

No. 19-10604

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

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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

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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

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**PLAINTIFFS–APPELLANTS’ SUPPLEMENT TO MOTION  
TO THE MERITS PANEL TO ENFORCE MANDATE**

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Mathew D. Staver (Fla. 0701092)  
Horatio G. Mihet (Fla. 026581)  
Roger K. Gannam (Fla. 240450)  
LIBERTY COUNSEL  
P.O. Box 540774  
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E-mail: court@lc.org

*Attorneys for Plaintiffs–Appellants*

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

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

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/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Plaintiffs–Appellants*

**PLAINTIFFS–APPELLANTS’ SUPPLEMENT TO MOTION TO THE  
MERITS PANEL TO ENFORCE MANDATE**

In their Motion to the Merits Panel to Enforce Mandate (“Motion”), filed on August 15, 2022, Plaintiffs–Appellants, ROBERT W. OTTO, Ph.D. LMFT and JULIE H. HAMILTON, Ph.D. LMFT (collectively, “Counselors”), referred to the involvement of Rand Hoch and the Palm Beach Human Rights Council in the 2017 enactment of the two ordinances at issue in this appeal, and now in the 2022 strategic attempts by Defendant Localities to repeal them to defeat jurisdiction over injunctive relief and avoid the consequences of this Court’s decision and mandate. (Motion at 12-15, ¶¶ 23(a)-(f)).

In their rush to seek prompt relief from this Court, Counselors had forgotten and overlooked the fact that, in October 2018, they had uncovered documents in discovery from Defendant Localities in which Mr. Hoch boasted that: (a) his group had a special political affiliation with Judge Robin Rosenberg’s husband; (b) his group and the Localities were “fortunate to get Judge Robin Rosenberg on the case”; and (c) his group “**will be working behind the scenes with the parties on the case so that Judge Rosenberg does not get recused.**” (*See Plaintiffs’ Notice of Court’s Potentially Disqualifying Relationship with Interested Non-Party Witness*, dkt. 117 at 1-2 and Exhibit C thereto; copy attached hereto as **Exhibit 1**).

Counselors brought these documents and revelations immediately to the attention of the district court. (*Id.*) At that time, Counselors did not believe—based

on those documents alone—that the district judge should be recused, but brought the documents to the court’s attention “only as a matter of prudence and in an abundance of caution, to give the Court a fair opportunity to evaluate Hoch’s statements under the standards of 28 U.S.C. § 455.” (*Id.* at 1). The Court’s docket does not reflect any response or remark from the district court to this filing, and, to Counselors’ best recollection now (three years removed from these events) the Court did not address this filing at any hearing or conference.

Counselors provide this information to this Court now for further context on the Localities’ connection with Mr. Hoch and their joint efforts to avoid the consequences of this Court’s mandate. In addition, although Counselors did not request recusal of the district judge based on these revelations alone, subsequent developments since then—including the district judge’s denial of preliminary injunctive relief, unjustified delay in fulfilling this Court’s clear mandate, and chastising of Counselors for insisting on a swift halt to their ongoing irreparable harm—now give Counselors sufficient doubt about the district court’s impartiality to reassess their previous declination to affirmatively seek recusal going forward.

Dated this August 16, 2022.

/s/ Horatio G. Mihet  
Mathew D. Staver (Fla. 0701092)  
Horatio G. Mihet (Fla. 026581)  
Roger K. Gannam (Fla. 240450)  
Liberty Counsel  
P.O. Box 540774  
Orlando, FL 32854  
Phone: (407) 875-1776  
E-mail: court@lc.org  
*Attorneys for Plaintiffs–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 426 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/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Plaintiffs–Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that, on this August 16, 2022, 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:

*Attorneys for Defendant–Appellee  
City of Boca Raton, Florida*

Jamie A. Cole  
jcole@wsh-law.com  
Daniel L. Abbott  
dabbott@wsh-law.com  
Anne R. Flanigan  
aflanigan@wsh-law.com  
WEISS SEROTA HELFMAN  
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200 East Broward Boulevard  
Suite 1900  
Fort Lauderdale, FL 33301

*Attorney for Defendant–Appellee  
Palm Beach County, Florida*

Helene C. Hvizd  
hhvizd@pbcgov.org  
Senior Assistant County Attorney  
Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401

