

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

ROBERT W. OTTO and JULIE H.
HAMILTON,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION FOR LEAVE TO
TAKE JURISDICTIONAL DISCOVERY**

INTRODUCTION

Pursuant to the Magistrate Judge's Order on Request for Jurisdictional Discovery (DE 195), Plaintiffs Robert Otto and Julie Hamilton move for leave to take jurisdictional discovery on the issue of subject matter jurisdiction. Defendants City of Boca Raton ("City") and County of Palm Beach ("County") (collectively, "Defendants"), purportedly repealed their respective ordinances banning SOCE counseling in their municipalities (collectively, the "Ordinances"), and they now contend that Plaintiffs' claims for injunctive and declaratory relief are moot.¹ On the record now before the Court, Plaintiffs have proffered facts to show that Defendants' purported repeals of the Ordinances are merely strategic moves to moot this case and do not reflect a genuine change of

¹ On February 9, 2023, both Plaintiffs accepted the offer of judgment extended to each of them separately by the City. (DE 196). Although judgment is expected to be entered against the City in the near future, Plaintiffs' claims will continue against the County. The discovery sought herein from the City is still necessary to defeat the County's mootness arguments, insofar as Plaintiffs believe and allege that the City and the County have acted in concert and conspiracy with each other and with others to not only violate Plaintiffs' rights, but to strategically moot their claims. If judgment against the City is entered prior to the discovery taking place, Plaintiffs will seek the same discovery from the City through other available means, including subpoenas.

heart. (*See* Pls.’ Consol. Opp’n to Defs.’ Mots. Dismiss [“Pls.’ Opp’n”] 6–13.) Plaintiffs submit that Defendants’ mootness arguments can be rejected on the existing record, but, if any doubt remains, Plaintiffs request that, consistent with the law in this Circuit, they be allowed to conduct jurisdictional discovery before the Court decides Defendants’ Motions to Dismiss.

PROCEDURAL HISTORY

Plaintiffs are licensed marriage and family therapists who help patients explore the fluidity of their unwanted same-sex attractions or gender confusion. In June 2018, Plaintiffs brought this action under 42 U.S.C. § 1983, challenging the Ordinances passed by Defendants in 2017 that banned mental health providers from engaging in Sexual Orientation Change Efforts (derisively termed “conversion therapy”) with minor patients. (DE 1.) Plaintiffs allege that the Ordinances, among other defects, violate their First Amendment right to free speech and are preempted by Florida law. Plaintiffs also moved for a preliminary injunction to bar the Ordinances’ enforcement during litigation. (DE 3, 8.) In February 2019, the Court denied Plaintiffs’ motion for a preliminary injunction (DE 141), which Plaintiffs immediately appealed (DE 142).

On November 20, 2020, the Eleventh Circuit issued an opinion reversing this Court’s denial of a preliminary injunction. *See Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020). The Eleventh Circuit held, among other things, that the Ordinances violate the First Amendment because they are content- and viewpoint-based regulations of speech that do not survive strict scrutiny. *See id.* Defendants filed a petition for *en banc* rehearing, which the Eleventh Circuit denied on July 20, 2022. *See Otto v. City of Boca Raton*, No. 19-10604, 2022 WL 2824907 (11th Cir. July 20, 2022). Nine days later, the Eleventh Circuit issued its mandate directing this Court to enter a preliminary injunction for Plaintiffs. (DE 149.) After additional motion practice, this Court entered a preliminary injunction on August 18, 2022. (DE 168.)

In October 2022, Plaintiffs filed an amended complaint that streamlined the allegations and added a conspiracy claim under 42 U.S.C. § 1985(3). (DE 182.) Defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (DE 183, 184.) Defendants’ motions are now pending before the Court.

