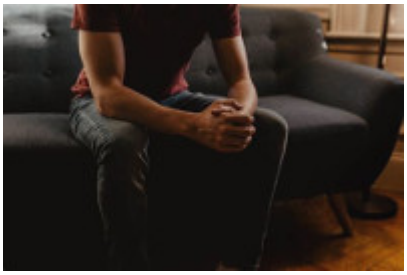
# COURT OF APPEALS STRIKES DOWN FLORIDA COUNSELING BAN (PART 1)





A three-judge panel of the Eleventh Circuit Court of Appeals struck down laws that ban counselors from providing minor clients with help to reduce or eliminate unwanted same-sex attractions, behaviors, or gender confusion.

This is the first federal Court of Appeals decision on such laws since the 2018 U.S. Supreme Court decision in *National Institute of Family & Life Advocates v. Becerra* (NIFLA).

The case of *Otto, et al v. City of Boca Raton, FL et al,* found that the laws were both content and viewpoint based and violate the First Amendment right to free speech. Full ruling can be downloaded here (48 pages).

Liberty Counsel represents Dr. Robert Otto, LMFT and Dr. Julie Hamilton, LMFT and their minor clients who challenged the constitutionality of ordinances enacted by the City of Boca Raton and Palm Beach County which prohibit minors from voluntary counseling from licensed professionals. These licensed therapists provide life-saving counseling to minors who desperately desire to conform their attractions, behaviors, and gender identities to their sincerely held religious beliefs.



In the 2-1 opinion, Judge Grant wrote, “We hold that the challenged ordinances violate the First Amendment because they are content-based regulations of speech that cannot survive strict scrutiny.”

Under the laws that were struck down, a counselor could encourage a client to take life-altering hormone drugs or even undergo invasive surgery to remove healthy body parts, but could not help a client who seeks to overcome unwanted same-sex attractions, behavior, or confusion.

The court also said, “Nor can the local governments evade the First Amendment’s ordinary presumption against content-based speech restrictions by saying that the plaintiffs’ speech is actually conduct. We can understand why they would make this claim; if the ordinances restricted only non-expressive conduct, and not speech, then they would not implicate the First Amendment at all. Our Court, though, has already rejected the practice of relabeling controversial speech as conduct. In a case quite similar to this one, we laid down an important marker: ‘the enterprise of labeling certain verbal or written communications ‘speech’ and others ‘conduct’ is unprincipled and susceptible to manipulation.’”

“The First Amendment does not protect the right to speak about banned speech; it protects speech itself, no matter how disagreeable that speech might be to the government. And what good would it do for a therapist whose client sought SOCE [sexual orientation change efforts] therapy to tell the client that she thought the therapy could be helpful, but could not offer it? It only matters that some words about sexuality and gender are allowed, and others are not… But speech does not need to be popular in order to be allowed. The First Amendment exists precisely so that speakers with unpopular ideas do not have to lobby the government for permission before they speak,” wrote Judge Grant.

The court also said, “The local governments are not entirely wrong when they characterize speech-based SOCE as a course of conduct. SOCE, after all, is a therapy, and plaintiffs say they want to ‘engage’ in it. But plaintiffs have the better of the argument. What the governments call a ‘medical procedure’ consists—entirely—of words. As the district court itself recognized, plaintiffs’ therapy ‘is not just carried out in part through speech: the treatment provided by Drs. Otto and Hamilton is entirely speech.’ If SOCE is conduct, the same could be said of teaching or protesting—both are activities, after all. Debating? Also an activity. Book clubs? Same answer. But the law does not require us to flip back and forth between perspectives until our eyes hurt.”

Liberty Counsel Founder and Chairman Mat Staver said, “This is a huge victory for counselors and their clients to choose the counsel of their choice free of political censorship from government ideologues. This case is the beginning of the end of similar unconstitutional counseling bans around the country.”