**ORDINANCE 51-21-O**

**ORDINANCE OUTLAWING ABORTION, DECLARING CELINA A SANCTUARY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE, AND DECLARING AN EMERGENCY.**

WHEREAS, Celina Council-as-a Whole Committee met on August 23, 2021 to discuss the designation of the City of Celina as a “Sanctuary City for the Unborn” and to proposed restrictions for establishment of abortion clinics in Celina; and

WHEREAS, the Council-as-a-Whole Committee voted to submit an Ordinance to Council for consideration by a 5-2 vote.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Celina, County of Mercer, State of Ohio:

SECTION ONE

THAT, the Findings, Declarations, and proposed Amendments as Chapter 1187, a copy of which is attached heretofore to and labeled as Exhibit “A”, which is fully incorporated herein by reference, be and is hereby adopted as law.

SECTION TWO

THAT, the City of Celina is hereby declared a Sanctuary City for the Unborn in accordance with State and Federal laws.

SECTION THREE

THAT, this Ordinance shall be declared an emergency measure immediately necessary for the preservation of the public peace, safety, and welfare, such emergency arising out of the necessity for the Declaration of Celina as a Sanctuary City for the Unborn. NOW, therefore, this ordinance shall take effect and be in force from and after its passage and approval by the Mayor at the earliest period allowed by law.

PASSED this \_\_\_\_\_day of , 2021

Jason D. King, President of Council

ATTEST:

Joan S. Wurster, Clerk of Council

APPROVED , 2021

Jeffrey S. Hazel, Mayor

APPROVED AS TO FORM:

George Erik. Moore, Esq., City Law Director

**EXHIBIT A**

FINDINGS

The Celina City Council finds that:

1. Human life begins at conception.
2. Abortion is a murderous act of violence that purposefully and knowingly terminates an unborn human life.
3. Unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings.
4. The Supreme Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), which invented a 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.”); 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 Ohio Human Rights and Heartbeat Protection Act has outlawed and criminalized abortion statewide if the unborn child has a detectable heartbeat. See Ohio Rev. Code § 2919.195(A). The only exception is for abortions needed to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function. See Ohio Rev. Code

§ 2919.195(B).

1. Any person who performs an abortion in violation of the Ohio Human Rights and Heartbeat Protection Act, other than the pregnant woman upon whom the abortion

is performed, is a criminal and felon who is subject to punishment of up to 12 months imprisonment and a fine of up to $2,500 for each illegal abortion performed. See Ohio Rev. Code §§ 2919.195(A); 2929.14(b)(5).

1. Any person who aids or abets an abortion performed in violation of the Ohio Human Rights and Heartbeat Protection Act, other than the pregnant woman upon whom the abortion is performed, is a criminal and felon under the

accomplice-liability provisions in section 2923.03 of the Ohio Revised Code, and is subject to punishment of up to 12 months imprisonment and a fine of up to $2,500 for each illegal abortion that the person aided or abetted.

1. The federal judiciary has no ability or power to veto, erase, or formally revoke the Ohio Human Rights and Heartbeat Protection Act, and it has no power to block the Ohio Human Rights and Heartbeat Protection Act from taking effect. The judiciary’s powers extend only to resolving cases and controversies between named parties to a lawsuit. The power of judicial review allows a court to decline to enforce a statute when resolving a case or controversy between named litigants, and it allows a court to enjoin government officials from taking steps to enforce a statute—though only while the court’s injunction remains in effect. But the Ohio Human Rights and Heartbeat Protection Act will continue to exist, even if a court opines that it violates the Constitution, and it will remain the law of Ohio until it is repealed by the legislature that enacted it.
2. On July 3, 2019, a federal district judge temporarily enjoined the state’s officials, as well as the County Prosecutors of Cuyahoga, Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties, from enforcing the Ohio Human Rights and Heartbeat Protection Act against the state’s abortion providers.