JURISDICTIONAL FACTS IN DISPUTE

Defendants contend that Plaintiffs’ claims are moot because they purportedly repealed the Ordinances. (City MTD at 14–16; County MTD at 5–12.) In response, Plaintiffs argue that Defendants have failed to unequivocally disavow any intent to reenact the Ordinances, that Defendant Boca Raton continues to defend its Ordinance on the merits and attack the Eleventh Circuit’s ruling, and that Defendants continue to conspire with each other and Rand Hoch to discriminate against Plaintiffs because of their religious beliefs and counseling practices. (Pls.’ Opp’n, at 6–13.) Plaintiffs argue these actions and more “betray a strategic repeal to avoid adverse litigation developments,” *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1285 (11th Cir. 2021), and thus Plaintiffs’ claims for injunctive and declaratory relief are not moot.

The Eleventh Circuit has outlined three broad factors to consider when examining the validity of an ordinance’s repeal and its impact on mootness: (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 Enters., Inc. of Georgia v. City of Sandy Springs*,

868 F.3d 1248, 1257 (11th Cir. 2017)).

Several jurisdictional facts related to these factors are in dispute and warrant further discovery if the Court is not able to reject Defendants' mootness arguments at this juncture. Discovery of these facts will provide the Court with a stronger record to which it may apply the *Fort Lauderdale* factors. Jurisdictional facts in dispute include, but are not limited to:

- Whether Defendants engaged in substantial deliberation to repeal their Ordinances, or whether Defendants' repeals of the Ordinances are in fact merely an attempt to manipulate the Court's jurisdiction;
- Whether Defendants conspired with each other and with Rand Hoch and the Palm Beach County Human Rights Council to facially repeal their Ordinances for the purpose of mooting Plaintiffs' claims and avoiding further judicial review and condemnation, while at the same time developing a scheme and strategy for continuing to chill Plaintiffs' constitutionally-protected speech;
- Whether Rand Hoch and the Palm Beach County Human Rights Council are continuing to encourage Defendants to target Plaintiffs and their First Amendment-protected activities;
- Whether the Boca Raton City Council's recent resolution accompanying its repeal of Ordinance 5407, Res. 84-2022, Boca Raton, Fla. City Council (Aug. 23, 2022)—which declares the City's "strong disagreement" with the Eleventh Circuit's decision, affirms the City Council's "desire[] to discourage the practice of SOCE on minors by licensed therapists," and resolves that the City Council "strongly opposes and discourages such practice on minors"—evinces a commitment to its purported permanent repeal of its Ordinance, or an intent to continue violating Plaintiffs' First Amendment rights; and
- Whether Defendants' elected officials continue to maintain ongoing animus toward Plaintiffs' religious practices and their desire to deprive Plaintiffs of their constitutionally protected right to live and work according to their sincerely held religious beliefs.

These disputed facts relate to whether Plaintiffs still have justiciable claims for declaratory and injunctive relief.

LEGAL STANDARD

The Supreme Court has recognized that where jurisdictional issues arise, discovery pursuant to Fed. R. Civ. P. 12(b)(1) is available to ascertain the facts bearing on those issues. *See*

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).

“While a district court has wide discretion to determine the scope of jurisdictional discovery, a plaintiff *must* have ample opportunity to present evidence bearing on the existence of jurisdiction.” *Leon v. Cont’l AG*, 301 F. Supp. 3d 1203, 1212 (S.D. Fla. 2017) (quoting *Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243 (11th Cir. 1991)) (emphasis added) (cleaned up); *see also In re CP Ships Ltd Sec. Litig.*, 578 F.3d 1306, 1312 (11th Cir. 2009) (“In a factual challenge, the district court *must* give the plaintiff an opportunity for discovery and for a hearing that is appropriate to the nature of the motion to dismiss.” (emphasis added)). In sum, whenever a defendant raises lack of subject matter jurisdiction and the plaintiff demonstrates that his jurisdictional allegations can be supplemented through discovery, the law of this Circuit is that the plaintiff is entitled to jurisdictional discovery.

ARGUMENT

A. Through jurisdictional discovery, Plaintiffs can supplement the factual basis supporting the Court’s continuing subject matter jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief.

