IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Texas Equal Access Fund; Lilith Fund for Reproductive Equity, Plaintiffs, v. City of Waskom, Texas; City of Naples, Texas; City of Joaquin, Texas; City of Tenaha, Texas; City of Rusk, Texas; City of Gary, Texas; City of Wells, Texas, Defendants.	Civil Action No.

COMPLAINT

1. The right to access abortion is protected by the United States Constitution. But in recent months, at the behest of anti-abortion activists, several east Texas municipalities have passed ordinances that claim to ban abortion. Although this section of the ordinances cannot be enforced while *Roe v. Wade* is in effect, the ordinances' existence misleads residents of these cities as to whether individuals can in fact exercise their right to access abortion.

2. Yet while the ordinances concede that they cannot ban abortion under current law, several other provisions are in effect. The ordinances deem Plaintiffs Texas Equal Access Fund ("TEA Fund") and Lilith Fund for Reproductive Equity ("Lilith Fund"), and other pro-choice organizations, as "criminal organizations." This means that Plaintiffs have been judged criminal without ever having been charged with a crime, much less afforded a trial. The list of "criminal

organizations" includes not only groups that provide abortions but also those that, like Plaintiffs, work to educate the public about their rights and to challenge restrictions on access to such services.

3. As a result of being designated criminal, Plaintiffs are prohibited from operating, speaking, and associating within these cities. Consequently, Plaintiffs are hampered from countering or clarifying the confusion created by the ordinances as to the legality of abortion services.

4. Plaintiffs, and many other pro-choice organizations, view educating people about their right to access abortion—and restrictions on that right—as a central component of their missions. Because of these anti-abortion ordinances, there is a critical need to make sure that people residing in or near these cities have an accurate understanding of their rights. However, the ordinances subject Plaintiffs to liability for carrying out their work.

5. These problems are exacerbated by the vague wording of, among other things, the provision that prevents Plaintiffs from "operat[ing] within" these cities, which is so unclear that no reasonable person would be able to discern the scope of the conduct that is prohibited.

6. The ordinances also discriminate against Plaintiffs and others who support abortion access because their prohibition of speech and association applies only to those with a pro-choice viewpoint. Organizations with an anti-abortion viewpoint, such as the one that promoted the ordinances, may operate and speak freely about their anti-abortion views within these cities.

7. Plaintiffs seek declaratory relief finding these punishing and discriminatory ordinances unconstitutional.

JURISDICTION AND VENUE

8. This civil action is brought pursuant to 42 U.S.C. § 1983 and the United States Constitution to vindicate rights secured by the First Amendment, the Bill of Attainder Clause, and the Due Process Clause.

9. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

10. Plaintiffs' claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 of the Federal Rules of Civil Procedure, and by the powers of this Court.

11. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(1) and (b)(2) because the Defendants are located in this district and because a substantial part of the events giving rise to the claims at issue in this case occurred in this district.

12. Venue is proper in this division because Defendant city Waskom is located in Harrison County and Defendant city Naples is located in Morris County; both counties are located in this division.

THE PARTIES

A. Plaintiffs

13. TEA Fund is a 501(c)(3) non-profit organization that assists Texans in exercising their constitutional right to abortion by removing barriers to access. In addition to providing direct financial assistance to individuals who want to end a pregnancy but cannot afford the full cost of an abortion procedure, TEA Fund's seven-person staff has been building an extensive advocacy program throughout north and east Texas.

14. Lilith Fund is a 501(c)(3) non-profit organization that assists Texans in exercising their constitutional right to abortion by removing barriers to access. In addition to providing

direct financial assistance to individuals who want to end a pregnancy but cannot afford the full cost of an abortion procedure, Lilith Fund has made advocacy work a core part of its mission. It focuses its advocacy work on educating people about reproductive rights and abortion access in Texas.

B. Defendants

15. Waskom is a city located in Harrison County, Texas.

16. Naples is a city located in Morris County, Texas.

17. Joaquin is a city located in Shelby County, Texas.

18. Tenaha is a city located in Shelby County, Texas.

19. Rusk is a city located in Cherokee County, Texas.

20. Gary is a city located in Panola County, Texas.

21. Wells is a city located in Cherokee County, Texas.

22. It is the official policy of these cities, enacted through ordinances promulgated by the legislative body of each city, to prohibit Plaintiffs from exercising their freedoms of speech and assembly, discriminate against pro-choice speech, and levy punishment on Plaintiffs without trial.

