³ Children frequently predict their parents' reactions poorly. Ideally, families will support their child as the same person they

have known and loved, although doing so may require time.

Youth who are rejected by their parents can experience profound isolation that adversely affects their identity formation, self-esteem, and capacity for intimacy; stigmatized teens are often vulnerable to dropping out of school, homelessness (which may lead to exploitation or heightened sexual risk), substance abuse, depression and suicide.⁵³ Clinicians should aim to alleviate any irrational feelings of shame and guilt, and preserve empathic and supportive family relationships where possible. They should assess parents' ideas about what constitutes normal, acceptable behavior, their cultural background, and any misconceptions or distorted expectations about homosexuality. These may include fears that their child will have only casual relationships, is fated to contract HIV/AIDS, cannot become a parent if desired, or will be ostracized. Stereotyped views of gay males as engaging only in numerous, indiscriminate sexual encounters are not supported by empirical research except in rare cases.¹² If such behavior is present and cannot be explained as part of normal adolescent sexual drive or identity formation, factors known to be associated with excessive sexuality in youth, such as a history of sexual abuse, family dysfunction, a pattern of conduct problems, or mood disorder such as bipolar disorder or depression, should be considered. Clinicians should screen for all forms of abuse or neglect (as in any evaluation), with careful attention to adverse family reactions to a youth's sexual or gender development. If these are suspected, they should involve child protective services as clinical appropriateness and ethical and legal mandates warrant. Support groups may be helpful for families in distress. In cases of protracted turmoil or family pathology, referrals to family therapy, individual or couples therapy may be appropriate.

Sexual and gender minority youth may experience unique developmental challenges relating to the values and norms of their ethnic group.⁷⁴ Various groups may place different emphasis on ideals of masculinity or femininity, on family loyalty, or on social conformity; some with authoritarian parenting ideals may sanction youth who reject traditional mores.

For gay and lesbian adolescents who are also members of ethnic minorities, the deleterious effect of anti-homosexual bias may be compounded by the effect of racial prejudice. In

response to unique pressures to gain group acceptance, they may give particular weight to negative group stereotyping of gay people. Gay and lesbian youth who are also members of ethnic minorities may be less likely than nonminority youth to be involved in gay-related social activities, to be comfortable with others knowing they are gay, or to disclose a gay identity.⁷⁵ In caring for youth who are members of both ethnic and sexual minorities, mental health professionals should take into account the unique complexities of identity formation for these groups.

Religion, often a valued aspect of identity, can vary widely regarding tolerance for sexual minorities. Membership in relatively more liberal or conservative religious groups is a significant influence on one's "sexual script," or social pattern in the expression of sexuality.¹⁶ Some minority denominations hold strong religious injunctions against homosexuality and stricter views about gender roles. As a result, members of certain religious groups can experience special challenges in integrating their sexual identity with family and community values. However, many religious groups are reconciling their traditions with more inclusive values. This remains an area of active social and cultural debate and change. Clinicians should respect the religious values of their patients, and should be aware of ongoing developments in religious thinking that may provide opportunities to integrate the religious and sexual aspects of identity.

Principle 4. Clinicians should inquire about circumstances commonly encountered by youth with sexual and gender minority status that confer increased psychiatric risk.

Bullying. Gay, lesbian, bisexual, and gender nonconforming youth are regularly exposed to hostile peers. Victims of peer harassment experience serious adverse mental health consequences including chronic depression, anxiety, and suicidal thoughts.⁷⁶⁻⁷⁸ Sexual and gender minority youth may benefit from support for coping with peer harassment. School programs including no-tolerance policies for bullying have proved effective.⁷⁹ Family treatment may be useful when sexual and gender minority youth are harassed in their families. Psychotherapy may help to avert or alleviate self-loathing related to identification with the aggressor. Clinicians should consider environmental interventions such as consultation or advocacy

with schools, police, or other agencies and institutions advocating enforcement of zero tolerance policies to protect youth who may be victims of harassment or bullying.

Suicide. Rates of suicidal thoughts and suicide attempts among gay, lesbian, and gender-variant youth are elevated in comparison with the general population.⁵²⁻⁵⁴ The developmental interval following same-sex experience but before self-acceptance as gay may be one of especially elevated risk.⁵⁴ Suicidal thoughts, depression, and anxiety are especially elevated among gay males who were gender-variant as children.^{80,81} Family connectedness, adult caring, and school safety are highly significant protective factors against suicidal ideation and attempts.⁸²

High-Risk Behaviors. Unique factors promoting risk-taking among gay and lesbian youth include maladaptive coping with peer, social and family ostracism, emotional and physical abuse, and neglect.⁸³ Fear of rejection may lead some youth to be truant, run away, become homeless, be sexually exploited, or become involved in prostitution. Positive coping skills and intact support systems can act as protective factors. Lesbian youth have higher rates of unintended pregnancy than heterosexual female youth, perhaps due to anxiety about their same-sex attractions and a desire to "fit in," an assumption birth control is unnecessary, or high-risk behavior rooted in psychological conflict.⁸⁴ Clinicians should monitor for these risks or provide anticipatory guidance for them when appropriate.

Substance Abuse. Some adolescents explore a gay identity in venues such as dance clubs and bars where alcohol and drugs are used. These youth may be at heightened risk of substance abuse because of peer pressure and availability of drugs. Lesbian and bisexual girls and boys describing themselves as "mostly heterosexual" (as opposed to unambiguously hetero- or homosexual) are at increased risk for alcohol use.⁸⁵ A subgroup of gay youth displays higher rates of use of alcohol and drugs including marijuana, cocaine, inhalants, designer, and injectable drugs.⁵² They may use drugs and alcohol to achieve a sense of belonging or to relieve painful affects such as shame, guilt, and a lack of confidence associated with their romantic and sexual feelings.

HIV/AIDS and Other Sexually Transmitted Illnesses. Adolescents are at risk for acquiring sexually transmitted illnesses included HIV infection through sexual risk taking, especially those who feel invulnerable or fatalistic, or who lack mature judgment, self-confidence, or the mature interpersonal skills needed to negotiate safe sexual experiences. Programs aimed at reducing adolescent sexual risk taking that are successful not only increase information about how HIV and sexually transmitted diseases are acquired and prevented, but also provide emotionally relevant and practical help in having safe sexual experiences that are developmentally relevant to youth.⁸⁶ Adolescent gay males may be at particular risk of acquiring HIV sexually because of its high prevalence among men who have sex with men. Factors such as substance abuse or internalized homophobia associated with shame, guilt, or low self-esteem may interfere with an individual's motivation to use knowledge effectively about how to protect oneself from acquiring HIV infection. If present, these issues should be addressed clinically. Special HIV-prevention programs have been developed for and tested in gay youth and have demonstrated promising results.^{87,88}

Principle 5. Clinicians should aim to foster healthy psychosexual development in sexual and gender minority youth and to protect the individual's full capacity for integrated identity formation and adaptive functioning.

Protecting the opportunity to achieve full developmental potential is an important clinical goal in working with sexual and gender minority youth. The psychological acceptability of homosexual feelings to an individual and his or her family, and the individual's capacity to incorporate them into healthy relationships, can change with therapeutic intervention, and are an appropriate focus of clinical attention.⁹ Clinicians should strive to support healthy development and honest self-discovery as youth navigate family, peer, and social environments that may be hostile. Family rejection and bullying are often the proper focus of psychiatric treatment rather than current or future sexual orientation.

Sometimes questions about a youth's future sexual orientation come to psychiatric attention. When they do, it may be most useful to explore what this issue means to the adolescent and significant persons in his/her life. It may be

preferable to indicate that it is too early to know an adolescent's sexual orientation rather than to refer to such feelings as a "phase," which may have connotations of disapproval.