/s/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Plaintiffs–Appellants*

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

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

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**PLAINTIFFS' NOTICE OF COURT'S POTENTIALLY  
DISQUALIFYING RELATIONSHIP WITH INTERESTED NON-PARTY WITNESS**

Plaintiffs and their undersigned counsel give notice to the Court of a potentially disqualifying relationship with interested non-party witness, Judge Rand Hoch (retired), based on written communications between Judge Hoch and Defendant City of Boca Raton's City Attorney which were produced by the City in discovery, and in which Judge Hoch expressly suggests that Judge Robin L. Rosenberg cannot be impartial in this case because of the involvement of Judge Hoch and his organization, Palm Beach County Human Rights Council (PBCHRC). Plaintiffs have no knowledge, apart from Judge Hoch's communications with the City, of any disqualifying relationship, and Plaintiffs do not by this notice seek Judge Rosenberg's disqualification or otherwise question Judge Rosenberg's impartiality. Plaintiffs, and their undersigned counsel as Officers of the Court, provide this notice only as a matter of prudence and in an abundance of caution, to give the Court a fair opportunity to evaluate Hoch's statements under the standards of 28 U.S.C. § 455.

Plaintiffs provide the following details regarding Judge Hoch's communications with Defendants:

1. Judge Hoch is the principal author and proponent of both Ordinances at issue in this case. (Hvzd Dep., DE 96-2, 21:22–23:19, 94:9–98:9, 247:14–249:23; Pls.' Ex. 6, DE 97-6; Woika Dep., DE 96-4, 12:24–13:24.) The Ordinances exist because Judge Hoch relentlessly pressured the City's and the County's elected officials to enact them (Pls.' Ex. 26, DE 97-26, at

City - 00992 (“Electeds received a lot of pressure from Rand Hoch.”)), even after Defendants’ own attorneys repeatedly and unequivocally told him that regulation of mental health professionals is a “classic” state issue that cannot be regulated at the local level because of a “pervasive” state regulatory scheme “evidencing an intent that this area be preserved to the Legislature.” (Pls.’s Ex. 9, DE 97-9, at PBC 014666; Pls.’ Ex. 11, DE 97-11, at PBC 014677.) (True and correct copies of Plaintiffs’ Exhibits 9 and 11 are attached hereto as Exhibits A and B, respectively.)

2. In an e-mail from Judge Hoch to Boca Raton City Attorney Diana Grub Frieser dated June 19, 2018 (Pls.’ Ex. 28, DE 97-28), Judge Hoch expressly questioned Judge Rosenberg’s impartiality because of PBCHRC’s involvement in this case:

**We were fortunate to get Judge Robin Rosenberg on the case. However, PBCHRC Voters Alliance has endorsed her husband, Michael McAuliffe, in his campaign for circuit court judge. So, PBCHRC will be working behind the scenes with the parties on the case so that Judge Rosenberg does not get recused.**

(Pls.’ Ex. 28, DE 97-28, at 1 (emphasis added).) (A true and correct copy is attached hereto as Exhibit C.)

3. Judge Hoch had, in fact, been “working behind the scenes” to obtain enactment of the Ordinances. (Pls.’s Exs. 8–17, 19, DE 97-8 – 97-17, 97-19.) Moreover, Judge Hoch has continued “working behind the scenes” in coordinating, and perhaps funding, the City and County defenses of this case:

[Palm Beach County Attorney] Denise [Marie Nieman] and I have been chatting about this for days. (She just left for Paris this afternoon, so she's gone for a while). Assistant County Attorneys Rachel Fahey and Kim Phan will be handling the case.

**I had asked Denise if the County was interested in seeing if we could secure outside counsel on a pro bono basis. They declined. We also reminded them that we can pay for experts expenses, etc [sic] and they took us up on that one. We'll do the same for Boca, but I trust you'll be coordinating with the County.**

....