In their Opposition Memo, Plaintiffs proffered evidence that strongly suggests that Defendants’ purported repeals of the Ordinances do not reflect a genuine change of heart or a permanent abandonment of their unlawful conduct, but instead are merely strategic moves to moot this case. (Pls.’ Opp’n, at 6–13.) This evidence includes statements made by Boca Raton council members affirming their antagonism toward Plaintiffs’ First Amendment-protected therapy

practices, Rand Hoch's sustained and detailed collaboration with both Defendants to target Plaintiffs' counseling services, and Boca Raton's resolution that reaffirms its opposition to SOCE counseling, intentionally and purposefully chills Plaintiffs' protected speech, and condemns the Eleventh Circuit's decision in *Otto*. Plaintiffs seek to supplement this evidence by conducting discovery, including deposing Defendants' representatives and/or decision-making officials and Rand Hoch. This discovery is expected to elicit more detailed information about Defendants' ongoing intent—even post the purported repeal of their Ordinances—to target Plaintiffs' First Amendment rights through laws and regulations that restrict the practice of so-called “conversion therapy.”

Although Defendants have made repeated conclusory statements that they have no intent to reenact the challenged Ordinances, Plaintiffs are entitled to examine the basis for, and veracity of, these assertions. For example, Defendant Boca Raton states that the City “has maintained its commitment to not violate the law,” (City Reply Supp. Mot. Dismiss 10, DE 191), yet the City Council passed a resolution disagreeing with the Eleventh Circuit's decision in *Otto* and condemning Plaintiffs' First Amendment-protected speech. Indeed, “when the government ceases a challenged policy without renouncing it, the voluntary cessation is less likely to moot the case.” *Pierce v. Ducey*, 2019 WL 4750138, at *5 (D. Ariz. Sept. 30, 2019), *rev'd on other grounds*, 965 F.3d 1085 (9th Cir. 2020). Discovery is warranted to test the validity of Defendants' professed “commitment to not violate the law.”

Plaintiffs would also probe, among other things, Defendants “hope that the Eleventh Circuit or the Supreme Court will eventually recognize the validity of SOCE regulations” (City Reply 10), and what Defendants are prepared and willing to do in the meantime, as stop-gap measures to chill Plaintiffs' disfavored but protected speech.

Further, discovery would permit Plaintiffs to explore Rand Hoch's post-*Otto* scheming with both Defendants to continue to suppress Plaintiffs' First Amendment rights through laws and resolutions prohibiting or condemning Plaintiffs' protected activities. The facts surrounding Mr. Hoch's ongoing advocacy implicate both the merits of Plaintiffs' federal claims and the court's subject matter jurisdiction, which, put together, supports jurisdictional discovery. *See Am. C.L. Union of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1341 (11th Cir. 2017).

B. It would be an abuse of discretion to deny Plaintiffs their qualified right to jurisdictional discovery.

The Eleventh Circuit holds that “[p]arties have a qualified right to jurisdictional discovery, meaning that a district court abuses its discretion if it completely denies a party jurisdictional discovery unless that party unduly delayed in propounding discovery or seeking leave to initiate discovery.” *Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1312 n.4 (11th Cir. 2022) (quoting *Am. C.L. Union of Fla., Inc. v. City of Sarasota*, 859 F.3d 1337, 1341 (11th Cir. 2017)). Here, Plaintiffs unquestionably have a right to jurisdictional discovery. Plaintiffs have not unduly delayed in propounding discovery, and they have sought leave pursuant to the Court's order. Thus, no factor militates against granting Plaintiffs leave to take jurisdictional discovery.

C. If Defendants refuse jurisdictional discovery, then Plaintiffs are entitled to the negative inference that Defendants' repeals of the Ordinances are merely strategic moves to moot this case.

If Defendants refuse to provide jurisdictional discovery to which Plaintiffs are entitled, then Plaintiffs are entitled to the negative inference that Defendants' post-*Otto* repeals of the Ordinances are not, in fact, a genuine change of heart but are instead merely strategic moves to moot this case and prevent further judicial review of the Ordinances' constitutionality. *Cf. Davis v. Northside Realty Assocs., Inc.*, 95 F.R.D. 39, 45 (N.D. Ga. 1982) (“Unfortunately for all the civil

defendants, failure to respond, albeit for good cause, creates an adverse inference against those to whom the questions were submitted.”) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 322 (1976)); *In re Vitamins Antitrust Litig.*, 120 F. Supp. 2d 58, 68 (D.D.C. 2000) (noting that the Court “may draw an adverse inference from [defendant’s] refusal to answer plaintiffs’ questions about his jurisdictional contacts when resolving his Motion to Dismiss”); *In re Ready-Mixed Concrete Antitrust Litig.*, 261 F.R.D. 154, 172 (S.D. Ind. 2009) (“Defendants have refused, at least in part, to testify or participate in discovery concerning aspects of the conspiracy, a fact that gives rise to a negative inference against Defendants as to the existence and impact of a conspiracy.”).