When working clinically with youth whose sexual orientation or gender identity is uncertain, protecting the opportunity for healthy development without prematurely foreclosing any developmental possibility is an important goal. Clinicians should evaluate and support each child's ability to integrate awareness of his or her sexual orientation into his or her sexual identity while developing age-appropriate capacities in the areas of emotional stability, behavior, relationships, academic functioning, and progress toward an adult capacity for work, play, and love.

The availability of role models for sexual and gender minority youth varies greatly. The increasing visibility of gay people in society may decrease the isolation and loneliness of some gay youth, but others may be confronted with information that forces self-labeling before they are able to cope with irrational bias and feeling different. Some have access to positive role models or opportunities to form an affirming sexual identity among family, friends, the media, or through school programs such as gay-straight alliances. Urban environments or the Internet may give youth access to positive role models and experiences, but may also carry risks that require adult supervision.

Principle 6. Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful.

There is no established evidence that change in a predominant, enduring homosexual pattern of development is possible. Although sexual fantasies can, to some degree, be suppressed or repressed by those who are ashamed of or in conflict about them, sexual desire is not a choice. However, behavior, social role, and—to a degree—identity and self-acceptance are. Although operant conditioning modifies sexual fetishes, it does not alter homosexuality.⁸⁹ Psychiatric efforts to alter sexual orientation through "reparative therapy" in adults have found little or no change in sexual orientation, while causing significant risk of harm to self-esteem.⁷ A study of efforts to do so in adults⁷¹ has been criticized for failure to adequately consider risks such as increased anguish, self-loathing, depression, anxiety, sub-

stance abuse and suicidality, and for failure to support appropriate coping with prejudice and stigma.⁹⁰

There is no empirical evidence that adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness, and caring, which are important protective factors against suicidal ideation and attempts.⁸² As bullies typically identify their targets on the basis of adult attitudes and cues,⁷⁶ adult efforts to prevent homosexuality by discouraging gender variant traits in “pre-homosexual children” may risk fomenting bullying. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial, or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated.^{7,91}

Principle 7. Clinicians should be aware of current evidence on the natural course of gender discordance and associated psychopathology in children and adolescents in choosing the treatment goals and modality.

A majority of children display gender role behavior that adult caregivers regard as departing from gender role norms in toy preferences at least some of the time (demonstrating a difference between that which is culturally expected and that which is actually statistically normal).⁹² However, a smaller group of children demonstrate a consistent difference in gender role behavior from social norms. In different children, this may be true to varying degrees. In some, it may involve only a few areas—for example, an aversion to rough-and-tumble sports in boys, or tomboyishness in girls. In others, it may involve several areas, including dress, speech, and use of social styles and mannerisms. It is important to distinguish those who display only variation in gender role behavior (gender nonconformity, which is not a *DSM* diagnosis) from those who also display a gender identity discordant from their socially assigned birth gender and biological sex (gender discordance, reflected in the *DSM-IV* diagnosis Gender Identity Disorder when accompanied by marked gender nonconformity).⁹³

A clinical interview using *DSM* criteria is the gold standard for making a *DSM* diagnosis. In

some cases of gender role variance, there may be clinical difficulty distinguishing between gender nonconformity and gender discordance—for example, there may be clearly marked gender nonconforming behavior, but ambiguous cross-sex wishes. To assist clinicians in determining whether gender discordance is present, in addition to using clinical interviews, they can consider using structured instruments such as the Gender Identity Interview for Children,⁹⁴ the Gender Identity Questionnaire for Children,⁹⁵ and the Gender Identity/Gender Dysphoria Questionnaire for Adolescents and Adults.⁹⁶ In using such instruments, clinicians should bear in mind that the American Psychiatric Association’s Gender Identity Disorder subworkgroup for *DSM-5* is currently debating areas of controversy in the diagnostic criteria for *GID*, including whether and how the explicit verbalization of gender discordant wishes should be included as a criterion, given the difficulty children may have expressing such wishes in nonaccepting environments.⁹³

Disorders of sex development are an important differential diagnosis in gender discordant children and adolescents, for which endocrinological treatment may be indicated.⁹⁷ When the clinical history suggests that a somatic intersex condition may be present, clinicians should consider consultation with a pediatric endocrinologist or other specialist familiar with these conditions.

Children. Different clinical approaches have been advocated for childhood gender discordance. Proposed goals of treatment include reducing the desire to be the other sex, decreasing social ostracism, and reducing psychiatric comorbidity.¹⁴ There have been no randomized controlled trials of any treatment. Early treatments for gender discordance developed in the 1970s included behavioral paradigms⁹⁸; their long-term risks and benefits have not been followed up in controlled trials, and have been rejected on ethical grounds as having an inappropriately punitive and coercive basis.⁹⁹ Psychodynamically based psychotherapy for gender discordance in boys has been proposed based on a psychodynamic hypothesis that gender discordance is a defense in fantasy against profound, early separation anxiety⁷¹; like other treatment strategies, this has not been empirically tested in controlled trials.

Recent treatment strategies based upon uncontrolled case series have been described that focus on parent guidance and peer group interaction. One seeks to hasten desistence of gender discordance in boys through eclectic interventions such as behavioral and milieu techniques, parent guidance and school consultation aimed at encouraging positive relationships with father and male peers, gender-typical skills, and increased maternal support for male role-taking and independence.¹⁰⁰ Another approach encourages tolerance of gender discordance, while setting limits on expression of gender-discordant behavior that may place the child at risk for peer or community harassment.¹⁰¹ Desistence of gender discordance has been described in both treatment approaches, as it is in untreated children.

As an ethical guide to treatment, "the clinician has an obligation to inform parents about the state of the empiric database,"¹⁴ including information about both effectiveness and potential risks. As children may experience imperatives to shape their communications about gender discordant wishes in response to social norms, a true change in gender discordance must be distinguished from simply teaching children to hide or suppress their feelings. Similarly, the possible risk that children may be traumatized by disapproval of their gender discordance must be considered. Just as family rejection is associated with problems such as depression, suicidality, and substance abuse in gay youth,⁵⁷ the proposed benefits of treatment to eliminate gender discordance in youth must be carefully weighed against such possible deleterious effects.

Given the lack of empirical evidence from randomized, controlled trials of the efficacy of treatment aimed at eliminating gender discordance, the potential risks of treatment, and longitudinal evidence that gender discordance persists in only a small minority of untreated cases arising in childhood, further research is needed on predictors of persistence and desistence of childhood gender discordance as well as the long-term risks and benefits of intervention before any treatment to eliminate gender discordance can be endorsed.

There is similarly no data at present from controlled studies to guide clinical decisions regarding the risks and benefits of sending gender-discordant children to school in their desired gender. Such decisions must be made based on clinical judgment, bearing in mind the potential

risks and benefits of doing so. Social gender assignment appears to exert partial influence on the gender identity of infants with disorders of sex development.⁶⁹ At the same time, countervailing biological factors may override social gender assignment and contribute significantly to gender discordance in many cases. Therefore, the possibility that sending a child to school in his/her desired gender may consolidate gender discordance or expose the child to bullying should be weighed against risks of not doing so, such as distress, social isolation, depression, or suicide due to lack of social support. Further research is needed to guide clinical decision making in this area.

