

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' UNOPPOSED
MOTION TO EXPAND WORD LIMIT FOR REPLY BRIEF**

*****TIME SENSITIVE*****

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Attorneys for Plaintiffs–Appellants

No. 19-10604

OTTO, etc., et al. v. CITY OF BOCA RATON, etc., et al.

**PLAINTIFFS-APPELLANTS'
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Plaintiffs-Appellants hereby certify that the following individuals and entities are known to have an interest in the outcome of this case:

Abbott, Daniel L.

American Association for Marriage and Family Therapy

American Psychological Association

Amunson, Jessica Ring

Carlton Fields Jordan Burt, P.A.

Chapuis, Emily L.

City of Boca Raton, Florida

Clemons, J. Tyler

Cole, Jamie A.

Dawson, James T.

Delery, Stuart F.

Dinielli, David C.

Dreier, Douglas C.

Dunlap, Aaron C.

Equality Florida Institute, Inc.,

Fahey, Rachel Marie

No. 19-10604

OTTO, *etc., et al.* v. CITY OF BOCA RATON, *etc., et al.*

Flanigan, Anne R.

Florida Psychological Association

Gannam, Roger K.

Gibson, Dunn & Crutcher LLP

Gilfoyle, Nathalie F.P.

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

Hoch, Rand

Hvzd, Helene C.

Jenner & Block LLP

Liberty Counsel, Inc.

McCoy, Scott D.

Mihet, Horatio G.

Minter, Shannon P.

National Association of Social Workers

National Association of Social Workers Florida Chapter

National Center for Lesbian Rights

Ottaviano, Deanne M.

Otto, Robert W., Ph.D. LMFT

Palm Beach County, Florida

Palm Beach County Human Rights Council

No. 19-10604

OTTO, *etc., et al.* v. CITY OF BOCA RATON, *etc., et al.*

Phan, Kim

Reinhart, Hon. Bruce E.

Rosenberg, Hon. Robin L.

SDG Counseling, LLC

Southern Poverty Law Center

Staver, Mathew D.

Stoll, Christopher F.

Sutton, Stacey K.

The Trevor Project

Walbolt, Sylvia H.

Weiss Serota Helfman Cole & Bierman, P.L.

Yasko, Jennifer A.

No publicly traded company or corporation has an interest in the outcome of this case.

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

**PLAINTIFFS-APPELLANTS' UNOPPOSED, TIME SENSITIVE
MOTION TO EXPAND WORD LIMIT FOR BRIEF**

Plaintiffs–Appellants, ROBERT W. OTTO, Ph.D. LMFT and JULIE H. HAMILTON, Ph.D. LMFT (collectively, “Counselors”), pursuant to Fed. R. App. P. 27, 11th Cir. R. 27-1, and 11th Cir. R. 32-4, and on an unopposed basis, respectfully move the Court for an order expanding the word limit for Counselors’ reply brief by 1,000 words (15%), for a total of 7,500 words, and respectfully request that the Court treat this motion as “time sensitive” pursuant to 11th Cir. R. 27-1(b)(1). Counselors show the Court as follows in support of this motion:

1. This appeal arises from the denial of Counselors’ motion for preliminary injunction in a First Amendment challenge to ordinances passed by Defendants–Appellees (collectively, the “Localities”), which ordinances ban Counselors’ speech-only, voluntary counseling for minors who seek and desire help with reducing or eliminating unwanted same-sex attractions or gender confusion.

