

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-CV-80771-ROSENBERG

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, &
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

**ORDER GRANTING PLAINTIFFS' MOTION TO
LIFT STAY AND ENTER PRELIMINARY INJUNCTION**

Following this Court's denial of Plaintiffs' Renewed Motion for Preliminary Injunction (DE 141) and Plaintiffs' same-day Notice of an interlocutory appeal (DE 142), the Court entered an Order on February 19, 2019, staying this action pending the resolution of Plaintiffs' appeal. DE 145. The Court indicated that "any party may move to lift the stay in this case." *Id.*

On November 20, 2020, the Eleventh Circuit issued an opinion reversing this Court's denial of a preliminary injunction. *See Otto v. City of Boca Raton*, 981 F.3d 854. The Eleventh Circuit "remand[ed] for entry of a preliminary injunction consistent with this opinion." *Id.* at 872. The Defendants filed a petition for *en banc* rehearing, which was denied by the Eleventh Circuit on July 20, 2022. *See Otto v. City of Boca Raton*, No. 19-10604, 2022 WL 2824907. The Eleventh Circuit opinion became effective on July 29, 2022, when the Eleventh Circuit issued its mandate. DE 149.

On August 4, 2022, Plaintiff filed a Motion to Lift Stay and Enter Preliminary Injunction. DE 150. The Defendants responded to the Motion on August 5, 2022 (DE 151, Defendant, City of Boca Raton's Suggestion of Mootness), August 9, 2022 (DE 154, 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), and August 10, 2022 (DE 156, 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). Plaintiffs filed a Reply in Support of their Motion to Lift Stay and Enter Preliminary Injunction on August 8, 2022 (DE 155) and, on August 11, 2022, a Second Reply in Support of Their Motion to Lift Stay and Enter Preliminary Injunction and a Renewed Emergency Request for Injunctive Relief Prior to 5:00 P.M. on Monday, August 15, 2022. DE 157. Thus, the Plaintiffs' Motion was ripe as of August 11, 2022.

On August 11, 2022, the Court issued an Order acknowledging receipt of the briefing in connection with the Mandate and indicating it would carefully review the submissions and issue a ruling. DE 158. On August 15, 2022, the Plaintiffs filed a Notice of Filing Motion to Enforce Mandate at the Eleventh Circuit or Appeals. DE 161. On August 17, 2022, the Eleventh Circuit issued an Order granting the Plaintiffs' petition for a writ of mandamus directing the Court to comply with the Eleventh Circuit's mandate and enter a preliminary injunction by 5:00 p.m. on Friday, August 19, 2022.

Accordingly, consistent with the Eleventh Circuit's opinion in *Otto v. City of Boca Raton*, 981 F.3d 854 (2020), *reh'g denied*, No. 19-10604, 2022 WL 2824907 (July 20, 2022), it is hereby **ORDERED AND ADJUDGED** that:

1. Plaintiffs' Motion (DE 150) is **GRANTED**;
2. The Clerk of the Court shall **OPEN** this case;
3. Defendant City of Boca Raton, and its officers, agents, employees, attorneys and other persons who are in active concert or participation with them, are hereby enjoined from enforcing Ordinance 5407 pending the resolution of the merits of this action;
4. Defendant County of Palm Beach, Florida, and its officers, agents, employees, attorneys and other persons who are in active concert or participation with them, are hereby enjoined from enforcing Ordinance 2017-046 pending the resolution of the merits of this action; and
5. The parties shall file a joint notice informing the Court of their respective positions on how, procedurally, this case should move forward. The notice shall be no longer than ten pages and shall be filed by August 25, 2022.

DONE and ORDERED in Chambers, West Palm Beach, Florida, this 18th day of August, 2022.

Copies furnished to Counsel of Record


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE