

NO. 19-10604-A

**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.

**APPELLEE, COUNTY OF PALM BEACH, FLORIDA'S,
RESPONSE TO PLAINTIFFS/APPELLANTS'
MOTION TO THE MERITS PANEL TO ENFORCE MANDATE**

**HELENE C. HVIZD
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**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT
ROBERT W. OTTO, et al. v. CITY OF BOCA RATON, et al.**

Case No. 19-10604-A

Appellee COUNTY OF PALM BEACH, FLORIDA files this Certificate of Interested Persons and Corporate Disclosure Statement, listing the parties and entities interested in this appeal, as required by Federal Rule of Appellate Procedure 26.1-1. and Eleventh Circuit Rule 26.1:

Abbott, Daniel L., trial and appellate co-counsel for defendant/appellee City of Boca Raton

Alliance for Therapeutic Choice, amicus in support of Plaintiffs/Appellants

Berger, Mary Lou, defendant/appellee Palm Beach County Commissioner

Carlton Fields Jordan Burt, P.A., counsel for Equality Florida Institute Inc., amicus
in support of defendants/appellees

City of Boca Raton, Florida, defendant/appellee

Cole, Jamie A., trial co-counsel for defendant/appellee City of Boca Raton

Dreier, Douglas C., counsel for The Trevor Project, amicus in support of
defendants/appellees

ROBERT W. OTTO, et al. v. CITY OF BOCA RATON, et al.

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Dunlap, Aaron C., counsel for Equality Florida Institute Inc., amicus in support of
defendants/appellees

Equality Florida Institute, Inc., amicus in support of defendants/appellees

Fahey, Rachel, trial co-counsel for defendant/appellee Palm Beach County

Flanigan, Anne R., trial and appellate co-counsel for defendant/appellee City of
Boca Raton

Gannam, Roger K., trial and appellate co-counsel for plaintiffs/appellants

Gibson, Dunn & Crutcher LLP, counsel for The Trevor Project, amicus in support
of defendants/appellees

Guedes, Edward G., appellate co-counsel for defendant/appellee City of Boca Raton

Hamilton, Julie H., Ph.D., LMFT, plaintiff/appellant

Hvizd, Helene C., appellate counsel for defendant/appellee Palm Beach County

Kay, Eric S., appellate co-counsel for defendant/appellee City of Boca Raton

Kerner, Dave, defendant/appellee Palm Beach County Commissioner

Liberty Counsel, trial and appellate counsel for plaintiffs/appellants

Mack, Bernard, defendant/appellee Palm Beach County Commissioner

ROBERT W. OTTO, et al. v. CITY OF BOCA RATON, et al.

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Mayotte, Monica, defendant/appellee City of Boca Raton Council Member

McKinlay, Melissa, defendant/appellee Palm Beach County Commissioner

Mihet, Horatio Gabriel, trial and appellate co-counsel for plaintiffs/appellants

O'Rourke, Andrea Levine, defendant/appellee City of Boca Raton Council Member

Otto, Robert W., Ph.D., LMFT, plaintiff/appellant

Palm Beach County, Florida, defendant/appellee

Phan, Kim, trial co-counsel for defendant/appellee Palm Beach County

Price, Max R., counsel for Alliance for Therapeutic Choice, amicus in support of
plaintiffs/appellants

Reinhart, Bruce E., United States Magistrate Judge

Rodgers, Jeremy, defendant/appellee City of Boca Raton Deputy Mayor

Rosenberg, Robin L., United States District Judge

SDG Counseling, LLC, company of plaintiff/appellant Robert W. Otto, Ph.D.,

LMFT

Singer, Scott, defendant/appellee City of Boca Raton Mayor

ROBERT W. OTTO, et al. v. CITY OF BOCA RATON, et al.

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Staver, Matthew Duane, trial and appellate co-counsel for plaintiffs/appellants

The Trevor Project, amicus in support of defendants/appellees

Thomson, Andy, defendant/appellee City of Boca Raton Council Member

Valeche, Hal R., defendant/appellee Palm Beach County Commissioner

Walbolt, Sylvia H., counsel for Equality Florida Institute Inc., amicus in support of
defendants/appellees

Weinroth, Robert S., defendant/appellee Palm Beach County Commissioner

Weiss, Gregg K., defendant/appellee Palm Beach County Commissioner

Weiss Serota Helfman Cole & Bierman, P.L., counsel for defendant/appellee City
of Boca Raton