Adolescents. For some individuals, discordance between gender and phenotypic sex presents in adolescence or adulthood.¹⁰² Sometimes it emerges in parallel with puberty and secondary sex characteristics, causing distress leading to a developmental crisis. Transgender adolescents and adults often wish to bring their biological sex into conformity with their gender identity through strategies that include hormones, gender correction surgery, or both, and may use illicitly obtained sex hormones or other medications with hormonal activity to this end. They may be at risk from side effects of unsupervised medication or sex hormone use.

One goal of treatment for adolescents in whom a desire to be the other sex is persistent is to help them make developmentally appropriate decisions about sex reassignment, with the aim of reducing risks of reassignment and managing associated comorbidity.¹⁴ In general, it is desirable to help adolescents who may be experiencing gender distress and dysphoria to defer sex reassignment until adulthood, or at least until the wish to change sex is unequivocal, consistent, and made with appropriate consent. Transgender youth may face special risks associated with hormone misuse, such as short- and long-term side effects, improper dosing, impure or counterfeit medications, and infection from shared syringes.

For situations in which deferral of sex-reassignment decisions until adulthood is not clinically feasible, one approach that has been described in case series is sex hormone suppression under endocrinological management with psychiatric consultation using gonadotropin-releasing hormone analogues that reversibly delay the

development of secondary sexual characteristics.¹⁰² The goals of such treatment are to avoid distress caused by unwanted secondary sexual characteristics, to minimize the later need for surgery to reverse them, and to delay the need for treatment decisions until maturity allows the adolescent to participate in providing informed consent regarding transition to living as the other sex. Prospective, case-controlled study of such treatment to delay puberty has shown some beneficial effects on behavioral and emotional problems, depressive symptoms, and general functioning (although not on anxiety or anger), and appears to be well tolerated acutely.¹⁰³ In addition, gender discordance is associated with lower rates of mental health problems when it is treated in adolescence than when it is treated in adulthood.¹⁰⁴ Therefore, such treatment may be in the best interest of the adolescent when all factors, including reducing psychiatric comorbidity and the risk of harm from illicit hormone abuse, are considered.

Treatment approaches for GID using guidelines based on the developmental trajectories of gender-discordant adolescents have been described.¹⁰⁵⁻¹⁰⁷ In one approach, puberty suppression is considered beginning at age 12, cross-sex hormone treatment is considered beginning at age 16, and gender reassignment surgery at age 18.¹⁰⁵ Gender reassignment services are available in conjunction with mental health services focusing on exploration of gender identity, cross-sex treatment wishes, counseling during such treatment if any, and treatment of associated mental health problems. In another approach based on stage of physical development rather than age, pubertal suppression has been described at Tanner stage 2 in adolescents with persistent GID; risks requiring management include effects on growth, future fertility, uterine bleeding, and options for subsequent genital surgery and cross-sex hormone use.¹⁰⁷ For families of transgender adolescents, a therapeutic group approach has been described that encourages parental acceptance.¹⁰⁸ This approach may help to mitigate psychopathology and other deleterious effects of environmental nonacceptance. Further research is needed to definitively establish the effectiveness and acceptability of these treatment approaches.

Principle 8. Clinicians should be prepared to consult and act as a liaison with schools, community agencies, and other health care provid-

ers, advocating for the unique needs of sexual and gender minority youth and their families.

Evaluating youths' school, community, and culture—essential in any psychiatric evaluation—is particularly important for sexual and gender minority youth. Clinicians should seek information about the sexual beliefs, attitudes, and experiences of these social systems, and whether they are supportive or hostile in the patient's perception and in reality. Clinicians should not assume that all parties involved in a youth's social system know about his or her sexual identity. They should review with the youth what information can be shared with whom, and elicit concerns regarding specific caregivers. If appropriate, the clinician can consider interventions to enhance support, with the youth's knowledge and assent.

As consultants, mental health professionals can help to raise awareness of issues affecting sexual and gender minority youth in schools and communities, and advise programs that support them. Clinicians can consider advocating for policies and legislation supporting nondiscrimination against and equality for sexual and gender minority youth and families, and the inclusion of related information in school curricula and in libraries.

Principle 9. Mental health professionals should be aware of community and professional resources relevant to sexual and gender minority youth.

Many community-based organizations and programs provide sexual and gender minority students with supportive, empowering experiences safe from stigma and discrimination (e.g., the Harvey Milk School at the Hetrick Martin Institute, www.hmi.org; Gay Straight Alliances, www.gsanetwork.org).

There are many books and Internet resources for youth and families on issues such as discovering whether one is gay or lesbian. Clinicians should consider exploring what youth and families read, and help them to identify useful resources. Organizations such as Parents, Friends, and Families of Lesbians and Gays (PFLAG, www.pflag.org) and the Gay, Lesbian and Straight Education Network (GLSEN) provide support and resources for families, youth, and educators. These organizations have programs in a number of communities. Clinicians can obtain information through professional channels such

as the AACAP Sexual Orientation and Gender Identity Issues Committee (www.aacap.org), the American Psychiatric Association (www.psych.org), the Lesbian and Gay Child and Adolescent Psychiatric Association (www.lagcapa.org), and the Association for Gay and Lesbian Psychiatrists (www.aglp.org).

The Model Standards Project, published by the Child Welfare League of America, is a practice tool related to the needs of LGBT youth in foster care or juvenile justice systems available at www.cwla.org.¹⁰⁹ The *Standards of Care for Gender Identity Disorders*, including psychiatric and medical care, are published by the World Professional Association for Transgender Health (www.wpath.org).¹¹⁰

PARAMETER LIMITATIONS

AACAP Practice Parameters are developed to assist clinicians in psychiatric decision making. These Parameters are not intended to define the sole standard of care. As such, the Parameters should not be deemed inclusive of all proper methods of care or exclusive of other methods of care directed at obtaining the desired results. The ultimate judgment regarding the care of a particular patient must be made by the clinician in light of all of the circumstances presented by the patient and that patient's family, the diagnostic and treatment options available, and other available resources. &

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AACAP Practice Parameters are developed by the AACAP CQI in accordance with American Medical Association policy. Parameter development is an iterative process between the primary author(s), the CQI, topic experts, and representatives from multiple constituent groups, including the AACAP membership, relevant AACAP Committees, the AACAP Assembly of Regional Organizations, and the AACAP Council. Details of the Parameter development process can be

accessed on the AACAP website. Responsibility for Parameter content and review rests with the author(s), the CQI, the CQI Consensus Group, and the AACAP Council.

AACAP develops both patient-oriented and clinician-oriented Practice Parameters. Patient-oriented Parameters provide recommendations to guide clinicians toward best assessment and treatment practices. Recommendations are based on the critical appraisal of empirical evidence (when available) and clinical consensus (when not), and are graded according to the strength of the empirical and clinical support. Clinician-oriented Parameters provide clinicians with the information (stated as principles) needed to develop practice-based skills. Although empirical evidence may be available to support certain principles, principles are based primarily on clinical consensus. This Parameter is a clinician-oriented Parameter.

The primary intended audience for the AACAP Practice Parameters is child and adolescent psychiatrists; however, the information contained therein may also be useful for other mental health clinicians.

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121-24

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Hamilton does not "conduct any therapeutic practice" as if it is something "done" to a client. Hamilton's practice involves only talk therapy, which is a conversation that takes place between herself and the client. Hamilton asks the client what his or her goal is and how the client believes Hamilton can be helpful to them during the course of therapy.

When a client presents with a therapeutic goal of conforming their attractions and behaviors to their sincerely held religious beliefs or desires to reduce or eliminate unwanted same-sex attractions, behaviors, identity, or gender confusion, Hamilton discusses the reasons why the client desires such counseling. Hamilton explains that there are no absolute guarantees in mental health counseling. Hamilton explains that behavior and thoughts are changeable, but that there is no guarantee feelings or attractions will always change. Hamilton also informs the client that while many clients can and do experience a successful reduction or elimination of their unwanted same-sex attractions, behaviors, or identity or gender confusion, there is no guarantee that such results are always attainable or equal in degree.