CONCLUSION

Plaintiffs have a good faith belief that discovery will further show that the Court has continuing subject matter jurisdiction over their claims for declaratory and injunctive relief. Accordingly, Plaintiffs respectfully request that the Court grant them leave to take jurisdictional discovery.

Pursuant to the Court’s Order (DE 195), Plaintiffs attach hereto examples of discovery they propose to take of parties and non-parties, including:

Exhibit A – Plaintiff Otto’s proposed Third Set of Discovery Requests (Document Production) to City of Boca Raton;

Exhibit B – Plaintiff Otto’s proposed Third Set of Discovery Requests (Document Production) to County of Palm Beach;

Exhibit C – Plaintiffs’ Notice of Taking Depositions of Defendants;

Exhibit D – Plaintiffs’ Subpoena Duces Tecum to Non-Party Rand Hoch;

Exhibit E – Plaintiffs’ Subpoena Duces Tecum to Non-Party Palm Beach Human Rights Council.

As is usually the case in discovery, follow-up probing and refining may be necessary as discovery progresses.

Date: February 9, 2023

Respectfully submitted,

/s/ Horatio G. Mihet

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court@lc.org
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2023, 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

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)
individually and on behalf of his patients,)
JULIE H. HAMILTON, PH.D., LMFT,)
individually and on behalf of her patients,)

Civil Action No.: 9:18-cv-80771-RLR

Plaintiffs,)

v.)

CITY OF BOCA RATON, FLORIDA,)
and COUNTY OF PALM BEACH,)
FLORIDA,)

Defendants.)

**PLAINTIFF ROBERT W. OTTO’S THIRD SET OF
DISCOVERY REQUESTS TO DEFENDANT CITY OF BOCA RATON, FLORIDA**

Pursuant to Fed. R. Civ. P. 26 and 34, and S.D. Fla. L.R. 26.1, Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following Third Set of Discovery Requests to Defendant City of Boca Raton, Florida (“Defendant” or the “City”). Defendant is directed to serve its responses, and/or its document production, in conformance with the above-cited rules, via electronic means, within 30 days.

Defendant is further instructed to respond pursuant to the same “DEFINITIONS” and “INSTRUCTIONS” contained in Plaintiff Otto’s First Set of Discovery Requests (pp. 1-6), served on July 17, 2018, which are incorporated by reference as if fully set for herein.

ADDITIONAL REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION 40:

All Documents relating to Communications of the City of Boca Raton (including any of its officers, attorneys, agents, employees, or elected officials) with Rand Hoch or the Palm Beach County Human Rights Council (including any of its officers, attorneys, agents, or employees), regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 40:

REQUEST FOR PRODUCTION 41:

All Documents relating to Communications of the City of Boca Raton (including any of its officers, attorneys, agents, employees, or elected officials) with the County of Palm Beach (including any of its officers, attorneys, agents, employees, or elected officials), regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 41:

REQUEST FOR PRODUCTION 42:

All Documents relating to the City's deliberations in repealing its conversion therapy ordinance, and all documents reviewed and relied upon by the City in enacting the repeal.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 42:

REQUEST FOR PRODUCTION 43:

All Documents relating to the proposing, drafting, deliberation, enactment, enforcement, or repeal of any resolution that condemns, discourages, chills, curbs or ostracizes "conversion therapy" or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 43:

REQUEST FOR PRODUCTION 44:

All Documents relating to the perceived need by the City to render this case moot, and all Documents related to any actions taken or proposed by the City to render this case moot.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 44:

REQUEST FOR PRODUCTION 45:

All Documents relating to the City’s purported commitment not to ban, restrict or chill in the future “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 45:

REQUEST FOR PRODUCTION 46:

All Documents relating to any perceived need or any effort by the City to condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 46:

Respectfully submitted,

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Email: hmihet@lc.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____ 2023, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)
individually and on behalf of his patients,)
JULIE H. HAMILTON, PH.D., LMFT,)
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Civil Action No.: 9:18-cv-80771-RLR

Plaintiffs,)

v.)

