

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

ROBERT W. OTTO and JULIE H.
HAMILTON,

Plaintiff,

v.

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

Defendants.

DEFENDANT, CITY OF BOCA RATON'S SUGGESTION OF MOOTNESS

Defendant, City of Boca Raton ("City"), files this Suggestion of Mootness as to the injunctive and declaratory relief sought against the City and states:

OVERVIEW

Plaintiffs, Robert W. Otto and Julie H. Hamilton ("Plaintiffs"), initiated this action primarily seeking¹ to enjoin the City's enforcement of Ordinance No. 5407, which prohibited conversion therapy on minors within the City limits ("Challenged Ordinance").²

Following an evidentiary hearing on Plaintiffs' motion for preliminary injunction [ECF No. 8], the Court denied said motion. ECF No. 141. Plaintiffs appealed, and the Eleventh Circuit reversed the order denying the preliminary injunction.³ The City (as well as the County) moved for rehearing en banc, resulting in the withholding of the Eleventh Circuit's mandate. The Eleventh Circuit ultimately denied the request for rehearing en banc on July 20, 2022. On July

¹ The Complaint also seeks declaratory relief, as well as damages, all under the U.S. Constitution, the Florida Constitutional and various statutes. ECF No. 1.

² Plaintiffs also sued defendant, County of Palm Beach ("County"), to enjoin the enforcement of a similar (but not identical) ordinance, and for other relief.

29, 2022, the Eleventh Circuit issued its mandate to this Court with instructions to this Court to enter a preliminary injunction enjoining enforcement of the Challenged Ordinance consistent with its opinion. ECF No. 149.

However, on August 5, 2022, the City Council passed an Emergency Ordinance (“Emergency Ordinance”), which repealed the Challenged Ordinance⁴. A copy of the Emergency Ordinance is attached hereto as Exhibit “A.” The City submits that Plaintiffs’ request for injunctive relief is now moot, and no injunction is necessary or should be entered enjoining the enforcement of the now-repealed Challenged Ordinance.⁵

ARGUMENT

PLAINTIFF’S DEMAND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AGAINST THE CITY IS MOOT BECAUSE THE CITY HAS REPEALED THE CHALLENGED ORDINANCE.

“[T]he Supreme Court has held that the repeal of or amendment to challenged legislation rendered moot a plaintiff’s request for injunctive relief.” *Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1329 (11th Cir. 2004) (citing *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 474 (1990) (holding that a Commerce Clause-based challenge to Florida banking statutes was rendered moot by amendments to the law); *Massachusetts v. Oakes*, 491 U.S. 576, 582–83 (1989) (holding that an overbreadth challenge to a child pornography law was rendered moot by amendment to the statute); *Princeton Univ. v. Schmid*, 455 U.S. 100, 103 (1982) (*per curiam*) (holding that the challenge to a university regulation was moot because the regulation had been

³ The Court stayed the case during the pendency of the interlocutory appeal. ECF No. 145.

⁴ The Challenged Ordinance, Ordinance No. 5407, was codified into Chapter 9, Article VI of the City Code, which was repealed by the Emergency Ordinance.

⁵ On August 4, 2022, Plaintiffs filed “Plaintiffs’ Motion to Life Stay, Enter Preliminary Injunction And Set Scheduling Conference For Merits Litigation And Request For Expedited Consideration.” The City will be filing a separate response thereto.

substantially amended); *Kremens v. Bartley*, 431 U.S. 119, 128–29 (1977) (holding moot a constitutional challenge to a state statute governing the involuntary commitment of mentally ill minors, because the law had been replaced with a different statute); *Diffenderfer v. Cent. Baptist Church, Inc.*, 404 U.S. 412, 415 (1972) (holding moot a challenge to a Florida tax exemption for church property when the law had been repealed)). Government actors, moreover “carry a lesser burden than others when they have unambiguously terminated the challenged policy.” *Rich v. Sec., Fla. Dep’t. of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013). Indeed, “governmental entities and officials have been given considerably more leeway than private parties in the presumption that they are unlikely to resume illegal activities. *Coral Springs St. Sys., Inc.*, 371 F.3d at 1328-29.

The well-settled law recognizes only a limited exception to the mootness of a challenge to a repealed law: if there is a substantial likelihood that the challenged statutory language will be reenacted.” *Id.* at 1329. No such substantial likelihood exists here. There is no evidence that the Challenged Ordinance, or any challenged aspect thereof, will be reenacted in the future. The repealing Emergency Ordinance specifically seeks “to ensure that the Conversion Therapy Prohibition does not chill protected speech in violation of the First Amendment (and therefore harm practitioners of conversion therapy),” thus, requiring immediate repeal of the Challenged Ordinance. Exh. A. In addition, the City Council explicitly found that “based upon the decision of the Eleventh Circuit, it has no intention of reenacting Chapter 9, Article VI, or anything substantially similar, unless there is a change in law that would make adoption of such regulation lawful.” *Id.* at Section 3.

Indeed, since enactment on October 10, 2017, the Challenged Ordinance was never enforced against Plaintiffs (or any other practitioner of conversion therapy in the City).

Plaintiffs, moreover, cannot meet the requisite elements for an injunction (i.e., a showing of irreparable harm), as the conduct at issue is no longer prohibited. There is simply no law in place the enforcement of which would be enjoined. Similarly, there is no need for a declaration of rights under a law that is no longer in effect. Accordingly, Plaintiffs' demand for injunctive and declaratory relief is now moot.

WHEREFORE, Defendant, City of Boca Raton, notifies this Court of the mootness of Plaintiffs' request for injunctive and declaratory relief and respectfully requests that the Court enter an order reflecting same and that the Court not enter unnecessary injunctive relief, as well as any further relief the Court deems just and proper.

Dated: August 5, 2022

Respectfully submitted,

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