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

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

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

RESPONSE: Hamilton does not “conduct any therapeutic practice” as if it is something “done” to a client. Hamilton’s practice involves only talk therapy, which is a conversation that takes place between herself and the client. Hamilton asks the client what his or her goal is and how the client believes Hamilton can be helpful to them during the course of therapy.

When a client presents with a therapeutic goal of conforming their attractions and behaviors to their sincerely held religious beliefs or desires to reduce or eliminate unwanted same-sex attractions, behaviors, identity, or gender confusion, Hamilton discusses the reasons why the client desires such counseling. Hamilton explains that there are no absolute guarantees in mental health counseling. Hamilton explains that behavior and thoughts are changeable, but that there is no guarantee feelings or attractions will always change. Hamilton also informs the client that while many clients can and do experience a successful reduction or elimination of their unwanted same-sex attractions, behaviors, or identity or gender confusion, there is no guarantee that such results are always attainable or equal in degree.

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

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

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

RESPONSE: Hamilton notes that, according to the Ordinance, so-called "conversion therapy" – which Hamilton has never used to describe her practice and knows of no other licensed mental health professional who employs such term – means "the practice of seeking to change an individual's sexual orientation or gender identity, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex." Hamilton notes that the Ordinance also states that, "It shall be unlawful for any Provider to engage in conversion therapy on any minor regardless of whether the Provider receives monetary compensation in exchange for such services."

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

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

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

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

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

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

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

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

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

Hamilton cannot possibly describe in this response every potential issue or statement that she might like to address in a therapeutic setting because her talk therapy practice is never the same for every client. Hamilton's practice focuses on conversations and discussions that address what the clients present with, what the clients wish to explore or address, and the goals and aims that the clients wish to pursue.

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

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

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

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

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

RESPONSE: Hamilton notes that she does not try to eliminate attractions, just as she does not claim she can eliminate any distressing issue that any client presents in therapy. With regard to reducing same-sex attractions, behaviors, or identity, this is sometimes the result of the client better understanding the attractions and addressing underlying issues. Hamilton’s practice deals only with assisting clients achieve their own goals, addressing the issues the clients wish to address, and focusing solely on the clients’ needs.

With regard to Hamilton’s approach, she is a client-centered family therapist. She seeks to work from the client’s frame of reference, honoring the client’s perspective and using the resources that the client presents. Hamilton explores the client’s perspective and does not enter any therapeutic alliance with any preconceived notions of what goals or issues the client may wish to address. Hamilton also searches for client strengths and builds on those strengths. In addition, Hamilton works to understand and strengthen family relationships. She helps clients to understand the root causes of their feelings or behaviors, and also helps them to make the changes they are seeking.

Many of Hamilton’s clients identify themselves as Christians and have sincerely held religious beliefs that the Bible is the only source of truth. Various Biblical truths are sometimes discussed with these Christian clients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Hamilton notes that she does not try to change her clients’ sexual orientation or gender identity. Hamilton’s practice deals only with assisting clients achieve their own goals, addressing the issues the clients wish to address, and focusing solely on the clients’ needs.

With regard to Hamilton’s approach, she is a client-centered family therapist. She seeks to work from the client’s frame of reference, honoring the client’s perspective and using the resources that the client presents. Hamilton explores the client’s perspective and does not enter any therapeutic alliance with any preconceived notions of what goals or issues the client may wish to address. Hamilton also searches for client strengths and builds on those strengths. In addition, Hamilton works to understand and strengthen family relationships. She helps clients to understand the root causes of their feelings or behaviors, and also helps them to make the changes they are seeking.

Many of Hamilton’s clients identify themselves as Christians and have sincerely held religious beliefs that the Bible is the only source of truth. Various Biblical truths are sometimes discussed with these Christian clients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hamilton also notes the following articles:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to Objections:

/s/ Horatio G. Mihet
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VERIFICATION

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

/s/ Julie H. Hamilton

Julie H. Hamilton, Ph.D., LMFT

CERTIFICATE OF SERVICE

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

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Horatio G. Mihet

Attorney for Plaintiffs

121-28

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

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

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

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

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

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

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

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

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

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

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

RESPONSE: Otto notes that the way this Interrogatory is worded implies that sexual orientation is a fixed concept that he is trying to change. Otto objects to that characterization as misleading and disagrees with the Interrogatory's premise, assumption and articulation of the issue. Otto notes that his marriage and family therapy practice is focused solely on helping a client achieve his or her stated goals, not a preconceived notion that he "seeks" to change behaviors, thoughts or feelings. Otto focuses on the issues that the client wants to address, including those situations where clients seek assistance in conforming their identity and attractions to their sincerely held religious beliefs, values, and concept of self.

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

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

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

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

RESPONSE: Otto notes that the way this Interrogatory is worded implies that sexual orientation is a fixed concept that he is trying to change. Otto objects to that characterization as misleading and disagrees with the Interrogatory's premise, assumption and articulation of the issue. Otto notes that his marriage and family therapy practice is focused solely on helping a client achieve his or her stated goals, not a preconceived notion that he "seeks" to change behaviors, thoughts or feelings. Otto focuses on the issues that the client wants to address, including those situations where clients seek assistance in conforming their identity and attractions to their sincerely held religious beliefs, values, and concept of self.

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

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

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

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

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

RESPONSE: Otto notes that, according to the Ordinance, so-called "conversion therapy" – which Otto has never used to describe his practice and knows of no other licensed mental health professional who employs such term – means "the practice of seeking to change an individual's sexual orientation or gender identity, including but not limited to efforts to change behaviors, gender identity, or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender or sex." Otto notes that the Ordinance also states that, "It shall be unlawful for any Provider to engage in conversion therapy on any minor regardless of whether the Provider receives monetary compensation in exchange for such services."

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

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

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

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

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

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

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

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

Otto cannot possibly describe in this response every potential issue or statement that he might like to address in a therapeutic setting because his talk therapy practice is never the same for every client. Otto's practice focuses on conversations and discussions that address

what the clients present with, what the clients wish to explore or address, and the goals and aims that the clients wish to pursue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to Objections:

/s/ Horatio G. Mihet
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Attorneys for Plaintiffs

VERIFICATION

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

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

CERTIFICATE OF SERVICE

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

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/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs

121-33



Payment Agreement

Responsibilities:

- Payment is due at the time service is rendered. Please pay by cash, check or credit card. If paying by check, please make check payable to SDG Counseling, LLC.
- Sessions are 50 minutes. The session fee is \$150 per session in the office. House calls and court appearances are billed at a different rate.
- There will be a \$35 fee for any returned check.
- For reasons of confidentiality, we do not make appointment reminder calls. You are responsible for keeping your appointment.
- Cancellations of a session must be made at least 24 hours prior to the scheduled time or you will be charged for the missed session.
- An invoice may be sent to your home for any outstanding balance

Credit Card Information:

- Many of my clients prefer to keep a credit card number on file for ease of payment for future sessions or phone sessions.
- If you would like to provide you with this service and convenience please indicate your permission below in the appropriate box. Your information will be kept in a locked cabinet.

Yes, I give my permission to SDG Counseling, LLC to retain my credit card information.

No, I do not give permission to SDG Counseling, LLC to retain my credit card information.

I certify that he/she has read the above information carefully, understands its contents, and agree to comply with the terms of payment as provided above.