**I think the County wants to take the lead on this case. So, let me know when you and the County want to get together.**

(Ex. C at 1 (emphasis added).) In addition, Judge Hoch is directly involved in advising Defendants regarding their legal positions in the case. For instance, when the Supreme Court recently decided

a seminal case invalidating the two cases upon which Defendants premised their Ordinances, the worried Defendants looked to Judge Hoch for direction:

[E-mail, July 3, 2018, Diana Grub Frasier to Rand Hoch]

Rand,

As I believe you know, the City was formally served in connection with the Robert W. Otto and Julie H. Hamilton v. City of Boca Raton and County of Palm Beach case ("Conversion Therapy" case). Since then, the decision in the U.S. Supreme Court case of National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018) was issued. Unfortunately, the decision disapproves of two cases relevant to the Conversion Therapy case: King v. Governor of New Jersey, 767 F.3d 216 (C.A.3 2014) and Pickup v. Brown, 740 F.3d 1208 (C.A.9 2014), specifically with respect to the differentiation of "professional" speech from First Amendment protected speech. **I'd appreciate your thoughts regarding the implications of this recent U.S. Supreme Court decision on the pending Conversion Therapy case. Let me know if you would like to schedule a time to discuss the issue.**

**Thanks, and I'll wait to hear from you,**

Diana

[Reply e-mail, July 3, 2018, Rand Hoch to Diana Grub Frasier]

**Will get back to you in a few days on this. Have circulated your request to our team of lawyers across the US.**

Rand

(Pls.' Ex. 36, City 00483 (emphasis added).) (A true and correct copy is attached hereto as Exhibit D.)

4. Judge Hoch expected his communications with Defendants' attorneys to be shielded from discovery. (Pls.' Ex. 12, DE 97-12 ("I trust that all of our e-mail concerning the litigation are temporarily exempt from public records requests in accordance with Chapter 119.").)

As shown above, in Judge Hoch's view, his extensive involvement "working behind the scenes" in enacting the Ordinances and the defense of this case would, if known to Judge Rosenberg, require her recusal. Given Judge Hoch's involvement, his name and conduct are likely to be heavily featured at the upcoming preliminary injunction hearing. Accordingly, Plaintiffs, and their undersigned counsel as Officers of the Court, give this notice in advance of the hearing of Judge Hoch's involvement and opinion regarding recusal. As also stated above, Plaintiffs take no position on recusal or otherwise question Judge Rosenberg's impartiality.

Respectfully submitted,

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

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this October 16, 2018, I caused a true and correct copy of the foregoing to be filed electronically with the Court's CM/ECF system. Service upon all counsel of record will be effectuated by the Court's electronic notification system.

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

**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

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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](mailto: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:** [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

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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](mailto:dnieman@pbcgov.org)

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**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

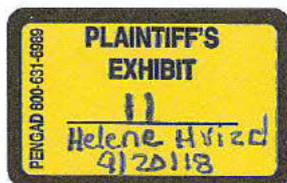
Hello Rand,

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,



**EXHIBIT B**

PBC 014677

Helene

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**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:** Rand Hoch  
**To:** Frieser, Diana Grub  
**Cc:** Carly Cass; Chauncey Graham; Dan Hall; Hutch Floyd; Jamie Todd Foreman-Plakas; JP Sasser; Marcie Hall; Meredith Ockman; Michael Fowler; Rae Franks; Rand Hoch; Trent Steele  
**Subject:** Re: PBCHRC - Otto and Hamilton v. Palm Beach and Boca Raton - Complaint (conversion therapy)  
**Date:** Tuesday, June 19, 2018 8:07:48 PM  
**Attachments:** image003.png  
image002.png

Diana,

Denise and I have been chatting about this for days. (She just left for Paris this afternoon, so she's gone for a while). Assistant County Attorneys Rachel Fahey and Kim Phan will be handling the case.

I had asked Denise if the County was interested in seeing if we could secure outside counsel on a pro bono basis. They declined. We also reminded them that we can pay for experts expenses, etc and they took us up on that one. We'll do the same for Boca, but I trust you'll be coordinating with the County.

The good thing is, Liberty Counsel filed the exact same lawsuit against the City of Tampa in December - *Vazzo et al v. City of Tampa*, Florida. So, my suggestion would be to contact the Tampa City Attorney there and see if you can copies of the pleadings in Word so your staff doesn't even have to retype them in full.

I think the County wants to take the lead on this case. So, let me know when you and the County want to get together.