*See Preterm-Cleveland v. Yost*, No. 1:19-cv-00360-MRB (ECF No. 29). This

district-court ruling did not “strike down” the Ohio Human Rights and Heartbeat Protection Act or “block” it from taking effect, as the media has falsely reported. The district court’s order in *Preterm-Cleveland* merely prevents the named defendants in that lawsuit from bringing criminal charges or enforcing the statute against the named plaintiffs for as long as the court’s injunction continues to exist.

1. Individuals who violate the Ohio Human Rights and Heartbeat Protection Act in reliance on the injunction in *Preterm-Cleveland* remain subject to future criminal prosecution and penalties if the injunction is vacated on appeal or if *Roe v. Wade* is overruled. An injunction merely prevents the named defendants from initiating criminal charges or enforcement proceedings while the court’s injunction remains in effect. It does not confer immunity or preemptive pardons on those who violate the statute, and it does not prevent government officials from prosecuting and punishing abortion providers after the injunction has been dissolved.
2. The federal district court’s ruling in *Preterm-Cleveland* does not bind the state judiciary; it does not bind nonparties to the lawsuit; and it does not bind private citizens, who are not even subject to the Fourteenth Amendment, let alone the judiciary’s purported interpretations of it. *See Civil Rights Cases*, 109 U.S. 3 (1883).
3. Abortion after fetal heartbeat therefore remains a criminal offense under Ohio law, even though a federal district court has temporarily enjoined some government officials from prosecuting and punishing abortion providers who violate the Ohio Human Rights and Heartbeat Protection Act. Abortion providers who kill unborn children after a fetal heartbeat can be detected, and any individual who aids or abets a post-heartbeat abortion in Ohio, remain criminals and felons under Ohio law—even if they are not currently being prosecuted or punished for their criminal acts—and they should be treated and ostracized as such.
4. Private citizens should continue to regard post-heartbeat abortions and acts that aid and abet post-heartbeat abortions as criminal acts under Ohio law, even though a federal district court has temporarily enjoined government officials from imposing criminal punishment on those who violate the Ohio Human Rights and Heartbeat Protection Act, and private citizens should continue regarding those who perform or assist post-heartbeat abortions as criminals who will be punished for their criminal acts as soon as the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973).
5. The County Prosecutor of Mercer—along with every County Prosecutor in the State of Ohio other than the County Prosecutors of Cuyahoga, Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties—is not a party to the *Preterm-Cleveland* litigation, and is not subject to the injunction that is preventing other County Prosecutors in Ohio from indicting and prosecuting individuals and organizations that aid or abet abortions after fetal heartbeat.
6. The County Prosecutor of Mercer—along with every County Prosecutor in the State of Ohio other than the County Prosecutors of Cuyahoga, Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties—may therefore indict and prosecute individuals and organizations that aid or abet abortions that occur after fetal heartbeat without violating the injunction in *Preterm-Cleveland*.
7. The County Prosecutor of Mercer—along with every County Prosecutor in the State of Ohio other than the County Prosecutors of Cuyahoga, Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties—may indict and prosecute individuals and organizations that aid or abet abortions that occur after fetal heartbeat without contradicting the U.S. Supreme Court’s abortion jurisprudence, so long as the prosecution and imprisonment of those individuals and organizations will not result in an “undue burden” on women seeking abortions.
8. The city council of Celina finds it necessary to supplement the Ohio Human Rights and Heartbeat Protection Act with this ordinance, which will ensure that abortion at all stages of pregnancy will be regarded as an unlawful act in Celina, and that the state’s criminal prohibitions on post-heartbeat abortion are enforced to the maximum possible extent.

