

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.

---

**DEFENDANT, CITY OF BOCA RATON'S REPLY REGARDING THE SUGGESTION  
OF MOOTNESS**

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

1. Plaintiffs argue that the City's suggestion of mootness is, essentially, disingenuous, because the City Council repealed the Challenged Ordinance – Ordinance No. 5407 – through an emergency ordinance (Ordinance No. 5625, the "Emergency Ordinance"), which pursuant to Section 3.14 of the City Charter lasts sixty days unless it is re-enacted under regular procedures. ECF No. 152 at 1-2. The City Council enacted the Emergency Ordinance because it desired to take immediate action in response to the Eleventh Circuit's decision. Although Plaintiffs' reading of the City's Charter regarding the 60-day period is correct, it is important to note that the City, at the August 5, 2022 meeting, also began the process of enacting an ordinance permanently repealing the Challenged Ordinance through the regular enactment procedures.

2. Specifically, at the August 5, 2022 special meeting (convened to repeal the Challenged Ordinance), the City Council not only unanimously approved the Emergency Ordinance repealing the Challenged Ordinance, but also held the first reading introducing Ordinance No. 5626, a non-emergency ordinance permanently repealing Ordinance No. 5407. *See* Declaration of Mary Siddons, attached as Exhibit “A.” As required by the City Code, the final reading and approval of Ordinance No. 5626 will take place at the City Council meeting on August 23, 2022. *Id.* Both the Emergency Ordinance and non-emergency Ordinance No. 5626 contain explicit statements by the City Council 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.” *See* Emergency Ordinance, Section 3; Ordinance No. 5626, Section 2.

3. Between the unanimous enactment of the Emergency Ordinance, the introduction of Ordinance No. 5626 and scheduling of final reading for August 23, 2022, and the factual finding regarding intent contained in both ordinances, the City has done everything possible to repeal the Challenged Ordinance as quickly as possible. As of the filing of this Reply, there is no City ordinance or regulation that would prevent Plaintiffs from engaging in conversion therapy for minors within the City, and thus there is nothing for the Court to enjoin.

4. Moreover, in light of the foregoing, Plaintiffs cannot genuinely contest that the City’s intent to repeal the Challenged Ordinance permanently is either speculative or reflects a substantial likelihood of reenactment. The City’s actions reflect an earnest effort to immediately and permanently comply with the Eleventh Circuit’s ruling.

5. Notably, Plaintiffs’ Response [ECF No. 152] wholly ignores the well-settled body of case law giving deference to municipalities that have repealed challenged legislation and

mooted injunctive relief. *See, e.g., 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 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)).

6. The cases upon which Plaintiffs rely deal exclusively with *private* actors and ignores the fact that 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.

7. Finally, Plaintiffs' argument regarding damages is a red herring. The City did not argue or even imply in the Suggestion of Mootness [ECF No. 151] that Plaintiffs' damages claim was now moot. While the City challenges the veracity of any claimed damages (particularly given the fact that the City has never once enforced the now-repealed Challenged Ordinance against Plaintiffs), it is not contending that the repeal of the Challenge Ordinance from the City's Code also moots Plaintiffs' purported damages claim.

8. Accordingly, and contrary to Plaintiffs' Response, the claim for declaratory and injunctive relief is now moot because of the emergency repeal of the Challenged Ordinance, a repeal that will continue through the passage of Ordinance No. 5626 on August 23, 2022. The entry of a preliminary injunction enjoining the City from enforcing a repealed ordinance is neither necessary nor appropriate. *See State v. Becerra*, 544 F. Supp. 3d 1241, 1251 (M.D. Fla. 2021) ("To present a justiciable case or controversy for a preliminary injunction, a plaintiff must establish by a 'clear showing' each element of 'standing.'") (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs cannot demonstrate the concrete and particularized injury necessary for Article III arising from a repealed ordinance. *Tokyo Gwinnett, LLC v. Gwinnett Cnty., Ga.*, 940 F. 3d 1254, 1263 (11th Cir. 2019) ("Because the old ordinances were repealed and replaced, these alleged injuries stemming from those ordinances will never materialize and cannot support Article III standing.").

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

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

Primary email: [jcole@wsh-law.com](mailto:jcole@wsh-law.com)  
Secondary email: [msarraff@wsh-law.com](mailto:msarraff@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)

UNITED STATES DISTRICT COURT  
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.

