

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

CASE NO. 9:18-CV-80771-ROSENBERG/REINHART

ROBERT W. OTTO, et al.,

Plaintiffs,

v.

CITY OF BOCA RATON, FLA., and
COUNTY OF PALM BEACH, FLA.,

Defendants.

**PLAINTIFFS' CONSOLIDATED RESPONSE
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTRODUCTION 1

ARGUMENT 2

I. Defendants Must Carry a Heavy Burden to Prevail on their Rule 12(b) Motions to Dismiss.....2

 A. The Eleventh Circuit recognizes that it is “extremely difficult” to dismiss a claim under Rule 12(b)(1).....2

 B. Defendants cannot overcome their extraordinarily high burden to prevail on their Rule 12(b)(6) motions to dismiss.....3

II. Defendants Fail to Meet Their Heavy Burden of Showing This Case is Moot.4

 A. This case is not moot because Plaintiffs have pled damages in addition to declaratory and injunctive relief.5

 B. Defendants’ repeal of the Ordinances does not moot Plaintiffs’ claims for declaratory and injunctive relief.6

 1. The repeals are merely a “strategic move” to manipulate the Court’s jurisdiction.7

 2. Defendants’ repeal does not reflect a permanent and complete change of heart.9

 3. Defendants are not committed to disavowing their unconstitutional actions and refraining from chilling Plaintiffs’ protected speech.11

 C. Even if the Court finds that Defendants’ mootness arguments have some merit, it must allow discovery to test their validity.13

III. Plaintiffs Have Standing to Bring Claims On Behalf of Themselves and Their Minor Patients.....15

 A. This Court has already concluded that Plaintiffs have standing to bring their claims.15

 B. The City’s concession that Dr. Otto has standing, and the County’s concession that Dr. Hamilton has standing, are fatal to their jurisdictional attack.17

 C. Plaintiffs have standing to challenge the Ordinances on behalf of their minor patients.17

 1. Plaintiffs have alleged a concrete injury.....18

 2. Plaintiffs and their clients have the requisite close relationship.....18

 3. Plaintiffs’ clients face significant obstacles to litigation.19

IV. The City’s Rule 8 Objections Are Meritless.....21

 A. The City relies on a strawman argument to attack Plaintiffs’ Amended Complaint. ..21

 B. Plaintiffs sufficiently allege a claim under Section 1983.23

V. Plaintiffs Have Sufficiently Alleged that They Are Entitled to Relief on Their Claims.24

A. Plaintiffs sufficiently allege a First Amendment violation.24

1. As confirmed by the Eleventh Circuit, Plaintiffs have demonstrated a violation of their right to free speech.24

2. Plaintiffs sufficiently allege that the Ordinances violate their right to free exercise of religion.24

B. Plaintiffs sufficiently allege a violation of the Florida Religious Freedom Restoration Act.26

C. Plaintiffs adequately allege that the Ordinances are impliedly preempted by Florida law.27

1. Plaintiffs have sufficiently alleged that the Ordinances are void *ab initio* as *ultra vires* acts.27

2. Defendants’ preemption arguments are factual issues improper for resolution at the motion-to-dismiss stage.29

D. Plaintiffs adequately state a claim under the Florida Patients’ Bill of Rights and Responsibilities.31

E. Plaintiffs sufficiently allege that Defendants conspired against them in violation of Section 1985(3).32

VI. If the Court Finds Plaintiffs’ Allegations Lacking In Any Respect, It Should Grant Them Leave To Amend.35

CONCLUSION. 35

TABLE OF AUTHORITIES

Cases

Adler v. Duval Cty. Sch. Bd.,
112 F.3d 1475 (11th Cir. 1997) 5

Aid for Women v. Foulston,
441 F.3d 1101 (10th Cir. 2006) 19, 20

Alamo-Cruz v. Evanston Ins. Co.,
369 F. Supp. 3d 1277 (S.D. Fla. 2018) 4

Am. C.L. Union of Fla., Inc. v. City of Sarasota,
859 F.3d 1337 (11th Cir. 2017) 15

Am. Psychiatric Ass’n v. Anthem Health Plans, Inc.,
821 F.3d 352 ((2d Cir. 2016) 19

Ashcroft v. Iqbal,
556 U.S. 662 (2009)..... 4, 33

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007)..... passim

Bernardele v. Bonorino,
608 F. Supp. 2d 1313 (S.D. Fla. 2009) 14

Bloedorn v. Keel,
2012 WL 777318 (S.D. Ga. Mar. 6, 2012) 14

Bray v. Alexandria Women’s Health Clinic,
506 U.S. 263 (1993)..... 33

Brooks v. Blue Cross & Blue Shield of Fla., Inc.,
116 F.3d 1364 (11th Cir. 1997) 1, 3

Burrell v. Bd. of Trs. of Ga. Military Coll.,
970 F.2d 785 (11th Cir. 1992) 33

Calvin v. Jefferson Cnty. Bd. of Commissioners,
172 F. Supp. 3d 1292 (N.D. Fla. 2016) 17

Checker Cab Operators, Inc. v. Miami-Dade Cnty.,
899 F.3d 908 (11th Cir. 2018) 5

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993)..... 26

Classy Cycles, Inc. v. Bay Cnty.,
201 So.3d 779 (Fla. 2016) 30

Conley v. Gibson,
355 U.S. 41 (1957)..... 2, 3

Coral Springs St. Sys., Inc. v. City of Sunrise,
371 F.3d 1320 (11th Cir. 2004) 6, 7, 9

Costa v. Bazron,
2020 WL 1935524 (D.D.C. Apr. 22, 2020)..... 14

Covenant Christian Ministries, Inc. v. City of Marietta,
654 F.3d 1231 (11th Cir. 2011) 5

D’Agastino v. City of Miami,
220 So. 3d 410 (Fla. 2017) 28

Dean v. Warren,
12 F.4th 1248 (11th Cir. 2021) 34

Deerfield Med. Ctr. v. City of Deerfield Beach,
661 F.2d 328 (5th Cir. 1981) 18

Doe v. Bolton,
410 U.S. 179 (1973)..... 17

Doe v. Woodard,
2016 WL 11658659 (D. Colo. Sept. 30, 2016)..... 14

Does v. Trump,
328 F. Supp. 3d 1185 (W.D. Wash. 2018)..... 14

Eaton v. Dorchester Dev., Inc.,
692 F.2d 727 (11th Cir. 1982) 14

Flanigan’s Enters., Inc. of Georgia v. City of Sandy Springs,
868 F.3d 1248 (11th Cir. 2017) passim

Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale,
11 F.4th 1266 (11th Cir. 2021) passim

Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.,
528 U.S. 167 (2000)..... 6, 13

Fulton v. City of Philadelphia,
141 S. Ct. 1868 (2021)..... 25, 26

Garcia v. Copenhagen, Bell & Assocs., M.D.’s, P.A.,
104 F.3d 1256 (11th Cir. 1997) 1, 2

Gibson-Carter v. Rape Crisis Ctr.,
2020 WL 2815122 (S.D. Ga. May 29, 2020) 34

GJR Invs., Inc. v. Cnty. of Escambia,
132 F.3d 1359 (11th Cir. 1998) 21

Green v. McLaughlin,
480 Fed. Appx. 44 (2d Cir. 2012)..... 33

Griffin v. Breckenridge,
403 U.S. 88 (1971)..... 33

Gutierrez, et al. v. Wiesnet,
2015 WL 12940215 (S.D. Tex. Aug. 3, 2015) 14

Haitian Refugee Ctr. v. Civiletti,
503 F. Supp. 442 (S.D. Fla. 1980) 14

Hall v. Bd. of Sch. Comm’rs of Conecuh Cnty.,
656 F.2d 999 (5th Cir. 1981) 12

Hearth, Inc. v. Department of Public Welfare,
617 F.2d 381 (5th Cir. 1980) 22

Hoefling v. City of Miami,
811 F.3d 1271 (11th Cir. 2016) 21

Holmes v. Crosby,
418 F.3d 1256 (11th Cir. 2005) 23

In re CP Ships Ltd. Sec. Litig.,
578 F.3d 1306 (11th Cir. 2009) 14

In re Florida Cement & Concrete Antitrust Litig.,
2011 WL 13174536 (S.D. Fla. Feb. 24, 2011) 17

Int’l Erectors, Inc. v. Wilhoit Steel Erectors & Rental Serv.,
400 F.2d 465 (5th Cir. 1968) 3

Jaffree v. Redmond,
518 U.S. 1 (1996)..... 19

Jager v. Douglas Cnty. Sch. Dist.,
862 F.2d 824 (11th Cir. 1989) 12

Jews for Jesus, Inc. v. Hillsborough Cty. Aviation Auth.,
162 F.3d 627 (11th Cir. 1998) 6, 33

Jones v. Moore,
2008 WL 384557 (S.D. Fla. Feb. 11, 2008) 21

Jouria v. CE Res., Inc.,
2017 WL 3868422 (S.D. Fla. July 17, 2017)..... 29

KH Outdoor, L.L.C. v. Clay Cnty.,
482 F.3d 1299 (11th Cir. 2007) 5

Knox v. Serv. Emps. Int’l Union, Loc. 1000,
567 U.S. 298 (2012)..... 8, 12

Lawrence v. Dunbar,
919 F.2d 1525 (11th Cir. 1990) 3

Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit,
507 U.S. 163 (1993)..... 21

LeBlanc-Sternberg v. Fletcher,
67 F.3d 412 (2d Cir. 1995) 33

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992)..... 15

Matthews v. Brookstone Stores, Inc.,
431 F. Supp. 2d 1219 (S.D. Ala. 2006) 14

Mcbride v. Guzina,
2022 WL 111230 (M.D. Fla. Jan. 12, 2022)..... 34

McElmurry v. Consol. Gov’t of Augusta-Richmond Cnty.,
501 F.3d 1244 (11th Cir. 2007) 3

Melton v. Abston,
841 F.3d 1207 (11th Cir. 2016) 23

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran,
456 U.S. 353 (1982)..... 32

Mississippi State Chapter, Operation Push, Inc. v. Mabus,
932 F.2d 400 (5th Cir. 1991) 30

Morrison v. Amway Corp.,
323 F.3d 920 (11th Cir. 2003) 3

Mother Doe I v. Al Maktoum,
632 F. Supp. 2d 1130 (S.D. Fla. 2007) 14

Nasir v. Morgan,
350 F.3d 366 (3d Cir. 2003) 19

Naturist Soc’y, Inc. v. Fillyaw,
958 F.2d 1515 (11th Cir. 1992) 11

Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville,
508 U.S. 656 (1993)..... 11

Olagues v. Russoniello,
770 F.2d 791 (9th Cir. 1985) 12

Oppenheimer Fund, Inc. v. Sanders,
437 U.S. 340 (1978)..... 13

Otto v. City of Boca Raton,
981 F.3d 854 (11th Cir. 2020) 1, 9, 12, 24

Otto v. City of Boca Raton, No. 19-10604, 2022 WL 2824907 (11th Cir. July 20, 2022) 7, 24

Parham v. J.R.,
442 U.S. 584 (1979)..... 20

Parker v. Scrap Metal Processors, Inc.,
386 F.3d 993 (11th Cir. 2004) 17

Penn. Psychiatric Soc’y v. Green Springs Health Serv., Inc.,
280 F.3d 278 (3d Cir. 2002) 19, 20

Phantom of Brevard, Inc. v. Brevard Cty.,
3 So. 3d 309 (Fla. 2008) 27

Pielage v. McConnell,
516 F.3d 1282 (11th Cir. 2008) 4

Planned Parenthood Ass’n of Atlanta Area, Inc. v. Miller,
934 F.2d 1462 (11th Cir. 1991) 17, 18, 19

Planned Parenthood Se., Inc. v. Bentley,
951 F. Supp. 2d 1280 (M.D. Ala. 2013) 19

Reproductive Health Servs. v. Strange,
204 F. Supp. 3d 1300 (M.D. Ala. 2016) 19

Resnick v. AvMed, Inc.,
693 F.3d 1317 (11th Cir. 2012) 4

Rich v. Sec’y, Fla. Dep’t of Corr.,
716 F.3d 525 (11th Cir. 2013) 12

Rosenberger v. Rector & Visitors of Univ. of Virginia,
515 U.S. 819 (1995)..... 24

S.E.C. v. City of Miami,
988 F. Supp. 2d 1343 (S.D. Fla. 2013) 23

Sarasota All. For Fair Elections, Inc. v. Browning,
28 So. 3d 880 (Fla. 2010) 28

Singleton v. Wulff,
428 U.S. 106 (1976)..... 17, 18, 19

Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc’ns, Inc.,
376 F.3d 1065 (11th Cir. 2004) 4

Spokeo, Inc. v. Robins,
578 U.S. 330 (2016)..... 15

State Farm Mut. Auto. Ins. Co. v. Health & Wellness Servs., Inc.,
389 F. Supp. 3d 1137 (S.D. Fla. 2018) 4

The Wilderness Society v. Kane County,
581 F.3d 1198 (10th Cir. 2009) 10, 11

Thomas v. Review Bd. of Ind. Employment Security Div.,
450 U.S. 707 (1981)..... 25

Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis,
444 U.S. 11 (1979)..... 32

Trinity Lutheran Church of Columbia, Inc. v. Comer,
137 S. Ct. 2012 (2017)..... 26

United Bd. of Carpenters & Joiners of Am., Local 610, AFL–CIO v. Scott,
463 U.S. 825 (1983)..... 32, 34