Rand

P.S. We were fortunate to get Judge Robin Rosenberg on the case. However, PBCHRC Voters Alliance has endorsed her husband, Michael McAuliffe, in his campaign for circuit court judge. So, PBCHRC will be working behind the scenes with the parties on the case so that Judge Rosenberg does not get recused. That having been said, we'll also be working with the National Center for Lesbian Rights and the Southern Poverty Law Center, who will probably file an amicus brief on behalf of some LGBTQ entity in PB County. Also, PBCHRC will be available for the media.

On Tue, Jun 19, 2018 at 4:52 PM, Frieser, Diana Grub <[DGfrieser@ci.boca-raton.fl.us](mailto:DGfrieser@ci.boca-raton.fl.us)> wrote:

Rand,

Thank you for letting us know about the denial of the Plaintiff's request for preliminary injunction. As you probably realize, we were unaware a hearing was scheduled, and are unaware of any circumstances that would justify a hearing without notice to the City. We did confirm with the County that it had been served with the complaint this morning, but as of this email the City has not been served.

We appreciate the interest from you and the Palm Beach County Human Rights Council regarding



**EXHIBIT C**

City - 00492

this newly filed litigation. We recall the assurances and support pledged by the PBCHRC during the City's consideration of the Ordinance prohibiting conversion therapy with respect to minors which is the focus of the complaint and believe those resources will be valuable. I believe it would be appropriate for us to touch base regarding the defense of the Ordinance once the City is served, and, at that time, we can discuss coordination of the financial and legal resources PBCHRC is prepared to provide to the City to supplement the City's efforts.

In addition, can you advise if you have been in touch with the County, and whether PBCHRC has similarly pledged to support the defense of the conversion therapy ordinance adopted by the County?

Thanks,  
Diana

**Diana Grub Frieser | City Attorney**

*City of Boca Raton, Office of the City Attorney*  
201 W. Palmetto Park Road • Boca Raton, FL 33432

P 561-393-7716 | [dgfrieser@myboca.us](mailto:dgfrieser@myboca.us)

Stay connected...



**From:** Rand Hoch [<mailto:rand-hoch@usa.net>]  
**Sent:** Tuesday, June 19, 2018 1:33 PM  
**To:** Frieser, Diana Grub <[DGFrieser@ci.boca-raton.fl.us](mailto:DGFrieser@ci.boca-raton.fl.us)>  
**Subject:** Re: PBCHRC - Otto and Hamilton v. Palm Beach and Boca Raton - Complaint

Diana,

Good news so far.

Robin Rosenberg is the Judge.

She denied the preliminary injunction w/our prejudice because the defendants have not been served.

PBC was served today.

Rand

Please note: Florida has a very broad public records law. Most written communications to or from local officials regarding city business are public records, and are available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. The City of Boca Raton scanned this outbound message for viruses, vandals and malicious content and found this message to be free of such content.

----- Forwarded message -----  
From: Rand Hoch <[rand-hoch@usa.net](mailto:rand-hoch@usa.net)>

To: "Weinroth, Robert" <RWeinroth@ci.boca-raton.fl.us>  
Cc: Mayor Susan Haynie <shaynie@ci.boca-raton.fl.us>, "Andrea Levine O'Rourke" <aorourke@ci.boca-raton.fl.us>, Jeremy Rodgers <jrodgers@ci.boca-raton.fl.us>, "Singer, Scott" <SSinger@ci.boca-raton.fl.us>, Diana Grub Frieser <DGFrieser@ci.boca-raton.fl.us>, Leif Ahnell <leif@ci.boca-raton.fl.us>  
Bcc:  
Date: Mon, 25 Dec 2017 13:26:36 -0500  
Subject: Re: Ltr - to City of Boca Raton re speech ban 12222017.pdf  
Thank you for forwarding The Liberty Counsel's letter to me. Just what I needed to reach on Christmas Day!

As you may know, The Liberty Counsel is a hate group i which advocates for anti-LGBT discrimination under the guise of religious liberty. (See, [www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel](http://www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel)).

The organization has made numerous threats about filing suit against the City of West Palm Beach, Palm Beach County and several other South Florida governmental entities which have enacted -- or are in the process of enacting -- bans on conversion therapy. However, despite the existence of more than a dozen bans in South Florida to date, The Liberty Counsel chose to file their lawsuit (on the same grounds as espoused in their December 22, 2107 diatribe sent to you) in federal court in Tampa, where the panel of federal judges is generally more conservative than here in South Florida.