\_\_\_\_\_ /

**DECLARATION OF MARY SIDDONS,**  
**CITY CLERK OF DEFENDANT, CITY OF BOCA RATON**

I, Mary Siddons, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over eighteen (18) years of age and have personal knowledge of all of the facts stated herein.
2. At 10:00 a.m. on August 5, 2022, the City Council convened a special meeting, at which I was present and served as the City Clerk (“Special Meeting”).
3. At the Special Meeting, the City Council unanimously approved Emergency Ordinance No. 5625, repealing Ordinance No. 5407, Exhibit “A” hereto.
4. Ordinance No. 5626, a non-emergency ordinance permanently repealing Ordinance No. 5407, was also introduced at the Special Meeting, a copy of which is attached hereto as Exhibit “B.”

5. The City Council was then advised that Ordinance No. 5626 would be placed on the agenda for the final reading and approval by the City Council at the August 23, 2022 regular City Council meeting.

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

Executed this 5th day of August, 2022, at Boca Raton, Florida.

  
Mary Siddons  
City Clerk, City of Boca Raton



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

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:

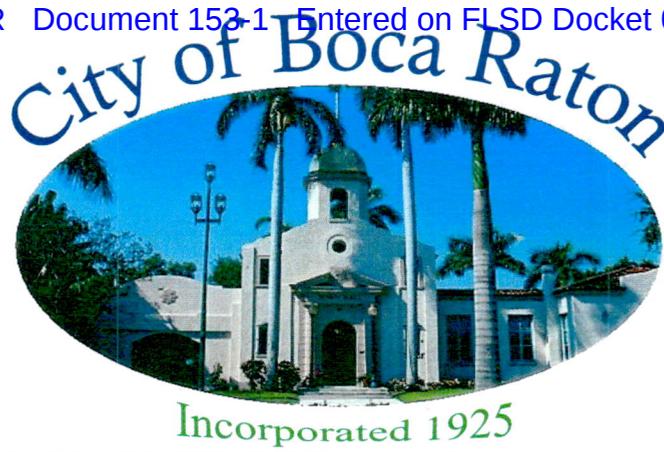
Mary Siddons  
Mary Siddons, City Clerk

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	✓		



## ORDINANCE

5626

AN ORDINANCE OF THE CITY OF BOCA RATON  
 REPEALING CHAPTER 9, ARTICLE VI, "PROHIBITION OF  
 CONVERSION THERAPY ON MINORS," CODE OF  
 ORDINANCES; PROVIDING FOR SEVERABILITY;  
 PROVIDING FOR REPEALER; PROVIDING FOR  
 CODIFICATION; PROVIDING AN EFFECTIVE DATE

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

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

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

1           WHEREAS, in order to ensure that the Conversion Therapy Prohibition does not chill  
2 protected speech in violation of the First Amendment (and therefore harm practitioners of  
3 conversion therapy), the City wishes to repeal Chapter 9, Article VI, Code of Ordinances, in its  
4 entirety; and

5           WHEREAS, on August 5, 2022, the City Council adopted emergency Ordinance No.  
6 5625 repealing the Conversion Therapy Prohibition, and now wishes to adopt the repeal as a non-  
7 emergency ordinance; now therefore

8  
9                           THE CITY OF BOCA RATON HEREBY ORDAINS:

10  
11           Section 1. Chapter 9, Article VI, "Prohibition of Conversion Therapy on Minors," Code  
12 of Ordinances, is deleted in its entirety.

13           Section 2. The City Council finds that, based upon the decision of the Eleventh Circuit  
14 Court of Appeals, it has no intention of reenacting Chapter 9, Article VI, or anything substantially  
15 similar, unless there is a change in law that would make adoption of such regulation lawful.

16           Section 3. If any section, subsection, clause or provision of this ordinance is held  
17 invalid, the remainder shall not be affected by such invalidity.

18           Section 4. All ordinances and resolutions or parts of ordinances and resolutions and  
19 all sections and parts of sections in conflict herewith shall be and hereby are repealed.

20           Section 5. Codification of the repeal of Chapter 9, Article VI in the City Code of  
21 Ordinances is hereby authorized and directed.

22           Section 6. This ordinance shall take effect immediately upon adoption.  
23  
24

1 PASSED AND ADOPTED by the City Council of the City of Boca Raton this \_\_\_\_ day  
2 of \_\_\_\_\_, 2022.

3 CITY OF BOCA RATON, FLORIDA

4 ATTEST:

5 \_\_\_\_\_  
6 Scott Singer, Mayor

7  
8  
9 \_\_\_\_\_  
10 Mary Siddons, City Clerk

11 Approved as to form:

12   
13 \_\_\_\_\_  
14 Diana Grub Frieser  
15 City Attorney  
16  
17

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			

18