United States v. Williams,
341 U.S. 70 (1951)..... 34

Uzuegbunam v. Preczewski,
141 S.Ct. 792 (2021)..... 6

Vazzo v. City of Tampa,
415 F. Supp. 3d 1087 (M.D. Fla. 2019)..... 28, 29, 30

Ward v. Connor,
657 F.2d 45 (4th Cir. 1981) 33

Warner v. City of Boca Raton,
887 So.3d 1023 (Fla. 2004) 27

Webb v. Goord,
340 F.3d 105 (2d Cir. 2003) 33

Weiland v. Palm Beach Cnty. Sherriff’s Off.,
792 F.3d 1313 (11th Cir. 2015) 22

West v. Atkins,
487 U.S. 42 (1988)..... 23

Wilson v. Strong,
156 F.3d 1131 (11th Cir. 1998) 21

Statutes

42 U.S.C. § 1983..... 21, 22, 23
 42 U.S.C. § 1985..... 32, 33, 34, 35
 42 U.S.C. § 1988..... 6
 Fla. Admin. Code 64B8-8.001 28
 Fla. Stat. § 166.021 28
 Fla. Stat. § 381.026 31, 32
 Fla. Stat. § 456.41 31
 Fla. Stat. § 491.003 31
 Fla. Stat. § 761.03 26
 Fla. Stat. Ann. § 491.009 28

Other Authorities

John Riley, *South Florida Locales Repeal Conversion Therapy Bans*, Metro Weekly (Sept. 2, 2022)..... 8
 Larry Keller, *Why Gay Activists See County’s Repeal of Ban on Conversion Therapy as a Strategic Gain*, The Palm Beach Post (Aug. 26, 2022) 8
 Res. 84-2022, Boca Raton, Fla. City Council (Aug. 23, 2022) 11
 Steve Stewart, *Florida Gay Rights Group Seeks to Avoid Supreme Court Review of ‘Conversion Therapy’ Ordinance*, The Florida Capital Star (Aug. 2, 2022) 8
 Wells Dusenbury, *Gay-Rights Group Asks Boca Raton and Palm Beach County to Drop “Conversion Therapy” Bans Amid Legal Defeats*, South Florida Sun-Sentinel (Jul. 31, 2022) 9

Rules

Fed. R. Civ. P. 12..... 1, 2, 3, 4
 Fed. R. Civ. P. 15..... 35
 Fed. R. Civ. P. 8..... 3

Treatises

Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3533.3 (3d ed.)..... 5
 Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1357 (3d ed.)..... 3

Constitutional Provisions

Fla. Const. art. VIII..... 27, 28, 29
 U.S. Const. amend. I 24
 U.S. Const. art. III, §§ 1–2..... 15

INTRODUCTION

This action challenges Defendants Boca Raton’s and Palm Beach County’s respective anti-“conversion therapy” ordinances (collectively, the “Ordinances”) that prohibited licensed mental health professionals from counseling minors seeking to explore the fluidity of their unwanted same-sex attractions and behaviors. In reversing this Court’s denial of a preliminary injunction, the Eleventh Circuit has held that the Ordinances “violate the First Amendment because they are content-based regulations of speech that cannot survive strict scrutiny.” *Otto v. City of Boca Raton*, 981 F.3d 854, 859 (11th Cir. 2020). As a result, the Eleventh Circuit concluded that Plaintiffs “meet the first requirement for a preliminary injunction,” *id.* at 870, meaning that Plaintiffs have “a *substantial* likelihood of success on the merits.” *Id.* at 860 (emphasis added).

Ignoring the import and implications of that binding determination, Defendants now ask this Court to overrule the Eleventh Circuit, and to find that, far from having any likelihood of any success on any of their claims, Plaintiffs can’t even make it out of the starting gate, because they lack standing and haven’t even successfully *pleaded* one claim. (Dkt. 183, “City MTD”; Dkt. 184, “County MTD”.) Defendants therefore maintain that the entire First Amended Complaint (Dkt. 182, “FAC”) should be dismissed under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Worse, the City continues to vigorously defend the merits of its defunct Ordinance, even as it claims that this case is moot because it has no interest in ever resurrecting the Ordinance whose legality it is trying to save. (*Id.*)

Defendants’ motions should be denied. At the outset, the Eleventh Circuit has long recognized that it is “extremely difficult” to dismiss a claim under Rule 12(b)(1) for lack of subject matter jurisdiction. *Garcia v. Copenhaver, Bell & Assocs., M.D.’s, P.A.*, 104 F.3d 1256, 1260 (11th Cir. 1997) (citation omitted). Similarly, Rule 12(b)(6) motions are highly disfavored in this Circuit and should be rarely granted. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). Defendants would thus have a heavy burden of showing that this case warrants dismissal even if the Eleventh Circuit had not already determined that Plaintiffs are the likely victors, let alone in the face of that determination. Defendants cannot possibly meet that heaviest of burdens *here*, on *this* record, at *this* juncture of this case.

As to their Rule 12(b)(1) arguments, Defendants largely contend that they repealed their respective Ordinances in August 2022, and thus the entire case is moot. But it is black letter law that Defendants’ repeals of the Ordinances cannot moot this case because Plaintiffs’ claims for

damages still present a live controversy. Beyond that, there is an extensive record here showing that Defendants improperly repealed the Ordinances solely to defeat this Court’s jurisdiction—not because they had a genuine change of heart in light of their loss at the Eleventh Circuit. Moreover, this Court has previously concluded (dkt. 141, at 11), correctly, that Plaintiffs have standing to bring their claims. Defendants present nothing new to justify their rehashing of an issue they already presented to this Court—and lost.

Defendants fare no better with their Rule 12(b)(6) arguments, which fail to grasp that a complaint “does not need detailed factual allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but must simply “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). In all their claims, Plaintiffs properly articulated “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. By contrast, Defendants’ motions to dismiss are riddled with evidentiary contentions, factual disputes, and merits arguments—all of which are wholly premature and inappropriate at this stage. In short, the only question presented to this Court on Defendants’ motions to dismiss is whether Plaintiffs’ allegations, *taken as true*, are sufficient to state a claim, thereby entitling Plaintiffs to discover and produce evidence to support their claims at trial. Without question, the answer is affirmative.

Unfortunately for Defendants, it is too late now to be arguing about starting gate issues, because the race has already been (mostly) run, and the Eleventh Circuit has declared Plaintiffs to be the likely winners. No matter how long it takes Defendants to realize this, one thing is clear: this Court cannot overrule the Eleventh Circuit, and therefore this Court must deny Defendants’ misguided and time-wasting motions.

ARGUMENT

I. Defendants Must Carry a Heavy Burden to Prevail on their Rule 12(b) Motions to Dismiss.

A. The Eleventh Circuit recognizes that it is “extremely difficult” to dismiss a claim under Rule 12(b)(1).

Defendants first move to dismiss under Fed. R. Civ. P. 12(b)(1), which allows the court to dismiss a claim for lack of subject-matter jurisdiction. The Eleventh Circuit has long observed that “it is *extremely difficult*” to dismiss a claim under Rule 12(b)(1). *Garcia v. Copenhaver, Bell & Assocs., M.D.’s, P.A.*, 104 F.3d 1256, 1260 (11th Cir. 1997) (citing *Simanonok v. Simanonok*, 787 F.2d 1517, 1519 (11th Cir. 1986)) (emphasis added). The Eleventh Circuit has further “cautioned

... that the district court should only rely on Rule 12(b)(1) “[i]f the facts necessary to sustain jurisdiction do not implicate the merits of plaintiff’s cause of action.” *Morrison v. Amway Corp.*, 323 F.3d 920, 925 (11th Cir. 2003) (quoting *Garcia*, 104 F.3d at 1261).

Attacks on subject matter jurisdiction under Rule 12(b)(1) come in two forms: “facial attacks” and “factual attacks.” *Lawrence v. Dunbar*, 919 F.2d 1525, 1528–29 (11th Cir. 1990). Here, Defendants make a factual attack (County MTD at 4), meaning that they challenge the existence of subject matter jurisdiction irrespective of the pleadings. *See McElmurry v. Consol. Gov’t of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). To carry their burden in making a factual attack, Defendants should present supporting evidence “such as testimony and affidavits.” *Lawrence*, 919 F.2d at 1529 (cleaned up). Notably, Defendants have failed to support their factual attack with extrinsic evidence. They include no supporting affidavits or other testimony to support their jurisdictional arguments. The conclusory contentions in their motions are insufficient to carry their burden under Rule 12(b)(1), and thus their Rule 12(b)(1) motions should be summarily denied.

B. Defendants cannot overcome their extraordinarily high burden to prevail on their Rule 12(b)(6) motions to dismiss.

Defendants also move for dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The Eleventh Circuit has long held that motions to dismiss under Rule 12(b)(6) are *highly disfavored* and should be *rarely granted*. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997) (“We hasten to add that this motion is viewed with disfavor and rarely granted.”). As such, “[d]ismissal of a claim on the basis of barebone pleadings is a precarious disposition with a high mortality rate.” *Id.* (quoting *Int’l Erectors, Inc. v. Wilhoit Steel Erectors & Rental Serv.*, 400 F.2d 465, 471 (5th Cir. 1968)); *accord* Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1357 (3d ed.) (“On the whole, relatively few complaints historically have failed to meet [Rule 8’s pleading] standard and thereby become subject to dismissal under Rule 12(b)(6)...”).

Generally, a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To survive a 12(b)(6) motion to dismiss, the complaint “does not need detailed factual allegations,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), but must “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests,” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A plaintiff simply must articulate “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. Indeed, where the allegations “possess enough heft” to suggest a plausible entitlement

to relief, the case may proceed. *Id.* “And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Id.* at 556 (cleaned up); accord *State Farm Mut. Auto. Ins. Co. v. Health & Wellness Servs., Inc.*, 389 F. Supp. 3d 1137, 1143 (S.D. Fla. 2018) (citing *Twombly*, 550 U.S. at 556).

In contrast to Defendants’ high burden in seeking dismissal, “[t]he threshold of sufficiency that a complaint must meet to survive a motion to dismiss is *exceedingly low*.” *Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc’ns, Inc.*, 376 F.3d 1065, 1070 (11th Cir. 2004) (emphasis added). For starters, when considering a motion to dismiss under Rule 12(b)(6), the Court must accept all allegations as true, construing them in the light most favorable to the plaintiff. See *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008); cf. *Alamo-Cruz v. Evanston Ins. Co.*, 369 F. Supp. 3d 1277, 1279 (S.D. Fla. 2018) (“All factual allegations are accepted as true and all reasonable inferences are drawn in the plaintiff’s favor.”). The Court’s “task” is then “to determine whether the pleadings contain ‘sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1326 (11th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “A claim is facially plausible when the court can draw ‘the reasonable inference that the defendant is liable for the misconduct alleged’ from the pled facts.” *Resnick*, 693 F.3d at 1326 (quoting *Iqbal*, 556 U.S. at 678). A district court cannot dismiss a complaint *unless* “it appears *beyond doubt* that [the pleader] can prove *no* set of facts which would entitle it to relief.” *Spanish Broad. Sys.*, 376 F.3d at 1070 (emphasis added).

Plaintiffs’ well-pleaded complaint easily satisfies this exceedingly low threshold. Taken as true, Plaintiffs’ factual allegations easily establish what the Eleventh Circuit has already held—that Defendants have violated Plaintiffs’ civil rights. As discussed in detail below, Plaintiffs’ “allegations are sufficient to cross the line from merely possible to plausible,” *Resnick*, 693 F.3d at 1326, and therefore meet the federal pleading standards.

II. Defendants Fail to Meet Their Heavy Burden of Showing This Case is Moot.

Defendants seek dismissal on the ground that they repealed their Ordinances, and thus, their theory goes, this *entire* case is moot. (City MTD at 14–16; County MTD at 5–12.) Defendants’ arguments in support of their capacious theory fail in light of binding precedent and decisive evidence to the contrary.

A. This case is not moot because Plaintiffs have pled damages in addition to declaratory and injunctive relief.

Defendants’ argument that the *entire* case is moot because they repealed their Ordinances is wholly without merit and borderline frivolous. It is true that, subject to exceptions (applicable here, as argued below), a repeal or change to a challenged law can *sometimes* moot claims for declaratory and injunctive relief. *See Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F.3d 1231, 1244 (11th Cir. 2011). But it is black letter law that “when the plaintiff has requested *damages*, those claims are not moot.” *Id.* (quotations and citations omitted) (emphasis added); Wright & Miller, 13C Fed. Prac. & Proc. Juris. § 3533.3 (3d ed.) (“Claims for damages or other monetary relief *automatically avoid mootness*, so long as the claim remains viable.” (emphasis added)).

Here, Plaintiffs have plainly pled damages, not only in the title of their “First Amended Complaint for Declaratory Relief, a Permanent Injunction, *and Damages*” (FAC at 1), but repeatedly throughout the FAC (*e.g.*, ¶¶ 5, 244, 252, 268, 287, 303, 351), and in the Prayer for Relief (FAC at 67, ¶¶ C, D (requesting both “nominal damages” and “actual damages in an amount to be determined at trial”). These extant claims for damages thus “ensure[] a live controversy between the parties.” *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 916 (11th Cir. 2018); *see also Adler v. Duval Cty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997) (noting that because plaintiffs’ “claim for money damages does not depend on any threat of future harm, [the] claim remains a live controversy”). As the Eleventh Circuit explained: “Unlike claims for declaratory and injunctive relief, which are inherently prospective in nature, ‘a claim for money damages looks back in time and is intended to redress a past injury.’” *Checker Cab Operators*, 899 F.3d at 916 (quoting *Adler*, 112 F.3d at 1477). Indeed, Defendants’ claim of mootness flies in the face of circuit precedent. *See KH Outdoor, L.L.C. v. Clay Cnty.*, 482 F.3d 1299, 1303 (11th Cir. 2007) (holding that changes made to sign ordinance did not moot billboard company’s challenge to old ordinance given that company requested damages in addition to injunctive relief).

