

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

ROBERT W. OTTO and JULIE H.  
HAMILTON,

Plaintiff,

v.

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

Defendants.

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**DEFENDANT, CITY OF BOCA RATON'S SUGGESTION OF MOOTNESS**

Defendant, City of Boca Raton ("City"), files this Suggestion of Mootness as to the injunctive and declaratory relief sought against the City and states:

**OVERVIEW**

Plaintiffs, Robert W. Otto and Julie H. Hamilton ("Plaintiffs"), initiated this action primarily seeking<sup>1</sup> to enjoin the City's enforcement of Ordinance No. 5407, which prohibited conversion therapy on minors within the City limits ("Challenged Ordinance").<sup>2</sup>

Following an evidentiary hearing on Plaintiffs' motion for preliminary injunction [ECF No. 8], the Court denied said motion. ECF No. 141. Plaintiffs appealed, and the Eleventh Circuit reversed the order denying the preliminary injunction.<sup>3</sup> The City (as well as the County) moved for rehearing en banc, resulting in the withholding of the Eleventh Circuit's mandate. The Eleventh Circuit ultimately denied the request for rehearing en banc on July 20, 2022. On July

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<sup>1</sup> The Complaint also seeks declaratory relief, as well as damages, all under the U.S. Constitution, the Florida Constitutional and various statutes. ECF No. 1.

<sup>2</sup> Plaintiffs also sued defendant, County of Palm Beach ("County"), to enjoin the enforcement of a similar (but not identical) ordinance, and for other relief.

29, 2022, the Eleventh Circuit issued its mandate to this Court with instructions to this Court to enter a preliminary injunction enjoining enforcement of the Challenged Ordinance consistent with its opinion. ECF No. 149.

However, on August 5, 2022, the City Council passed an Emergency Ordinance (“Emergency Ordinance”), which repealed the Challenged Ordinance<sup>4</sup>. A copy of the Emergency Ordinance is attached hereto as Exhibit “A.” The City submits that Plaintiffs’ request for injunctive relief is now moot, and no injunction is necessary or should be entered enjoining the enforcement of the now-repealed Challenged Ordinance.<sup>5</sup>

### ARGUMENT

#### **PLAINTIFF’S DEMAND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AGAINST THE CITY IS MOOT BECAUSE THE CITY HAS REPEALED THE CHALLENGED ORDINANCE.**

“[T]he Supreme Court has held that the repeal of or amendment to challenged legislation rendered moot a plaintiff’s request for injunctive relief.” *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1329 (11th Cir. 2004) (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 474 (1990) (holding that a Commerce Clause-based challenge to Florida banking statutes was rendered moot by amendments to the law); *Massachusetts v. Oakes*, 491 U.S. 576, 582–83 (1989) (holding that an overbreadth challenge to a child pornography law was rendered moot by amendment to the statute); *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (*per curiam*) (holding that the challenge to a university regulation was moot because the regulation had been

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<sup>3</sup> The Court stayed the case during the pendency of the interlocutory appeal. ECF No. 145.

<sup>4</sup> The Challenged Ordinance, Ordinance No. 5407, was codified into Chapter 9, Article VI of the City Code, which was repealed by the Emergency Ordinance.

<sup>5</sup> On August 4, 2022, Plaintiffs filed “Plaintiffs’ Motion to Life Stay, Enter Preliminary Injunction And Set Scheduling Conference For Merits Litigation And Request For Expedited Consideration.” The City will be filing a separate response thereto.

substantially amended); *Kremens v. Bartley*, 431 U.S. 119, 128–29 (1977) (holding moot a constitutional challenge to a state statute governing the involuntary commitment of mentally ill minors, because the law had been replaced with a different statute); *Diffenderfer v. Cent. Baptist Church, Inc.*, 404 U.S. 412, 415 (1972) (holding moot a challenge to a Florida tax exemption for church property when the law had been repealed)). Government actors, moreover “carry a lesser burden than others when they have unambiguously terminated the challenged policy.” *Rich v. Sec., Fla. Dep’t. of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013). Indeed, “governmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities. *Coral Springs St. Sys., Inc.*, 371 F.3d at 1328-29.

