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May 28, 2024

Amarillo Mayor and all Members of City Council
601 S. Buchanan
Amarillo, Texas 79101
Via Email

Mr. Bryan McWilliams, Amarillo City Attorney
Via Email: bryan.mcwilliams@amarillo.gov

RE: Agenda Items 9.G and 9.H for May 28, 2024 Council Meeting

Dear Mayor and Members of the City Council:

I have been retained as counsel by the Initiating Committee for the Amarillo Sanctuary City for the Unborn ordinance petition. The purpose of this letter, unfortunately, is to convey serious concerns arising from the agenda for today's Council meeting.

Specifically, the "Alternative Proposed Ordinance" (Agenda Item 9.H.) is an unnecessary and meaningless distraction from the discussion regarding the Sanctuary City ordinance supported by over 10,000 residents and voters in the City of Amarillo. The proposed "alternative" ordinance would merely regurgitate (portions of) extant state law on abortion. Some of the provisions that would be meaninglessly re-printed as part of the City's Code are not even within the authority of a home rule city, such as setting out a felony offense for performing, inducing, or attempting a prohibited abortion. *See* Tex. Health & Safety Code §§ 170A.002, .004. Municipalities do not have authority to create or punish felony offenses, so re-printing this provision as part of the City Code would have no effect. But even beyond those provisions outside City authority, such as creating a felony offense, re-printing extant state law in the City's code book *accomplishes nothing*.

The Sanctuary City for the Unborn ordinance, on the other hand, is specifically drafted for codification by the municipality to protect precious unborn life in several material ways beyond current state law, to be enforced by means of the civil action provision. The Initiating Committee has highlighted some of those "nonnegotiable" features of the Sanctuary City ordinance for Council in a letter submitted contemporaneously with the petition. Those provisions include **Section 8-6-2** (extending the Texas Heartbeat Act's private enforcement provision to the point of

conception for all elective abortions within the city limits of Amarillo); **8-6-3** (Prohibit Elective Abortions On Residents of Amarillo, Texas, Regardless of Location); **8-6-4** (Prohibit Abortion Trafficking of an Unborn Child); **8-6-5** (Prohibit Abortion-Inducing Drugs); **8-6-6** (Prohibit Criminal Organizations from Doing Business in the City of Amarillo); and **8-6-7** (Prohibit the Transport and Disposal of the Remains of Unborn Children Killed by Elective Abortions). The Sanctuary City proposed ordinance therefore has meaning *beyond* current state law and would go further to protect unborn life in the City of Amarillo and its environs. The “Alternative Proposed Ordinance” at Agenda Item 9.G., by contrast, would be legally meaningless. It would be a performative exercise aimed at thwarting the real, additional protections included in the Sanctuary City ordinance. This is a slap in the face to the 10,000+ residents and voters who signed the petition.¹

The City of Amarillo has already echoed its support for one of the laws referenced in Mayor Stanley’s proposed ordinance. On June 8, 2021, the City Council considered approval of a “Resolution in Support of the Texas Heartbeat Act.” This was described to be a resolution by the City of Amarillo that “would support, endorse what the legislature has done there.” A motion was made by Mayor Pro-Tem Freda Powell and seconded by Councilman Cole Stanley. Prior to the unanimous 5-0 passage of the resolution, Mayor Ginger Nelson stated, “I know there will be folks in our city who do not agree, but I think it’s important to take a stand on this issue in word.” The effect of this resolution, which was drafted on May 28, 2021, shares much in common with Mayor Cole Stanley’s ordinance, apparently now being considered by the Council three years later. Mayor Stanley’s ordinance claims to protect human life by “amending the Amarillo Municipal Code to add State-adopted abortion-related restrictions and prohibitions” but does not accomplish anything more than State law already accomplishes, raising the understandable question whether the City Council wants to simply *appear* to be strongly pro-life—by meaninglessly regurgitating provisions already in state law and repeating something the Council itself has already said through a resolution approved years ago—or whether it wants to actually do something.