Although Plaintiffs have pled, and will prove at trial, that Defendants’ unconstitutional Ordinances have caused them substantial actual damages, Plaintiffs’ case would not be moot even if they could not prove any actual damages. This is because Defendants’ completed violations of Plaintiffs’ First Amendment rights at the very least entitle Plaintiffs to nominal damages, which Plaintiffs have expressly pled in the FAC. (FAC, at 67). “[A] request for nominal damages satisfies

the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 802 (2021).

In sum, because Plaintiffs continue to pursue monetary relief, this case remains very much alive. Notwithstanding Defendants' repeal, Plaintiffs are unquestionably still entitled to: (1) a judicial determination from this Court that Defendants' Ordinances were unconstitutional and violated Plaintiffs' rights (an exceedingly easy and pre-determined task for this Court, in light of the Eleventh Circuit's pronouncement in *Otto*); (2) a final judgment awarding Plaintiffs actual (or at least nominal) damages; and (3) attorney's fees and costs under 42 U.S.C. § 1988. Plaintiffs' attempt to have this case dismissed on grounds of mootness is nothing but a waste of time.

B. Defendants' repeal of the Ordinances does not moot Plaintiffs' claims for declaratory and injunctive relief.

Defendants' mootness arguments (City MTD at 14–16; County MTD at 5–12) fail not only as to the case as a whole, but even as to Plaintiffs' claims for declaratory and injunctive relief. It is true that, "if a suit is moot, it cannot present an Article III case or controversy and the federal courts lack subject matter jurisdiction to entertain it." *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004). However, both the Supreme Court and the Eleventh Circuit have long held that "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot." *Flanigan's Enters., Inc. of Georgia v. City of Sandy Springs*, 868 F.3d 1248, 1255 (11th Cir. 2017) (quoting *United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953)). Thus, "intervening events will render a case moot *only* when we have 'no reasonable expectation that the challenged practice will resume after the lawsuit is dismissed.'" *Flanigan's*, 868 F.3d at 1255–56 (cleaned up) (emphasis added) (quoting *Jews for Jesus, Inc. v. Hillsborough Cty. Aviation Auth.*, 162 F.3d 627, 629 (11th Cir. 1998)); *see also Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1284 (11th Cir. 2021) (noting that "an exception [to mootness] 'applies if there is a substantial likelihood that the challenged statutory language will be reenacted'" (quoting *Coral Springs*, 371 F.3d at 1329)).

"The test for determining that no such reasonable expectation [of resumed illegal conduct] exists is ordinarily a '*stringent*' one and, accordingly, the party asserting mootness generally bears a '*heavy burden* of persuading the court that the challenged conduct cannot reasonably be expected to start up again.'" *Flanigan's*, 868 F.3d at 1256 (quoting *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (cleaned up)) (emphases added). The "key

inquiry” is “whether the evidence leads [the Court] to a reasonable expectation” that Defendants “will reverse course and reenact the allegedly offensive portion[s] of its Code should this Court grant its motion to dismiss.” *Flanigan’s*, 868 F.3d at 1256–57; accord *Coral Springs*, 371 F.3d at 1331 (“Whether the repeal of a law will lead to a finding that the challenge to the law is moot depends most significantly on whether the court is sufficiently convinced that the repealed law will not be brought back.”).

The Eleventh Circuit has outlined “[t]hree broad factors” to guide this inquiry: (1) “whether the change in conduct resulted from substantial deliberation or is merely an attempt to manipulate our jurisdiction”; (2) “whether the government’s decision to terminate the challenged conduct was unambiguous,” including “whether the actions that have been taken to allegedly moot the case reflect a rejection of the challenged conduct that is both permanent and complete”; and (3) “whether the government has consistently maintained its commitment to the new policy or legislative scheme.” *Fort Lauderdale*, 11 F.4th at 1284 (quoting *Flanigan’s*, 868 F.3d at 1257). “These factors are neither exclusive nor dispositive; rather, the question is whether *the totality of the circumstances* persuades the court that there is *no reasonable expectation* that the government entity will reenact the challenged legislation.” *Id.* (cleaned up) (emphasis added).

Based upon the concrete evidence already available here, and upon additional evidence that Plaintiffs expect to obtain in discovery, the Court may reasonably expect that Defendants will reenact the Ordinances in the future without a permanent injunction and a declaration of their unconstitutionality.

1. The repeals are merely a “strategic move” to manipulate the Court’s jurisdiction.

As to the first factor, Defendants’ repeal of the Ordinances is, in fact, a full-throated “attempt to manipulate [the Court’s] jurisdiction.” *Fort Lauderdale*, 11 F.4th at 1284 (quoting *Flanigan’s*, 868 F.3d at 1257). Since the Eleventh Circuit issued its mandate following its denial of Defendants’ petition for *en banc* rehearing, see *Otto v. City of Boca Raton*, No. 19-10604, 2022 WL 2824907 (11th Cir. July 20, 2022), Defendants have embarked on a calculated course of political and legal maneuvering to avoid the consequences of the Eleventh Circuit’s decision. The clearest proof is Defendants’ plotting with Rand Hoch and his activist organization, the Palm Beach County Human Rights Council, to purportedly “repeal” the Ordinances to defeat jurisdiction and avoid Supreme Court review. For example, during a Boca Raton City Council meeting in August 2022, City Attorney Diana Grub Frieser indicated that each City Council member received

a communication from Hoch, the “primary local advocate” for the passage of the City’s Ordinance in 2017. (FAC ¶ 63.) In that email, which has yet to be produced in discovery, Mr. Hoch advised and recommended to the Council to repeal the Ordinance—*not to nullify an unconstitutional law*, but as a strategic move, so as not to jeopardize counseling bans in other jurisdictions with an adverse ruling from the Supreme Court, and expressly to preserve the City’s ability to “reassess” its counseling ban with “changes and other developments” “over time.” (*Id.*) Put simply, the repeal was not a genuine change of heart but rather a move to keep the door open for a potential reenactment in the future depending on legal developments in other jurisdictions.

The fact that Defendants’ purported repeal of the Ordinances is not a permanent change of heart but merely a tactic conceived by Rand Hoch to moot this case is not just conjecture or speculation—it is an admitted fact, evident in the public boastings of Defendants’ co-conspirator. For example, according to an article in *The Palm Beach Post*: “Hoch’s organization pushed for the county and Boca Raton to repeal their ordinances because ‘we want to stop this from getting to the United States Supreme Court. The court is very different now than we started this project back in 2017,’ Hoch said.” Larry Keller, *Why Gay Activists See County’s Repeal of Ban on Conversion Therapy as a Strategic Gain*, *The Palm Beach Post* (Aug. 26, 2022), <https://www.palmbeachpost.com/story/news/2022/08/26/palm-beach-county-repeals-ban-conversion-therapy-lgbtq-gay-rights-groups-say-its-a-strategic-gain/7893573001/>. Hoch added, “It’s a *strategic move*.” *Id.* (emphasis added). His explanation: “We don’t want the Supreme Court to rule on this because we feel they might make an adverse ruling [that would apply nationwide].”¹

Several other news outlets have reported on Rand Hoch’s successful scheming with Defendants to strategically (and temporarily) repeal the Ordinances.² Indeed, an article in the *South Florida Sun-Sentinel* quoted Hoch as saying that “he was asking for the county and the city to drop their litigation, because the plaintiffs’ attorneys ‘clearly want to have this issue heard by the U.S.

¹ The Supreme Court has observed that such “maneuvers designed to insulate a decision from review by this Court must be viewed with a critical eye.” *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012).

² See, e.g., John Riley, *South Florida Locales Repeal Conversion Therapy Bans*, *Metro Weekly* (Sept. 2, 2022), <https://www.metroweekly.com/2022/09/south-florida-locals-repeal-conversion-therapy-bans/>; Steve Stewart, *Florida Gay Rights Group Seeks to Avoid Supreme Court Review of ‘Conversion Therapy’ Ordinance*, *The Florida Capital Star* (Aug. 2, 2022), <https://floridacapitalstar.com/2022/08/02/florida-gay-rights-group-seeks-to-avoid-supreme-court-review-of-conversion-therapy-ordinance/>.

Supreme Court as soon as possible.” Wells Dusenbury, *Gay-Rights Group Asks Boca Raton and Palm Beach County to Drop “Conversion Therapy” Bans Amid Legal Defeats*, South Florida Sun-Sentinel (Jul. 31, 2022), <https://www.sun-sentinel.com/local/palm-beach/fl-ne-conversation-therapy-ban-20220731-k7xxc24qmnhztelstbwz7hr4eq-story.html>. The article quotes Hoch stating: “[W]e are asking the county and the city of Boca Raton to repeal their ordinances. By repealing the ordinances, the legal issue before the District Court will be moot and the litigation will end.” *Id.*

These statements confirm that Defendants’ “repeal” of the Ordinances does not reflect a genuine concern or respect for Plaintiffs’ First Amendments rights as upheld by the Eleventh Circuit. Instead, it is merely an attempt to defeat jurisdiction and moot Plaintiffs’ claims. And the sole reason for Defendants’ desire to end this case now is out of hope that a future Supreme Court composition may allow them to re-enact their Ordinances. Despite purported statements and promises to the contrary, it is clear that, absent a permanent injunction, Defendants will swiftly reenact the purportedly repealed Ordinances when they—in consultation with Hoch—determine that the legal winds in the Eleventh Circuit and Supreme Court are more favorable.

Indeed, the timing of the repeal is reason enough to “doubt the [Defendants’] sincerity.” *Coral Springs*, 371 F.3d at 1320. Notably, Defendants did not repeal the Ordinances in 2020, after the Eleventh Circuit panel concluded that the Ordinances violate the First Amendment. *See Otto*, 981 F.3d at 859. Instead, Defendants continued to defend the legality of the Ordinances by seeking *en banc* review of the panel decision. And during the intervening year-and-a-half, Defendants continued to keep their Ordinances on their books. Only after the Eleventh Circuit denied their *en banc* petition did Defendants repeal the Ordinances, as strategically requested by Hoch.

2. Defendants’ repeal does not reflect a permanent and complete change of heart.

As for the second factor of the mootness inquiry, Defendants’ repeal of the Ordinances hardly “reflect[s] a rejection of the challenged conduct that is both permanent and complete.” *Fort Lauderdale*, 11 F.4th at 1284 (quoting *Flanigan’s*, 868 F.3d at 1257). For one, while they have paid some lip service to the mootness checkboxes, Defendants have not “unequivocally assured that [they] will not re-enact the Ordinance[s].” *Id.* at 1285. To the contrary, Defendants’ elected officials have openly admitted that they are repealing the Ordinances only “to avoid adverse litigation developments.” *Id.* at 1285.

For example, during an August 2022 City Council meeting, Boca Raton City Council Member Monica Mayotte admitted that the City Council is repealing the Ordinance only because “we don’t want to threaten lawful conversion therapy laws across the state or across the country by appealing this to the Supreme Court.” (FAC ¶ 64.) She then proposed that the unconstitutional Ordinance be replaced with a City Council resolution “to admonish conversion therapy in our City ... *that we support the banning, we don’t agree with conversion therapy here in this City...*” (emphasis added). (*Id.*)

Later in the same meeting, Boca Raton City Council Member Andrea O’Rourke indicated she fully supported a resolution chilling and condemning Plaintiffs’ protected speech, because “it’s the least we can do,” and that she is opposed to Plaintiffs’ protected speech but will vote in favor of repealing the Ordinance because she “want[s] to comply” with Rand Hoch’s request “because they feel that they won’t have success at the higher level.” (FAC ¶ 66.) O’Rourke reiterated that the repeal is “a sad thing to have to approve,” but she “would support a resolution saying that *we don’t abide, we would not want to abide by this in the City of Boca Raton.*” (emphasis added). (*Id.*)

And City Mayor Scott Singer indicated that “our policy position is clear,” and boasted that two out of four federal judges that heard this matter (presumably this Court and the dissenting judge on the Eleventh Circuit’s panel) agreed with the City’s ban on Plaintiffs’ protected speech, and announced that he supports the repeal “in light of the information shared and the impact on other jurisdictions.” (FAC ¶ 68.)

To frame the gravity of Defendants’ admissions, the Tenth Circuit’s decision in *The Wilderness Society v. Kane County* is instructive. 581 F.3d 1198, 1214–15 (10th Cir. 2009), *on reh’g en banc sub nom. The Wilderness Soc. v. Kane Cnty.*, 632 F.3d 1162 (10th Cir. 2011). In that case, plaintiffs challenged a county ordinance designating roads in federal public lands for off-highway vehicle use. *See id.* at 1208. After plaintiffs brought suit, the county repealed the ordinance. *See id.* One commissioner said the county was attempting to secure the most successful resolution of the litigation and that litigating the case “is too big a bite of the apple at one time.” *Id.* at 1214–15. Another commissioner said it was not his intention to reenact another ordinance “right away.” *Id.* at 1215. The Tenth Circuit agreed with the district court in finding that the action was not moot: “[T]hese facts suggest that Kane County rescinded the Ordinance *in a deliberate attempt to render the pending litigation moot*, and it seems poised to reenact a similar ordinance.

We appreciate the commissioners' candor, but they cannot so easily moot environmental plaintiffs' claims." *Id.* (emphasis added).