The well-settled law recognizes only a limited exception to the mootness of a challenge to a repealed law: if there is a substantial likelihood that the challenged statutory language will be reenacted.” *Id.* at 1329. No such substantial likelihood exists here. There is no evidence that the Challenged Ordinance, or any challenged aspect thereof, will be reenacted in the future. The repealing Emergency Ordinance specifically seeks “to ensure that the Conversion Therapy Prohibition does not chill protected speech in violation of the First Amendment (and therefore harm practitioners of conversion therapy),” thus, requiring immediate repeal of the Challenged Ordinance. Exh. A. In addition, the City Council explicitly found that “based upon the decision of the Eleventh Circuit, it has no intention of reenacting Chapter 9, Article VI, or anything substantially similar, unless there is a change in law that would make adoption of such regulation lawful.” *Id.* at Section 3.

Indeed, since enactment on October 10, 2017, the Challenged Ordinance was never enforced against Plaintiffs (or any other practitioner of conversion therapy in the City).

Plaintiffs, moreover, cannot meet the requisite elements for an injunction (i.e., a showing of irreparable harm), as the conduct at issue is no longer prohibited. There is simply no law in place the enforcement of which would be enjoined. Similarly, there is no need for a declaration of rights under a law that is no longer in effect. Accordingly, Plaintiffs' demand for injunctive and declaratory relief is now moot.

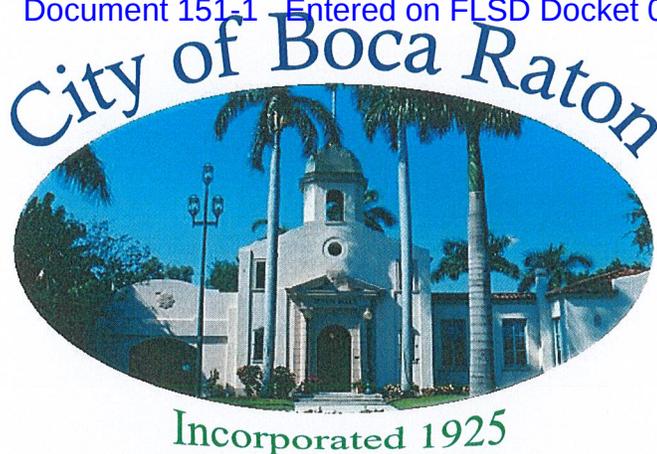
WHEREFORE, Defendant, City of Boca Raton, notifies this Court of the mootness of Plaintiffs' request for injunctive and declaratory relief and respectfully requests that the Court enter an order reflecting same and that the Court not enter unnecessary injunctive relief, as well as any further relief the Court deems just and proper.

Dated: August 5, 2022

Respectfully submitted,

WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.  
*Counsel for Defendant City of Boca Raton*  
200 East Broward Boulevard, Suite 1900  
Fort Lauderdale, FL 33301  
Telephone: (954) 763-4242  
Telecopier: (954) 764-7770

By: /s/ Anne R. Flanigan  
JAMIE A. COLE  
Florida Bar No. 767573  
Primary email: [jcole@wsh-law.com](mailto:jcole@wsh-law.com)  
Secondary email: [msaraff@wsh-law.com](mailto:msaraff@wsh-law.com)  
DANIEL L. ABBOTT  
Florida Bar No. 767115  
Primary email: [dabbott@wsh-law.com](mailto:dabbott@wsh-law.com)  
Secondary email: [pgrotto@wsh-law.com](mailto:pgrotto@wsh-law.com)  
ANNE R. FLANIGAN  
Florida Bar No. 113889  
Primary email: [aflanigan@wsh-law.com](mailto:aflanigan@wsh-law.com)  
Secondary email: [pgrotto@wsh-law.com](mailto:pgrotto@wsh-law.com)