DECLARATIONS

1. We declare Celina, Ohio to be a Sanctuary City for the Unborn.
2. We declare that abortion at all times and at all stages of pregnancy is an unlawful act if performed in Celina, Ohio, unless 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.
3. We declare abortion-inducing drugs to be contraband, and we declare the possession of abortion-inducing drugs within city limits to be an unlawful act.
4. We also declare that abortion after fetal heartbeat remains a criminal act under section 2919.195 of the Ohio Revised Code, unless the abortion is needed to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function.
5. We declare that abortion after fetal heartbeat will remain a criminal act under state law until the legislature repeals section 2919.195 of the Ohio Revised Code, regardless of whether a court has enjoined government officials from prosecuting or punishing abortion providers who violate the Ohio Human Rights and Heartbeat Protection Act.
6. We declare that the Ohio Human Rights and Heartbeat Protection Act remains enforceable against any person who is not a named party to a court ruling that has declared the statute unconstitutional or enjoined government officials from enforcing it.
7. We declare that the Ohio Human Rights and Heartbeat Protection Act remains enforceable by any government official who has not been enjoined by a court from enforcing it. This includes the County Prosecutor of Mercer, as well as every County Prosecutor in the State of Ohio other than the County Prosecutors of Cuyahoga,

Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties

1. We declare that the Ohio Human Rights and Heartbeat Protection Act remains enforceable against any person who lacks third-party standing to assert the constitutional rights of women seeking abortions, such as individuals who aid or abet abortions by providing financial assistance, transportation to an abortion

clinic, or other forms of logistical support, including employers and insurance companies who pay for abortions, and we urge the County Prosecutor of Mercer County—and all County Prosecutors throughout the state of Ohio—to criminally prosecute these individuals under the Ohio Human Rights and Heartbeat Protection Act and the accomplice-liability provisions in section 2923.03 of the Ohio Revised Code.

1. We declare that the Ohio Human Rights and Heartbeat Protection Act remains fully enforceable against any person whose criminal prosecution will not result in

an “undue burden” on women seeking abortions, such as individuals who aid or abet abortions by providing financial assistance, transportation to an abortion clinic, or other forms of logistical support, including employers and insurance companies who pay for abortions, and we urge the County Prosecutor of Mercer County—and all County Prosecutors throughout the state of Ohio—to criminally prosecute these individuals under the Ohio Human Rights and Heartbeat Protection Act and the accomplice-liability provisions in section 2923.03 of the Ohio Revised Code.

1. We declare that all individuals who violate the Ohio Human Rights and Heartbeat Protection Act, and all individuals who aid or abet violations of

post-heartbeat abortion, are criminals, regardless of whether a court has enjoined government officials from punishing these individuals for their crimes.

1. We declare that any abortion provider or other individual who violates the Ohio Human Rights and Heartbeat Protection Act can be prosecuted for their crimes as soon as the injunction preventing the enforcement of that statute is vacated on appeal or in response to a Supreme Court ruling that overrules *Roe v. Wade*, 410

U.S. 113 (1973), as long as the six-year statute of limitations for felony prosecutions has not expired.

1. We urge County Prosecutors throughout the state of Ohio to announce that they will prosecute every person who has violated the Ohio Human Rights and Heartbeat Protection Act, and every person who has aided or abetted a violation of the Ohio Human Rights and Heartbeat Protection Act, as soon as any injunction against the enforcement of that law is vacated on appeal or in response to a

Supreme Court ruling that overrules Roe v. Wade, 410 U.S. 113 (1973), to the extent allowed by the six-year statute of limitations.

1. We urge all residents of Celina and the state of Ohio to regard anyone who performs or assists a post-heartbeat abortion as criminals, consistent with the law of Ohio, and to report these criminal activities to County Prosecutors for future criminal prosecution.

AMENDMENTS

The City of Celina Code of Ordinances is amended by adding sections 537.19, 537.20, 537.21, and 537.22 to read as follows:

Sec. 537.19. Abortion.

(A) 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 Celina, Ohio.