Like the county commissioners' statements in *Wilderness Society*, comments made by Boca Raton's councilmembers show that Defendants rescinded the Ordinances "in a deliberate attempt to render the pending litigation moot," 581 F.3d at 1215, and not because they agreed with the Eleventh Circuit's assessment of the illegality of their conduct. Indeed, Defendants have expressly and unequivocally stated that they *strongly disagree* with the Eleventh Circuit's conclusion that their Ordinances are unconstitutional. (See FAC ¶ 72 (Boca Raton City Council unanimously passed a resolution declaring the City's "strong disagreement" with the Eleventh Circuit's decision in *Otto*)). On top of that, the council members expressly admitted their strategy of ending the case now, so as to preserve the chance that they can reenact the Ordinances in the future, in a better legal climate.

Defendants have thus made clear that they do not agree with the Eleventh Circuit's decision and that they feel fully justified in continuing to violate Plaintiffs' First Amendment rights. Only permanent declaratory and injunctive relief would put an end to Defendants' unconstitutional crusade against Plaintiffs and ensure the Eleventh Circuit's decision is respected.

3. Defendants are not committed to disavowing their unconstitutional actions and refraining from chilling Plaintiffs' protected speech.

Defendants similarly fail under the third factor of the mootness inquiry, because they have consistently maintained their "[*non-*]commitment to the new policy or legislative scheme." *Fort Lauderdale*, 11 F.4th at 1284 (quoting *Flanigan's*, 868 F.3d at 1257). For proof, the Court need not look further than the Boca Raton City Council's resolution accompanying its purported repeal of its Ordinance. The unanimously passed resolution announces the City's "*strong disagreement*" with the Eleventh Circuit's decision in *Otto*, affirms the City Council's "desire[] to *discourage* [*i.e.*, chill] the practice of SOCE on minors by licensed therapists," and resolves that the City Council "*strongly opposes* and *discourages* such practice on minors." Res. 84-2022, Boca Raton, Fla. City Council (Aug. 23, 2022) (emphasis added) (copy attached as **Exhibit A**). (See also, FAC ¶ 72.)

When "a superseding statute leaves objectionable features of the prior law substantially undisturbed, the case is not moot." *Naturist Soc'y, Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992); *cf. Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993) (holding that the enactment of new statute similar to the one repealed saves a case

from mootness so long as the new statute implicates “the gravamen of [the original] complaint,” even if the new statute “differs in certain respects from the old one” or “disadvantage[s] [the plaintiffs] to a lesser degree than the old one.”). Even though a resolution lacks the same legal effect of an ordinance, the City’s resolution is admittedly designed to discourage and chill Plaintiffs’ protected speech, by telling them and others that it is not countenanced in the City. Instead of changing course from its unlawful Ordinance that chilled Plaintiffs’ protected speech, Defendants are doubling down. The resolution reflects Defendants’ concerted effort to continue to chill Plaintiffs’ First Amendment rights by declaring Plaintiffs to be pariahs and by using the full might of their governmental power to denigrate and oppose Plaintiffs’ counseling services.

Indeed, the City’s continued, vigorous defense of its Ordinance’s legality further belies and precludes a finding of mootness under Eleventh Circuit precedent. *See Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525, 532 (11th Cir. 2013) (Florida’s sudden plan to provide kosher meals to prisoners did not moot prisoner’s RLUIPA appeal under voluntary cessation doctrine, where Florida continued to defend its prior policy on appeal); *Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 834 (11th Cir. 1989) (controversy concerning prior government practices is not moot because defendants continue to argue that the voluntarily ceased conduct is constitutional); *Hall v. Bd. of Sch. Comm’rs of Conecuh Cnty.*, 656 F.2d 999, 1001 (5th Cir. 1981) (defendant school board’s voluntary cessation of morning devotionals did not moot plaintiff’s Establishment Clause challenge because school board had disputed the constitutionality of the practice up to the day of trial).³ The City’s motion to dismiss reads as if the Eleventh Circuit’s *Otto* decision was merely a temporary setback, an error that may be rectified down the road by a more favorable Supreme Court composition. Indeed, from its continue defense of the Ordinance on First Amendment grounds (City MTD at 4) to its vigorous anti-preemption arguments (*id.* at 8–11), nothing in the City’s motion demonstrates that it has changed its mind about the the lawfulness of its Ordinance. At a minimum, the City’s continued defense of the Ordinance shows its non-commitment to

³ *See also, e.g., Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (observing that “since the union continues to defend the legality of the Political Fight–Back fee, it is not clear why the union would necessarily refrain from collecting similar fees in the future”); *Olagues v. Russoniello*, 770 F.2d 791, 795 (9th Cir. 1985) (finding that case was not moot where government official “did not voluntarily cease the challenged activity because he felt that [it] was improper” but instead “at all times continued to argue vigorously that his actions were lawful”).

disavowing its unconstitutional actions. After all, why defend the merits of a repealed ordinance if the government does not intend to reenact it?

In short, Defendants' renewed commitment to antagonize Plaintiffs and suppress their SOCE counseling has not wavered in light of the Eleventh Circuit's decision; it has only grown stronger, adapting to whatever means Defendants think they can still get away with, and ready to continue to pounce upon Plaintiffs at the first perceived opportunity. This is entirely different from a government entity that learns its lesson from a law struck down by the courts, repeals it, acknowledges the error of its ways, and publicly commits to changing course and not violating the Constitution again. Permanent injunctive relief in such a case might be moot. Here, it is clearly not.

* * *

To sum, Defendants have failed to unequivocally "disavow[] any intent to reenact" the Ordinances, *Flanigan's*, 868 F.3d at 1263. They continue to defend their Ordinances on their merits, they maintain their disagreement with the Eleventh Circuit's ruling, they remain wholly opposed to Plaintiffs' First Amendment-protected speech, and they continue to conspire with Rand Hoch to discriminate against Plaintiffs on the basis of their religious beliefs and counseling practices. Defendants' ongoing animus is proven, at the least, by the City's hostile resolution criticizing the Eleventh Circuit's decision, condemning Plaintiffs, and chilling their protected speech. All these actions and more "betray a strategic repeal to avoid adverse litigation developments." *Fort Lauderdale*, 11 F.4th at 1285. Plaintiffs' claims for injunctive and declaratory relief are not moot.

C. Even if the Court finds that Defendants' mootness arguments have some merit, it must allow discovery to test their validity.

The record in this case already provides sufficient reason for this Court to deny Defendants' Rule 12(b)(1) motions. Should the Court conclude otherwise, Plaintiffs respectfully request the opportunity for additional discovery to assess whether it is "absolutely clear" that Defendants' constitutional violations "could not reasonably be expected to recur," and to thereafter amend or supplement their First Amended Complaint. *Laidlaw, supra*, 528 U.S. at 189–90. The Supreme Court has recognized that "where issues arise as to jurisdiction ... discovery [pursuant to Fed. R. Civ. P. 12(b)(1)] is available to ascertain the facts bearing on such issues." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978). The Eleventh Circuit also recognizes a right to conduct jurisdictional discovery. *See Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729 n.7 (11th

Cir. 1982); *see also Mother Doe I v. Al Maktoum*, 632 F. Supp. 2d 1130, 1144 (S.D. Fla. 2007) (“It is well-accepted that a qualified right to jurisdictional discovery exists.”); *Bernardele v. Bonorino*, 608 F. Supp. 2d 1313, 1321 (S.D. Fla. 2009) (same).

Indeed, mootness is an intensely factual inquiry, and a refusal to grant discovery to test claims of mootness is an abuse of discretion. *See In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1312 (11th Cir. 2009), *abrogated on other grounds by Morrison v. Nat’l Australia Bank Ltd.*, 561 U.S. 247 (2010) (noting that “[i]n a factual challenge [to subject matter jurisdiction], the district court *must* give the plaintiff an opportunity for discovery” (cleaned up) (emphasis added); *see also Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 463 (S.D. Fla. 1980) (“Mootness contentions require an intensely factual inquiry.”); *Bloedorn v. Keel*, 2012 WL 777318, *3 (S.D. Ga. Mar. 6, 2012) (observing that “[m]ootness involves, in part, a factual inquiry” and thus finding that “factual discovery could support [plaintiff’s] case”); *see also id.*, at *2–3 (reversing magistrate’s denial of plaintiff’s discovery on mootness defense even though the court doubted that plaintiff could ultimately overcome mootness defense).⁴

Here, Defendants’ contention that the case is moot due to the repeal of the Ordinances gives rise to a jurisdictional question that is “genuinely in dispute.” *Eaton*, 692 F.2d at 729 n.7 (cleaned up). Discovery would be useful, and perhaps essential, to gather facts necessary to resolve the dispute. *See Matthews v. Brookstone Stores, Inc.*, 431 F. Supp. 2d 1219, 1228 (S.D. Ala. 2006) (granting plaintiff’s request, contained in a memorandum in opposition to a motion to dismiss, to postpone ruling on the Rule 12(b) motion until the parties had adequate opportunity to take jurisdictional discovery). For example, Defendants have not yet produced their recent communications with Rand Hoch on their admittedly “strategic” move to moot this case to avoid

⁴ Courts routinely and frequently allow jurisdictional discovery as to mootness in cases involving government defendants. *See, e.g., Does v. Trump*, 328 F. Supp. 3d 1185, 1198–1199 (W.D. Wash. 2018) (concluding that factual dispute warranted limited jurisdictional discovery prior to mootness determination); *Costa v. Bazron*, 2020 WL 1935524, at *1 (D.D.C. Apr. 22, 2020) (noting that court previously “granted Plaintiffs the opportunity to conduct jurisdictional discovery” after “Defendants moved to dismiss the complaint on mootness and standing grounds”); *Gutierrez, et al. v. Wiesnet*, 2015 WL 12940215, at *1 (S.D. Tex. Aug. 3, 2015) (noting that court previously “allowed the parties to conduct sixty days of limited jurisdictional discovery on specific issues related to mootness”); *Doe v. Woodard*, 2016 WL 11658659, at *13 (D. Colo. Sept. 30, 2016) (concluding that court “cannot resolve the issue of mootness, and therefore denies without prejudice Defendants’ motions to dismiss ... and will allow a limited period of jurisdictional discovery on the issue of Article III standing”).

further review. Plaintiffs know that these communications exist, because Defendants have admitted at council meetings that they were doing Hoch's personal bidding in seeking to moot this case. Document and deposition discovery from Defendants, and from non-party Hoch, will very likely reveal the breadth and depth of Defendants' maneuvers, and provide further proof that Defendants are not done with violating Plaintiffs' rights. For these reasons, the Court should allow jurisdictional discovery if it finds that Defendants' mootness argument has some cogency. *Cf. Am. C.L. Union of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1340 (11th Cir. 2017) (holding that district court abused its discretion in denying nonprofit organization's request for jurisdictional discovery).

III. Plaintiffs Have Standing to Bring Claims On Behalf of Themselves and Their Minor Patients.

A. This Court has already concluded that Plaintiffs have standing to bring their claims.

Defendants stubbornly reprise their already-failed challenge to Plaintiffs' standing, by contending that Dr. Otto has no standing to challenge the County's Ordinance, and Dr. Hamilton has no standing to challenge the City's Ordinance. (City MTD at 3–5; County MTD at 12–14.) Under Article III of the U.S. Constitution, a federal court's jurisdiction extends only to certain "Cases" and "Controversies." U.S. Const. art. III, §§ 1–2. To establish Article III standing, "a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (cleaned up). An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized[] and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up).

In its Order denying Plaintiffs' motion for a preliminary injunction, this Court has already found "that Dr. Otto and Dr. Hamilton have standing to challenge *both* ordinances." (Dkt. 141 at 11 (emphasis added).) Citing to the extensive record supporting Plaintiffs' standing, this Court correctly concluded:

Both are practitioners in Palm Beach County, with practices that would be impacted by the City's Ordinance: Dr. Otto maintains a counseling practice in the City of Boca Raton and in other parts of Palm Beach County, including regular appointments in unincorporated Palm Beach County. Dr. Hamilton practices throughout Palm Beach County, including in the City of Boca Raton. Dr. Hamilton has not consistently practiced in Boca Raton, but the Court is satisfied that she

likely will be regulated by the City's Ordinance if enforced. And, both named Plaintiffs have counseled minors on their unwanted same sex attractions. Therefore, the Court finds that Drs. Otto and Hamilton will be regulated by the ordinances, and, if they establish their constitutional claims, will suffer "an injury in fact" that is not "hypothetical."

(*Id.* at 11–12; Dkt. 141, at 11–12 [citations omitted].)

The Court's conclusion is well supported by the actual, unrebutted facts adduced in the record during the preliminary injunction discovery phase of this litigation. Dr. Otto has testified, unrebuttably, that he kept ongoing, regular client appointments in unincorporated Palm Beach County where the County Ordinance applies. (Otto Dep. 19:21–20:5, 143:23–144:2, Dkt. 121-7; FAC ¶¶ 169, 171.) Dr. Hamilton has likewise testified that she wanted to be able to see adult and minor clients in Boca Raton, made arrangements for office space to do so, and even had a minor client whom she would see in Boca Raton but for the City Ordinance. (Hamilton Dep. 329:3–335:15, Dkt. 121-8; Hamilton Decl., Dkt. 96-1.) Dr. Hamilton has also also paid business taxes in the City of Boca Raton, and has provided in-person counseling in the City of Boca Raton since this lawsuit was filed. (Hamilton Dep. 341:7–342:3, Dkt. 121-8; Hamilton Decl. ¶ 2, Dkt. 96-1.)