FACTUAL ALLEGATIONS

A. Plaintiffs' Advocacy Work

23. Plaintiffs' shared goals of using advocacy to educate people about the importance of abortion and increasing access to abortion are central to their work.

24. Speaking about abortion is a significant part of TEA Fund's work. TEA Fund has grown to have a staff of seven people since its founding in 2005. While it has a statewide

manager and a grassroots organizer on staff, all of TEA Fund's employees participate in advocacy work in some capacity.

25. As the organization has expanded, the scale of the advocacy work it has undertaken has grown. In recent years, its advocacy work has included planning and participating in outreach in regions throughout Texas. Staff frequently present on abortion access at conferences and events, and they directly communicate with and engage state and local officials on abortion access. TEA Fund also communicates information to the public in a variety of ways, including through digital campaigns and other social media advocacy. It also works with individuals to help them share their stories about their abortion experiences with the public to emphasize the importance of access and to reduce the stigma associated with abortion. It often engages in this work along with other reproductive rights and reproductive justice organizations. It plans to continue expanding its advocacy work.

26. TEA Fund also runs a volunteer program. Its volunteers generally participate as helpline volunteers, clinic escorts (ensuring that people visiting an abortion clinic feel supported and safe), or clinic legal observers (monitoring anti-abortion protestors outside clinics to make sure they are complying with the law). TEA Fund also encourages other types of volunteering as the need arises, such as hosting events or promoting TEA Fund on social media. It has over 125 active volunteers who provide this assistance throughout the state.

27. TEA Fund recruits and sustains volunteers who advocate for abortion access by providing active mentorship and resources to its volunteers. It is planning to expand the scope of this work, particularly in rural areas in north and east Texas. It also hopes to send people to east Texas towns to discuss their personal experiences with abortion in order to break down the stigma associated with it.

28. Advocacy is also a crucial component of Lilith Fund's work and mission. The overarching mission of its advocacy work is to break down the shame and stigma associated with abortion by bringing it into the open, thereby creating culture change that will increase people's ability to access care. Founded in 2001, Lilith Fund has continued to grow its advocacy work to meet these goals.

29. An important component of Lilith Fund's advocacy work involves education and communication efforts to raise awareness about abortion access. In 2015, recognizing that there was confusion about the legality of abortion access and how to seek services after the passage of extensive state restrictions, Lilith Fund co-founded a website called needabortion.org to educate people about their rights and worked to promote it as a useful resource. It continues to regularly hold events in Texas to educate people about reproductive justice.

30. Lilith Fund's work also includes working with government officials to advance legislation that would help people access abortion services. Like TEA Fund, it uses digital media to share information about abortion access throughout the state. It also has volunteers who share their personal experiences with abortion with officials and the public in order to advocate for greater access to services. And it trains people to become effective messengers on abortion rights. Lilith Fund staff frequently speak on panels at conferences and partner with other organizations and coalitions to advocate for change at the local level.

B. The Ordinances

31. On June 11, 2019, the City of Waskom, Texas, passed Ordinance Number 336 (the "Waskom Ordinance"), declaring itself a "sanctuary city for the unborn." *See* Ex. 1. This was the first municipal ordinance in the state of Texas to attempt to make abortion and emergency contraception unlawful within its city limits. Waskom's motivation in passing its

ordinance was clear: Mayor Jesse Moore told a CBS News affiliate that a group called "Right to Life approached us because the abortion laws are changing in Louisiana, Alabama and Mississippi and that the abortion clinics may start moving to Texas . . . .With Waskom being the first city, 18 miles (west) from (Shreveport,) Louisiana, they were anticipating one moving over here."

32. Soon after, six other east Texas cities— Naples, Joaquin, Tenaha, Rusk, Gary, and Wells—enacted similar ordinances. *See* Exs. 2–7. These ordinances, promulgated by the legislative body of each city, constitute official policies of these cities.

33. As Mayor Moore indicated, the idea to pass these ordinances did not start with residents of the cities. Members of anti-abortion groups Right to Life of East Texas and Texas Right to Life traveled to each of these cities to convince city officials to enact these ordinances. They brought with them a template ordinance that bans abortion within city limits if *Roe v. Wade* is overturned and that designates organizations engaged in reproductive rights work as criminal.