Yasko, Jennifer A., counsel for Equality Florida Institute Inc., amicus in support of
defendants/appellees

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

**APPELLEE, COUNTY OF PALM BEACH, FLORIDA’S,
RESPONSE TO PLAINTIFFS/APPELLANTS’
MOTION TO THE MERITS PANEL TO ENFORCE MANDATE**

Palm Beach County files this Response to Plaintiffs/Appellants’ Motion to the Merits Panel to Enforce Mandate, (the Motion), respectfully suggesting that the County is acting in compliance with this Court’s mandate by taking steps to repeal Palm Beach County Ordinance No. 2017-046, “Prohibition of Conversion Therapy on Minors Ordinance” (the subject Ordinance).¹ As the County noted in its response to the Plaintiffs/Appellants’ motion to lift stay in the District Court, an ordinance repealing the subject Ordinance will be considered by the Palm Beach County Board of County Commissioners, (the Board), on August 23, 2022.

Additionally, the mandate rule cited throughout Plaintiffs/Appellants’ Motion “does not extend to issues the appellate court did not address.” *Piambino v. Bailey*, 757 F.2d 1112, 1119-20 (11th Cir. 1985) (quoting *Terrell v. Household Goods Carriers’ Bureau*, 494 F.2d 16, 19 (5th Cir.), cert. dismissed, 419 U.S. 987, 95 S.Ct. 246, 42 L.Ed.2d 260 (1974); *Fogel v. Chestnutt*, 668 F.2d 100 (2d Cir. 1981), cert. denied, 459 U.S. 828, 103 S.Ct. 65, 74 L.Ed.2d 66 (1982)).

¹ The Ordinance was codified at Chapter 18, Article V, Section 18-121, et seq., Palm Beach County Code.

Thus, the issue of whether entry of a preliminary injunction is mooted by repeal of the subject Ordinance is properly considered by the District Court, as this Court did not address that issue.

Plaintiffs/Appellants' misstate the steps necessary to permanently repeal the subject Ordinance (Motion at 10). Plaintiffs/Appellants state that enactment of an ordinance requires "multiple readings", suggesting that the ordinance must be considered at more than one meeting of the County's Board of County Commissioners. That is not correct.

Section 125.66(2)(a), Florida Statutes, provides for enactment of an ordinance at any regular meeting of a board of county commissioners, provided notice of intent to consider the ordinance is given 10 days before such meeting, as the County has done:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.-

* * * *

(2)(a) The regular enactment procedure shall be as follows: *The board of county commissioners at any regular or special meeting may enact or amend any ordinance, except as provided in subsection (4), if notice of intent to consider such ordinance is given at least 10 days before such meeting by publication as provided in chapter 50. A copy of such notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the board of county commissioners. The notice of proposed enactment shall state the date,*

time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the county where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

§ 125.66(2)(a), Fla. Stat. (2021) (emphasis added).

Also, contrary to Plaintiffs/Appellants' assertion that "the Localities embarked on a calculated course of political and legal maneuvering", (Motion at 10), the County is taking steps to repeal the subject Ordinance, an action necessary because of this Court's holding that the subject Ordinance was unconstitutional. Surely, failure to act to repeal an unconstitutional Ordinance, as the County is doing, would be improper.

Finally, the Department tasked with enforcement of the subject Ordinance, the Planning, Zoning, and Building Department, (PZ&B), Code Enforcement Division, has never received a complaint concerning conduct prohibited by the subject Ordinance, and the County Administrator advised the Executive Director of PZ&B of this Court's ruling that the subject Ordinance was unconstitutional, should any complaints be received prior to the Board's meeting of August 23, 2022 (County's Appendix). The subject Ordinance has not and will not be enforced pending the repeal on August 23, 2022.

CONCLUSION

The County respectfully requests this Court allow the District Court to consider the issue of mootness.

Respectfully submitted,

/s/ Helene C. Hvizd
HELENE C. HVIZD
Senior Assistant County Attorney
Florida Bar Number 868442

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(g). According to the Word program on which it is written, the pages of this motion contain 1461 words and are typed using Times New Roman 14-point font.

/s/ Helene C. Hvizd
HELENE C. HVIZD
Senior Assistant County Attorney
Counsel for Defendant/Appellee
Palm Beach County
Florida Bar Number 868442

CERTIFICATE OF SERVICE

I CERTIFY that on August 16, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. Service will be accomplished by the CM/ECF system.

/s/ Helene C. Hvizd

HELENE C. HVIZD

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