Critically, at this motion to dismiss stage, Plaintiffs are not even required to adduce *any* evidence, and can overcome Defendants' motions to dismiss merely by *alleging* that their speech is chilled by Defendants' unconstitutional Ordinances. *See Twombly, supra*, 550 U.S. at 555. This, they clearly and unequivocally *do* allege in the First Amended Complaint, and those allegations standing on their own *must be accepted as true*, even apart from the unrebutted evidence detailed above. (*See* FAC ¶¶ 206–211 (alleging that Dr. Otto and Dr. Hamilton would each like to be able to advertise, offer, and engage in voluntary SOCE counseling with "clients and potential clients in the City *and* County" (emphasis added)); *id.* ¶¶ 210–221 (alleging in over *ten* separate paragraphs the various concrete injuries that Dr. Otto and Dr. Hamilton each suffered "[b]ecause of the City *and* County Ordinances" (emphasis added)). If Plaintiffs can survive dismissal merely through allegations of injury, then Plaintiffs can clearly survive dismissal where, as here, they have actually adduced unrebutted proof for their allegations.

In sum, nothing has changed to alter the Court's conclusion on Plaintiffs' standing to challenge both Ordinances. Defendants do not even acknowledge the Court's earlier disposition of their fanciful arguments on standing, let alone provide a factual or legal basis to reverse it. Defendants are wasting the Court's time.

B. The City’s concession that Dr. Otto has standing, and the County’s concession that Dr. Hamilton has standing, are fatal to their jurisdictional attack.

Although the grounds in the preceding section provide sufficient reason for the Court to deny (again) Defendants’ standing challenge, such denial is also warranted for a separate and independent reason. The City does not dispute, and thus concedes, that Dr. Otto has Article III standing to challenge the City Ordinance. Likewise, the County does not dispute, and thus concedes, that Dr. Hamilton has standing to challenge the County Ordinance. These concessions are fatal to their standing challenges: It is well established that in a suit brought by multiple plaintiffs, only one plaintiff need have standing for each claim. *See Parker v. Scrap Metal Processors, Inc.*, 386 F.3d 993 n.10 (11th Cir. 2004); *Jackson v. Okaloosa Cnty.*, 21 F.3d 1531, 1536 (11th Cir. 1994) (noting that “at least one named plaintiff must have standing for each of the claims”); *accord Calvin v. Jefferson Cnty. Bd. of Commissioners*, 172 F. Supp. 3d 1292, 1299 (N.D. Fla. 2016) (“[A]s long as one named plaintiff has standing for each claim, there is a case or controversy within the meaning of Article III.” (cleaned up)); *cf. Planned Parenthood Ass’n of Atlanta Area, Inc. v. Miller*, 934 F.2d 1462, 1465 n.2 (11th Cir. 1991) (“Since [one plaintiff] has standing, we need not consider the standing of the other parties.”).

Here, Defendants have each conceded Article III standing of at least one Plaintiff, thus the Amended Complaint may not be dismissed under Rule 12(b)(1) for lack of standing. “The key word in the Rule is ‘complaint.’ By its terms, Rule 12(b)(1) permits the Court to dismiss a *complaint* not a *complainant*.” *In re Florida Cement & Concrete Antitrust Litig.*, 2011 WL 13174536, *1 (S.D. Fla. Feb. 24, 2011)). Thus, “[i]t is settled law that as long as one plaintiff has standing, the Court has subject matter jurisdiction over the case.” *Id.* Defendants’ patchwork standing arguments go nowhere.

C. Plaintiffs have standing to challenge the Ordinances on behalf of their minor patients.

Defendants also challenge Plaintiffs’ right to bring claims on behalf of their patients and minor clients. (City MTD 4–6; County MTD at 13–14.) The Supreme Court and the Eleventh Circuit have long recognized the rights of doctors and mental health professionals to bring constitutional challenges on behalf of their patients and clients. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 118 (1976) (allowing a physician to assert the rights of patients against governmental interference); *Doe v. Bolton*, 410 U.S. 179, 188 (1973) (licensed doctors consulted by pregnant women had standing to maintain action challenging Georgia abortion statute although they had not

been prosecuted or threatened with prosecution); *Miller*, 934 F.2d at 1465 n.2 (doctor had standing to challenge statute on behalf of minor patient). Plaintiffs’ assertion of their clients’ constitutional rights is consistent with Article III standing requirements because their clients’ “enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue.” *Singleton*, 428 U.S. at 114–15. As such, “the relationship between the litigant and the third party [is] such that the former is fully, or very nearly, as effective a proponent of the right as the latter.” *Id.* at 115.

The Eleventh Circuit has noted that doctors or mental health professionals have standing to bring claims on behalf of their clients when (1) the plaintiff has suffered concrete injury; (2) the plaintiff and the third party have a close relationship; and (3) the third party faces some obstacles to asserting his own rights. *See Miller*, 934 F.2d at 1465 n.2. Plaintiffs satisfy each of these elements. Although the City and County only challenge the third element (City MTD at 4; County MTD at 14), and therefore waived argument as to the first two, Plaintiffs briefly addresses all three below.

1. Plaintiffs have alleged a concrete injury.

Plaintiffs’ Amended Complaint alleges, and this Court must presume true, that Plaintiffs suffered irreparable injury at the hands of Defendants’ Ordinances and by virtue of Defendants’ conduct. (FAC ¶¶ 206–225.) Indeed, the City and County Ordinances prohibited Plaintiffs from engaging in voluntary SOCE counseling with minor clients who desired to receive it, and the Ordinances unconstitutionally prohibited such counseling on the basis of its content and viewpoint. (*Id.* ¶¶ 211–225.) Plaintiffs also suffered irreparable injury under the yoke of presumptively unconstitutional prior restraints. (*Id.* ¶ 10.) Plaintiffs therefore suffered concrete injury sufficient to satisfy Article III and thus satisfy the first requirement. Indeed, as demonstrated above, the City and County each admit that at least one Plaintiff has standing to sue them, which necessarily includes an admission that sufficient injury has been alleged.

2. Plaintiffs and their clients have the requisite close relationship.

Courts have long held that the relationship of a healthcare professional and patient satisfies the requisite close relationship for purposes of third party standing. *See, e.g., Singleton*, 428 U.S. at 117 (noting that “the physician is uniquely qualified to litigate the constitutionality of the [government’s] interference with, or discrimination against” medical decision); *Miller*, 934 F.2d at 1465 n.2 (holding that the relationship between doctor and patient is sufficiently close for standing); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 334 (5th Cir. 1981)

(same); *Planned Parenthood Se., Inc. v. Bentley*, 951 F. Supp. 2d 1280, 1284 (M.D. Ala. 2013) (observing that “federal courts routinely recognize a [doctor’s] standing to assert the claims of its patients”); *Reproductive Health Servs. v. Strange*, 204 F. Supp. 3d 1300, 1320 (M.D. Ala. 2016) (permitting doctor to assert claims on behalf of minor patient); *Am. Psychiatric Ass’n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2d Cir. 2016) (holding that “a physician or other professional may raise the *constitutional* rights ... of his or her patients”); *Aid for Women v. Foulston*, 441 F.3d 1101, 1112 (10th Cir. 2006) (same); *Nasir v. Morgan*, 350 F.3d 366, 376 (3d Cir. 2003) (noting that close relationships arise “in professional contexts, where the right of the potential plaintiff and third-party plaintiff neatly align”). The constitutionally protected right to make decisions concerning one’s mental health and health care, based upon candid and unencumbered speech from the therapist, is “one in which the physician is intimately involved.” *Singleton*, 428 U.S. at 117. Indeed, “[t]he closeness of the relationship is patent.” *Id.*; *see also Miller*, 934 F.2d at 1465 n.2 (same).

Here, Plaintiffs and their clients establish a therapeutic alliance in their counseling, and the relationship between them is sufficiently close. Indeed, Plaintiffs’ clients have specifically sought them out because they offer client-centered and client-directed counseling consistent with the clients’ wishes, values and beliefs. (FAC ¶¶ 115, 176, 178.) This relationship is inherently close and sufficient for Article III standing. *See Penn. Psychiatric Soc’y v. Green Springs Health Serv., Inc.*, 280 F.3d 278, 289 (3d Cir. 2002) (“Psychiatrists clearly have the kind of relationship with their patients which lends itself to advancing claims on their behalf. This intimate relationship and the resulting mental health treatment ensures psychiatrists can effectively assert their patients’ rights.”) Therefore, Plaintiffs have—by the very nature of their counseling relationship with their patients—satisfied the second requirement. *Id.* at 290 (“the psychiatrist-patient relationship would satisfy the second criterion for third-party standing”).

3. Plaintiffs’ clients face significant obstacles to litigation.

Contrary to the Court’s initial conclusion in its order denying Plaintiffs’ motion for a preliminary injunction (dkt. 114, at 13), Plaintiffs’ clients face substantial obstacles to bringing these claims. Indeed, “[f]or one thing, [they] may be chilled from such assertion by a desire to protect the very privacy of [their] decision from the publicity of a court suit.” *Singleton*, 428 U.S. at 117. “[T]he psychotherapist-patient privilege is rooted in the imperative need for confidence and trust.” *Jaffree v. Redmond*, 518 U.S. 1, 10 (1996). “[D]isclosure of confidential

communications made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.” *Id.*

Moreover, “[t]he stigma associated with receiving mental health services presents a considerable deterrent to litigation.” *Penn. Psychiatric Soc’y*, 280 F.3d at 290 (citing *Parham v. J.R.*, 442 U.S. 584 (1979) (Stewart, J., concurring)). This consideration is only increased when such counseling involves intimate details concerning a minor’s development, growth, and identity. Indeed, even the fear of stigmatization associated with bringing claims in a public forum “operates as a powerful deterrent to bringing suit.” *Id.*

As the Tenth Circuit observed, “adolescents seeking health care related to sexuality or mental health care may be chilled from asserting their own rights by a desire to protect the very privacy of the care they seek from the publicity of a court suit.” *Aid for Women*, 441 F.3d at 1114. The desire to keep private the intimate details associated with SOCE counseling are clearly obstacles to bringing the claims of Plaintiffs’ clients in public court.

Nevertheless, this Court concluded that fear and stigma faced by Plaintiffs’ minor patients are “generalized statements” and “not enough to confer third-party standing.” (Dkt. 141, at 13.) But the mere fact that the City and County passed their respective Ordinances is *ipso facto* proof that Plaintiffs’ clients are likely to be stigmatized and subjected to opprobrium for seeking the kind of counseling that offends Defendants’ sensibilities. Indeed, as Plaintiffs have alleged, the City’s subsequent resolution condemning SOCE counseling leaves no doubt that Defendants consider Plaintiffs *and* their willing clients to be pariahs, deserving of their express condemnation and opprobrium. (FAC ¶¶ 17–73.) That Plaintiffs’ clients are minors and face open hostility from the City and County in which they live only makes matters worse. Plaintiffs’ clients’ thus should not endure the humiliation, embarrassment, and potential doxing of bringing individual claims on a matter of profound intimacy and privacy.

In sum, Plaintiffs’ allegations are more than sufficient to establish standing at this initial juncture. But if the Court deems that any additional allegations are necessary regarding the obstacles to litigation faced by Plaintiffs’ clients, or regarding any other aspect, Plaintiffs request leave to conduct jurisdictional discovery and then supplement their amended complaint with additional jurisdictional facts to cure any concerns.

IV. The City's Rule 8 Objections Are Meritless.

A. The City relies on a strawman argument to attack Plaintiffs' Amended Complaint.

The City curiously contends that Plaintiffs' Amended Complaint fails to comply with Rule 8 because Plaintiffs did not adequately and specifically allege a violation of 42 U.S.C. § 1983. (City MTD at 5–7.) That contention is untenable and explicitly rejected by the Supreme Court. The City first contends that Section 1983 complaints must somehow satisfy a heightened pleading standard. In support, the City relies on (1) an unpublished *pro se* prisoner case, *Jones v. Moore*, 2008 WL 384557, at *2 (S.D. Fla. Feb. 11, 2008); (2) an overruled Eleventh Circuit case involving a zoning dispute over a campground, *GJR Invs., Inc. v. Cnty. of Escambia*, 132 F.3d 1359, 1366 (11th Cir. 1998), *overruled by Ashcroft v. Iqbal*, 556 U.S. 662 (2009); and (3) a dog catcher case, *Wilson v. Strong*, 156 F.3d 1131, 1133 (11th Cir. 1998). Conspicuously ignored by the City, however, is that each of those cases dealt with *qualified immunity*, *see Jones*, 2008 WL 384557, at *2 (“Factual detail in the pleadings is particularly necessary in cases involving qualified immunity....” (citing *GJR Investments*, 132 F.3d at 1367)), and thus those decisions have no relevance here, where Plaintiffs are not suing any individual officials. In any event, the Supreme Court has explicitly rejected the notion that plaintiffs must satisfy some higher threshold than “the liberal system of notice pleading” when bringing Section 1983 claims against municipalities. *See Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit*, 507 U.S. 163, 168 (1993) (holding that a federal court may not apply “heightened pleading standard,” more stringent than usual pleading requirements of civil rule, in civil rights cases alleging municipal liability under § 1983); *accord Hoefling v. City of Miami*, 811 F.3d 1271, 1275–76 (11th Cir. 2016) (“After *Leatherman*, we eliminated the heightened pleading standard in § 1983 cases *not involving qualified immunity*.” (emphasis added)).

