

ORDINANCE NO. _____

**AN ORDINANCE ADDING CHAPTER 241 TO THE MARSHFIELD, MISSOURI
CODE OF ORDINANCES; REQUIRING COMPLIANCE WITH FEDERAL
ABORTION LAWS; DECLARING MARSHFIELD, MISSOURI, A
SANCTUARY CITY FOR THE UNBORN**

WHEREAS, Article I, Section 2 of the Constitution of Missouri provides that all persons have a natural right to life.

WHEREAS, the Missouri General Assembly has passed laws recognizing that “[t]he life of each human being begins at conception,” § 1.205.1(1) RSMo, “[u]nborn children have protectable interests in life, health, and wellbeing,” § 1.205.1(2) RSMo; and that “the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state,” § 1.205.2 RSMo.

WHEREAS, the Missouri General Assembly has declared the State and all of its political subdivisions to be a “sanctuary of life” that protects pregnant women and their unborn children.” *See* § 188.010, RSMo.

WHEREAS, the Supreme Court of the United States in *Poelker v. Doe*, 432 U.S. 519 (1977), opined that “the Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth” instead of abortion.

WHEREAS, federal law imposes felony criminal liability on certain individuals who ship or receive abortion pills or abortion-related paraphernalia through the mail or by using an express company, common carrier, or interactive computer service, *see* 18 U.S.C. §§ 1461–62.

WHEREAS, federal law also imposes federal criminal liability on every person who performs or aids or abets a partial-birth abortion. *See* 18 U.S.C. § 1531.

WHEREAS, the Constitution and laws of Missouri do not and cannot secure a right, privilege or immunity to act in violation of federal criminal statutes such as 18 U.S.C. §§ 1461–62 and 18 U.S.C. § 1531.

WHEREAS, the so-called “fundamental right to reproductive freedom” described in Article I, Section 36 “to make and carry out decisions about all matters relating to reproductive health care” does not and cannot encompass conduct that violates federal criminal statutes such as 18 U.S.C. §§ 1461–62 and 18 U.S.C. § 1531.

WHEREAS, the Mayor and City Council are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18

U.S.C. §§ 1461–62 and 18 U.S.C. § 1531 are the “supreme Law of the Land” under Article VI of the Constitution and must be obeyed and respected by every person within the City of Marshfield and by every judge in the state of Missouri. See U.S. Const. art. VI (“[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

WHEREAS, we call upon the United States Attorneys for the District of Missouri and throughout the United States, both present and future, to investigate and prosecute all abortion providers and abortion-pill distribution networks that violate 18 U.S.C. §§ 1461–62.

WHEREAS, to preserve the safety, health, peace, good order, comfort, convenience, morals, and welfare of all inhabitants within the City of Marshfield, and to ensure the federal prohibitions on the shipment of abortion pills and abortion-related paraphernalia are obeyed, the City Council finds it necessary to enact this ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of Marshfield, Missouri, that the City of Marshfield, Missouri, be declared to be a Sanctuary City for the Unborn—a city encouraging mothers to choose life and not abortion, while also enforcing laws to preserve the safety, health, peace, good order, comfort, convenience, morals, and welfare of all inhabitants within the City of Marshfield, Missouri, both the born and the unborn, and that the Marshfield, Missouri, Code of Ordinances be amended as follows:

The Marshfield Code is amended by adding Chapter 241 to read as follows:

CHAPTER 241

ABORTION

§ 241.001. Definitions

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

(1) “Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

(A) In vitro fertilization or fertility treatments of any type;

(B) The use, prescription, administration, procuring, or selling of Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

(C) An act performed with the purpose to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

(2) “Elective abortion” means any abortion other than those performed or induced in response to a medical emergency;

(3) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(4) “Medical emergency” means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(5) “Partial-birth abortion” means an abortion in which the person performing the abortion:

(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

(6) “Woman” and “women” include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

§ 241.002. Compliance With Federal Abortion Laws Required.

(a) It shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

(1) Any article or thing designed, adapted, or intended for producing an elective abortion; or

(2) Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing an elective abortion;

(b) It shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

(1) using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing an elective abortion;

(2) knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (b)(1).

(c) It shall be unlawful for any person to violate 18 U.S.C. § 1531 by knowingly performing a partial-birth abortion that is not necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(d) It shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (a).

(e) Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in § 241.003. No direct or indirect enforcement of this section may be taken or threatened by the city of Marshfield or any of its employees or agents against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in § 241.003. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

§ 241.003. Private Right of Action.

(a) Any person, other than the state, its political subdivisions, including the city of Marshfield, and any officer or employee or agent of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

(1) violates any provision of § 241.002(a), § 241.002(b), or § 241.002(c); or

(2) intends to violate any provision of § 241.002(a), § 241.002(b), or § 241.002(c).

(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 § 241.002;

(2) nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;

(3) statutory damages in an amount of not less than \$100,000 for each violation of § 241.002(a), § 241.002(b), or § 241.002(c); and

(4) costs and reasonable attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under Subsection (b)(3) or (b)(4) in response to a violation of Subsection (a)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (b)(3) in another action for that particular violation of § 241.002.

(d) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, 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 or provisions of this chapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

(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;

(5) a defendant's reliance on any federal or state statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal or state statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

(6) non-mutual issue preclusion or non-mutual claim preclusion;

(7) the consent of the plaintiff or the unborn child's mother to the abortion, or the consent of one or both of the parents of the unborn child's mother to the abortion, or the consent of the legal guardian of the unborn child's mother to the abortion;

(8) contributory or comparative negligence;

(9) assumption of risk;

(10) 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 § 241.004.

(f) 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 Missouri Constitution.

(g) Notwithstanding any other law, neither the city of Marshfield, nor any of its officers, employees, or agents, may:

(1) act in concert or participation with anyone who brings suit under this section;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

(3) make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

(4) intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (g)(1)–(4).

(h) Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

(i) Notwithstanding any other law, a civil action under this section may not be brought:

(1) against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this chapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this chapter;

(2) against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

(3) against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

(4) by any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

§ 241.004. Affirmative Defenses

(a) A defendant against whom an action is brought under § 241.003 may assert an affirmative defense to liability under this section if:

(1) the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States or by the Constitution or laws of the state of Missouri, that belong to the defendant personally; or

(2) the defendant

(A) has standing to assert the rights, privileges, or immunities of a third party under the tests for third-party standing established by the Supreme Court of the United States or the Supreme Court of Missouri; and

(B) demonstrates that the imposition of civil liability on the defendant will violate rights, privileges, or immunities secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of Missouri, that belong to that third party; or

(3) The conduct for which the defendant is being sued:

(A) was not intended to assist or facilitate the performance of an elective abortion; or

(B) was necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman. For purposes of this section, "major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(b) Nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this ordinance as a defense to liability under § 241.003, or from asserting any other defense that might be available under any other source of law.

§ 241.005. Severability

(a) 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 Supreme Court of the United States 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 chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the City Council's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

(c) The City Council further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

(d) If any provision of this chapter 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 severability requirements of Subsections (a), (b), and (c).

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), and (d) 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 state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Missouri Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute or ordinance; and

(3) no more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(f) If any court, including any state or federal court, disregards any of the severability requirements in Subsections (a), (b), (c), (d), or (e), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of city law, as if the city had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

PASSED this ___ day of _____, 2025 by ___ ayes, ___ nays, and ___ abstains.

APPROVED:

By: _____

ATTEST:

By: _____