34. The ordinances declare organizations that "perform abortions and assist others in obtaining abortions" to be "criminal organizations." It specifically names eight reproductive rights and reproductive justice organizations, including Plaintiffs, as criminal organizations.

35. The ordinances make it unlawful for the named "criminal organizations," including Plaintiffs, to "operate within" the cities. "Operat[ing] within" the cities is defined broadly and "includes, but is not limited to: (a) offering services of any type," "renting office space or purchasing real property," or "establishing a physical presence of any sort."

36. The ordinances also designate as unlawful procuring or performing an abortion, aiding or abetting an abortion, and causing an abortion; some also designate as unlawful the sale or distribution of emergency contraception.

37. All of the ordinances declare abortion to be an "act of murder with malice aforethought." Abortion is legal in Texas, and the Texas penal code does not classify it as unlawful.

38. The ordinances contain multiple enforcement provisions, none of which includes a defined statute of limitations period. Plaintiffs challenge the "criminal organizations" declaration and the provision that forbids them from "operat[ing] within" Defendant cities, which is currently enforceable through a provision that allows "[a]ny private citizen [to] bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act." Qui tam relator actions authorize a suit in the name of the government, in order to assert a government interest.

39. The ordinances also contain two other enforcement mechanisms. One creates a civil cause of action against a person or entity that procures, aids, or abets an abortion, making them "liable in tort to any surviving relative" of the fetus. It is immediately enforceable. The other provides that the commission of an act deemed unlawful by the ordinance "shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health." However, the ordinances are explicit that this last provision may not be used "unless and until the Supreme Court overrules" *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

C. The Impact of the Ordinances

40. These ordinances violate the U.S. Constitution in several ways:

a. First, the ordinances suppress lawful speech about abortion and other reproductive healthcare.

b. Second, the ordinances discriminate against speech that has a pro-choice viewpoint.

c. Third, the ordinances restrict the rights of Plaintiffs and their staff to associate within and with individuals in these cities on issues of abortion and reproductive healthcare.

d. Fourth, the ordinances are unconstitutionally vague, failing to adequately describe the conduct that is prohibited. It is impossible for a person to know how to abide by the law.

e. Fifth, by declaring Plaintiffs to be criminal and prohibiting them from operating within the cities, the ordinances unconstitutionally punish them through the legislative process, without a trial.

41. Further, by purporting to ban abortion, the ordinances create the impression that residents of Defendant cities can no longer exercise their right to an abortion. Although that part of the ordinances will not take effect unless *Roe v. Wade* and *Planned Parenthood v. Casey* are overturned, all residents of these cities are likely not aware of this limitation.

42. Plaintiffs have informed people in and around these cities that they continue to have the constitutional right to access reproductive healthcare, including abortion, because it is part of their missions to educate people about their reproductive rights. But by branding Plaintiffs as criminal, blocking their speech, and preventing them from associating within Defendant cities, the ordinances impede Plaintiffs' ability to disseminate truthful information to the people of these cities.

43. Both Plaintiffs have attempted to inform east Texans, including residents of these cities, about their rights since the ordinances have passed. Lilith Fund has rebranded and updated

the content on needabortion.org to provide people with easy-to-access knowledge and resources. Both Plaintiffs have undertaken extensive work to promote the website in the cities that passed the ordinances through digital media. They have paid Facebook to display ads directing residents of the cities who use Facebook to needabortion.org, and have plans to continue to do so.

44. Lilith Fund has also placed information on road-side billboards in east Texas to direct people to needabortion.org, and it hopes to expand its use of billboards to share this information. TEA Fund has done volunteer recruitment work in Defendant cities to ensure that communities have locally-based advocates to increase awareness that abortion is still legal. TEA Fund provides extensive guidance and training, including on how to speak about abortion and how to host events, and education on reproductive healthcare. TEA Fund also offers resources and support for volunteers to host events.

45. However, the ordinances chill Plaintiffs from expanding the scope of this important advocacy. The ordinances subject Plaintiffs to civil liability if they "operate within" any of Defendant cities. This includes offering services of any type, renting office space or purchasing property, and establishing a physical presence of any sort—but is not limited solely to those three types of conduct. Because of the undefined scope of prohibited conduct, Plaintiffs and others are unsure of what they are barred from doing.