Further, to the extent that Agenda Item 9.G. suggests that the Council is considering adopting the ineffectual “alternative” ordinance and simultaneously ordering an election on the Sanctuary City ordinance on its own initiative—shortchanging the process prescribed by the Charter (*see* art. V, sec. 23)—I do not believe the Council has such authority. *See* Agenda Item 9.G. (“Without further proceedings, accept the petition as sufficient evidence of community interest in the topic to merit submitting the proposal to the voters at the next municipal election.”). More precisely, I am not aware of any authority of the Council to preemptively order an (expensive) election on an initiated *ordinance* on its own initiative, as contrasted with the authority of a

¹ While the City Secretary reported that some signatures were not valid for certain technicalities, for example, where a signatory did not designate his or her county of residence (despite inclusion of other identifying information including the street address), or due to technical deficiencies with the notarizations/circulator statements, those signatories are still actual voters within the City of Amarillo whose support for the Sanctuary City ordinance was publicly attested on the petition.

home rule city to order an election on a proposed *charter* amendment, which authority is set out in the Texas Constitution (art. XI § 5) and Tex. Loc. Gov't Code § 9.004(a). Indeed, I am aware that the City of San Angelo specifically asked the Texas Secretary of State in 2021 whether the City had authority to avoid deciding whether to adopt the Sanctuary City ordinance by preemptively submitting the issue to an election. See **Exhibit A** (email from San Angelo Clerk to SOS). The answer subsequently reported to the San Angelo City Council was that the Council lacked such authority.

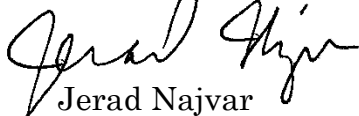
Preemptively ordering an election would therefore represent an invalid end-run around the Amarillo Charter, which prescribes a certain process requiring that Council give proper consideration to the petition-supported ordinance and deciding whether to adopt it. These procedures are clear enough in the Charter and are aptly summarized in **Exhibit B**, the City's own "Initiative and Referendum Process Outline." Under the Charter's procedures, the requirement of an election would come about only at the Initiating Committee's insistence in the event Council does not adopt the Sanctuary City ordinance as proposed. Again, the third option listed under Item 9.G is concerning to the extent it suggests Council is considering ordering an election to preempt this process and avoid its responsibility to consider the Sanctuary City ordinance in good faith.

Relatedly, consideration of the proposed "alternative" ordinance will unnecessarily hamper this process, including by making the requisite public meeting(s) unbearably long.

Lastly, I am attaching a statement from the members of the Initiating Committee themselves as to the rationale and import of this critical ordinance to protecting the rights of the unborn. See **Exhibit C**.

Please do not hesitate to contact me to discuss matters further.

Very respectfully,



Jerad Najvar

Enclosures

From: [Antilley, Julia](#)
To: [REDACTED] EMAIL ADDRESS
Cc: [James, Theresa](#)
Subject: Elections Question
Date: Monday, September 27, 2021 3:51:33 PM

Bill,

I was asked to contact "TML" (by SOS) in regards to my Election Law question. I'm not sure if you are the best person to respond to this, or if there is someone else that you can forward this to... but, in case you can assist, here is our situation:

We are a home rule city with provisions for initiatives & referendums in our charter (https://library.municode.com/tx/san_angelo/codes/code_of_ordinances?nodeId=HOME_RULE_CHARTERCISAAN_EL).

Our citizens want the City Council to propose and vote on an ordinance to become a Sanctuary City for the Unborn, but have not filed a petition or formed an initiating committee.

Our Council does not want to make that decision for everyone, and wants to order an election placing this on a ballot for all voters to decide.

