CITY ORDINANCE NO. 7-7-2021

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF CENTERVILLE, DECLARING CENTERVILLE A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CENTERVILLE, TEXAS:

A. FINDINGS

The City Council of Centerville finds that:

(1) The State of Texas has never repealed its pre–*Roe v. Wade* statutes that outlaw and criminalize abortion unless the mother's life is in danger. *See* West's Texas Civil Statutes, articles 4512.1 – 4512.6 (1974); *see also* Act of June 14, 1973, ch. 399, §§ 5–6, 1973 Tex. Acts 883, 995–96; *see also id.* 996a, 996e (including the Texas abortion laws in the table indicating the "Disposition of Unrepealed Articles of the Texas Penal Code of 1925 and Vernon's Penal Code.").

(2) The Texas Legislature has reaffirmed the continued existence and validity of the State's pre–*Roe v. Wade* criminal abortion statutes. *See* Senate Bill 8, 87th Leg., § 2 (2021) ("The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.").

(3) The law of Texas therefore continues to define abortion as a criminal offense except when necessary to save the life of the mother. *See* West's Texas Civil Statutes, article 4512.1 (1974); Senate Bill 8, 87th Leg., § 2 (2021).

(4) The law of Texas also imposes felony criminal liability on anyone who "furnishes the means for procuring an abortion knowing the purpose intended," *see* West's Texas Civil Statutes, article 4512.2 (1974), as well as anyone who aids or abets an abortion performed in violation of Texas law, *see* Tex. Penal Code section 7.02.

(5) The Supreme Court's judgment in *Roe v. Wade* did not cancel or formally revoke the Texas statutes that outlaw and criminalize abortion, and the judiciary has no power to erase a statute that it believes to be unconstitutional. *See Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.21 (Tex. 2017) ("When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it"); *Texas v. United States*, 945 F.3d 355, 396 (5th Cir. 2019) ("The federal courts have no authority to erase a duly enacted law from the statute books, [but can only] decline to enforce a statute in a particular case or controversy." (citation and internal quotation marks omitted)).

(6) The Supreme Court's pronouncements in *Roe v. Wade* and subsequent cases may limit the ability of State officials to impose penalties on those who violate the Texas abortion statutes, but

they do not veto or erase the statutes themselves, which continue to exist as the law of Texas until they are repealed by the legislature that enacted them. The State's temporary inability to prosecute or punish those who violate its abortion statutes on account of *Roe v. Wade* does not change the fact that abortion is still defined as a criminal act under Texas law.

(7) The Texas murder statute defines the crime of "murder" to include any act that "intentionally or knowingly causes the death" of "an unborn child at every stage of gestation from fertilization until birth." *See* Texas Penal Code § 19.02; Texas Penal Code § 1.07. Although the statute exempts "lawful medical procedures" from the definition of murder, *see* Texas Penal Code § 19.06(2), an abortion is not a "lawful medical procedure" under Texas law unless the life of the mother is in danger, *see* West's Texas Civil Statutes, article 4512.1 (1974).

(8) The law of Texas also prohibits abortions unless they are performed in a facility that meets the minimum standards for an ambulatory surgical center, and by a physician who holds admitting privilege at a nearby hospital. *See* Texas Health and Safety Code § 171.0031, 245.010(a). The Supreme Court's ruling in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), did not alter or revoke these requirements of state law; it merely enjoined state officials from enforcing the penalties established in those statutes against the abortion providers who violate them. *Whole Woman's Health v. Hellerstedt* does not change the fact that abortion is not a "lawful medical procedure" under Texas law unless it complies with sections 171.0031 and 245.010(a) of the Texas Health and Safety Code, and it does not change the fact that the Texas murder statute prohibits abortions that fail to comport with these still-existing requirements of Texas law.

(9) The Texas abortion laws are severable in each of their discrete applications, and they are severable as to each individual person, group of persons, or circumstances. *See* Tex. Gov't Code § 311.032(c); *see also* Senate Bill 8, 87th Leg., § 5 (adding new section 311.036(c) to the Texas Government Code); *id.* ("Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution."). These laws therefore remain enforceable against any individual or entity that aids or abets an abortion performed in Texas, so long as the prosecution of the particular individual or entity that aids or abets the abortion will not impose an "undue burden" on abortion patients;

(10) The City Council of Centerville finds it necessary to supplement the existing state-law prohibitions on abortion-murder with its own prohibitions on abortion, and to empower city officials and private citizens to enforce these prohibitions to the maximum extent permitted by state law and the Constitution. *See* Tex. Local Gov't Code §§ 54.001(b)(1).