2. There are several reasons why this appeal presents exceptional circumstances warranting a modest, 1,000-word increase for Counselors’ brief, which amounts to a 15% increase of the 6,500-word limit imposed by the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(ii):

a. The case below, and this appeal, raise numerous and weighty constitutional issues, including the extent to which the ordinances burden Counselors’ protected speech; whether the ordinances are content-neutral or

content-based; whether the ordinances are viewpoint-neutral or viewpoint-based; the appropriate level of scrutiny; whether the ordinances are unconstitutionally vague or overbroad, or unconstitutional prior restraints; whether the Localities have met their respective burdens of demonstrating that their ordinances are narrowly-tailored; and whether the ordinances impose irreparable harm.

b. In addition to the significant and complex First Amendment issues, this appeal also involves a complex state law preemption issue requiring separate argument and factual development.

c. The district court permitted the parties to engage in significant, pre-hearing written and deposition discovery, and held a one-day evidentiary hearing, all of which produced a voluminous record comprising nearly 20,000 pages of transcripts and documentary exhibits.

d. Recognizing the number and importance of issues raised, and the voluminous record amassed, the district court allowed lengthy briefing below, comprising preliminary injunction motion briefing totaling over 34,500 words (docs. 8, 83, 85 95), preliminary injunction pre-hearing briefing (proposed findings and conclusions) totaling over 27,000 words (docs. 109, 111, 112), and preliminary injunction post-hearing briefing (proposed findings and conclusions) totaling over 51,400 words (docs. 132, 133, 134), for a grand

total of **over 113,000 words**. The district court expressly refrained from limiting the parties' respective post-hearing submissions due to the size of the record and number of issues involved. (Doc. 123.)

e. The district court's resulting order (the order on appeal) is itself 60 pages (doc 141) and raises numerous weighty issues for this Court to resolve.

f. The Court, having been presented with the foregoing, ordered on March 19, 2019, a 2,000-word increase (15%) of the word limit for Counselors' principal brief. With the 1,000-word increase requested herein, Counselors' reply brief would be half the length of their principal brief, which would be consistent with the default type-volume limitations of Fed. R. App. P. 32(a)(7)(B).

g. The two Localities respectively filed principal briefs totaling 19,616 words, to which Counselors' must reply in a single reply brief.

3. Counselors' counsel are diligently working to focus their arguments to provide a **clear and concise** submission to this Court.

4. Counselors are mindful of this Court's time, and of the disfavored nature of motions for word limit expansion. Counselors do not seek this relief lightly, and only because, in their reasoned judgment, it is not possible to adequately address all of the relevant and weighty issues before this Court without it. Counselors further

believe the requested expansion will assist the Court's thorough review and consideration of the order on appeal.

5. Granting the relief requested herein will not prejudice any party, nor unduly delay the efficient resolution of this appeal or the administration of justice. Prior to filing this motion, the undersigned counsel for Counselors conferred with counsel for Defendant–Appellee Palm Beach County, who advised that the County takes no position on the requested expansion. The undersigned also attempted to confer with counsel for Defendant–Appellee City of Boca Raton, sending two e-mails and leaving one telephone message identifying the relief sought and seeking the City's position, but did not receive a response. The motion is, therefore, unopposed. Counselors will notify the Court promptly if advised differently by the City after filing.

6. Counselors respectfully request that the Court treat this motion as “time sensitive” pursuant to 11th Cir. R. 27-1(b)(1). Counselors' brief is due in twelve days, on July 15, 2019, and Counselors need this Court's guidance as they continue to draft, focus, and finalize their reply brief. Counselors prepared this motion and sought conferral with opposing counsel as soon as it became clear that the word-limit expansion is necessary.

WHEREFORE, for good cause shown, Counselors respectfully request that the Court enter an order expanding Counselors' word limit for their reply brief by 1,000 words.

Dated this July 3, 2019.

/s/ Roger K. Gannam
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Attorneys for Plaintiffs–Appellants

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A). Not counting the items excluded from the length by Fed. R. App. P. 32(f), this document contains 840 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This document has been prepared using Microsoft Word in 14-point Times New Roman font.

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

CERTIFICATE OF SERVICE

I hereby certify that, on this July 3, 2019, a copy of the foregoing motion was electronically filed through the Court’s ECF system, which will effect service on the following counsel and parties of record:

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