CITY OF BOCA RATON, FLORIDA,)
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FLORIDA,)

Defendants.)

**PLAINTIFF ROBERT W. OTTO’S THIRD SET OF
DISCOVERY REQUESTS TO DEFENDANT COUNTY OF PALM BEACH, FLORIDA**

Pursuant to Fed. R. Civ. P. 26 and 34, and S.D. Fla. L.R. 26.1, Plaintiff Robert W. Otto, LMFT, individually and on behalf of his patients, hereby propounds the following Third Set of Discovery Requests to Defendant County of Palm Beach, Florida (“Defendant” or the “County”). Defendant is directed to serve its responses, and/or its document production, in conformance with the above-cited rules, via electronic means, within 30 days.

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RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 44:

REQUEST FOR PRODUCTION 45:

All Documents relating to the County’s purported commitment not to ban, restrict or chill in the future “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 45:

REQUEST FOR PRODUCTION 46:

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RESPONSE:

BATES RANGES OF DOCUMENTS RESPONSIVE TO RFP 46:

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____ 2023, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

ROBERT W. OTTO, PH.D. LMFT,)	
individually and on behalf of his patients,)	
JULIE H. HAMILTON, PH.D., LMFT,)	
individually and on behalf of her patients,)	Civil Action No.: <u>9:18-cv-80771-RLR</u>
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF BOCA RATON, FLORIDA, and)	
COUNTY OF PALM BEACH, FLORIDA,)	
)	
Defendants.)	

PLAINTIFFS’ NOTICE OF TAKING DEPOSITIONS OF DEFENDANTS

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, Plaintiffs will take the following depositions upon oral examination before a court reporter or some other officer duly authorized by law to take depositions, at the dates, times, and locations shown for the witnesses (or at such other date(s), time(s), and location(s) as to which the parties may mutually agree), for the purpose of discovery or as evidence in this action, which depositions will be recorded by stenographic means:

WITNESS	DATE, TIME	LOCATION
COUNTY OF PALM BEACH, FLORIDA (“County”)	TBD	TBD
CITY OF BOCA RATON, FLORIDA (“City”)	TBD	TBD

Each deposition will commence on the date and time specified and continue thereafter until the deposition has been completed.

DESCRIPTION OF MATTERS FOR EXAMINATION

Each Defendant, pursuant to Rule 30(b)(6), Federal Rules of Civil Procedure, will designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on the Defendant’s behalf, regarding the following matters for examination:

1) Communications of each Defendant (including any of its officers, attorneys, agents, employees, or elected officials) with Rand Hoch, or the Palm Beach County Human Rights Council (including any of its officers, attorneys, agents, or employees), or the other Defendant (including any of its officers, attorneys, agents, employees, or elected officials) regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.

2) Each Defendant’s deliberations in repealing its respective conversion therapy ordinance, and all documents reviewed or relied upon by the Defendant in enacting the repeal.

3) The proposing, drafting, deliberation, enactment, enforcement, or repeal of any resolution that condemns, discourages, chills, curbs or ostracizes “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

4) The perceived need by each Defendant to render this case moot, and any actions taken or proposed by the Defendant to render this case moot.

5) Each Defendant’s purported commitment not to ban, restrict or chill in the future “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

6) Any perceived need or any effort by each Defendant to condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts.

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Email: rgannam@LC.org
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of _____ 2023, I caused a true and correct copy of the foregoing to be served via electronic mail on counsel for each party of record, including:

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Plaintiffs

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Robert Otto and Julie Hamilton

Plaintiff

v.

City of Boca Raton, Fla., and County of Palm Beach, Fla.

Defendant

Civil Action No. 18-CV-80771

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Rand Hoch
400 North Flagler Dr. Ste. 1402; West Palm Beach, FL 33401

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action.

Table with 2 columns: Place (To be determined), Date and Time

The deposition will be recorded by this method: Stenography and video

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See ATTACHMENT A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs

Horatio Mihet, Liberty Counsel; P.O. Box 540774 Orlando, FL 32854; (407) 875-1776; hmihet@lc.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-CV-80771

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

In responding to the Subpoena, all designated documents in your possession, custody, or control are to be produced, including documents in the possession, custody, or control of your agents, attorneys, or any third party to whom you have surrendered possession, custody, or control.

“Document” has its broadest possible meaning, including communications (email or written), analysis, notes, internal documents, and memoranda.

This request is continuing in character, and if additional responsive documents come to your attention following the date of production, you must promptly produce those documents.

Please produce the following subpoenaed documents:

1. All documents relating to your or the Palm Beach County Human Rights Council’s communications with the City of Boca Raton, and/or the County of Palm Beach, and/or any of their officers, attorneys, agents, employees, or elected officials, regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.

2. All documents related to Palm Beach County’s and City of Boca Raton’s ordinances, regulations, or resolutions regarding conversion therapy.

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Robert Otto and Julie Hamilton

Plaintiff

v.

City of Boca Raton, Fla., and County of Palm Beach, Fla.

Defendant

Civil Action No. 18-CV-80771

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Palm Beach County Human Rights Council
400 North Flagler Dr. Ste. 1402; West Palm Beach, FL 33401

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters: See ATTACHMENT A

Table with 2 columns: Place (To be determined), Date and Time

The deposition will be recorded by this method: Stenograph

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See ATTACHMENT B

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs

, who issues or requests this subpoena, are: Horatio Mihet, Liberty Counsel; P.O. Box 540774 Orlando, FL 32854; (407) 875-1776; hmihet@lc.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 18-CV-80771

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

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(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

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(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

In accordance with Fed. R. Civ. P. 30(b)(6), Plaintiffs designate the following matters for examination. All terms are intended to encompass as broad a range of information as permitted under the Federal Rules of Civil Procedure.

1. Communications of Palm Beach County Human Rights Council (or any of its employees, officers, agents, or attorneys) with the City of Boca Raton, and/or the County of Palm Beach, and/or any of their officers, attorneys, agents, employees, or elected officials, regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.
2. The documents produced by you in response to this Subpoena.

ATTACHMENT B

In responding to the Subpoena, all designated documents in your possession, custody, or control are to be produced, including documents in the possession, custody, or control of your agents, attorneys, or any third party to whom you have surrendered possession, custody, or control.

“Document” has its broadest possible meaning, including communications (email or written), analysis, notes, internal documents, and memoranda.

This request is continuing in character, and if additional responsive documents come to your attention following the date of production, you must promptly produce those documents.

Please produce the following subpoenaed documents:

1. All documents relating to the communications of Palm Beach County Human Rights Council (or any of its employees, officers, agents, or attorneys) with the City of Boca Raton, and/or the County of Palm Beach, and/or any of their officers, attorneys, agents, employees, or elected officials, regarding: (a) Robert Otto; (b) Julie Hamilton; (c) the banning, restricting, condemning, chilling, curbing, or stopping of “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (d) the proposing, drafting, enactment, enforcement, or repeal of ordinances or regulations that regulate or prohibit “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; (e) the proposing, drafting, enactment, enforcement, or repeal of resolutions that condemn, discourage, chill, curb or ostracize “conversion therapy” or any therapy directed to assist minors with sexual orientation or gender identity change efforts; or (f) any aspect of the *Otto et al. v. City of Boca Raton et al.* litigation (in the Southern District of Florida and/or at the Eleventh Circuit Court of Appeals) concerning “conversion therapy” ordinances, including, without limitation, efforts to render the case moot.

2. All documents related to Palm Beach County’s and City of Boca Raton’s ordinances, regulations, or resolutions regarding conversion therapy.