(B) It shall be unlawful for any person to knowingly aid or abet an abortion

that occurs in the city of Celina, Ohio. This section does not prohibit referring

a patient to have an abortion which takes place outside the city limits of

Celina, Ohio. The prohibition in this section includes, but is not limited to,

the following acts:

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

(2) Giving instructions over the telephone, the internet, or any other

medium of communication regarding self-administered abortion;

(3) Providing money with the knowledge that it will be used to pay for an

abortion or the costs associated with procuring an abortion;

(4) Providing or arranging for insurance coverage of an abortion;

(5) Providing “abortion doula” services; and

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

(C) It shall be an affirmative defense to the unlawful acts described in

Subsections (A) and (B) 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.

(D) It shall be unlawful for any person to possess or distribute

abortion-inducing drugs in the city of Celina, Ohio.

(E) No provision of this section may be construed to prohibit any action which

occurs outside of the jurisdiction of the city of Celina, Ohio.

(F) No provision of this section 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 1, Section 11 of

the Ohio Constitution.

(G) Under no circumstance may the mother of the unborn child that has been

aborted, or the pregnant woman who seeks to abort her unborn child, be

subject to prosecution or penalty under this section.

(H) For purposes of this section, the following definitions shall apply:

(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,

and it does not include Plan B, morning-after pills, 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) “Unborn child” means a natural person from the moment of conception

who has not yet left the womb*.*

(3) “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.

(I) 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, the provisions and applications of this section shall be

severable as follows:

(1) It is the intent of the city council that every provision, subsection,

sentence, clause, phrase, or word in this section, and every application

of the provisions in this section, are severable from each other. If any

application of any provision in this section 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 section 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 section 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 applications 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 section’s

application do not present an undue burden. The city council further

declares that it would have enacted this section, and each provision,

section, subsection, sentence, clause, phrase, or word, and all

constitutional applications of this section, irrespective of the fact that

any provision, section, subsection, sentence, clause, phrase, or word, or

applications of this section were to be declared unconstitutional or to

represent an undue burden.

(2) If any court declares or finds a provision in this section facially

unconstitutional, when there are discrete applications of that provision

that can be enforced against a person, group of persons, or

circumstances without violating the Constitution, then those

applications shall be severed from all remaining applications of the

provision, and the provision shall be interpreted as if the city council

had enacted a provision limited to the persons, group of persons, or

circumstances for which the provision’s application will not violate the

Constitution.

(3) If any provision of this section 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 Subsections (I)(1) and (I)(2).

(4) No court may decline to enforce the severability requirements in

Subsections (I)(1), (I)(2), and (I)(3) 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 locality or

government 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 an executive official not to

enforce a duly enacted statute or ordinance in a limited and defined set

of circumstances.

(5) If any federal or state court ignores or declines to enforce the

requirements of Subsections (I)(1), (I)(2), (I)(3), or (I)(4), or holds a

provision of this section invalid or unconstitutional on its face after

failing to enforce the severability requirements of Subsections (I)(1),

(I)(2), and (I)(3), for any reason whatsoever, then the Mayor shall hold

delegated authority to issue a saving construction of this section that

avoids the constitutional problems or other problems identified by the

federal or state court, while enforcing the provisions of this section 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 section 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 this section is overruled, vacated, or reversed.

(6) The Mayor must issue the saving construction described in Subsection

(I)(5) within 20 days after a judicial ruling that declares invalid or

enjoins the enforcement of a provision of this section after failing to

enforce the severability requirements of Subsections (I)(1), (I)(2), and

(I)(3). If the Mayor fails to issue the saving construction required by

Subsections (I)(5) 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 Subsections (I)(1),

(I)(2), and (I)(3), 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 Subsection (I)(5).

(J) Whoever violates this section is guilty of a misdemeanor in the first

degree.

Sec. 537.20. Abortions Performed in Violation of Ohio Law.

(A) It is the policy of the city of Celina to ensure that the Ohio abortion laws

are enforced to the maximum possible extent consistent with the Constitution

and existing Supreme Court doctrine.