(11) The law of Texas allows municipalities and political subdivisions to outlaw and prohibit abortion, and to establish penalties and remedies against those who perform or enable unlawful abortions. *See* Senate Bill 8, 87th Leg., § 5 (adding new section 311.036(b) to the Texas Government Code); *see also id.* ("A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.").

(12) To protect the health and welfare of all residents within the City of Centerville, including the unborn, the City Council finds it necessary to outlaw abortion under city law and to establish penalties and remedies as provided in this ordinance. *See* Tex. Local Gov't Code §§ 54.001(b)(1).

B. 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 selling 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) "Abortion-inducing drugs" includes mifepristone, misoprostol, and any drug or medication that is used to terminate the life of an unborn child. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception.

(6) "City" shall mean the city of Centerville, Texas.

C. DECLARATIONS

(1) We declare Centerville, 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, subject to the affirmative defenses described in Section D(5).

(3) Abortion-inducing drugs are declared to be contraband, and we declare the possession of abortion-inducing drugs within city limits to be an unlawful act.

(4) *Roe v. Wade*, 410 U.S. 113 (1973), which invented a supposed "constitutional right" for pregnant women to kill their unborn children through abortion, is a lawless and unconstitutional act of judicial usurpation, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right.

(5) 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." (emphasis in original)); 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.").

(6) 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 or murder an unborn child, are unconstitutional usurpations of judicial power, which violate the Tenth Amendment by trampling the reserved powers of the States, and violate article IV, section 2 of the Constitution by denying the people of each State a Republican Form of Government by imposing abortion policy through judicial decree, and are declared to be null and void in the City of Centerville.

(7) Abortions performed anywhere in the state of Texas are criminal acts under Texas law, unless the abortion is procured or attempted by medical advice for the purpose of saving the life of the mother. *See* West's Texas Civil Statutes, article 4512.1 – article 4512.6 (1974); *see also* Senate Bill 8, 87th Leg., § 2.

(8) Any person who "furnishes the means for procuring an abortion knowing the purpose intended," or who otherwise aids or abets an abortion performed in Texas, is a criminal and a felon subject to prosecution and imprisonment under section 7.02 of the Texas Penal Code and

article 4512.2 of the Revised Civil Statutes, unless the abortion is procured or attempted by medical advice for the purpose of saving the life of the mother.

(9) The City Council urges the district attorney of Leon County to investigate and prosecute any individual or organization that "furnishes the means for procuring" an elective abortion, or that otherwise aids or abets such abortions, including:

(a) employers and insurers who arrange for coverage of abortions in Texas;

(b) individuals and organizations that knowingly provide transportation to or from a Texas abortion provider;

(c) individuals and organizations that knowingly pay for another person's abortion in Texas, including abortion funds and abortion-assistance organizations;

(d) individuals who knowingly donate money to abortion funds and abortion-assistance organizations that aid or abet abortions performed in Texas;

(e) individuals and organizations that offer or provide "abortion doula" services in Texas.

(10) The City Council urges all residents of Leon County to regard anyone who performs or assists an elective abortion as criminals, consistent with the abortion laws of Texas, and to report these criminal activities to the relevant district attorneys for investigation and criminal prosecution.

D. 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 Centerville, Texas.

(2) ABORTION-INDUCING DRUGS—It shall be unlawful for any person to possess or distribute abortion-inducing drugs in the city of City of Centerville, Texas, and it shall be unlawful for any person to mail or ship abortion-inducing drugs into the City of Centerville, Texas.

(3) AIDING OR ABETTING AN ABORTION IN CENTERVILLE, TEXAS—It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Centerville, Texas. The prohibition in this section 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) Providing or arranging for insurance coverage of an abortion;

(e) Providing "abortion doula" services; and

(f) Coercing or pressuring a pregnant mother to have an abortion against her will.

(4) AFFIRMATIVE DEFENSE—It shall be an affirmative defense to the unlawful acts described in Sections D(1), D(2), and D(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) No provision of Section D may be construed to prohibit any conduct protected by the First Amendment of the U.S. Constitution, as made applicable to state and local governments through the Supreme Court's interpretation of the Fourteenth Amendment, or by Article I, section 8 of the Texas Constitution.

E. PUBLIC ENFORCEMENT

(1) Except as provided in Section E(2) and E(3), any person, corporation, or entity who commits an unlawful act described in Section D 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.