Signed: _____

Date: _____

Signed: _____

Date: _____



Acknowledgement of Notice of Privacy Practices

"I hereby acknowledge that I have received a copy of this practice's NOTICE OF PRIVACY PRACTICES. I understand that if I have questions or complaints regarding my privacy rights that I may contact the person listed. I further understand that the practice will offer me updates to the NOTICE OF PRIVACY PRACTICES should it be amended, modified, or changed in any way."

Signed: _____

Date: _____

Printed: _____

Signed: _____

Date: _____

Printed: _____

Notice of Policies and Practices to Protect the Privacy of Your Health Information

THIS NOTICE PERTAINS TO THE PRACTICE OF: SDG COUNSELING, LLC, 4400 N. FEDERAL HIGHWAY, SUITE 210, BOCA RATON, FL 33431

THIS NOTICE DESCRIBES HOW PSYCHOLOGICAL AND MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

THIS NOTICE AND ALL OF THESE RIGHTS MAY NOT APPLY TO YOU IN SOME CIRCUMSTANCES WHICH ARE NOT COVERED BY FEDERAL HIPAA REGULATIONS. YOU MAY BE PROTECTED UNDER OTHER FEDERAL AND STATE LAWS.

Uses and Disclosures for Treatment, Payment, and Health Care Operations

We may use or disclose your protected health information (PHI), for treatment, payment, and health care operations purposes with your consent. To help clarify these terms, here are some definitions:

- ~ "PHI" refers to information in your health record that could identify you.
- ~ "Treatment, Payment, and Health Care Operations"
 - o Treatment is when we provide, coordinate or manage your health care and other services related to your health care. An example of treatment would be when we consult with another health care provider, such as your family physician or another psychologist.
 - o Payment is when we obtain reimbursement for your healthcare. Examples of payment are when we disclose your PHI to your health insurer to obtain reimbursement for your health care or to determine eligibility or coverage.
 - o Health Care Operations are activities that relate to the performance and operations of our practice. Examples of health care operations are quality assessment and improvement activities, business-related matters such as audits and administrative services, and case management and care coordination.
- ~ "Use" applies only to activities within our [office, clinic, practice group, etc.] such as sharing, employing, applying, utilizing, examining, and analyzing information that identifies you.
- ~ "Disclosure" applies to activities outside of our [office, practice group, etc.], such as releasing, transferring, or providing access to information about you to other parties.

Uses and Disclosures Requiring Authorization

We may use or disclose PHI for purposes outside of treatment, payment, and health care operations when your appropriate authorization is obtained. An "authorization" is written permission above and beyond the general consent that permits only specific disclosures. In those instances when we are asked for information for purposes outside of treatment, payment and health care operations, we will obtain an authorization from you before releasing this information.

We would also need to obtain an authorization before releasing your "psychotherapy notes." "Psychotherapy notes" have a very limited definition under HIPAA rules, and would be notes made about analyses of conversations during a private, group, joint, or family counseling session, which would be kept separate from the rest of your medical record. It is our office practice not to keep "Psychotherapy notes" under this definition. Your diagnosis and relevant treatment information, symptom complaints and information about progress are maintained in "Progress Notes" which document your care.

You may revoke all such authorizations (of PHI or psychotherapy notes) at any time, provided each revocation is in writing. You may not revoke an authorization to the extent that (1) we have relied on that authorization; or (2) if the authorization was obtained as a condition of obtaining insurance coverage, and the law provides the insurer the right to contest the claim under the policy.

Uses and Disclosures with Neither Consent nor Authorization:

We may use or disclose PHI without your consent or authorization in the following circumstances:

Child Abuse: If we know, or have reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver or other person responsible for the child's welfare, the law requires that we report such knowledge or suspicion to the Florida Department of Child and Family Services.

Adult and Domestic Abuse: If we know, or have cause to suspect, that a vulnerable adult (disabled or elderly) has been or is being abused, neglected, or exploited, we are required by law to immediately report such knowledge or suspicion to the Central Abuse Hotline.

Health Oversight: If a complaint is filed against us with the Florida Department of Health, the Department has the authority to subpoena confidential mental health information from us relevant to that complaint.

Government: We may disclose the PHI information of military personnel and veterans to government benefit programs relating to eligibility and enrollment.

Impaired Professionals: We may disclose information pertaining to the safety to practice to the Florida Department of Health for health care professionals if we have reasonable reason to believe public safety is endangered or where there would be a statutory duty to report.

Judicial or Administrative Proceedings: If you are involved in a court proceeding and a request is made for information about your diagnosis or treatment and the records thereof, such information is privileged under state law, and we will not release information without the written authorization of you or your legal representative, or a subpoena of which you have been properly notified and you have failed to inform us that you are opposing the subpoena or a court order. The privilege does not apply when you are being evaluated for a third party or where the evaluation is court ordered. You will be informed in advance if this is the case.

Serious Threat to Health or Safety: When you present a clear and immediate probability of physical harm to yourself, to other individuals, or to society, we may communicate relevant information concerning this to the potential victim, appropriate family member, or law enforcement or other appropriate authorities.

Worker's Compensation: If you file a worker's compensation claim, we must, upon request of your employer, the insurance carrier, and authorized qualified rehabilitation provider, or the attorney for the employer or insurance carrier furnish your relevant records to those persons.

Litigation: If you have a pending personal injury claim such as auto accident, malpractice claim or other situation in which you are eligible to collect damages, your entire records may be subject to disclosure by subpoena or court order and are subject to full disclosure to the payor of any claims we file for services on your behalf. You may object, in writing, to a subpoena for such records. In the case of an Independent Medical Examination which is being conducted on behalf of a third party, any information is subject to disclosure to that third party. However, you may have additional rights under State law.

Forensic Evaluation at the request of your attorney: In most circumstances, such evaluations, if arranged for and paid for through your attorney's office retain a special status of attorney-client privilege until such information is disclosed by your attorney or used for legal purposes. Such evaluations are not protected by rights established under HIPAA.

Law Enforcement: We may disclose health information for law enforcement purposes and special governmental functions only as required by Federal, State or Local law.

Business Associates: We have Business Associates with whom we may share your Protected Health Information. Examples included Business Associates who provide coverage while we are out of town, answering services as necessary, shared clerical functions with Business Associates with whom we may share offices with, collection agencies or collection attorneys, or technicians who may need to service equipment where necessary information is stored. We enter into agreements with such associates such that they are also obligated to respect the privacy of your Protected Health Information.

Communication with Family: If a family member or close friend calls for scheduling, payment, or changing appointments and in our best judgment we do not believe you would object, we may communicate minimal necessary information to facilitate scheduling, payments and appointments. With your signed consent, if family members, other relatives, close personal friend, or any other person you identify as participating in your care, minimal necessary health information relevant to that person's involvement in your care or in payment for such care if you do not object or in an emergency. Unless you notify us otherwise, we may leave messages on your home or cell phone if you utilize and answering machine, voice mail, or text message, or email regarding contacting our office regarding scheduling or regarding personal or third party payment.

Marketing: We may Contact you to provide you with appointment reminders, with information about other health-related benefits or services that may be of interest to you.

Health Research: We may use Personal Health Information to conduct or participate in research studies based upon clinical and health records. In such cases any PHI shall be removed. For example, we may collect outcome data or group treatment

approaches or we may use data from your record to conduct a study or test patterns in head injury. Of course, we will not conduct any experimental research without a separate informed consent.

Correctional Institution: If you are an inmate of a correctional institution, we may disclose to the institution or agents there of your PHI necessary for your health and health and safety of other individuals.

