

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 RESPONSE TO MOTION TO LIFT STAY,  
ENTER PRELIMINARY INJUNCTION AND SET SCHEDULING CONFERENCE FOR  
MERITS LITIGATION AND REQUEST FOR EXPEDITED CONSIDERATION**

Defendant, City of Boca Raton ("City"), files this Response to the Motion to Lift Stay, Enter Preliminary Injunction, and Set Scheduling Conference for Merits Litigation and Request for Expedited Consideration ("Motion") [ECF No. 150], filed by plaintiffs, Robert W. Otto and Julie H. Hamilton ("Plaintiffs"), and states:

**A. City Does Not Oppose The Request to Lift Stay and Set Scheduling Conference**

1. The City does not oppose Plaintiffs' request to lift the stay of this action and to set a scheduling conference to discuss, *inter alia*, case management deadlines.

**B. City Opposes the Request For Entry Of Preliminary Injunction**

2. Following the Eleventh Circuit's denial of the motion for a rehearing en banc on July 20, 2022 and the entry of a Mandate on July 29, 2022, the City acted as quickly as possible to repeal Ordinance No. 5407 (the "Challenged Ordinance") and comply with the Eleventh Circuit's decision.

3. The City convened a special meeting on August 5, 2022 to repeal the Challenged Ordinance. At that meeting, the City Council unanimously approved Emergency Ordinance No. 5625 (the “Emergency Repeal Ordinance”), repealing the Challenged Ordinance. The purpose of an emergency ordinance is to enable the City to take action immediately, which action remains in place until the City Council is able to take action through the regular process. Thus, pursuant to Section 3.14 of the City Charter, an emergency ordinance lasts sixty days unless it is re-enacted under regular procedures. *See* City Charter, Section 3.14. Accordingly, at the August 5, 2022 special meeting, the City Council also held the first reading introducing Ordinance No. 5626, a non-emergency ordinance to permanently repeal Ordinance No. 5407 (the “Non-Emergency Repeal Ordinance”). *See* Declaration of Mary Siddons, attached as Exhibit “A,” to which copies of the Emergency Repeal Ordinance and the Non-Emergency Repeal Ordinance are attached.

4. As required by the City Code, the final reading and public hearing for the Non-Emergency Repeal Ordinance will take place at the City Council meeting on August 23, 2022. *Id.*

5. Both the Emergency Repeal Ordinance and Non-Emergency Repeal Ordinance (if adopted) 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 Repeal Ordinance, Section 3; Non-Emergency Repeal Ordinance, Section 2.

6. “[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 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.*, 371 F.3d at 1328-29.

7. 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. Unlike private parties, the law recognizes that substantial deference is given to municipalities that have repealed challenged legislation and mooted injunctive relief. *See, e.g., Coral Springs St. Sys.*, 371 F.3d at 1329.

8. With the unanimous enactment of the Emergency Repeal Ordinance, the introduction at the August 5, 2022 special meeting and scheduling of final reading and public hearing at the August 23, 2022 regular meeting of the Non-Emergency Repeal Ordinance, 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 and formalize its intent to have that repeal continue indefinitely. The City's actions reflect an earnest effort to immediately and permanently comply with the Eleventh Circuit's ruling.

9. As of the time of the filing of this Response, 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*.

10. 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 should (or could) be enjoined. Accordingly, Plaintiffs' demand for injunctive relief is now moot.

**C. If the Court Were To Enter A Preliminary Injunction, it Should Be Narrower Than Proposed By Plaintiffs**

11. If the Court were inclined to enter a preliminary injunction against the City notwithstanding the repeal of the Challenged Ordinance, the language and scope of the preliminary injunction proposed in Plaintiffs' Motion is overbroad. Specifically, Plaintiffs request an injunction enjoining the City from enforcing the now-repealed Challenged Ordinance against any actor(s) within the City. ECF No. 150, ¶ 6. Plaintiffs' request is broader than the relief sought in Plaintiffs' Complaint, namely, an injunction enjoining the City from prohibiting Plaintiffs' speech alone, not the public at large. *See* ECF No. 1, at 56. Consequently, to the extent the Court *were* to enter an injunction notwithstanding the repeal of the Challenged Ordinance, it should be limited to the relief expressly sought by Plaintiffs.

**WHEREFORE**, defendant, City of Boca Raton, respectfully requests that this Court lift the stay; set a status conference to discuss the status of the litigation and case management

deadlines; deny the entry of an injunction against the City for the reasons set forth herein; and grant any further relief that the Court deems just and proper.

Dated: August 9, 2022

Respectfully submitted,

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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

1 5625

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:

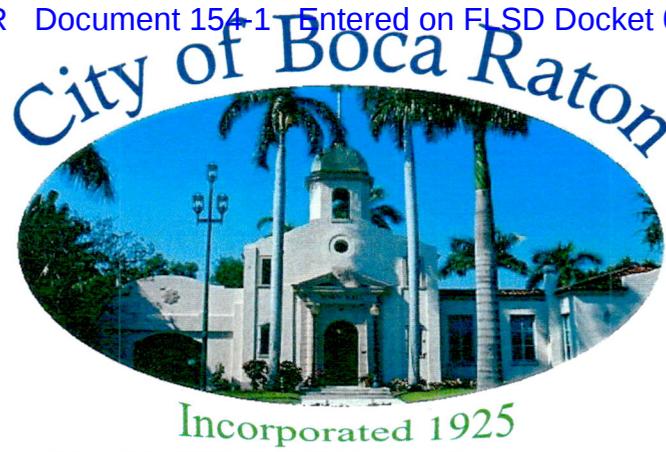
Mary Siddons  
Mary Siddons, City Clerk

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	✓		



## 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:

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

CITY OF BOCA RATON, FLORIDA

ATTEST:

\_\_\_\_\_  
Scott Singer, Mayor

\_\_\_\_\_  
Mary Siddons, City Clerk

Approved as to form:

  
\_\_\_\_\_  
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			

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