(2) Neither the City of Centerville, 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, may impose or threaten to impose the penalty described in Section E(1) unless and until:

(a) 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 punish anyone who violates an abortion prohibition, or

(b) A state or federal court enters a declaratory judgment or otherwise rules that the imposition or threatened imposition of this penalty upon the particular person, corporation, or entity that committed the unlawful act described in Section D will not impose an "undue burden" on women seeking abortions; or

(c) A state or federal court enters a declaratory judgment or otherwise rules that the person, corporation, or entity that committed the unlawful act described in Section D lacks third-party standing to assert the rights of women seeking abortions in court.

Provided, that the penalty provided in Section E(1) may not be imposed if a previous decision of the Supreme Court of the United States established that the prohibited conduct was constitutionally protected at the time it occurred.

(3) Under no circumstance may the penalty described in Section E(1) be imposed on the mother of the unborn child that has been aborted, or the pregnant woman who sought or seeks to abort her unborn child.

(4) The non-imposition of the penalties described in Section E(1) does not in any way legalize the conduct that has been outlawed in Section D, and it does not in any way limit or effect the availability of the private-enforcement remedies established in Section F, or the criminal penalties for abortion set forth in article 4512.1 of the Revised Civil Statutes and sections 1.07 and 19.02(b) of the Texas Penal Code. Abortion remains and is to be regarded as an illegal act under city law and a criminal act under state law, except when abortion is necessary to save the life of the mother. And abortion remains outlawed under both city and state law, despite the temporary and partial inability of city and state officials to punish those who violate the abortion laws on account of the Supreme Court's decisionmaking.

(5) Mistake of law shall not be a defense to the penalty established in Section E(1).

F. PRIVATE ENFORCEMENT

(1) Any person, other than those described in sections F(7) and F(8), may bring a civil enforcement suit against a person or entity that commits or intends to commit an unlawful act described in Section D. If the claimant prevails in an action brought under this section, the court shall award:

(a) Injunctive relief sufficient to prevent the defendants from violating Section D in the future;

(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;

(2) Notwithstanding Subsection (1), a court may not award relief under this section if the defendant demonstrates that the defendant previously paid statutory damages in a previous action for the particular conduct that violated Section D.

(3) There is no statute of limitations for an action brought under this section.

(4) The following are not a defense to an action brought under this section:

(a) ignorance or mistake of law;

(b) a defendant's belief that the requirements of this ordinance or the Texas abortion statutes are unconstitutional or were unconstitutional;

(c) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this ordinance or the Texas abortion statutes;

(d) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(e) nonmutual issue preclusion or nonmutual claim preclusion;

(f) the consent of the unborn child's mother to the abortion; or

(g) any claim that the enforcement of this ordinance or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section G.

(5) An action under this section must be brought in state court and not in the municipal courts of Centerville;

(6) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the Texas Constitution;

(7) Neither the city of Centerville, nor any state or local official or employee may bring an action or intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(8) A civil action under this section may not be brought by any person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other unlawful act.

(9) Under no circumstance may a civil action under this section be brought against the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child.

(10) The private civil-enforcement suits described in this section may be brought against any person, corporation, or entity that commits an unlawful act described in Section D on or after the effective date of the ordinance, regardless of whether the Supreme Court has overruled *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and regardless of whether the current jurisprudence of the Supreme Court limits the authority of states and municipalities to punish those who violate abortion prohibitions.

G. UNDUE-BURDEN DEFENSE

(1) A defendant against whom an action is brought under Section F does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(a) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(b) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(2) A defendant in an action brought under Section F may assert an affirmative defense to liability under this section if:

(a) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Section G(1); and

(b) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(3) A court may not find an undue burden under Section G(2) unless the defendant introduces evidence proving that:

(a) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(b) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(4) A defendant may not establish an undue burden under this section by:

(a) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(b) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(5) The affirmative defense under this section is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based occurred before the Supreme Court overruled either of those decisions.

(6) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section F, and a court may not award relief under Section F if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

H. 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 H(1).

(3) No court may decline to enforce the severability requirements in Sections H(1) and H(2) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking 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 H(1), H(2), or H(3), or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections H(1) and H(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 this 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 H(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 H(1) and H(2). If the Mayor fails to issue the saving construction required by Section H(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 H(1) or H(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 H(4).

I. EFFECTIVE DATE

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

PASSED, ADOPTED, SIGNED and APPROVED,

M R Doolby

Mayor of the City of Centerville, Texas

Teresa Tyler

City Secretary of the City of Centerville, Texas

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 7th DAY OF July, THE YEAR OF OUR LORD 2021.

WITNESS: _____

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