



Written by [Steve Byas](#) on November 22, 2020

## Appellate Court: Bans on “Conversion Therapy” Unconstitutional

On Friday of last week, the 11th Circuit Court of Appeals (in a 2-1 decision) ruled that two city ordinances banning sexual orientation change effort [SOCE] therapy, sometimes called “conversion therapy,” violate the U.S. Constitution’s protection of free speech and freedom of religion.

At issue were the ordinances of two Florida local governments, in Boca Raton and Palm Beach County, which made it illegal for therapists to provide counseling to minors who have unwanted same-sex attraction or unwanted gender-identity issues. The two licensed marriage and family therapists who sued the two local governments, Julie Hamilton and Robert Otto, argued that “the ordinances infringe on their constitutional right to speak freely with clients,” and also violate the right of their patients to receive information. The two plaintiffs also contended that Florida’s Religious Freedom Restoration Act was violated by the local ordinances.

Judge Britt Grant and Judge Barbara Lagoa sided with the plaintiffs, while Judge Barbara Martin took the side of the local governments, the defendants.

In siding with the two licensed therapists, Judge Grant said, “People have intense moral, religious, and spiritual views about these matters — on all sides. And that is exactly why the First Amendment does not allow communities to determine how their neighbors may be counseled about matters of sexual orientation or gender.”

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Grant quoted the Supreme Court decision *Texas v. Johnson*, saying, “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Opponents of therapy to help patients deal with unwanted same-sex attraction or unwanted gender identity issues derisively call it “conversion therapy.” They argue that such therapy is emotionally harmful to these patients, even claiming it leads to suicides, and therefore, governments need to ban the practice. Grant said, “We understand and appreciate that the therapy is highly controversial. But the First Amendment has no carveout for controversial speech. We hold that the challenged ordinances violate the First Amendment because they are content-based regulations of speech that cannot survive



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strict scrutiny.” (Under the “strict scrutiny doctrine,” the burden of proof is with those defending a law or ordinance).

The city of Boca Raton did have an exception for members of the clergy, but Palm Beach County did not. It should be noted that all persons, not just members of the clergy, are entitled to religious liberty.

Both ordinances, however, do allow for “therapy” and counseling providing “support and assistance to a person undergoing gender transition.” In other words, the cities allow therapy that supports the concept of “gender transition,” while disallowing therapy for those who want to resist desires to change their sex.

The therapists told the court that their clients usually have “sincerely held religious beliefs conflicting with homosexuality, and voluntarily seek SOCE counseling in order to live in congruence with their faith and to conform their identity, concept of self, attractions, and behaviors to their sincerely held religious beliefs.”

In dissent, however, Judge Martin, who was named to the bench by former President Barack Obama, claimed that SOCE therapy “is known to be a harmful therapeutic practice.” She added, “The majority invalidates laws enacted to curb these therapeutic practices, despite strong evidence of the harm they cause.” Martin said that she was “mindful” of “free-speech concerns,” but still dissented.

One would think that judges — and other public officials — should be more than simply “mindful” of free speech and religious liberty, but rather should aggressively defend both.

The defendants raised concerns that “conversion therapy” includes such practices as electric shock therapy, exposure to pornography, forced separation from loved ones, and extreme public shaming. But none of those practices are a part of the methods of the two therapists in question. Writing in *The Christian Post*, Liz Flaherty said that this was just a “straw man” argument used by those who oppose SOCE, as those practices are considered “unethical” by those who practice SOCE, and are not part of SOCE.

While it is noteworthy that the dissenting judge was appointed by Obama and the two judges in the majority were named by President Trump, *Slate* (and other media) chose to make that fact *the* story, using the headline, “Trump Judges Block Laws Banning LGBTQ ‘Conversion Therapy’ for Minors.”

The hypocrisy of the mainstream liberal media is well-established, and how this story is covered further illustrates that hypocrisy. For example, the *New York Daily News* described SOCE as “debunked” and “dangerous,” and spent several paragraphs of its story opposing the practice, hardly covering the central question that was at issue in the case — does the ban violate the First Amendment?

They also highlighted that the two judges in the majority were nominated by Trump. Yet, in 2018, when Trump lamented that a federal judge was an “Obama judge,” and Chief Justice John Roberts publicly rebuked him, saying, “We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” the *Daily News* was quick to condemn Trump.

“He apparently isn’t all that thankful for checks and balances,” wrote *Daily News* at the time.

Apparently, the *New York Daily News* is not too “thankful” for checks and balances from an “independent federal judiciary” when they disagree with a ruling. One can reasonably infer from their story that when the First Amendment stands in the way of a policy they agree with, the constitutional protections of free speech and freedom of religion should be ignored by judges — although they can remain “mindful” of the Bill of Rights.



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“Forbidding the government from choosing favored and disfavored messages is at the core of the First Amendment’s free-speech guarantee,” the majority said in this case. They added, “What the governments [of Boca Raton and Palm Beach County] call a ‘medical procedure’ consists — entirely — of words.”

It should be chilling to all Americans that the Left increasingly favors using the power of the government, from cities all the way to the federal government (and perhaps even international bodies such as the United Nations) to suppress speech they do not agree with. At the end of the day, if one does not believe in liberty for those with whom one disagrees, one simply does not believe in liberty.



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