(B) Except as provided by subsection (D), it shall be unlawful for any person

to perform an abortion in violation of any statute enacted by the Ohio

legislature, including section 2919.195 of the Ohio Revised Statutes.

(C) Except as provided by subsection (D), it shall be unlawful for any person

to knowingly aid or abet an abortion performed in violation of any statute

enacted by the Ohio legislature, including section 2919.195 of the Ohio

Revised Statutes. The prohibition in this subsection includes, but is not

limited to:

(1) Knowingly providing transportation to or from an abortion

provider;

(2) Giving instructions over the telephone, the internet, or any other

medium of communication regarding self-administered abortion;

(3) Providing money with the knowledge that it will be used to pay for

an abortion or the costs associated with procuring an abortion;

(4) Providing or arranging for insurance coverage of an abortion;

(5) Providing “abortion doula” services;

(6) Coercing a pregnant mother to have an abortion against her will;

and

(7) Engaging in conduct that makes one an accomplice to abortion

under section 2923.03 of the Ohio Revised Code.

This subsection may not be construed to impose civil or criminal 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 11 of the Ohio Constitution.

(D) Until the Supreme Court of the United States overrules *Roe v. Wade*, 410

U.S. 113 (1973), or *Planned Parenthood of Southeastern Pa. v. Casey*, 505

U.S. 833, 874 (1992), the prohibitions in subsections (B) and (C) may be

enforced only against:

(1) Persons who lack third-party standing to assert the rights of

women seeking an abortion under the tests for third-party standing

established by the Supreme Court of the United States; or

(2) Persons for whom prosecution and punishment will not impose an

undue burden on women seeking abortions.

(E) A person who violates this section may assert an affirmative defense if:

(1) the person has standing to assert the third-party rights of a woman

or group of women seeking an abortion under the tests for third-party

standing established by the Supreme Court of the United States; and

(2) the person demonstrates that his prosecution or punishment will

impose an undue burden on that woman or that group of women

seeking an abortion. A defendant does not establish an “undue burden”

under this subsection merely by demonstrating that the imposition of

civil or criminal liability will prevent women from obtaining support or

assistance, financial or otherwise, from others in their effort to obtain

an abortion;

(F) The affirmative defense under Subsection (e) 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).

(G) Nothing in this section shall in any way limit or preclude a defendant

from asserting his or her own constitutional rights as a defense to civil or

criminal liability, and a defendant is not liable under this section for any

exercise of state or federal constitutional rights that belong to the defendant

personally.

(H) Under no circumstance may the woman upon whom the unlawful

abortion was performed, or the pregnant woman who seeks to abort her

unborn child in violation of Ohio law, be subject to prosecution or penalty

under this section.

(I) 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, the provisions and applications of this section shall be

severable as follows:

(1) It is the intent of the city council that every provision, subsection,

sentence, clause, phrase, or word in this section, and every application

of the provisions in this section, are severable from each other. If any

application of any provision in this section 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 section 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 section 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 applications 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 section’s

application do not present an undue burden. The city council further

declares that it would have enacted this section, and each provision,

section, subsection, sentence, clause, phrase, or word, and all

constitutional applications of this section, irrespective of the fact that

any provision, section, subsection, sentence, clause, phrase, or word, or

applications of this section were to be declared unconstitutional or to

represent an undue burden.

(2) If any court declares or finds a provision in this section facially

unconstitutional, when there are discrete applications of that provision

that can be enforced against a person, group of persons, or

circumstances without violating the Constitution, then those

applications shall be severed from all remaining applications of the

provision, and the provision shall be interpreted as if the city council

had enacted a provision limited to the persons, group of persons, or

circumstances for which the provision’s application will not violate the

Constitution.

(3) If any provision of this section 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 Subsections (I)(1) and (I)(2).

