

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 9:18-CV-80771-ROSENBERG/REINHART**

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,

v.  
CITY OF BOCA RATON, FLORIDA, and  
COUNTY OF PALM BEACH, FLORIDA,  
Defendants.

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**DEFENDANT, PALM BEACH COUNTY’S RESPONSE IN OPPOSITION TO  
PLAINTIFFS’ MOTION TO LIFT STAY, ENTER PRELIMINARY INJUNCTION AND  
SET SCHEDULING CONFERENCE FOR MERITS LITIGATION AND REQUEST FOR  
EXPEDITED CONSIDERATION.**

Defendant, Palm Beach County (County) by and through undersigned counsel, files this Response in Opposition to Plaintiffs’ Motion to Lift Stay, Enter Preliminary Injunction and Set Scheduling Conference for Merits Litigation and Request for Expedited Consideration, dated August 3, 2022, (Motion to Lift Stay) and states the following:

1. Plaintiffs initiated this action to enjoin the County’s enforcement of Palm Beach County Code, Ordinance No. 2017-046, referred to as the “Prohibition of Conversion Therapy on Minors Ordinance.” (“Challenged Ordinance”). At the onset of these proceedings, the Plaintiffs moved for the issuance of a preliminary injunction, a request that was denied by this Court following an evidentiary hearing. [ECF No. 141]. Plaintiffs then filed an interlocutory appeal of this Court’s Order to the United States District Court of Appeal for the Eleventh Circuit (Eleventh Circuit). On July 20, 2020, the Eleventh Circuit reversed the denial of the request for preliminary injunction, determining that the Challenged Ordinance violated the First Amendment. The County

and the City of Boca Raton moved for rehearing *en banc*, which was denied by the Eleventh Circuit on July 20, 2022. On July 29, 2022, the Eleventh Circuit issued a mandate finalizing its decision. [ECF No. 149.]

2. This Court stayed the case during the pendency of the interlocutory appeal. [ECF No. 145]. On August 4, 2022, the Plaintiffs filed their Motion to Lift Stay of these proceeding asking this Court to enter a preliminary injunction, and to set a scheduling conference to proceed with the merits litigation of this proceeding. [ECF No. 150]. Specifically, Plaintiffs ask that this Court enjoin “Defendant County of Palm Beach, Florida . . . from enforcing Ordinance 2017-046 [against the Plaintiffs] pending the resolution of the merits of this action.” [ECF No. 150, p. 3].

3. It is the County’s position that the Plaintiffs’ request for injunctive relief is both inappropriate and unnecessary because the County has already commenced the repeal of the Challenged Ordinance, rendering the Plaintiffs’ request that this Court enjoin the County from enforcing the Challenged Ordinance against the Plaintiffs or Plaintiffs’ clients, as moot.

4. Specifically, following the Eleventh Circuit’s July 20, 2022, decision, and the issuance of mandate on July 29, 2022, the County initiated an expedited process to repeal the Challenged Ordinance in its entirety. Pursuant to section 125.66(2), Florida Statutes, the County has submitted for publication notice of an ordinance repealing the Challenged Ordinance, for the Palm Beach County Board of County Commissioners’ approval at the next meeting of the Palm Beach County Board of County Commissioners on August 23, 2022. Exhibit A, Agenda Item Summary; Exhibit B, Ad Preview of Publication Notice. The Challenged Ordinance will be repealed in its entirety through Ordinance Repealing Art. V. Sec. 18-121 (Repeal Ordinance), attached hereto as Exhibit C. Once passed, the Repeal Ordinance will become a part of the Palm Beach County Code. Exhibit A. The County anticipates that the repeal of the Challenged

Ordinance will be filed with the Florida Department of State no later than August 29, 2022, at which point the Repeal Ordinance will be effective.

5. The County's upcoming repeal of the Challenged Ordinance will render the merits litigation of this case as it relates to injunctive relief moot. As already outlined in detail in Boca Raton's Suggestion of Mootness [ECF No. 151] and Boca Raton's Reply Regarding Suggestion of Mootness [ECF No. 153], it is in fact settled law that the repeal of or an amendment to challenged legislation renders moot a plaintiff's request for injunctive relief.<sup>1</sup>

6. The County's upcoming repeal of the Challenged Ordinance disposes of the Plaintiffs' requests for temporary and permanent injunctive relief. Simply put, the Plaintiffs ask this Court that it enjoin the County from enforcing the Challenged Ordinance against the Plaintiffs and their clients. However, without an existing Ordinance, there is nothing left for this Court to enjoin.

7. The County recognizes that the Plaintiffs' Complaint includes a request for an evidentiary proceeding relative to the issues of the Plaintiffs' actual and nominal damages. [ECF No. 1]. However, it is the County's position that a lift of the stay is unnecessary, as it is the County's good faith intent to resolve the outstanding issues of damages fees amicably,

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<sup>1</sup> Boca Raton relies on the foregoing cases in support of its suggestion of mootness: Coral Springs St. Sys. Inc. v. City of Sunrise, 371 F.3d 1320, 1329 (11th Cir. 2004) (citing Lewis v. Cont't Bank Corp., 49 U.S. 472, 474 (1990) (holding that a challenge to Florida banking statute 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 of statute); Princeton Univ. v. Schmid, 455 U.S. 100, 103 (1982) (per curium) (holding that the challenge to a university regulation was moot because the regulation had been substantially amended); Kremens v. Bartley, 431 U.S. 119, 128-129 (1977) (holding moot a constitutional challenge to a 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)).

expeditiously, and without unnecessarily driving up the cost of litigation for all parties involved. To that end, on August 5, 2022, County's counsel has reached out to Plaintiffs' counsel with a request for a settlement demand to settle all claims against the County raised by the Plaintiffs' Complaint, including the claims for damages and attorney's fees. Plaintiffs' Counsel acknowledged the receipt of the County's request for demand and indicated that one would be provided to the County by the end of this week.

8. As for the Plaintiffs' request for expedited consideration, given the upcoming repeal of the Challenged Ordinance, it is not necessary.

9. The denial of the requested injunctive relief and a further stay of these proceedings are both in the interests of judicial economy. For example (and as the Plaintiffs acknowledge in their Motion for Stay), the issuance of a preliminary injunction will likely require a hearing on the amount of bond to be posted, an unnecessary exercise in light of the County's repeal of the Challenged Ordinance. Plaintiffs will not be prejudiced by further stay because their stated objective: permanently enjoining the County from enforcing the Challenged Ordinance against them, will be effectuated by the County's repeal of the Ordinance. Likewise, their demands for damages and attorney's fees are being addressed through settlement discussions.

WHEREFORE, the Defendant, Palm Beach County respectfully requests that 1) this Court deny the Plaintiffs' request for issuance of preliminary injunction; 2) deny the Plaintiffs' request for lift of stay, and continue the stay of these proceedings while the parties negotiate a settlement; 3) should this Court be inclined to lift the stay, that this be done for the limited purpose of a status conference; 4) provide such other relief as is just and proper.

Respectfully submitted this 10<sup>th</sup> day of August, 2022.

*/s/ David R.F. Ottey*

David R.F. Ottey, Esquire

Chief Assistant County Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 10, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send an electronic notice to the authorized CM/ECF filers.

*/s/ David R.F. Ottey*

David R.F. Ottey, Esq.

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**Order Confirmation**

**Not an Invoice**

<b>Account Number:</b>	730480
<b>Customer Name:</b>	Pbc Bocc Engineering
<b>Customer Address:</b>	Pbc Bocc Engineering PO BOX 4036  WEST PALM BEACH FL 334024036
<b>Contact Name:</b>	Jillian Zalewska
<b>Contact Phone:</b>	
<b>Contact Email:</b>	izalewska@mypalmbeachclerk.com
<b>PO Number:</b>	

<b>Date:</b>	08/09/2022
<b>Order Number:</b>	7639276
<b>Prepayment Amount:</b>	\$ 0.00