That lawsuit was filed just days before the Palm Beach County Board of County Commissioners passed their conversion therapy ban and iIn my opinion, it was filed as an attempt to intimidate the County Commissioners -- who obviously were not intimidated.

The Broward County Board of County Commissioners is set to have their Final Reading on their conversion therapy ban on January 9, 2018, So, it appears likely that The Liberty Counsel is trying to intimidate another body of elected officials which is taking action to protecting children from the harm of conversion therapy. I am confident that despite the hollow threats made by The Liberty Counsel, the Broward County Commissioners will not be intimidated by The Liberty Counsel.

As mentioned in prior correspondence, **no challenge to a conversion therapy ban has ever succeeded anywhere in the U.S.** And on four occasions (including last May with Associate Justice Neil Gorsuch sitting on the Court), the U.S. Supreme Court has declined to take up lower cases which were filed (and failed to) overturn conversion therapy bans.

Moreover, having followed this hate group and their litigation for more than two decades, I cannot recall them ever having filed the same lawsuit in two different parts of the same state. So, the letter to your and the City Council Members appears to be just another idle threat meant to grab some media attention and appease The Liberty Counsel's donors in Boca Raton.

Following the Holidays, PBCHRC will provide Mayor Haynie and the City Council with a more detailed response to the December 22, 2017 letter. In the interim, I trust that Boca Raton's elected officials will not be intimidated by the Liberty Counsel's latest threat of litigation.

**From:** Frieser, Diana Grub  
**To:** Rand Hoch; Denise Nieman  
**Cc:** Fernandez, Christopher  
**Subject:** RE: PBCHRC - Conversion Therapy appeal - National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018)  
**Date:** Tuesday, July 10, 2018 7:57:25 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)

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Rand,  
Thanks, we'll look forward to receiving it.  
Diana

**From:** flagler400@gmail.com [mailto:flagler400@gmail.com] **On Behalf Of** Rand Hoch  
**Sent:** Monday, July 9, 2018 6:18 PM  
**To:** Frieser, Diana Grub ; Denise Nieman  
**Subject:** PBCHRC - Conversion Therapy appeal - National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018)  
Diana,

The Southern Poverty Law Center has a filing in the Tampa case tomorrow that they will send you that lays out our views on the effect of the NIFLA decision. I will forward a copy to you and to Denise.

Rand  
On Tue, Jul 3, 2018 at 5:04 PM, Rand Hoch <[rand-hoch@usa.net](mailto:rand-hoch@usa.net)> wrote:

Will get back to you in a few days on this. Have circulated your request to our team of lawyers across the US.

Rand  
On Tue, Jul 3, 2018 at 4:11 PM, Frieser, Diana Grub <[DFGrieser@ci.boca-raton.fl.us](mailto:DFGrieser@ci.boca-raton.fl.us)> wrote:

Rand,  
As I believe you know, the City was formally served in connection with the Robert W. Otto and Julie H. Hamilton v. City of Boca Raton and County of Palm Beach case ("Conversion Therapy" case). Since then, the decision in the U.S. Supreme Court case of National Institute of Family and Life Advocates v. Becerra (2018 WL 3116336 June 26, 2018) was issued. Unfortunately, the decision disapproves of two cases relevant to the Conversion Therapy case: King v. Governor of New Jersey, 767 F.3d 216 (C.A.3 2014) and Pickup v. Brown, 740 F.3d 1208 (C.A.9 2014), specifically with respect to the differentiation of "professional" speech from First Amendment protected speech. I'd appreciate your thoughts regarding the implications of this recent U.S. Supreme Court decision on the pending Conversion Therapy case. Let me know if you would like to schedule a time to discuss the issue.

Thanks and I'll wait to hear from you,  
Diana

**Diana Grub Frieser | City Attorney**  
*City of Boca Raton, Office of the City Attorney*  
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Stay connected...



Please note: Florida has a very broad public records law. Most written communications to or from local officials regarding city business are public records, and are available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure. The City of Boca Raton scanned this outbound message for viruses, vandals and malicious content and found this message to be free of such content.