46. For example, Lilith Fund does not know whether the ordinances will subject them to prosecution for their advocacy work, such as their billboard and social media campaigns. TEA Fund is likewise unclear as to whether its current work and planned work will subject it to liability. It hopes to host events in east Texas and to bring individuals to these towns to discuss their experiences with reproductive healthcare. Plaintiffs are also concerned that the ordinances

have exacerbated hostility to abortion advocacy, making any advocacy in these cities more difficult and also potentially unsafe for employees.

47. Both Plaintiffs seek to expand their work with volunteers on the ground in east Texas. As a concrete step, they signed on to co-brand and distribute a toolkit created by the ACLU of Texas to train volunteers on how to advocate against local anti-abortion restrictions, like the ordinances at issue. However, the ordinances are so overly broad and vague that it is unclear whether volunteer recruitment and engagement, done locally or even remotely, would constitute "operat[ing] within" these cities and thus open Plaintiffs up to liability. Plaintiffs are apprehensive that doing so might increase the likelihood that they are held liable under the ordinances.

48. And by prohibiting Plaintiffs from having a "physical presence of any sort" within these cities, the ordinances impede Plaintiffs from associating with volunteers in or residents of the cities on issues central to their mission. Plaintiffs cannot participate in or host events in these cities to discuss reproductive health without the possibility of incurring liability. Nor can they assemble with like-minded residents, or recruit additional volunteers—at least not without assuming risk of liability. This risk directly impedes Plaintiffs' work and mission.

49. The ordinances also unlawfully target Plaintiffs by name, thereby punishing them outside of the judicial system and without the protections of a judicial trial. In addition to banishing Plaintiffs from these cities, where they would otherwise be able to operate freely, the ordinances cause harm to their reputation and exacerbate the extensive stigma against the issue of abortion. The ordinances also negatively impact the Plaintiffs' ability to form and maintain relationships with people and organizations who might aid in that work. In other words, people will be directly discouraged from associating or working with a declared criminal entity.

50. And of course, the ordinances impose these barriers only against organizations who speak in support of abortion and reproductive justice. East Texas Right to Life, and any other organization opposed to abortion, can enter these cities freely to cultivate volunteers and discuss its mission with residents. It and other anti-abortion groups can establish offices in these cities to effectuate their work without restraint.

51. Because these ordinances prevent Plaintiffs and similar organizations from speaking and associating within these cities, while at the same time permitting speech and association advocating the abolishment of abortion, the confusion created about the right to access abortion is compounded. These ordinances enact a barrier to information for those who reside in or around these cities, and simultaneously prevent organizations like Plaintiffs from helping to overcome that barrier to information.

52. Abortion is legal and constitutionally protected in these cities—officials there just do not want their residents to know it.

CLAIMS FOR RELIEF

COUNT ONE— UNCONSTITUIONAL ABRIDGMENT OF FREE SPEECH RIGHTS

53. The foregoing allegations are repeated and incorporated as though fully set forth herein.

54. The ordinances violate the right to free expression protected under the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

55. Plaintiffs engage in speech to protect and advance the constitutional right to access abortion. On their face and as applied, the ordinances passed by Defendants burden protected expression by subjecting Plaintiffs to liability for operating within these cities.

COUNT TWO—UNCONSTITUTIONAL ABRIDGMENT OF FREE ASSOCIATION RIGHTS

56. The foregoing allegations are repeated and incorporated as though fully set forth herein.

57. The ordinances violate Plaintiffs' right to freedom of association under the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

58. Plaintiffs seek to educate and raise awareness among the public by conducting outreach, holding events, and recruiting and associating with volunteers. On their face and as applied, the ordinances passed by Defendants burden Plaintiffs' right to associate with others in carrying out their work by subjecting them to liability for operating within these cities.