Patient's Rights and Psychologist/Counselor's Duties:

Patient's Rights:

- ~ Right to Request Restrictions: You have the right to request restrictions on certain uses and disclosures of Protected Health Information about you. However, we are not required to agree to a restriction you request.
- ~ Right to Receive Confidential Communications by Alternative Means and at Alternative Locations: You have the right to request and receive confidential communications of PHI by alternative means and at alternative locations. (For example, you may not want a family member to know that you are in counseling. Upon your request, we will send your bills to another address.)
- ~ Right to Inspect and Copy: You have the right to inspect or obtain a copy (or both) of PHI in our mental health and billing records used to make decisions about you for as long as the PHI is maintained in the record. On your request, we will discuss with you the details of the request process.
- ~ Right to Amend: You have the right to request an amendment of PHI for as long as the PHI is maintained in the record. We may deny your request. On your request, we will discuss with you the details of the amendment process.
- ~ Right to an Accounting: You generally have the right to receive an accounting of disclosures of PHI regarding you. On your request, we will discuss with you the details of the accounting process.
- ~ Right to a Paper Copy: You have the right to obtain a paper copy of the notice from us upon request, even if you have agreed to receive the notice electronically.

We reserve the right to bill you for professional time involved in explaining or reviewing these procedures with you.

Psychologist/Counselor's Duties:

- ~ We are required by law to maintain the privacy of PHI and to provide you with a notice of our legal duties and privacy practices with respect to PHI.
- ~ We reserve the right to change the privacy policies and practices described in the notice. Unless we notify you of such changes, however, we are required to abide by the terms currently in effect.

If we revise our policies and procedures, we will notify active clients by mail. Returning clients will be notified upon their first visit following a change in policy and procedures. Clients may request a written copy at any time by mailing such a request to SDG Counseling, LLC, 4400 N. Federal Highway, Suite 210, Boca Raton, FL 33431.

Questions and Complaints:

If you are a client of SDG Counseling, LLC and have questions about this notice, disagree with a decision we make about access to your records, believe that your privacy rights have been violated and wish to file a complaint or have other concerns about your privacy rights, you may contact Dr. Otto at 561-703-9444. You may also send a written complaint to the Secretary of the U.S. Department of Health and Human Services.

You have specific rights under the Privacy Rule. We will not retaliate against you for exercising your right to file a complaint.



Therapy Agreement

I, _____, have applied for counseling, testing, or other services at SDG Counseling, LLC for myself and the following persons for whom I am legally responsible.

- I am responsible for any and all indebtedness incurred as a result of services rendered to me or those under my guardianship by this therapy or testing.
- I understand that if, during the course of treatment, the counselor determines that a threat of physical harm (including child or elder abuse) to the client or to another person is imminent, the appropriate individuals and authorities will be notified. By law, the appropriate authorities by be notified in accordance with the following Florida statutes: F.S. 39.201, F.S. 39.202, F.S. 39.204, F.S. 490.0147, and F.S. 491.0147.
- I further agree to indemnify and hold harmless SDG Counseling, LLC, its agents, servants, and employees from any claim for damages, or any nature arising out of, or allegedly due to, any activity related thereto. I accept full responsibility for any decisions make regarding my life.

I certify that he/she has read the above information carefully, understands its contents, and agree to receive services for myself and/or anyone herein designated as provided above.

Signed: _____ Date: _____

Signed: _____ Date: _____



INFORMED CONSENT FOR COUNSELING REGARDING UNWANTED SAME-SEX ATTRACTIONS AND BEHAVIORS

For those clients struggling with sexual attractions or feelings that are inconsistent with their religious beliefs or that the client does not believe are true statements of how that person believes himself or herself to be, we offer counseling to assist those clients in understanding causes of such feelings or attractions and help them work toward their goal of making their attractions and feelings consistent with their beliefs. It is critical to understand that you, as the client, set the goals and objectives of counseling. Your therapist is only here to assist you in working toward the goals you set and does not participate in the decision of what a client's goals should be.

It is important for all clients to understand that there is never a guarantee of success with any form of mental health counseling, and that no marriage and family therapist can promise certain outcomes will be obtained by the client. This is also true with counseling for those individuals seeking to change, reduce, or eliminate unwanted same-sex attractions or feelings. It is also important to understand that your marriage and family therapist does not take a position on the goals or objectives you have with your counseling. It is our task to assist all clients in the goals that the client sets, and that your therapist will work with you to identify and understand what underlying issues may be causing you anxiety, distress, discomfort, fear, confusion, or any other uncomfortable feelings you may be having.

Though your therapist cannot guarantee a successful outcome, many clients who identify their goal as seeking to change their unwanted attractions or feelings do experience benefit from the counseling we provide. Many clients can and do succeed in reducing their attractions towards members of the same sex and reducing anxiety and confusion that arises from such feelings. For those clients whose anxiety, distress, or confusion arises from the inconsistency between their religious beliefs and their sexual attractions, feelings, or behaviors, counseling can and does provide benefit to those clients and allows them to conform their attractions and behaviors to their values, beliefs, and faith.

As with many other form of counseling, the therapeutic process can evoke stressful feelings or emotions that are difficult to deal with during the process. Change is never quick or easy, for any anxiety or distress that a client is feeling. The same is true of unwanted sexual or romantic feelings and attractions. Your therapist wants you to know that you are in control of your counseling at all times, and if your goals or objectives change at any point during the counseling, you should inform your therapist immediately.

Your therapist also wants you to know that there are some mental health professionals and others who suggest you should not have the goal of reducing or eliminating your unwanted feelings or attractions, and that some people believe that such counseling is unlikely to assist you. As noted above, your therapist disagrees with such conclusions and has personally

SDG

COUNSELING, LLC

counseled many people who experienced successful change. While your therapist cannot guarantee that for you, you should be informed of the various viewpoints concerning this form of counseling prior to making your decision to choose and pursue such counseling.

Consent Statement: I have read this document, have had an opportunity to discuss its content with my therapist, agree to its terms, and have received a copy. This authorization constitutes informed consent for my decision to address issues related to unwanted attractions or feelings in a manner that is consistent with my goals for counseling, including my values and moral beliefs.

Patient Signature

Birth Date

Date

(If a minor)

Parent or Legal Guardian's Signature

Date

Therapist's Signature

Date

126-2

1 exist. There are, in fact, many people who desire
2 change, including many teenagers. Please don't
3 disregard this population. Please don't take away
4 the right of young people to seek licensed
5 professional counseling when they are distressed by
6 their unwanted attractions. Would you want this
7 for your child? Would you want your child to have
8 no other choice? Please vote no on this ordinance.
9 Thank you.

10 MR. HOCH: Hi. My name is Rand Hoch. I'm
11 president of -- and founder of the Palm Beach
12 County Human Rights Council. Mayor McKinlay and
13 Commissioners, thank you for taking a look at this
14 ordinance at our request.

15 Over the past two years we've heard from two
16 individuals, minors, who have been required to go
17 to conversion therapy by their parents. These are
18 kids with gay friends who are comfortable where
19 they are; It's their parents that have a problem
20 with their children being gay or lesbian.

21 I guess I'm the first lawyer other than Helene
22 to talk today. You've heard legal advice from a
23 bunch of psychologists and other people, but I have
24 to tell you, Helene has done an amazing job looking
25 at this for the past year and a half. She's read



1 every case that's out there. She has challenged
2 Trent Steele and I and Jamie Foreman from the
3 council on every section that might be a problem, a
4 year and a half of legal research, and she won most
5 of the arguments. Things --

6 When we first made the presentation, we were
7 overreaching. We knew that we wanted everything.
8 We wanted to prohibit advertising of conversion
9 therapy, which is illegal in two states because
10 conversion therapy is fraudulent. There is no
11 evidence that it works. Among the federal cases,
12 they wouldn't even allow one of the witnesses, who
13 was a conversion therapist, to testify because he
14 lacked scientific knowledge and reality that was
15 acceptable by the courts.