In summary, there has not been a petition filed by an initiating committee, the Council just wants to order an election on the measure. ***Are you aware of any election code that would make this an authorized election?***

From what the SOS said, without any election code that specifically allows this type of election (they mentioned the law that allows for a liquor option election, etc), we would need to follow our charter provisions for calling an election (which brings us back to our Charter's initiative provisions requiring a citizen initiated petition) and the City Council would not be able to just call an election for this proposition. ***Do you concur?***

Thank you,

Julia Antilley
City Clerk
City of San Angelo
72 W. College Ave.
San Angelo, Texas 76903
325-657-4405
www.cosatx.us

Public Information Requests can now be submitted through our portal at <http://www.cosatx.us/OpenRecords>

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AMARILLO CITY CHARTER
INITIATIVE AND REFERENDUM PROCESS OUTLINE

Dec 29, 2023

INITIATING COMMITTEE FILED STATEMENT WITH CITY SECRETARY

- Per Article II, Section 23 (a), at least five registered voters must sign a statement that they are the Initiative Committee (Committee), and file the statement with the City Secretary, along with the full text of their proposed ordinance.

By Apr. 29, 2024

COMMITTEE RETURNS COMPLETED AND SIGNED PETITION TO CITY SECRETARY

- After such statement is filed, the Committee must obtain signatures of not less than 5% of qualified voters in the city. If the Committee does not file the completed and signed petition with the City Secretary by close of business on the 120th day after the date the initiating statement was filed, such petition and the Committee registration shall be deemed to be withdrawn and void. [April 29, 2024 *Day 120 falls on a non-business day, so the deadline falls to the following day]

Up to 21 Days after Petition Received

CITY SECRETARY VERIFIES VALIDITY OF PETITION

- When signatures have been obtained in the number above provided for, and the petition and statement have been provided to the City Secretary, the City Secretary has 21 days to verify the validity of the petition in accordance with the Amarillo City Charter and applicable state law.

Next Regular City Council Meeting

CITY SECRETARY SUBMITS THE PETITION TO CITY COUNCIL

- Once the petition is validated, the City Secretary must submit the petition to City Council at its next regular meeting, in accordance with the Texas Open Meetings Act. The City Secretary must mail to each Committee member a notice of the time of the Council meeting where hearing and consideration shall be open to the public, and the public shall be permitted to present arguments for or against the proposed ordinance.

Within 30 Days After Submission

COUNCIL TAKES ACTION ON THE PROPOSED ORDINANCE

- After this presentation and public hearing, City Council shall, within 30 days from the date the petition is submitted to them, take final action upon the proposed ordinance, by either adopting or rejecting the petition, and such action shall be noted in its Minutes.

Within 20 Days After Council Action

INITIATING COMMITTEE MAY REQUIRE PROPOSED ORDINANCE BE SUBMITTED TO A VOTE

- If City Council refuses to pass the proposed Ordinance, or passes the proposed Ordinance in a form that is amended from the original proposed ordinance, then the Committee may require that the original proposed ordinance be submitted to a vote of Amarillo citizens. Upon a majority vote of the Committee, they shall certify their desire to have the proposed ordinance within 20 days after Council takes action on the proposed ordinance by filing their certificate and statement with the City Secretary.

Next Regular City Council Meeting

CITY SECRETARY PRESENTS STATEMENT AND ORDINANCE TO CITY COUNCIL; COUNCIL ORDERS ELECTION

- After receipt of the certificate and certified copy of the proposed ordinance, the City Secretary shall present the certificate and certified copy of the proposed ordinance to City Council at its next regular meeting, and such ordinance shall be submitted by City Council to a vote of the registered voters in Amarillo at the next election date allowable by state law.

May 4, 2024 or Nov 5, 2024

GENERAL ELECTION HELD WITH INITIATIVE ON THE BALLOT

- If an election is required, upcoming municipal election dates are:
 - May 4, 2024 (Last day to order an election is February 16, 2024)
 - November 5, 2024 (Last day to order an election is August 19, 2024)

**FROM THE AMARILLO SANCTUARY CITY
FOR THE UNBORN CITIZEN INITIATIVE
PETITION INITIATING COMMITTEE**

Thursday, May 23, 2024

Amarillo is an amazing place to live. Our precious unborn children deserve the right to live here too. Amarillo is a Pro-Life community and we believe everyone here, even the unborn, have the right to life, liberty, and happiness. This is very simple. This ordinance saves unborn children.

