A STATEMENT BY THE INITIATING COMMITTEE IN REGARDS TO THE "ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF LUBBOCK, DECLARING LUBBOCK A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE" IN CERTIFICATION DEMANDING A SPECIAL ELECTION TO BE CALLED FOR THE PURPOSE OF THE PEOPLE OF LUBBOCK HAVING THE OPPORTUNITY TO VOTE FOR OR AGAINST THE ENACTMENT OF THIS ORDINANCE WHICH WOULD IMMEDIATELY OUTLAW ABORTION WITHIN THE CITY LIMITS OF LUBBOCK, TEXAS".

1:10PM

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OFFICE OF THE CITY SECRETARY
LUBBOCK, TEXAS

December 3, 2020

On November 17th, Mayor Dan Pope and the Lubbock City Council had the opportunity to vote in favor of an ordinance which would have immediately outlawed abortion within the city limits of Lubbock, Texas. Instead of voting in favor of this ordinance, which had the support of their state lawmakers, the Mayor and City Council voted 7-0 against this enforceable ordinance.

We are disappointed in the vote which Mayor Dan Pope and the Lubbock City Council have cast and we fear their failure to pass this ordinance will lead to the deaths of many innocent unborn children in Lubbock, Texas. The initiating committee met on November 18th and voted unanimously to reject the action of the Mayor and City Council and to move forward in certifying their desire to have the ordinance submitted for adoption by the citizens of the City of Lubbock at the next available election.

Because we fear God, view the intentional shedding of the blood of unborn children to be an inconceivably wicked action, and we believe that we all have a responsibility to protect the lives of the smallest and most vulnerable humans among us, we do not only request, but we demand that the ordinance which the Mayor and City Council of Lubbock voted against, with no changes or alterations, which is entitled the **"ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF LUBBOCK, DECLARING LUBBOCK A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE"**, be placed on the ballot to be voted upon by the people of the City of Lubbock at the soonest possible opportunity.

Sincerely,

Dorothy Boyett — Dec 3rd 2020

Dorothy Boyett — Date

Aletha VanMeter

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Erin Carmichael Agee

12/3/2020
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Katherine Cochran

12/3/2020
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Sandy Cavazos Ciseneros

12-03-2020
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Skyler Wachsmann

12/3/2020
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Mitchell Cochran

12/03/2020
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Charles Perry

12/3/20
Date

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter

Resolution No. 2020-R0393
Item No. 6.13
November 2, 2020

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor and City Council of the City of Lubbock hereby receive from the City Secretary all papers pertaining to a Petition and proposed Ordinance seeking to outlaw abortion within the City of Lubbock and to declare Lubbock a sanctuary city for the unborn, and a Certificate attesting to the number of verified signatures on said Petition. Said documents are attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council; and

THAT a public hearing related to such proposed ordinance, which shall be open to the public and the public is permitted to present arguments for or against such ordinance, is hereby set for Tuesday, November 17, 2020 at 5:00 p.m.

Passed by the City Council on November 2, 2020.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Rebecca Garza, City Secretary

APPROVED AS TO FORM:

Amy L. Sims, Deputy City Attorney

CITY OF LUBBOCK §

COUNTY OF LUBBOCK §

STATE OF TEXAS §

CERTIFICATE TO COPY OF PUBLIC RECORD

I hereby certify, in the performance of the functions of my office, that the attached instrument is a full, true and correct copy of the **Proposed Ordinance outlawing abortion within the City of Lubbock, declaring Lubbock a sanctuary city for the unborn as presented to City Council on November 17, 2020**, as the same appears of record in my office and that said document is an official record from the public office of the City Secretary of the City of Lubbock, Lubbock County, State of Texas, and is kept in said office. The total number of pages within the attached document is 9 pages.

I further certify that I am the City Secretary of the City of Lubbock, that I have legal custody of said record, and that I am a lawful possessor and keeper and have legal custody of the records in said office.

In witness whereof I have hereunto set my hand and affixed the official seal of said office the 3rd day of December, 2020.

(City Seal)

Rebecca Garza
City Secretary
City of Lubbock
Lubbock County, State of Texas

1:10pm

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DEC 04 2020
OFFICE OF THE CITY SECRETARY
LUBBOCK, TEXAS

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

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

A. FINDINGS

The City Council of Lubbock 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.

(2) After the Supreme Court announced its judgment in Roe v. Wade, 410 U.S. 113 (1973), the Texas legislature recodified and transferred its criminal prohibitions on abortion laws to articles 4512.1 through 4512.6 of the Revised Civil Statutes. 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.").

(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).

(4) 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)).

(5) 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.

(6) 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).

(7) 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.

(8) The City Council of Lubbock finds it necessary to supplement these 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); 54.004.