16 Our ordinance is different than the one in
17 Miami-Dade County. It's narrower because of
18 Helene. She took a look at what was going on there
19 and said, "This opens us up to a problem," so she
20 closed the gap.

21 Florida legislature has never had a hearing on
22 conversion therapy regardless of what you've been
23 told. Excuse me?

24 COMMISSIONER: Can you address that?

25 MR. HOCH: Okay. They've never had a hearing

1 on conversion therapy. Bills have been filed, but
2 they have refused to amend the sections of the law
3 that governs psychologists, psychiatrists, medical
4 providers, to specifically address conversion
5 therapy, and that's the problem and that's why
6 we're here today. That's why we've been to other
7 places throughout the county, and other groups have
8 been throughout Florida because there is a problem.
9 Conversion therapy causes harm. That is proven in
10 every one of the studies that we provided you.

11 And I apologize for giving you hundreds of
12 pages of things to review, but it's consistent.
13 And these are done by real groups. They're not
14 done by the American College of Pediatricians --
15 and I have ten seconds left -- so nothing affects
16 free speech. It affects conduct, and that has been
17 dealt with by the United States Supreme Court and a
18 lot of lower courts. Thank you.

19 COMMISSIONER BURDICK: Thank you.

20 That concludes the members of the public who
21 wish to speak, but we do have a number of cards
22 here that do not want to speak but wanted their
23 names read into the record.

24 Amanda Canate is in support. Dylan Brocks is
25 in support. Carly Cass is in support. Sherman

126-3

1 MR. HOCH: Mayor McKinlay, Commissioners, my
2 name is Rand Hoch. I'm president and founder of
3 the Palm Beach County Human Rights Council.

4 For almost three decades county commissioners
5 and other public officials have enacted laws and
6 policies to protect LGBTQ people. As a result,
7 Palm Beach County is now one of the safest places
8 in the world for LGBTQ people to live, study, work,
9 create families, raise children, and retire, and I
10 want to thank you for that.

11 I also want to commend Helene for modifying
12 the ordinance to take into effect the concerns
13 raised by Commissioner Abrams at the last meeting.
14 Helene has gone to great lengths to balance the
15 interest of children, parents, and therapists. Not
16 a single word needs to be added or deleted from the
17 draft presented to you today. If enacted, this
18 ordinance will serve as a model for other counties
19 around the state and the nation.

20 For the past 18 months I've had to endure
21 people suggesting to elected officials that gay
22 people are God's mistakes, and then go on to say
23 that they are the ones who can fix the mistakes
24 through therapy. How arrogant. I have been taught
25 that each one of us is created in God's image.



1 I have been taught that God does not make
2 mistakes, and I believe those statements to be
3 true. I also believe the statements and
4 conclusions from virtually every mainstream
5 scientific, medical, psychiatric, and psychological
6 organization in this country that conversion
7 therapy is ineffective and it causes harm to
8 children.

9 So the choice before you today is clear. You
10 can vote to protect children from harm or you can
11 vote to protect these people who want to continue
12 to cause children harm. Basically the choice is
13 between kids and quacks. Please vote to protect
14 the kids. Thank you, and Happy Holidays, Happy New
15 Year.

16 COMMISSIONER BURDICK: Madam Mayor, we have 13
17 additional cards who do not wish to speak this
18 morning but are in opposition.

19 MAYOR MCKINLAY: And we will enter those into
20 the record. Commissioner Valeche.

21 COMMISSIONER VALECHE: Mr. Hoch, I just had
22 a -- you can go over there, I think.

23 Just in terms of the complaints, it was
24 mentioned earlier that there were two that the HRC
25 knows of. Could you give me an idea of who those

1 complaints were registered with, who they
2 originated from, what the disposition of them was,
3 et cetera?

4 MR. HOCH: Gladly.

5 COMMISSIONER VALECHE: Give us some color on
6 that, please.

7 MR. HOCH: Both of the complaints regard
8 children who live in your district.

9 COMMISSIONER VALECHE: Okay.

10 MR. HOCH: We received complaints from the
11 mothers of gay people because their friends, the
12 gay children's friends who also identified as gay,
13 were being subjected to conversion therapy.

14 COMMISSIONER VALECHE: And?

15 MR. HOCH: There's nothing we can do about
16 that unless you act today. So these kids are still
17 being forced to go to therapists who are telling
18 them that God does not love them --

19 COMMISSIONER VALECHE: Isn't there -- isn't
20 there some recourse for the parent if they feel
21 their child has been harmed by a professional?

22 MR. HOCH: The parents are the ones who are
23 causing the harm to the children by sending them to
24 therapy. The children are the ones being harmed by
25 the therapy. There is no recourse unless you pass

1 an ordinance and the child comes forward to the
2 county and says, "This is what's happening to me,"
3 and only a complaint is going to trigger this
4 ordinance from taking effect. It's not like
5 anyone's going to go into a therapist's office and
6 sit in with patients.

7 And the children are allowed to waive all of
8 the HIPAA requirements for their therapist. They
9 can tell them because the children are the
10 patients.

11 COMMISSIONER VALECHE: Okay. I understand.
12 But wouldn't the child in this instance, in these
13 two instances, have been able to register a
14 complaint?

15 MR. HOCH: With who? Well, that's the
16 problem.

17 COMMISSIONER VALECHE: Well --

18 MAYOR MCKINLAY: It's not banned.

19 COMMISSIONER VALECHE: -- I think there's a
20 licensing organization. There's a professional
21 organization.

22 MR. HOCH: There is no state law that
23 specifically prohibits therapists from doing
24 conversion therapy. That's the entire problem.
25 That's why 16 communities have already passed this.

1 That's why 10 states have already passed this.
2 That's why dozens of cities and counties around the
3 country have passed it. Without the law, these
4 kids are helpless.

5 COMMISSIONER VALECHE: Well, but there --
6 whether the statute or the regulatory body mentions
7 conversion therapy per se, there's still a
8 prohibition against the psychologist abusing his or
9 her professional position to do harm to a patient
10 and, you know, that can take in a wide range of
11 subjects beyond conversion therapy. And I think
12 there is recourse in those instances, isn't there?

13 MR. HOCH: These psychologists and therapists
14 don't think they're doing harm. That's a problem.
15 That is the problem. And you're dealing with
16 minors, so you're the only ones who can protect
17 them. It's up to the seven of you.

18 COMMISSIONER VALECHE: Well, but in this -- if
19 we were to pass the ordinance, it would be the
20 minors' perception that they were being harmed,
21 it's not the -- whether the psychologist believes
22 they're doing harm or not is totally irrelevant to
23 this, it's the patient who's -- who we're going to
24 be listening to.

25 MR. HOCH: That's correct.

1 COMMISSIONER VALECHE: So why isn't the
2 patient in this case, you know, responsible to --
3 not responsible, but why doesn't they -- why don't
4 they have the option of making the abusive therapy
5 known to the licensing authority?

6 MR. HOCH: I imagine they could, but I don't
7 know if the licensing authority will actually do
8 anything. I do have faith that Palm Beach
9 County --

10 COMMISSIONER VALECHE: Well, why would they be
11 more inclined to report it to the county than they
12 would to -- to the state?

13 MR. HOCH: Don't you get a lot of complaints
14 from people that should really go elsewhere? You
15 are the closest form of government to these kids.
16 They look to you. Don't send them elsewhere. Take
17 responsibility, protect these children.

18 COMMISSIONER VALECHE: All right. Okay.

19 MR. HOCH: Thank you.

20 MAYOR MCKINLAY: And let me add that this is
21 the same state legislature that has refused to hear
22 a ban on conversion therapy under the premise of
23 protection of privacy rights, but the same state
24 legislature that forces a female, who's seeking an
25 abortion, to have a six inch wand stuck between her

1 legs in a forced ultrasound before she can move
2 forward with that procedure.

3 COMMISSIONER BURDICK: Are you ready? I'd
4 like to move the adoption of the ordinance of the
5 Palm Beach County Commissioners, Palm Beach County,
6 Florida Establishing a Prohibition for Conversion
7 Therapy on Minors Ordinance.

8 COMMISSIONER KERNER: Second.

9 MAYOR MCKINLAY: I have a motion by
10 Commissioner Burdick to move the ordinance. I have
11 a second by Commissioner Kerner.

12 Commissioner Abrams, you are recognized.

13 COMMISSIONER ABRAMS: Well, I think in making
14 that motion, we don't want to just give short
15 shrift to the county attorney's caution/admonition
16 on this. You know, we'd be the first county, my
17 understanding, to pass such an ordinance.

18 There's -- it's a gray area. There's no doubt
19 that -- we've already been told there would be
20 lawsuits filed, and I have no doubt of that.
21 They're public-interest organizations that file
22 these lawsuits, such as the one in Tampa. That
23 would result in monetary exposure to the county. I
24 mean there's no doubt.

25 I'm mindful of the county attorney's

126-6

From: flagler400@gmail.com on behalf of [Rand Hoch](#)
To: [MaryLou Berger](#); [Hal Valeche](#); [Paulette Burdick P.](#); [Shelley Vana](#); [Steven Abrams](#); [Melissa McKinlay](#); [Priscilla Taylor A.](#)
Cc: [Verdenia Baker](#); [Denise Marie Nieman](#); [Carly Cass](#); [Chauncey Graham](#); [Dan Hall](#); [Hutch Floyd](#); [Jamie Todd Foreman-Plakas](#); [Jessica Blackman](#); [JP Sasser](#); [Matt McWatters](#); [Meredith Ockman](#); [Rae Franks](#); [Rand Hoch](#); [Reagan South](#); [Trent Steele](#)
Subject: PBCHRC - Request to enact a County Ordinance prohibiting conversion therapy for minors
Date: Monday, June 20, 2016 2:33:19 PM
Attachments: [BCC Conversion Therapy Ban memo 062016.pdf](#)

Attached please find a memorandum (with attachments) concerning enacting an ordinance to prohibit conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County. (A copy of the ordinance enacted earlier this month in Miami Beach is included in the packet.)

For more information concerning banning conversion therapy, please refer to an October 2015 report by the federal Substance Abuse and Mental Health Services Administration published which can be found at <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf> and a more recent report published by the Southern Poverty Law Center entitled "QUACKS: 'Conversion Therapists,' the Anti-LGBT Right, and the Demonization of Homosexuality" may be viewed by going to <https://www.splcenter.org/20160525/quacks-conversion-therapists-anti-lgbt-right-and-demonization-homosexuality>.

PBCHRC hopes that you will promptly take steps to prohibit the quackery in our county.

Thank you for your consideration.

Judge Rand Hoch (retired)
President and Founder
Palm Beach County Human Rights Council
400 North Flagler Drive, #1402
West Palm Beach, FL 33401
[561-358-0105](tel:561-358-0105)





Please respond to:

400 North Flagler Drive, #1402
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MEMORANDUM (via e-mail)

To: Mayor Mary L. Berger
Vice Mayor Hal Valeche
Commissioner Paulette Burdick
Commissioner Shelley Vana
Commissioner Steven L. Abrams
Commissioner Melissa McKinlay
Commissioner Priscilla Taylor

From: Judge Rand Hoch (retired), President and Founder *mh*

Re: Prohibiting conversion therapy counseling, practices, and treatments by state licensed professionals in Palm Beach County

Date: June 20, 2016

“Conversion therapy” (also known as “reparative therapy,”) is counseling based on the erroneous assumption gay, lesbian, bisexual and transgender (LGBT) identities are mental disorders that can be cured through aversion treatment. These discredited practices have long been rejected by our nation’s leading medical and mental health organizations.

In 2001, David Satcher, U.S. Surgeon General during the administration of President George W. Bush, issued a report finding that “there is no valid scientific evidence that sexual orientation can be changed.” Years later, California Governor Jerry Brown stated that “[t]hese practices have no basis in science or medicine and they will now be relegated to the dustbin of quackery.”

Just last year, the federal Substance Abuse and Mental Health Services Administration concluded that “[d]irecting the child or adolescent to conform to any particular gender expression or identity, or directing parents and guardians to place pressure on the child or adolescent to conform to specific gender expressions and/or identities, is inappropriate and reinforces harmful gender stereotypes.” (The report, which called for the end of conversion therapy, can be found online at: <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>).

Palm Beach County Commissioners
June 20, 2016
Page two —

The Palm Beach County Human Rights Council ("PBCHRC") recognizes that the practice of conversion therapy, which is most often forced upon minors by their parents or guardians, is extremely harmful. The "treatment" frequently provokes guilt and anxiety. Moreover, it is not uncommon for the therapy to result in depression, self-destructive behavior and suicide.

PBCHRC believes that licensed professionals engaged in conversion therapy are committing fraud and therefore Palm Beach County should enact an ordinance banning the practice.

To date, California, Illinois, New Jersey, Oregon, Vermont, the District of Columbia, Cincinnati and most recently, Miami Beach, have enacted laws to prevent licensed mental health providers from offering conversion therapy to minors. **In each of these jurisdictions, the ban applies only to state-licensed therapists. Unlicensed ones, such as those associated with faith-based groups, retain their religious freedom to engage in such work. Additionally, adults remain free to seek out such therapy.**

Over the years, there have been several legal challenges to the constitutionality of these laws. However, *on three occasions*, the U.S. Supreme Court has declined to hear challenges to the constitutionality laws banning conversion therapy for minors.

As noted above, nearly every major medical and psychological association in the country has come out in opposition to conversion therapy. These include, but are not limited to, .

- American Academy of Child Adolescent Psychiatry
- American Academy of Pediatrics
- American Association of School Administrators
- American Association for Marriage and Family Therapy
- American College of Physicians
- American Counseling Association
- American Federation of Teachers
- American Medical Association
- American Psychiatric Association
- American Psychoanalytic Association
- American Psychoanalytic Association
- American School Counselor Association
- American School Health Association
- National Association of Social Workers
- National Association of School Psychologists
- National Association of Secondary School Principals
- National Education Association
- Pan American Health Organization: Regional Office of the World Health Organization
- School Social Work Association of America
- World Psychiatric Association

Palm Beach County Commissioners
June 20, 2016
Page three —

On June 8, 2016, the City of Miami Beach became the first public employer in Florida to enact an ordinance banning conversion therapy for minors. I have attached a copy of the ordinance, along with the agenda backup and an article from *The Miami Herald*.

While the Palm Beach County Human Rights Council has asked West Palm Beach Mayor Jeri Muoio and the City Commission to enact an ordinance similar to the one in effect in Miami Beach, we hope that you will promptly take steps to ensure that the quackery known as conversion therapy is prohibited throughout Palm Beach County.

If you have any questions, please do not hesitate to contact me directly.

attachments

copies (w/attachments) via e-mail to: PBCHRC Board of Directors
County Administrator Verdenia Baker
County Attorney Denise Nieman