The City inexplicably contends that the Amended Complaint fails to comply with Rule 8 because “reference to” Section 1983 “is conspicuously absent from the federal claims brought in Counts I, II, and III....” (City MTD 6.) The City must have read a different Amended Complaint than the one actually filed by Plaintiffs, because, contrary to the City's contention, Plaintiffs plainly invoked the protection of Section 1983, not simply in their jurisdictional allegations, but in every count raised under the First and Fourteenth Amendments. (*See* FAC ¶ 21 (“This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought

pursuant to 42 U.S.C. § 1983.” (emphasis added)); *id.* ¶ 226 (incorporating ¶ 21 into Count I, and thus alleging a violation of the speech clause of the First Amendment “pursuant to 42 U.S.C. §1983”); *id.* ¶ 245 (incorporating ¶ 21 into Count II, and thus alleging a violation of the speech clause of the First Amendment as to Plaintiffs’ clients “pursuant to 42 U.S.C. §1983”); *id.* ¶ 253 (incorporating ¶ 21 into Count III, and thus alleging a violation of the free exercise clause of the First Amendment “pursuant to 42 U.S.C. §1983”).

The City’s reliance on *Hearth, Inc. v. Department of Public Welfare*, 617 F.2d 381 (5th Cir. 1980), is misplaced, not just because *Hearth* preceded the Supreme Court’s subsequent teaching in *Leatherman*. In *Hearth*, the complaint failed to state a claim under Section 1983 because it failed to even mention Section 1983 anywhere in the complaint. *See* 617 F.2d 381 at 382–83. Indeed, the *Hearth* complaint was premised solely on the Fourteenth Amendment and explicitly so stated. *Id.* at 382 (“[t]he action arises under the Fourteenth Amendment [and] [t]he matter in controversy exceeds exclusive of interests and costs the sum of \$10,000”). That statement was the only allegation, jurisdictional or otherwise, that was put forward to invoke the Article III jurisdiction of the court. The Fifth Circuit found that such an invocation was insufficient to state a cause of action because “no attempt has been made to invoke the protection of section 1983.” *Id.* Unlike the complaint in *Hearth*, which failed to even mention Section 1983 anywhere in the complaint, the Amended Complaint here expressly alleges, multiple times, that Plaintiffs are bringing their federal claims against the government Defendants “pursuant to 42 U.S.C. § 1983.” (FAC ¶¶ 21, 226, 245, 253.)

Even more fatal to the City’s contentions is the Eleventh Circuit’s subsequent and much more recent holding—in a case involving Defendant Palm Beach County—that dismissing a Section 1983 complaint where it incorporates the jurisdictional and factual allegations into the relevant count is an *abuse of discretion*. *See Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1325 (11th Cir. 2015) (holding that district court abused its discretion in dismissing § 1983 claims in arrestee’s action against sheriff’s office and deputies for failure to comply with Rule 8’s pleading requirements; complaint incorporated all factual allegations contained in first 49 paragraphs of complaint in separate claims, where counts were informative enough to permit court to readily determine if they stated a claim upon which relief could be granted; district court recognized that counts did state claims upon which relief could be granted, and complaint identified which constitutional amendments governed which counts); *see also S.E.C. v. City of*

Miami, 988 F. Supp. 2d 1343, 1354–55 (S.D. Fla. 2013) (holding that it is permissible to incorporate by reference those allegations that are applicable to each count alleged). Plaintiffs’ incorporation by reference of their clear invocation of Section 1983 into each of their federal constitutional claims is permissible, and the City’s argument fails as a matter of settled law.

B. Plaintiffs sufficiently allege a claim under Section 1983.

Beyond the City’s misreading of Plaintiffs’ Amended Complaint, Plaintiffs have clearly met the requirements of pleading section 1983 claims for federal constitutional violations, not only in form but also in substance. “To state a claim under Section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988); *see also Melton v. Abston*, 841 F.3d 1207, 1220 (11th Cir. 2016) (same); *Holmes v. Crosby*, 418 F.3d 1256, 1258 (11th Cir. 2005) (same).

Plaintiffs’ Amended Complaint is replete with specific allegations that Defendants are state actors and that the challenged Ordinances constitute state action. (*See, e.g.*, FAC ¶ 19 (alleging that the City is a “municipal corporation and political subdivision of the State of Florida,” *i.e.*, a government/state actor); *id.* ¶ 20 (alleging that the County is “a political subdivision of the State of Florida,” *i.e.*, a government/state actor); *id.* ¶ 21 (alleging that the City and County committed the actions giving rise to Plaintiffs’ claims); *id.* ¶ 26 (alleging that the City enacted Ordinance 5407, which gave rise to Plaintiffs’ claims); *id.* ¶ 33 (alleging that the County enacted Ordinance 2017-046, which gave rise to Plaintiffs’ claims); *id.* ¶ 10 (alleging that the City and County Ordinances irreparably harmed Plaintiffs’ and their clients’ constitutional rights)). These allegations, taken as true, are plainly sufficient to establish that Plaintiffs’ alleged injuries arise from state action.

Defendants do not dispute that Plaintiffs’ Amended Complaint alleges violations of federal constitutional rights. (FAC ¶¶ 226–268 (alleging violations of Plaintiffs and their clients’ constitutional rights under the First Amendment)). In fact, the City even concedes as much. (City MTD at 6 (acknowledging Plaintiffs’ “federal claims brought in Counts I, II, and III”)). In sum, Plaintiffs have pled both of the only two requirements for Section 1983 claims.

V. Plaintiffs Have Sufficiently Alleged that They Are Entitled to Relief on Their Claims.

A. Plaintiffs sufficiently allege a First Amendment violation.

1. As confirmed by the Eleventh Circuit, Plaintiffs have demonstrated a violation of their right to free speech.

Two years ago, the Eleventh Circuit settled the merits of Plaintiffs' First Amendment free speech claim in no uncertain terms: "We hold that the challenged ordinances violate the First Amendment because they are content-based regulations of speech that cannot survive strict scrutiny." *Otto, supra*, 981 F.3d at 859. The Court even held that the ordinances not only discriminate on the basis of content but "[t]hey also discriminate on the basis of viewpoint." *Id.* at 864. The Court was clear: "Viewpoint-based regulations like these are 'an egregious form of content discrimination.'" *Id.* (quoting *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995)). The full Eleventh Circuit Court has also rejected Defendants' plea for en banc reconsideration of the panel's ruling. *See Otto v. City of Boca Raton*, No. 19-10604, 2022 WL 2824907 (11th Cir. July 20, 2022).

Despite the Eleventh Circuit's unequivocal finding that Defendants' "egregious[ly]" discriminated against Plaintiffs, 981 F.3d at 864 (citation omitted), the City *still* doggedly and stubbornly insists its Ordinance passes First Amendment muster because it "properly regulates conduct, rather than speech." (City MTD 4.) But the Eleventh Circuit squarely rejected the legal theory that SOCE "fall[s] into a kind of twilight zone of 'professional speech' or 'professional conduct'" that warrants lesser or no constitutional protection. *Id.* at 865. The City's refusal to acknowledge the binding decision of the Eleventh Circuit, and its apparent wish for this Court to overrule the Eleventh Circuit, serves no purpose other than to waste this Court's time, and demonstrates that the City's profession of mootness-by-voluntary-cessation is not genuine, and this case is not moot. (*See* Section II.B.3., *supra* (demonstrating that continued defense of merits of repealed laws indicates a controversy still exists and action is not moot)).

2. Plaintiffs sufficiently allege that the Ordinances violate their right to free exercise of religion.

Plaintiffs' well-pled allegations, taken as true, also reveal that Defendants' enactments of the Ordinances are an unconstitutional violation of their right to free exercise of religion. The First Amendment's Free Exercise Clause, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law ... prohibiting the free exercise" of religion. U.S. Const. amend. I. Plaintiffs have sufficiently alleged that Defendants' actions have burdened Plaintiffs'

religious exercise by prohibiting them from providing SOCE counseling in accordance with their religious beliefs.

At the outset, Plaintiffs have plainly alleged the Ordinances implicate their and their clients' sincerely held religious beliefs. For example, Plaintiffs allege that they have sincerely held religious beliefs that they should counsel their clients from a religious viewpoint and help their client align their attractions, behaviors, and identity to the clients' own sincerely held religious beliefs and convictions. (FAC ¶ 218.) They also allege that their clients profess to be Christians who desire SOCE counseling to help them live consistent with their sincerely held religious beliefs. (FAC ¶ 255.) These "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981).

Plaintiffs also sufficiently allege that the Ordinances violate their sincerely held religious beliefs because they are neither neutral nor generally applicable. (FAC ¶ 261.) "Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). Here, Plaintiffs allege that the Ordinances cause direct and immediate conflict with their sincerely held religious beliefs by prohibiting them from offering counseling consistent with those beliefs. (FAC ¶¶ 258–260.) They also allege that the Ordinances burden Plaintiffs' and their clients' religious beliefs and compel them to change their religious beliefs or act in contradiction to them to avoid punitive liability. (FAC ¶ 258.) And they allege that the Ordinances placed Plaintiffs and their clients in an irresolvable conflict between their sincerely held religious beliefs and compliance with the Ordinances. (FAC ¶ 259.) All these allegations, which the Court must accept as true, plausibly support Plaintiffs' claims that that Ordinances are non-neutral and thus violate their Free Exercise rights.

The City misleadingly contends that its Ordinance is neutral because it contains "specific exemption for religious counseling." (City MTD 7.) But Plaintiffs are not *religious* counselors that fall under the City's exemption. Instead, they are mental health professionals who are inarguably covered by the Ordinances, and who provide licensed therapy consistent with their and their clients' religious beliefs and practices. The Ordinances prohibit Plaintiffs from providing licensed therapy in accordance with their religious beliefs about human sexuality, thereby placing a substantial burden on their religious exercise. Just because the City Ordinance contains a purported

carve-out for “religious counseling” does not make the Ordinance a religion-friendly law; if anything, it shows that it is not generally applicable because it has individualized exemptions. *Cf. Fulton*, 141 S. Ct. at 1877 (“A law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.” (cleaned up)). In any event, “indirect coercion or penalties on the free exercise of religion, not just outright prohibitions,” also trigger scrutiny under the Free Exercise Clause. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017) (citation omitted); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (“The Free Exercise Clause protects against government hostility which is masked, as well as overt.”) By prohibiting Plaintiffs from providing SOCE counseling in conformance with the religious beliefs of Plaintiffs and of their clients, Defendants are indirectly coercing and penalizing Plaintiffs’ free exercise of religion. Thus, Plaintiffs have sufficiently stated a claim under the Free Exercise Clause.

B. Plaintiffs sufficiently allege a violation of the Florida Religious Freedom Restoration Act.

Plaintiffs have sufficiently alleged a violation of the Florida Religious Freedom Restoration Act. The Act prohibits the government from substantially burdening a person’s exercise of religion, even if the burden results from a general applicable rule, unless it proves that the burden furthers a compelling government interest and is the least restrictive means of furthering that interest. *See Fla. Stat. § 761.03*. The Act defines “exercise of religion” as “an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief.” Fla. Stat. § 761.02(3). Any person whose religious beliefs are burdened by the government “may assert that violation as a claim or defense in a judicial proceeding.” Fla. Stat. § 761.03(2).

Plaintiffs have alleged that they view their work as mental health counselors as an expression of their Christian faith to care for the infirm and needy. (FAC ¶ 6.) Plaintiffs also allege that they believe that God wants each client to live happy and fulfilling lives; and during counseling they strive to help the client understand God’s love for them. (FAC ¶ 1, 173.) Plaintiffs’ clients share Plaintiffs’ Christian beliefs, and, in counseling Christian clients on issues related to sexuality and relationships, Plaintiffs incorporate shared Biblical teaching and beliefs about Christian sexual ethics. (FAC ¶¶ 6, 173, 218, 257.)

The City misleadingly contends that this claim fails because the Ordinance permits Plaintiffs to provide “spiritual counsel.” (City MTD 12.) Even if that were so, Plaintiffs have still adequately stated a claim that the Ordinances substantially burden Plaintiffs’ sincerely held religious beliefs by prohibiting them from offering, referring, and providing *SOCE counseling* (not merely spiritual counseling) consistent with their and their clients’ religious beliefs. The Florida Supreme Court has held that “a substantial burden on the free exercise of religion is one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to engage in conduct that his religion requires.” *Warner v. City of Boca Raton*, 887 So.3d 1023, 1033 (Fla. 2004). As Plaintiffs’ allegations make plain, the Ordinances forbid them from engaging in counseling that is consistent with their and their clients’ sincerely held religious beliefs, compels them to change their religious beliefs, and compels them to act in contradiction to their sincerely held religious beliefs. (FAC ¶ 257 (The Ordinances “caused Plaintiffs and their clients a *direct and immediate conflict* with their religious beliefs by prohibiting them from offering, referring, or receiving counseling that is consistent with their religious beliefs.” (emphasis added); *id.* ¶ 258 (alleging that the Ordinances “*compelled* them to both change their religious beliefs and to act in contradiction to them” (emphasis added)).

No compelling interest justifies the burdens Defendants imposed on Plaintiffs’ religious exercise. (FAC ¶¶ 262–263.) Even if the Ordinances further a compelling interest, they are not the least restrictive means of achieving that end. (*Id.* ¶ 264.) Thus, Plaintiffs have sufficiently alleged that Defendants have violated Plaintiffs’ rights under the Florida Religious Freedom Restoration Act.