As a result of the press conference by the City of Amarillo last week, the Sanctuary City for the Unborn Citizen Initiative Petition Initiating Committee has felt it necessary to release a public response.

The Mayor and some members of City Council and City Staff have claimed that this ordinance duplicates state law. Nothing is further from the truth. This ordinance covers six points that are *not covered in state law*.

The Mayor and members of City Council and City Staff have also suggested that this ordinance may infringe on Constitutional rights. We stand behind the belief that this ordinance is fully in line with the Constitution and does not violate anyone's rights, but is carefully written to respect the rights of all people - born and unborn. This ordinance does not prohibit a pregnant mother from traveling to have an abortion. It is a hindrance to an abortion because it prohibits individuals or organizations from assisting with the transportation or funding of the travel for that abortion. This ordinance will ban any attempts to use our roads and airways, or any other means, for the sake of taking the lives of unborn children. This will dissuade individuals and abortion organizations from taking pregnant mothers and their unborn babies across state lines for the purpose of abortion.

This ordinance is not enforced by the City of Amarillo, but is enforced by citizens through a private enforcement mechanism – just like the one that is found in the Texas Heartbeat Act. The private or civil enforcement mechanism involves using a lawsuit as an instrument of justice. While some have claimed this idea of citizens being able to sue those who violate this ordinance as being “unchristian,” we disagree wholeheartedly. If protecting a baby in the womb from being taken and murdered here in Texas, New Mexico, Colorado, Kansas, or anywhere else is not a conservative, Christian viewpoint, then we don't know what is! Proverbs 24:11-12 says, “*Rescue those who are being taken away to death; hold back those who are stumbling to the slaughter. If you say, “Behold, we did not*

know this,” does not he who weighs the heart perceive it? Does not he who keeps watch over your soul know it, and will he not repay man according to his work?” As Christians, we cannot ignore the trafficking of pregnant women across state lines for the purpose of the murder of their unborn children - *regardless of who it is that is taking them.*

Mayor Cole Stanley said that this petition represents the true voice of Amarillo. We agree wholeheartedly. We encourage our leaders elected by the voice of the people to value the same voice of the people who signed this petition to make Amarillo a Sanctuary City for the Unborn. We believe that the majority of the City of Amarillo is pro-life and in favor of banning the trafficking of pregnant mothers and their unborn children.

Anyone can look at the pro-life ballot propositions on the Republican Party primaries over the last several years – this ordinance is fully in line with those propositional statements. We encourage Mayor Cole Stanley and the Amarillo City Council to recognize abortion is not abolished in Texas, Texas is not a Sanctuary State for the Unborn, and there is still much work to be done to protect the lives of unborn children in Amarillo and the entire State of Texas. There are over 10,000 people who see there is more work to be done and who want this ordinance as the law of Amarillo.

Prior to initiating this petition, many changes were made to accommodate the wishes of elected officials in Amarillo, as well as the wishes of pro-life leaders across the city. The bargaining time has closed. In a letter read aloud outside City Hall and turned in to the City Secretary on April 25, 2024, the initiating committee was clear: “the provisions prohibiting abortion found therein are non-negotiable items.” It is now up to the Council and Mayor to vote to accept it. We know and respect each one of them, and we believe they will listen to the people of this community whom they represent.

Life comes before liberty, and we must do all within our legal power to grant life to each citizen – including the unborn. We call upon our elected representatives to accept the will of the people and vote for this ordinance as written. We have done our part; now it is their time to do their part. It is our conviction that if this is passed, good companies with good morals will be drawn to Amarillo; and we will find ourselves blessed by God for standing in the gap for the most helpless in our city and our state.