(9) To protect the health and welfare of all residents within the City of Lubbock, 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); 54.004.

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) "City" shall mean the city of Lubbock, Texas.

C. DECLARATIONS

(1) We declare Lubbock, 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(3).

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 Lubbock, 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 Lubbock, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Lubbock, TX. 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) 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 D(1) and D(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) No provision of Section D may be construed to prohibit any action which occurs outside of the jurisdiction of the City of Lubbock.

(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.

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. See Tex. Local Gov't Code §§ 54.001(b)(1);

(2) Neither the City of Lubbock, 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.

(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. 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 Section E(1).

F. PRIVATE ENFORCEMENT

(1) Any person, corporation, or entity that commits an unlawful act described in Section D(1) or D(2), other than the mother of the unborn child that has been aborted, shall be liable in tort to the unborn child's mother, father, grandparents, siblings and half-siblings. 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. Mistake of law shall not be a defense to liability. The consent of the unborn child's mother to the abortion shall not be a defense to liability, even if the unborn child's mother sues under this provision.

(2) Any private citizen of Texas, other than the individuals described in Section F(3), may bring an action to enforce this ordinance against a person or entity that has committed an unlawful act described in Section D, or that commits or plans to commit an unlawful act described in Section D, and shall be awarded:

(a) Injunctive relief, if the court finds that the defendant is committing or plans to commit an unlawful act described in Section D;

(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, if court finds that the defendant has committed an unlawful act described in Section D for which he has not previously paid statutory damages or the penalty described in section (E)(1); and

(c) Costs and attorneys' fees, if the court awards any of the injunctive relief or statutory damages described in sections (F)(2)(a) and (b).

Provided, that no citizen-suit enforcement action may be brought, and no injunction or statutory damages or liability for costs and attorneys' fees may be awarded or assessed, against the mother of the unborn child that has been or will be aborted.

There is no statute of limitations for this private right of action. Mistake of law shall not be a defense to liability. The consent of the unborn child's mother to the abortion shall not be a defense to liability.

(3) The citizen-suit enforcement action described in Section F(2) may not be brought by the City of Lubbock, 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) The citizen-suit enforcement action described in Section F(1) and F(2) may be brought on or after the effective date of this ordinance. An individual or entity sued

under the citizen-suit enforcement action described in Section F(1) and F(2) may assert the Supreme Court's rulings in Roe v. Wade, 410 U.S. 113 (1973), or Planned Parenthood v. Casey, 505 U.S. 833 (1992), or any other abortion-related pronouncement of the Supreme Court as a defense to liability if that individual or entity has third-party standing to assert the rights of women seeking abortions in court, and if the imposition of liability in that particular lawsuit would impose an "undue burden" on women seeking abortions.

G. 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 G(1)

(3) No court may decline to enforce the severability requirements in Sections G(1) and G(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 G(1), G(2), or G(3), or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections G(1) and G(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 G(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 G(1) and G(2). If the Mayor fails to issue the saving construction required by Section G(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 G(1) or G(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 G(4).

H. EFFECTIVE DATE

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

PASSED, ADOPTED, SIGNED and APPROVED,

_____

Mayor of the City of Lubbock, Texas

_____

City Secretary of the City of Lubbock, Texas

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS 5th DAY OF November, THE YEAR OF OUR LORD 2020.

WITNESS: Dorothy Bayett

WITNESS: Karla

We, a majority of members of the Initiating Committee that proposed an ordinance outlawing abortion within the city of Lubbock , declaring Lubbock a sanctuary city for the unborn, request the following ballot language at the election we are requesting. The election is to be held at the next uniform Election date of May 1, 2021, or such date should a special election be granted by the Governor.

Proposed Ballot Language:

PROPOSITION

THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK SHALL BE AMENDED BY ENACTING AN ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF LUBBOCK, DECLARING LUBBOCK A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

FOR THE ORDINANCE: _____

AGAINST THE ORDINANCE: _____

APPROVED AS TO FORM AND CONTENT:

Affiant

Affiant

Affiant

Affiant

Affiant

Affiant

12:4

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DEC 07 2020
OFFICE OF THE CITY SECRETAR
LUBBOCK, TEXAS

LUBBOCK COUNTY, TEXAS

BEFORE ME, the undersigned authority, a Notary Public in and for said County, Texas, on this day personally appeared Charles Perry, Erin Agee, Skyler Wachsmann, Sandy Cisneros, Dorothy Boyett, Mitchell Cochran, Katherine Cochran known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

SWORN TO AND SUBSCRIBED Before me this 7th day of December, 2020.

(Seal)

ALETHA VANMETER
Notary Public, State of Texas
Comm. Expires 05-20-2024
Notary ID 130670576

Aletha VanMeter
Notary Public, State of Texas
Commission Expires: 05/20/2024