COUNT THREE—CONTENT AND VIEWPOINT DISCRIMINATION

59. The foregoing allegations are repeated and incorporated as though fully set forth herein.

60. The ordinances discriminate on the basis of the content and viewpoint of speech in violation of the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

61. On their face and as applied to Plaintiffs, the ordinances passed by Defendants discriminate against Plaintiffs based on their pro-choice stance and speech. By passing ordinances that prohibit Plaintiffs and other pro-choice organizations—and not anti-abortion organizations—from speaking and associating within these cities, Defendants have engaged in speaker-based discrimination, burdening speech based on its content and viewpoint.

COUNT FOUR—VIOLATION OF PROHIBITION OF BILLS OF ATTAINDER

62. The foregoing allegations are repeated and incorporated as though fully set forth herein.

63. The ordinances violate the Bill of Attainder Clause of the United States Constitution by impermissibly singling out and punishing Plaintiffs by specifically declaring them by name to be "criminal organizations."

64. Defendants' passage of the ordinances additionally violates the Bill of Attainder Clause because the ordinances impermissibly target and punish Plaintiffs by prohibiting them from operating within Defendant cities.

65. The ordinances are unconstitutional bills of attainder because they punish Plaintiffs without a judicial trial.

COUNT FIVE—VOID FOR VAGUENESS

66. The foregoing allegations are repeated and incorporated as though fully set forth herein.

67. The ordinances are void for vagueness under the Due Process Clause of the Fifth Amendment of the United States Constitution, as incorporated by the Fourteenth Amendment, by failing to define what it means to "operate within" Defendant cities with sufficient precision and particularity as to give Plaintiffs fair notice as to what conduct is prohibited.

68. Because the ordinances implicate the fundamental rights to free speech and association, they are subject to heightened scrutiny.

69. The ordinances articulate three examples of prohibited conduct with these cities: "(a) Offering services of any type," "(b) Renting office space or purchasing real property," and "(c) Establishing a physical presence of any sort."

70. "Offering services of any type" and "physical presence of any sort" are sufficiently vague that it is unclear what behavior is barred.

71. Additionally, "operat[ing] within" Defendant cities "includes, *but is not limited to*" these examples. It is unclear to any reasonable person what conduct is actually prohibited and would carry legal consequences.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

72. Issue a declaratory judgment that the ordinances of each Defendant city violate the First Amendment to the United States Constitution on its face and as applied to Plaintiffs;

73. Issue a declaratory judgment that the ordinances violate the Bill of Attainder Clause of the United States Constitution on its face and as applied;

74. Issue a declaratory judgment that the ordinances are void for vagueness in violation of the Due Process Clause of the United States Constitution on its face and as applied;

75. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and

76. Grant such further relief as this Court deems just and proper.

Dated: February 25, 2020

Respectfully submitted,

/s/ Anjali Salvador

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EXHIBIT 1

CITY OF WASKOM, TEXAS ORDINANCE

ORDINANCE NO. 336

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF WASKOM, DECLARING WASKOM A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Alderman of the City of Waskom hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their pre-born children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Waskom, including the unborn, the City Council has found it necessary to outlaw human abortion within the city limits.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASKOM, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the death of a child as the result of purposeful action taken before or during the birth of the child with the intent to cause the death of the child. This includes, but is not limited to:

(a) Chemical abortions caused by the morning-after pill, mifepristone (also known as RU-486), and the Plan B pill.

(b) Surgical abortions at any stage of pregnancy.

(c) Saline abortions at any stage of pregnancy.

(d) Self-induced abortions at any stage of pregnancy.

The term "abortion" does NOT include accidental miscarriage.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Pre-born child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. This includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind for any reason.

(b) Any other medical doctor who performs abortions of any kind for any reason.

(c) Any nurse practitioner who performs abortions of any kind for any reason.

(d) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind for any reason.

(e) Any remote personnel who instruct abortive women to perform self-abortions at home via internet connection.

(f) Any pharmacist or pharmaceutical worker who sells chemical or herbal abortifacients.

5. "City" shall mean the city of Waskom, Texas.

B. DECLARATIONS

1. We declare Waskom, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.3.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equality;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a pre-born child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Waskom.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Waskom, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Waskom, Texas. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. AFFIRMATIVE DEFENSES — It shall be an affirmative defense to the unlawful acts described in Sections C.1 and C.2 if the abortion was:

(a) In response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(b) In response to a pregnancy caused by an act of rape, sexual assault, or incest that was reported to law enforcement;

The defendant shall have the burden of proving these affirmative defenses by a preponderance of the evidence.

4. CAUSING AN ABORTION BY AN ACT OF RAPE, SEXUAL ASSAULT, OR INCEST — It shall be unlawful for any person to cause an abortion by an act of rape, sexual assault, or incest that impregnates the victim against her will and causes her to abort the pre-born child.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Waskom, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Waskom, Texas;

(b) Renting office space or purchasing real property within the City of Waskom, Texas;

(c) Establishing a physical presence of any sort within the City of Waskom, Texas;

D. PUBLIC ENFORCEMENT

1. Neither the City of Waskom, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the pre-born child that has been aborted.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1 or C.2, other than the mother of the pre-born child that has been aborted, shall be liable in tort to any surviving relative of the aborted pre-born child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted pre-born child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the pre-born child that has been aborted. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Waskom, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2,

for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Waskom, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

CITY SEAL Jesse Moore Jesse Moore, Mayor

ATTEST: Tammy Lofton Tammy Lofton, City Secretary

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS DAY OF JUNE 11, THE YEAR OF OUR LORD 2019.

WITNESS: Teresa Garcia

WITNESS: Tina Taylor

EXHIBIT 2

CITY OF NAPLES, TEXAS ORDINANCE

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF NAPLES, DECLARING NAPLES A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Naples hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Naples,

including the unborn and pregnant women, the City Council has found it necessary to outlaw human abortion within the city limits.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF Naples, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. "City" shall mean the city of Naples, Texas.

6. "Emergency contraception" means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Naples, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equality;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Naples.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Naples, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Naples, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Naples, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. EMERGENCY CONTRACEPTION — It shall be unlawful for any person or entity which physically resides
within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Naples, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Naples, Texas;

(b) Renting office space or purchasing real property within the City of Naples, Texas;

(c) Establishing a physical presence of any sort within the City of Naples, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Naples, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Naples, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Naples, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this

ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or

state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Naples, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

ATTEST: _____

David Betts, Mayor

_____

Alyssa Browning, City Secretary

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 9TH DAY OF THE MONTH OF SEPTEMBER, THE YEAR OF OUR LORD 2019.

WITNESS: _____

WITNESS: _____

EXHIBIT 3

CITY OF JOAQUIN, TEXAS ORDINANCE

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF JOAQUIN, DECLARING JOAQUIN A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Joaquin hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Joaquin, including the unborn and pregnant women, the City Council has found it necessary to outlaw human abortion within the city limits.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JOAQUIN, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. “Child” means a natural person from the moment of conception until 18 years of age.

3. “Unborn child” means a natural person from the moment of conception who has not yet left the womb.

4. “Abortionist” means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. “City” shall mean the city of Joaquin, Texas.

6. “Emergency contraception” means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Joaquin, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equality;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Joaquin.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Joaquin, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Joaquin, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Joaquin, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. EMERGENCY CONTRACEPTION --- It shall be unlawful for any person or entity which physically resides within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Joaquin, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Joaquin, Texas;

(b) Renting office space or purchasing real property within the City of Joaquin, Texas;

(c) Establishing a physical presence of any sort within the City of Joaquin, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Joaquin, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Joaquin, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Joaquin, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications

in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Joaquin, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,
TUESDAY, SEPTEMBER 17th, 2019

EXHIBIT 4

CITY OF TENAHA, TEXAS ORDINANCE

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF TENAHA, DECLARING TENAHA A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Tenaha hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Tenaha,

including the unborn and pregnant women, the City Council has found it necessary to outlaw human abortion within the city limits.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TENAHA, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. "City" shall mean the city of Tenaha, Texas.

6. "Emergency contraception" means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Tenaha, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equality;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Tenaha.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Tenaha, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Tenaha, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Tenaha, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. EMERGENCY CONTRACEPTION --- It shall be unlawful for any person or entity which physically resides
within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Tenaha, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Tenaha, Texas;

(b) Renting office space or purchasing real property within the City of Tenaha, Texas;

(c) Establishing a physical presence of any sort within the City of Tenaha, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Tenaha, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Tenaha, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Tenaha, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this

ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or

state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Tenaha, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

ATTEST: Michael Wade Baker

Mayor

Amanda D. Teat

City Secretary

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 23RD DAY OF THE MONTH OF SEPTEMBER, THE YEAR OF OUR LORD 2019.