C. Plaintiffs adequately allege that the Ordinances are impliedly preempted by Florida law.

1. Plaintiffs have sufficiently alleged that the Ordinances are void *ab initio* as *ultra vires* acts.

Plaintiffs have sufficiently alleged that the Ordinances are void *ab initio* as *ultra vires* acts because they are impliedly preempted by Florida’s healthcare regulatory scheme. The Florida Constitution provides that counties operating under a charter, including Defendant Palm Beach County, may not enact ordinances “inconsistent with general law.” (Fla. Const. art. VIII, § 1 (g)). Accordingly, “a county cannot legislate in a field if the subject area has been preempted to the State.” *Phantom of Brevard, Inc. v. Brevard Cty.*, 3 So. 3d 309, 314 (Fla. 2008). Nor may a county “enact an ordinance that directly conflicts with a state statute in a field . . . where both the State and

local government can legislate concurrently.” *Id.* Similarly, the Florida Constitution authorizes and empowers municipalities like Defendant Boca Raton to exist and exercise any municipal powers except as otherwise provided by law. *See* Fla. Const. art. VIII, § 1 2(b); Fla. Stat. § 166.021. But a municipality’s powers are subject to limitations. *See D’Agastino v. City of Miami*, 220 So. 3d 410, 420 (Fla. 2017). A local government unlawfully exceeds its authority in enacting an ordinance if the state legislature preempted the subject area or if the ordinance conflicts with a state statute. *See Sarasota All. For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 86 (Fla. 2010) (citation omitted).

Here, Plaintiffs have sufficiently alleged that the Ordinances are preempted by the Florida Legislature’s extensive state statutory and regulatory scheme governing healthcare providers. Specifically, through enactment of Chapter 491 of the Florida Statutes, the Florida Legislature has preempted the regulation of licensed mental health counselors, including the field of disciplinary actions for licensed mental health professionals in Fla. Stat. Ann. § 491.009 and the supplemental regulations under Fla. Admin. Code 64B8-8.001. *Cf. Vazzo v. City of Tampa*, 415 F. Supp. 3d 1087, 1096 (M.D. Fla. 2019) (holding that “substantive regulation of psychotherapy is a State, not a municipal concern”).

That Plaintiffs have sufficiently *alleged* an *ultra vires* and preemption claim here is evidenced not only by the plain allegations of the FAC, but also by the fact that in *Vazzo*, a nearly-identical claim, in a nearly-identical case, involving a nearly-identical SOCE counseling ban, was not only sufficiently pled, but actually *prevailed* on summary judgment. As Defendants have already conceded, *Vazzo* is substantively indistinguishable from this case and therefore highly instructive and persuasive.⁵

In *Vazzo*, a licensed marriage and family therapist and a nonprofit organization alleged, among numerous claims, that the City of Tampa’s nearly identical “conversion therapy” ordinance was unlawful because the Florida Legislature preempted the field of regulating mental health professionals. 415 F. Supp. 3d at 1092. The district court granted summary judgment to the

⁵ Defendant Palm Beach County’s attorney Denise Nieman reviewed the *Vazzo* complaint, agreed that the SOCE ordinance in *Vazzo* “really is an ordinance that is similar to ours,” and concluded as to the *Vazzo* complaint that “[i]t’s a well-pled complaint.” (Dkt. 37-1, 5:4-6-6:24-25.) Attorney Nieman strongly urged the Palm Beach County Commissioners not to enact the County’s SOCE Ordinance until the Tampa lawsuit was concluded, but her clients rejected her prescient advice, at their own peril. (*Id.* at 5:6-9.)

plaintiffs on their preemption claim, concluding that the State’s “substantive regulation of healthcare practices, modalities, and discipline is so pervasive that it occupies the entire field.” *Id.* at 1107. The court also concluded that Tampa’s ordinance “creates a danger of conflict with the Legislature’s broad program for the healing arts in Florida.” *Ibid.* The court further noted that “[t]he strong policy reasons for a statewide, uniform system of substantive healthcare regulation and discipline are clear, as is the Legislature’s intent for same.” *Ibid.*

Like the City of Tampa in *Vazzo*, Defendants here have “never before substantively regulated and disciplined the practice of medicine, psychotherapy, or mental health treatment within [their] limits.” 415 F. Supp. 3d at 1089–90. Nor has the State delegated enforcement authority of its healthcare regulations to localities such as Defendants. *See id.* at 1097. Because Defendants have no authority to regulate licensed counseling, they are even more powerless to regulate what a licensed therapist says during counseling than what a tattoo artist inscribes on a customer’s arm.

The City contends that Plaintiffs’ implied preemption argument fails because “neither the Florida Constitution nor general law addresses SOCE.” (City MTD at 11.) That narrow-minded view cannot be squared with reality. The Ordinances impermissibly occupy or alter vast swaths of *state*-regulated healthcare areas, including privacy rights, informed consent, and professional discipline. Thus, as the *Vazzo* court found, local SOCE ordinances are “preempted by the comprehensive Florida regulatory scheme for healthcare regulation and discipline.” 415 F. Supp. 3d at 1090. Because the Ordinances are an unlawful attempt to regulate areas pervasively covered by the State’s regulatory health care scheme, they are impliedly preempted under the Florida Constitution. Thus, Plaintiffs have adequately alleged that the Ordinances are *void ab initio* as *ultra vires* acts in violation of the Article VIII of the Florida Constitution.

2. Defendants’ preemption arguments are factual issues improper for resolution at the motion-to-dismiss stage.

Beyond their misinterpretation of preemption case law, Defendants also inappropriately attempt to resolve factual preemption issues at this stage. As this Court has observed, preemption analysis “requires a fact-intensive inquiry.” *Jouria v. CE Res., Inc.*, 2017 WL 3868422, at *3 (S.D. Fla. July 17, 2017); *accord Kevin Harrington Enterprises, Inc. v. Bearwolf*, 1998 WL 798164, at *1 (S.D. Fla. Aug. 5, 1998) (concluding that whether state laws are preempted by federal statute “involves factual determinations which are inappropriate at the motion to dismiss stage”). Defendants’ contention that the Ordinances are not *ultra vires* rests on their factual claims that the

State has not preempted the field of mental health professionals and that Defendants have the authority to regulate professions and professional conduct. (City MTD at 17; County MTD at 17-18). Resolution of these preemption issues necessarily requires a factual record and is therefore inappropriate for a motion to dismiss.

Indeed, in determining whether the State's regulation impliedly preempts local governments from regulating mental health professionals licensed by the State, the court must look at the provisions of the policy as a whole, the nature of power exercised by the legislature, the object sought to be attained by the statute, and the character of the obligations imposed by the statute. *See Classy Cycles, Inc. v. Bay Cnty.*, 201 So.3d 779, 784 (Fla. 2016). The object and purpose of a statute or statutory scheme is necessarily fact intensive and inappropriate for a motion to dismiss. *See Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 408 (5th Cir. 1991) (noting that a legislature's purpose in enacting a law "is a question of fact"). Defendants' efforts to dismiss Plaintiffs' preemption claim before any factual inquiry is undertaken must be rejected.

Incidentally, as this Court knows from the discovery dispute it has previously addressed, Plaintiffs propounded interrogatories upon the County and City to inquire about the extent to which they purport to regulate any other modes of therapy (besides SOCE counseling), or any other professionals or professional conduct. (Dkts. 27-1, 27-2, 42.) Not surprisingly, Defendants failed to identify a single such other regulation. This confirms Plaintiffs' claims that the SOCE bans enacted by Defendants here are the first—and only—exercise of Defendants' purportedly (City MTD at 10) broad, routine, and unremarkable power to regulate professions and professionals for the safety of their citizens. All this demonstrates that factual development, especially depositions, will lay bare Defendants' preemption defenses.

In sum, regardless of how the Court views the prospects of Plaintiffs' ultimate success on their preemption claim at this juncture of the case, the Court may not dismiss that claim unless it were clear that Plaintiffs could prove no set of facts whatsoever that would entitle them to relief. *See Twombly, supra*, 550 U.S. at 570. But how could Defendants even suggest that to be the case here, when the *Vazzo* court has already found that a nearly identical preemption challenge to a nearly identical SOCE ordinance was not only sufficiently pled, but also sufficiently proven to warrant summary judgment? The Court should confine its review to the four corners of Plaintiffs'

Amended Complaint and deny Defendants' improper, premature, and misguided motions to dismiss.

D. Plaintiffs adequately state a claim under the Florida Patients' Bill of Rights and Responsibilities.

Plaintiffs sufficiently allege that the Ordinances violate Chapter 381 of the Florida Statutes, "Florida Patient's Bill of Rights and Responsibilities." The Patient's Bill was enacted "to promote the interests and well-being of the patients of health care providers and health care facilities and to promote better communication between the patient and the health care provider." Fla. Stat. § 381.026(3).

Under the Patient's Bill, a patient "has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment." Fla. Stat. § 381.026(4)(d)(1)). A patient also "has the right to access any mode of treatment that is, in his or her own judgment and the judgment of his or her health care practitioner, in the best interests of the patient, including complementary or alternative health care treatments in accordance with the provisions of §456.41." Fla. Stat. § 381.026(4)(d)(3). "Complementary or alternative health care treatment" means "any treatment that is designed to provide patients with an effective option to the prevailing or conventional treatment methods associated with the services provided by a health care practitioner." Fla. Stat. § 456.41 (2)(a).

Plaintiffs have sufficiently alleged that by prohibiting voluntary SOCE, the Ordinances violate Plaintiffs' right to offer or provide, and their clients' right to receive, alternative health care treatment in compliance with Fla. Stat. § 381.026(d)(2) and Fla. Stat. § 456.41. (FAC ¶¶ 326, 331.) The Ordinances violate Plaintiffs' responsibility to ensure patients make informed decisions, and likewise force Plaintiffs to violate their clients' rights to autonomy and self-determination. The Ordinances also force Plaintiffs to both deny clients the opportunity to engage in SOCE and withhold information about their clients' full range of therapeutic choices. (*Id.* ¶ 326.) Consequently, the Ordinances violate Fla. Stat. § 381.026 and have caused, and will continue to cause, Plaintiffs to suffer undue and actual hardship and irreparable injury.

Contrary to the City's contention (MTD at 11), each Plaintiff is undoubtedly a "health care practitioner" under Fla. Stat. § 456.41(2)(b). The statute expressly provides that "[h]ealth care practitioner means any health care practitioner as defined in § 456.001(4)," which includes marriage and family therapists licensed under Fla. Stat. § 491.003(5).

The City also contends (MTD at 11) that the Patient’s Bill provides no private right of action. To be sure, the provision states that it “shall not be used for any purpose in any civil or administrative action and neither expands nor limits any rights or remedies provided under any other law.” Fla. Stat. § 381.026(3). Nevertheless, if a statute “was enacted for the benefit of a special class,” then “the judiciary normally recognize[s] a remedy for members of that class.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 374 (1982). Here, Section 381.026 was enacted for the benefit of a special class: medical patients and health care practitioners. Therefore, an implied private right of remedy exists for patients and health care providers to enforce their rights under the statute. The law abhors rights without remedies, *see Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 15 (1979) (recognizing that “some opinions of the Court have placed considerable emphasis upon the desirability of implying private rights of action in order to provide remedies thought to effectuate the purposes of a given statute”), and the City’s interpretation of the Patient’s Bill would render it meaningless.

Plaintiffs have sufficiently alleged a violation of the Florida Patient’s Bill of Rights and Responsibilities. Defendants’ motions should be denied.

E. Plaintiffs sufficiently allege that Defendants conspired against them in violation of Section 1985(3).

Plaintiffs have adequately pled that Defendants have conspired with each other and with third parties to violate Plaintiffs’ civil rights, in violation of 42 U.S.C. § 1985(3). Federal law prohibits two or more persons from conspiring “for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws....” 42 U.S.C. § 1985(3). The elements of a civil rights conspiracy cause of action under Section 1985 are (1) a conspiracy; (2) for the purpose of depriving any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; and (4) injury. *See United Bd. of Carpenters & Joiners of Am., Local 610, AFL–CIO v. Scott*, 463 U.S. 825, 828–29 (1983).

Defendants contend that Plaintiffs have failed to sufficiently plead the elements of a civil rights conspiracy. (City MTD at 12–14; County MTD at 14–19.) That is wrong. *First*, Plaintiffs have sufficiently alleged Defendants conspired with each other and with Rand Hoch and the Palm Beach County Human Rights Council to deny Plaintiffs’ equal enjoyment of their First Amendment rights because of Plaintiffs’ and their clients’ religious views on human sexuality, and Plaintiffs’ faith-based counseling practices. (FAC ¶¶ 69, 72–81.) Evidence of the conspiracy is

supported by numerous emails between Defendants and Hoch coordinating the Ordinances’ enactments, their defense, and even the scheme to defeat this Court’s jurisdiction through strategic repeals. (FAC ¶¶ 49, 63.) These emails (backed by Hoch’s numerous statements to the media) show “a meeting of the minds” to engage in a conspiracy to deprive Plaintiffs of their First Amendment rights by targeting their SOCE counseling. *Webb v. Goord*, 340 F.3d 105, 110–11 (2d Cir. 2003). In any event, the factual basis need not be direct evidence—Plaintiffs have met their burden simply by alleging “facts upon which it may be plausibly inferred that the defendants came to an agreement to violate [their] constitutional rights.” *Green v. McLaughlin*, 480 Fed. Appx. 44, 46 (2d Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 680-81 (2009)); see also *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 427 (2d Cir. 1995) (“A conspiracy ... need not be shown by proof of an explicit agreement but can be established by showing that the parties have a tacit understanding to carry out the prohibited conduct.”).