<b>Column Count:</b>	1.0000
<b>Line Count:</b>	53.0000
<b>Height in Inches:</b>	0.0000

**Print**

Product	#Insertions	Start - End	Category
WPB Palm Beach Post	1	08/11/2022 - 08/11/2022	Public Notices
WPB palmbeachpost.com	1	08/11/2022 - 08/11/2022	Public Notices

<b>Total Order Confirmation</b>	<b>\$163.77</b>
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**EXHIBIT**  
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## Ad Preview

**NOTICE OF PUBLIC HEARINGS**  
PLEASE TAKE NOTICE THAT AT 9:30 A.M. ON AUGUST 23, 2022, in the Palm Beach County Governmental Center, Jane Thompson Memorial Chambers, 6th Floor, 301 North Olive Avenue, West Palm Beach FL., the Board of County Commissioners of Palm Beach County, FL., intends to hold a public hearing for the purpose of considering the following proposed Palm Beach County Ordinance (s):

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING CHAPTER 18, ARTICLE V, SECTION 18-121, ET SEQ., PALM BEACH COUNTY CODE, ORDINANCE NO. 2017-046, "PROHIBITION OF CONVERSION THERAPY ON MINORS ORDINANCE"; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR EFFECTIVE DATE.

A copy of the above-referenced proposed ordinance is available for inspection in the Minutes Department, 2nd floor, Room 203.2, Governmental Center. All interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s).

If a person decides to appeal any decision made by this commission with respect to any matter considered at this meeting or hearing they will need to have a record of the proceeding, and for that, for such purpose, they may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is based.

JOSEPH ABRUZZO,  
Clerk of the Circuit Court &  
Comptroller  
Board of County Commissioners  
AUGUST 11, 2022 7639276

ORDINANCE NO. 2022-\_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING CHAPTER 18, ARTICLE V, SECTION 18-121, ET SEQ., PALM BEACH COUNTY CODE, ORDINANCE NO. 2017-046, "PROHIBITION OF CONVERSION THERAPY ON MINORS ORDINANCE"; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, on December 21, 2017, the Palm Beach County Board of County Commissioners (BCC) enacted Chapter 18, Article V, Section 18-121, et seq., Palm Beach County Code, Ordinance No. 2017-046, referred to as the "Prohibition of Conversion Therapy on Minors Ordinance" (Ordinance); and

WHEREAS, the Eleventh Circuit Court of Appeals considered the Ordinance in *Otto v. City of Boca Raton, Florida*, 931 F.3d 854 (11th Cir. 2020), *reh'g en banc den.*, 2022 WL 2824907 (Jul. 20, 2022), and determined that the Ordinance was violative of the First Amendment; and

WHEREAS, in light of the decision in *Otto*, the BCC wishes to repeal the Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

**Section 1.**

Chapter 18, Article V, Section 18-121, et seq., Palm Beach County Code, Ordinance No. 2017-046, is hereby repealed in its entirety.

**Section 2. REPEAL OF LAWS IN CONFLICT:**

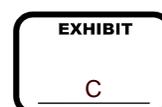
All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 3. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

**Section 4. EFFECTIVE DATE:**

The provisions of this Ordinance shall become effective upon filing with the Department of State.



1 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County,  
2 Florida, on this the \_\_\_\_ day of \_\_\_\_\_, 2022.

3  
4 JOSEPH ABRUZZO, CLERK PALM BEACH COUNTY, FLORIDA,  
5 OF THE CIRCUIT COURT & BY ITS BOARD OF COUNTY  
6 COMPTROLLER COMMISSIONERS

7  
8  
9 By: \_\_\_\_\_ By: \_\_\_\_\_  
10 Deputy Clerk Robert S. Weinroth, Mayor

11  
12  
13  
14 APPROVED AS TO FORM AND  
15 LEGAL SUFFICIENCY

16  
17  
18 By: \_\_\_\_\_  
19 County Attorney

20  
21  
22 EFFECTIVE DATE: Filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2022.