WITNESS:

WITNESS: Eleanor Adams

EXHIBIT 5

CITY OF RUSK, TEXAS ORDINANCE

ORDINANCE 2020 01

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF RUSK, DECLARING RUSK A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Rusk hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Rusk, including the unborn and pregnant women, the City Council has found it necessary to outlaw human abortion within the city limits.

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RUSK, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices or oral contraceptives. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. "City" shall mean the city of Rusk, Texas.

B. DECLARATIONS

1. We declare Rusk, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.3.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equity;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Rusk.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Rusk, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Rusk, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Rusk, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1 and C.2 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

4. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Rusk, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Rusk, Texas;

(b) Renting office space or purchasing real property within the City of Rusk, Texas;

(c) Establishing a physical presence of any sort within the City of Rusk, Texas;

5. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Rusk, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that

commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1 or C.2, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Rusk, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this

ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings;

and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Rusk, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

CITY SEAL _____ Angela Raiborn, Mayor

ATTEST: _____ Cinda Etheridge, City Secretary

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS DAY OF JANUARY 9, THE YEAR OF OUR LORD 2020.

WITNESS:

WITNESS:

EXHIBIT 6

CITY OF GARY, TEXAS ORDINANCE

ORDINANCE NO. 2020-1

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF GARY, DECLARING GARY A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Gary hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Gary, including the unborn and pregnant women, the City Council has found it necessary to outlaw

human abortion within the city limits.
NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARY, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. "City" shall mean the city of Gary, Texas.

6. "Emergency contraception" means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may

function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Gary, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equity;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to

be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Gary.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Gary, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Gary, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Gary, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. EMERGENCY CONTRACEPTION --- It shall be unlawful for any person or entity which physically resides within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or

a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Gary, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Gary, Texas;

(b) Renting office space or purchasing real property within the City of Gary, Texas;

(c) Establishing a physical presence of any sort within the City of Gary, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Gary, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Gary, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that

commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City

of Gary, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

4. Private enforcement described in Section E.1 and E.2 may be brought against a person or entity that commits an unlawful act described in Section C upon the effective date of the ordinance, regardless of whether the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), or permits states and municipalities to once again enforce abortion prohibitions.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All
constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional

vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Gary, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

Mayor of the City of Gary

City Secretary of the City of Gary

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 16TH DAY OF THE MONTH OF JANUARY, THE YEAR OF OUR LORD 2020.

WITNESS:

WITNESS:

EXHIBIT 7

CITY OF WELLS, TEXAS ORDINANCE

ORDINANCE NO. 2020-2

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF WELLS, DECLARING WELLS A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wells hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, *see* John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . is *not* constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple fiat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun's opinion in *Roe* as an innovation akin to Joyce's or Mailer's. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Wells, including the unborn and pregnant women, the City Council has found it necessary to outlaw

human abortion within the city limits.
NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WELLS, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(a) save the life or preserve the health of an unborn child;

(b) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(c) remove an ectopic pregnancy.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. "City" shall mean the city of Wells, Texas.

6. "Emergency contraception" means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may

function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Wells, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equity;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to

be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Wells.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Wells, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Wells, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Wells, TX. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

(d) Coercing a pregnant mother to have an abortion against her will.

3. EMERGENCY CONTRACEPTION --- It shall be unlawful for any person or entity which physically resides within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or

a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Wells, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Wells, Texas;

(b) Renting office space or purchasing real property within the City of Wells, Texas;

(c) Establishing a physical presence of any sort within the City of Wells, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Wells, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Wells, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that

commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City

of Wells, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

4. Private enforcement described in Section E.1 and E.2 may be brought against a person or entity that commits an unlawful act described in Section C upon the effective date of the ordinance, regardless of whether the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), or permits states and municipalities to once again enforce abortion prohibitions.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All
constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional

vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Wells, Texas City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED on this the 10 day of February, 2020.

C.W. Williams

Mayor of the City of Wells

Melanie Pounds

City Secretary of the City of Wells

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 10TH DAY OF THE MONTH OF FEBRUARY, THE YEAR OF OUR LORD 2020.

WITNESS: Wesley Matthews

WITNESS: Darlene Kirkland