Second, there must be class-based “invidiously discriminatory animus behind the conspirators’ action.” *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); see also *Burrell v. Bd. of Trs. of Ga. Military Coll.*, 970 F.2d 785, 788 (11th Cir. 1992). Accordingly, Plaintiffs’ Section 1985 claim plausibly alleges a deprivation of the equal protection of law by alleging that Defendants’ actions reflect “discriminatory animus” based on religion. (FAC ¶¶ 52, 53, 348.) Contrary to Defendants’ contention (City MTD at 13; County MTD at 16–17), religion *is* a “class of persons” within the meaning of § 1985(3), and therefore individuals like Plaintiffs are protected from conspiracies against them motivated by religious animus. See *Ward v. Connor*, 657 F.2d 45, 48–49 (4th Cir. 1981) (holding that a religious group that is the object of discriminatory animus may be deemed a class falling within the ambit of § 1985(3)); *Jews for Jesus, Inc. v. Jewish Cmty. Relations Council of N.Y., Inc.*, 968 F.2d 286, 291 (2d Cir. 1992) (defining “class-based animus” to “include discrimination based on religion”). Further, the legislative history of § 1985(3) also reveals that at least some members of Congress believed actionable conspiracies would include those “against a person ... because he was a *Catholic*, or because he was a *Methodist*....” *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 296 (1993) (Souter, J., concurring in part and dissenting in part) (discussing remarks of senator who managed the bill on the Senate floor) (cleaned up) (emphasis added).

Defendants’ attempts (City MTD at 13; County MTD at 16–17) to obfuscate Plaintiffs’ claims of religion-based discrimination fall woefully short. For instance, the County’s citations (at

17–18) to *Dean v. Warren*, 12 F.4th 1248, 1255–56 (11th Cir. 2021), and two unpublished out-of-district cases in *Gibson-Carter v. Rape Crisis Ctr.*, 2020 WL 2815122, at *28 (S.D. Ga. May 29, 2020), and *Mcbride v. Guzina*, 2022 WL 111230, at *6 (M.D. Fla. Jan. 12, 2022), are wholly irrelevant. Each of those cases is factually distinguishable as none alleged, as here, religion-based animus. Beyond that, each of the plaintiffs in those cases failed to make even a plausible allegation of a conspiracy to deprive civil rights. By contrast, Plaintiffs here have sufficiently alleged that Defendants’ conspiracy with Hoch and the Council was motivated by discriminatory animus toward Plaintiffs’ religion, specifically their Christian viewpoints and beliefs on human sexuality and their desire to exercise their Christian beliefs through their SOCE counseling. (FAC ¶¶ 69, 72–81.)

To further confuse the issues, the County contends that “federal courts” have “specifically affirmed” that “§ 1985(3) cannot serve as the basis for a lawsuit which claims a violation of free speech and expression.” (County MTD 15.) That proposition is squarely rejected by the Supreme Court’s decision in *Scott, supra*, 463 U.S. at 831. In that case, the Supreme Court found that an “alleged conspiracy to infringe First Amendment rights is not a violation of § 1985(3) *unless* it is proved that the *State* is involved in the conspiracy.” *Id.* at 830 (emphasis added). The Court based its holding on the fact that the First Amendment, by virtue of the Due Process Clause of the Fourteenth Amendment, “protects the individual against *state action*, not against wrongs done by *individuals*.” *Id.* at 831 (quoting *United States v. Williams*, 341 U.S. 70, 92 (1951) (dissenting opinion)). Thus, plaintiffs like Dr. Otto and Dr. Hamilton may challenge a *government*-involved conspiracy to infringe First Amendment rights under Section 1985(3). *See Scott*, 463 U.S. at 831–33.

Third, Plaintiffs sufficiently allege that Defendants committed overt acts in furtherance of the conspiracy by drafting, enacting, and enforcing the Ordinances. (FAC ¶¶ 52–53.) These acts are ongoing as Defendants are still scheming and conspiring with Hoch to discriminate against Plaintiffs’ religious beliefs and practices. (*Id.* ¶ 47.) As a result of Defendants’ conspiracy to violate Plaintiffs’ civil rights, Plaintiffs have suffered injury, and these injuries were a consequence of overt acts committed by Defendants in connection with the conspiracy. Plaintiffs thus have stated a plausible claim for relief for a violation of Section 1985(3).

Ultimately, it bears repetition here that Plaintiffs need not convince the Court that they will ultimately succeed on their conspiracy claim to survive the instant motions to dismiss. *See*

Twombly, supra, 550 U.S. at 570. Because Plaintiffs have plainly alleged the requisite elements of a Section 1985 conspiracy, the Court must provide them with the opportunity to probe and support those allegations with facts adduced from discovery, even if the Court were to currently doubt the strength or ultimate prospects of Plaintiffs' claim. *See id.* at 566. The Court should therefore deny Defendants' motions.

VI. If the Court Finds Plaintiffs' Allegations Lacking In Any Respect, It Should Grant Them Leave To Amend.

Should the Court determine that Plaintiffs' Amended Complaint is lacking in any respect, Plaintiffs should be given the opportunity to amend their Complaint to address any deficiencies. Indeed, Fed. R. Civ. P. 15 permits a party to amend its pleading and instructs that "[t]he court should *freely give leave* when justice so requires." Fed. R. Civ. P. 15(a)(2) (emphasis added). Thus, should this Court find any deficiency in the Amended Complaint, Plaintiffs respectfully request leave to address it through an amended or supplemental pleading.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss should be denied.

Respectfully submitted,

Dated: December 19, 2022

/s/ Horatio G. Mihet

Mathew D. Staver (FL Bar 0701092)

Horatio G. Mihet (FL Bar 026581)

Roger K. Gannam (FL Bar 240450)

LIBERTY COUNSEL

P.O. Box 540774

Orlando, FL 32854

Phone: (407) 875-1776

Email: court@lc.org

Attorneys for Plaintiffs

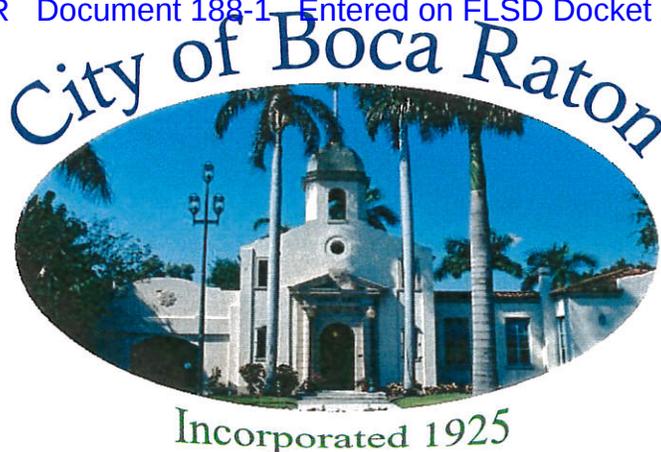
CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I caused a true and correct copy of the foregoing to be filed electronically with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Plaintiffs



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RESOLUTION

84-2022

A RESOLUTION OF THE CITY OF BOCA RATON
OPPOSING AND DISCOURAGING THE PRACTICE OF
CONVERSION THERAPY ON MINORS; PROVIDING AN
EFFECTIVE DATE

WHEREAS, as recognized by major professional associations of mental health practitioners and researchers in the United States and elsewhere for nearly 40 years, being lesbian, gay, bisexual, transgender, or gender nonconforming, or questioning ("LGBTQ") is not a mental disease, disorder or illness, deficiency, or shortcoming; and

WHEREAS, the American Academy of Pediatrics in 1993 published an article in its Journal, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation;" and

WHEREAS, the American Psychiatric Association in December 1998 published its opposition to any psychiatric treatment, including reparative or conversion therapy, which therapy regime is based upon the assumption that homosexuality is a mental disorder per se or that a patient should change his or her homosexual orientation; and

1 WHEREAS, the American Psychological Association's Task Force on Appropriate
2 Therapeutic Responses to Sexual Orientation ("APA Task Force") conducted a systematic
3 review of peer-reviewed journal literature on sexual orientation change efforts ("SOCE"), and
4 issued its report in 2009, citing research that sexual orientation change efforts can pose critical
5 health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt,
6 helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress,
7 disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-
8 hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and
9 potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction,
10 high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith,
11 and a sense of having wasted time and resources; and

12 WHEREAS, following the report issued by the APA Task Force, the American
13 Psychological Association in 2009 issued a resolution on Appropriate Affirmative Responses to
14 Sexual Orientation Distress and Change Efforts, advising parents, guardians, young people,
15 and their families to avoid sexual orientation change efforts that portray homosexuality as a
16 mental illness or developmental disorder and to seek psychotherapy, social support, and
17 educational services that provide accurate information on sexual orientation and sexuality,
18 increase family and school support, and reduce rejection of sexual minority youth; and

19 WHEREAS, the American Psychoanalytic Association in June 2012 issued a position
20 statement on conversion therapy efforts, articulating that "As with any societal prejudice, bias
21 against individuals based on actual or perceived sexual orientation, gender identity or gender
22 expression negatively affects mental health, contributing to an enduring sense of stigma and
23 pervasive self-criticism through the internalization of such prejudice" and that psychoanalytic
24 technique "does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an
25 individual's sexual orientation, gender identity or gender expression," such efforts being

1 inapposite to "fundamental principles of psychoanalytic treatment and often result in substantial
2 psychological pain by reinforcing damaging internalized attitudes;" and

3 WHEREAS, the American Academy of Child & Adolescent Psychiatry in 2012
4 published an article in its Journal stating that clinicians should be aware that there is "no
5 evidence that sexual orientation can be altered through therapy and that attempts to do so may
6 be harmful;" that there is "no medically valid basis for attempting to prevent homosexuality,
7 which is not an illness;" and that such efforts may encourage family rejection and undermine
8 self-esteem, connectedness and caring, important protective factors against suicidal ideation
9 and attempts; and that, for similar reasons cumulatively stated above, carrying the risk of
10 significant harm, SOCE is contraindicated; and

11 WHEREAS, the Pan American Health Organization, a regional office of the World
12 Health Organization, issued a statement in 2012 stating: "'These supposed conversion
13 therapies constitute a violation of the ethical principles of health care and violate human rights
14 that are protected by international and regional agreements.'" The organization also noted that
15 conversion therapies "lack medical justification and represent a serious threat to the health and
16 well-being of affected people;" and

17 WHEREAS, in 2014, the American School Counselor Association issued a position
18 statement that states: "It is not the role of the professional school counselor to attempt to
19 change a student's sexual orientation or gender identity. Professional school counselors do not
20 support efforts by licensed mental health professionals to change a student's sexual orientation
21 or gender as these practices have been proven ineffective and harmful;" and

22 WHEREAS, a 2015 report of the Substance Abuse and Mental Health Services
23 Administration, a division of the U.S. Department of Health and Human Services, "Ending
24 Conversion Therapy: Supporting and Affirming LGBTQ Youth" further reiterates based on
25 scientific literature that conversion therapy efforts to change an individual's sexual orientation,
26 gender identity, or gender expression is a practice not supported by credible evidence and has

1 been disavowed by behavioral health experts and associations, perpetuates outdated views of
2 gender roles and identities, negative stereotypes, stating, importantly, that such therapy may
3 put young people at risk of serious harm, and recognizing that, same-gender sexual orientation
4 (including identity, behavior, and attraction) is part of the normal spectrum of human diversity
5 and does not constitute a mental disorder; and

6 WHEREAS, the American College of Physicians wrote a position paper in 2015
7 opposing the use of "conversion," "reorientation," or "reparative" therapy for the treatment of
8 LGBT persons, stating that "[a]vailable research does not support the use of reparative therapy
9 as an effective method in the treatment of LGBT persons. Evidence shows that the practice may
10 actually cause emotional or physical harm to LGBT individuals, particularly adolescents or
11 young persons;" and

12 WHEREAS, the City Council hereby finds the overwhelming research demonstrating
13 that sexual orientation and gender identity change efforts can pose critical health risks to
14 lesbian, gay, bisexual, transgender or questioning persons, and that being lesbian, gay,
15 bisexual, transgender or questioning is not a mental disease, mental disorder, mental illness,
16 deficiency, or shortcoming; and

17 WHEREAS, the City previously prohibited the practice of SOCE on minors but,
18 following a challenge in federal court to such prohibition resulting in an adverse ruling by the
19 United States Court of Appeals for the Eleventh Circuit (the "Eleventh Circuit Decision"), and
20 notwithstanding strong disagreement with the Eleventh Circuit Decision, the City Council elected
21 to repeal such prohibition and does not intend to reenact, or consider reenactment of, any such
22 prohibition or anything substantially similar; and

23 WHEREAS, City Council desires to discourage practices, such as SOCE, that are
24 harmful or potentially harmful to the physical and psychological well-being of minors, including
25 but not limited to lesbian, gay, bisexual, transgender, and questioning youth, and to protect its
26 minors from exposure to serious harms caused by SOCE; and

1 WHEREAS, the City Council desires to discourage the practice of SOCE on minors
2 by licensed therapists, including reparative and/or conversion therapy, which have been
3 demonstrated to be harmful to the physical and psychological well-being of lesbian, gay,
4 bisexual, transgender, and questioning persons; now therefore

5
6 BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOCA
7 RATON:

8 Section 1. The City Council believes that SOCE is potentially harmful to the physical
9 and psychological well-being of lesbian, gay, bisexual, transgender, and questioning persons,
10 and therefore strongly opposes and discourages such practice on minors. However, the City
11 Council acknowledges the Eleventh Circuit Decision and does not intend to take any action in
12 contravention of such decision.

13 Section 2. This resolution shall take effect immediately upon adoption.

14 PASSED AND ADOPTED by the City Council of the City of Boca Raton this _____
15 day of _____, 2022.

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18 CITY OF BOCA RATON, FLORIDA

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20 ATTEST:

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23 _____
24 Scott Singer, Mayor

25 _____
26 Mary Siddons, City Clerk

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COUNCIL MEMBERS	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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