## ORDINANCE

5625

1  
2 AN EMERGENCY ORDINANCE OF THE CITY OF BOCA  
3 RATON REPEALING CHAPTER 9, ARTICLE VI,  
4 "PROHIBITION OF CONVERSION THERAPY ON MINORS,"  
5 CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY;  
6 PROVIDING FOR REPEALER; PROVIDING AN EFFECTIVE  
7 DATE

8  
9 WHEREAS, this emergency ordinance is adopted pursuant to Section 3.14 of the  
10 City Charter; and

11 WHEREAS, the Eleventh Circuit Court of Appeals, in the case of *Otto, et al. vs. City of*  
12 *Boca Raton and County of Palm Beach, Florida*, has found Chapter 9, Article VI, "Prohibition of  
13 Conversion Therapy on Minors," of the City's Code of Ordinances (the "Conversion Therapy  
14 Prohibition") to be an unconstitutional restriction on speech in violation of the First Amendment to  
15 the United States Constitution; and

16 WHEREAS, the City has analyzed the decision of the Eleventh Circuit, and although  
17 the City disagrees with the decision, the City respects the judicial authority of the Eleventh Circuit  
18 and accepts the decision; and

1           WHEREAS, the Conversion Therapy Prohibition is applicable not only to the named  
2 plaintiffs in *Otto, et al. vs. City of Boca Raton, et al.*, but is also applicable to any other practitioners  
3 of conversion therapy in the City; and

4           WHEREAS, in order to ensure that the Conversion Therapy Prohibition does not chill  
5 protected speech in violation of the First Amendment (and therefore harm practitioners of  
6 conversion therapy), it is imperative for the City to immediately repeal Chapter 9, Article VI, Code  
7 of Ordinances, in its entirety; and

8           WHEREAS, City Council finds that preventing the chilling of protected speech is an  
9 emergency "affecting life, health, property or the public peace," as described in Section 3.14 of  
10 the City Charter; now therefore

11  
12                                   THE CITY OF BOCA RATON HEREBY ORDAINS:

13  
14           Section 1. Chapter 9, Article VI, "Prohibition of Conversion Therapy on Minors," Code  
15 of Ordinances, is deleted in its entirety.

16           Section 2. An emergency exists, as described in the above recitals, and this  
17 emergency ordinance is adopted in order to ensure that the Conversion Therapy Prohibition does  
18 not chill protected speech in violation of the First Amendment (and therefore harm practitioners  
19 of conversion therapy).

20           Section 3. The City Council finds that, based upon the decision of the Eleventh Circuit  
21 Court of Appeals, it has no intention of reenacting Chapter 9, Article VI, or anything substantially  
22 similar, unless there is a change in law that would make adoption of such regulation lawful.

23           Section 4. If any section, subsection, clause or provision of this ordinance is held  
24 invalid, the remainder shall not be affected by such invalidity.

25           Section 5. All ordinances and resolutions or parts of ordinances and resolutions and all  
26 sections and parts of sections in conflict herewith shall be and hereby are repealed.

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Section 6. This ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Boca Raton this 5<sup>th</sup> day of August, 2022.

CITY OF BOCA RATON, FLORIDA

ATTEST:

Mary Siddons  
Mary Siddons, City Clerk

Scott Singer  
Scott Singer, Mayor

Approved as to form:

Diana Grub Frieser  
Diana Grub Frieser  
City Attorney

COUNCIL MEMBER	YES	NO	ABSTAINED
MAYOR SCOTT SINGER	✓		
DEPUTY MAYOR ANDREA LEVINE O'ROURKE	✓		
COUNCIL MEMBER YVETTE DRUCKER	✓		
COUNCIL MEMBER MONICA MAYOTTE	✓		
COUNCIL MEMBER ANDY THOMSON	✓		