(4) No court may decline to enforce the severability requirements in

Subsections (I)(1), (I)(2), and (I)(3) 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 locality or

government 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 an executive official not to

enforce a duly enacted statute or ordinance in a limited and defined set

of circumstances.

(5) If any federal or state court ignores or declines to enforce the

requirements of Subsections (I)(1), (I)(2), (I)(3), or (I)(4), or holds a

provision of this section invalid or unconstitutional on its face after

failing to enforce the severability requirements of Subsections (I)(1),

(I)(2), and (I)(3), for any reason whatsoever, then the Mayor shall hold

delegated authority to issue a saving construction of this section that

avoids the constitutional problems or other problems identified by the

federal or state court, while enforcing the provisions of this section 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 section 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 this section is overruled, vacated, or reversed.

(6) The Mayor must issue the saving construction described in Subsection

(I)(5) within 20 days after a judicial ruling that declares invalid or

enjoins the enforcement of a provision of this section after failing to

enforce the severability requirements of Subsections (I)(1), (I)(2), and

(I)(3). If the Mayor fails to issue the saving construction required by

Subsections (I)(5) 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 Subsections (I)(1),

(I)(2), and (I)(3), 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 Subsection (I)(5).

(J) Whoever violates this section is guilty of a misdemeanor in the first

degree.

Sec. 537.21. Private Right of Action.

(A) Any person, other than an officer or employee of a state or local

governmental entity in this state, may bring a civil action in state court against any

person who violates or intends to violate section 537.19 or section 537.20.

(B) If a claimant prevails in an action brought under this section, the court

shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this

section 537.19 or section 537.20 in the future;

(2) statutory damages in an amount of not less than $10,000 for each

violation of section 537.19 or section 537.20 that the defendant

committed; and

(3) costs and attorney's fees.

(C) Notwithstanding Subsection (B), 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 537.19

or section 537.20.

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

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

(1) ignorance or mistake of law;

(2) a defendant’s belief that the requirements of this section, or the requirements of section 537.19 or section 537.20, are unconstitutional or were unconstitutional;

(3) 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 section 537.19 or section 537.20;

(4) 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, including but not limited to the preliminary-injunction order in

*Preterm-Cleveland v. Yost*, No. 1:19-cv-00360-MRB (ECF No. 29) (July 3, 2019);

(5) nonmutual issue preclusion or nonmutual claim preclusion;

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

(7) any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 537.22.

(F) An action under this section must be brought in state court and not in the

municipal courts of Celina;

(G) 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 11 of the Ohio Constitution;

(H) Neither the city of Celina, nor any state or local official may 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.

(I) 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.

(J) 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.

(K) The severability requirements that appear in section 537.20(I) are fully

applicable to this section as well.

Sec. 537.22. Civil Liability: Undue Burden Defense.

(A) A defendant against whom an action is brought under Section 537.22 does

not have standing to assert the rights of women seeking an abortion as a defense to

liability under that section unless:

(1) 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

(2) 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.

(B) A defendant in an action brought under Section 537.21 may assert an

affirmative defense to liability under this section if:

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

(2) 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.

(C) A court may not find an undue burden under Subsection (B) unless the

defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from

obtaining an abortion; or

(2) 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.

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

(1) 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

(2) 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.

(E) The affirmative defense under Subsection (B) 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 under Section 537.21 occurred before

the Supreme Court overruled either of those decisions.

(F) 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 537.21, and a court may not award relief under Section

537.21 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.

(G) The severability requirements that appear in section 537.20(I) are fully

applicable to this section as well.

# EMERGENCY MEASURE

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, morals and welfare of the City of Celina, Ohio; and for the further reason that the immediate passage of this

ordinance is necessary to preserve the lives of unborn children in Celina, Ohio then this ordinance shall take effect immediately upon its adoption.

PASSED, ADOPTED, SIGNED and APPROVED,

Mayor

City of Celina, Ohio

Clerk of the City Council of Celina, Ohio

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

WITNESS:

WITNESS: