



A Fact Sheet On the Proposed Ordinance Requiring Compliance with Federal Abortion Laws, Declaring Marshfield, Missouri a Sanctuary for the Unborn (1-23-25)

How many cities and counties have passed “Sanctuary for the Unborn” ordinances throughout the United States? As of Thursday January 23, 2025, a total of 70 cities and 8 counties¹ throughout the U.S. have passed ordinances going as far as they possibly can to protect pregnant mothers and their unborn children. The majority of these governments passed these ordinances through a vote by their Mayor and City Council who are the people’s elected representatives.

Why should the Marshfield City Council pass a SCFTU Ordinance? In 1809, Thomas Jefferson told Maryland Republicans, “The care of human life and happiness and not their destruction is the first and only legitimate object of good government.” The Marshfield City Council has an obligation to preserve the safety, health, peace, good order, comfort, convenience, morals, and welfare of all inhabitants within the City of Marshfield. This ordinance, which ensures the federal abortion-related prohibitions are obeyed, is the very least that Marshfield can do to protect unborn children, their mothers, and their community in a post-Amendment 3 Missouri.

If passed, what would the proposed Marshfield SCFTU Ordinance do and how would it be enforced? The proposed Marshfield Ordinance requires compliance with 18 U.S.C. §§ 1461–62, which prohibits the shipping or receiving of abortion-inducing drugs or abortion-related paraphernalia, as well as 18 U.S.C. § 1531, which prohibits the performing or the aiding or abetting of a partial-birth abortion. The ordinance would be enforced through a private enforcement mechanism allowing private citizens to file civil lawsuits against anyone who violates the ordinance. The ordinance, which places the power to act in the hands of the people, cannot be enforced by the city or by law enforcement in any way. It should also be noted that the proposed ordinance is clear that no action may be taken against mothers who have received an abortion or pregnant mothers who intend to have an abortion.

According to the Marshfield SCFTU Ordinance, what is an abortion? In § 241.001, Definitions, the proposed Marshfield Ordinance defines abortion to mean “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 ordinance is clear the term does not include: “In vitro fertilization or fertility treatments of any type, 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 an act performed with the purpose to save the life or preserve the health of the unborn child, remove a dead unborn child caused by spontaneous abortion, or remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside the uterus.”

Does the Marshfield SCFTU Ordinance prohibit abortion? While some describe the proposed Marshfield SCFTU Ordinance as a de-facto abortion ban, the ordinance does not prohibit abortion or abortion-inducing drugs. As stated before, all the proposed Marshfield SCFTU Ordinance does is require compliance with 18 U.S.C. §§ 1461–62, which prohibits the shipping or receiving of abortion-inducing drugs or abortion-related paraphernalia, as well as 18 U.S.C. § 1531, which prohibits the performing or the aiding or abetting of a partial-birth abortion.

¹ To see a complete list of cities and counties, visit www.sanctuarycitiesfortheunborn.com.

Does the Marshfield SCFTU Ordinance ignore or violate Amendment 3? No. The proposed ordinance does not ignore Amendment 3, but rightly recognizes that 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. In other words, federal laws trump the laws of Missouri and the Constitution of Missouri. Whatever the passage of Amendment 3 means for the State of Missouri, the passage of Amendment 3 cannot nullify laws passed by Congress that bind all fifty states.

What is Missouri Attorney General Andrew Bailey’s position on cities passing ordinances regulating abortion? On Monday, December 16, 2024, Missouri Assistant Attorney General Dominic Barceleau shared before the Rolla City Council, “The Attorney General’s position is that State law does not prohibit cities from regulating abortion in a way that is consistent with state and federal law.”

What is the current status of Missouri’s abortion laws in a post-Amendment 3 Missouri? In an official opinion,² released November 22, 2024, Attorney General Andrew Bailey gave an assessment of the legal effect of Amendment 3 on five statutes: Mo. Rev. Stat. §§ 188.017, 188.030, 188.056, 188.057, and 188.058. Attorney General Bailey said Amendment 3 “will generally prohibit the Attorney General, the Governor, locally elected prosecutors, the Department of Health and Senior Services, the Division of Professional Registration, and other officials from enforcing these provisions” but argued that there were cases in which the laws could be enforced. Attorney General Bailey was also clear that “Should Amendment 3 be construed more narrowly by courts or be amended or repealed in the future to permit greater protection of unborn life, that will automatically restore authority to the Attorney General and other officials to resume broader enforcement.” He went on to say, “Amendment 3 does not remove these statutes from the books, so there will be no need to reenact them if Amendment 3 is altered in the future.”³ While Attorney General Bailey did not specifically address Mo. Rev. Stat. § 188.021.1 in this opinion, which is the statute he referred to in his February 1, 2023 letters to Walgreens⁴ and CVS⁵ as to why it is unlawful to distribute an abortion drug through the mail, it is true that this statute has not been repealed by the State of Missouri or by the passage of Amendment 3 and is still the law of Missouri – regardless if it is currently enforceable or not. While Planned Parenthood has challenged several of Missouri’s laws on abortion in a post-Amendment 3 case filed in Jackson County, it should be understood by all that no ruling in that case or in any other case has the ability to repeal the pro-life laws which have been passed by the legislature of the State of Missouri. So, while it is true that some of Missouri’s abortion laws are now unenforceable, they still exist as the laws of Missouri.

Is the mailing and receiving of abortion-inducing drugs a violation of state and federal laws? Yes. The mailing and receiving of abortion-inducing drugs is a violation of state and federal laws. Unfortunately, many of the abortion laws of the State of Missouri have become unenforceable under Amendment 3. That being said, regardless of what the Missouri statutes and the post-Amendment 3 Constitution of Missouri says on abortion, none of this changes the point made by Attorney General Bailey in his February 1, 2023 letter to Walgreens that “federal law expressly prohibits using the mail to send or receive any drug that will be used or applied for producing abortion.”

² <https://ago.mo.gov/wp-content/uploads/22-2024.pdf>

³ For a better understanding of this principle, view The Writ-of-Erasure Fallacy by Attorney Jonathan F. Mitchell: https://www.supremecourt.gov/opinions/URLs_Cited/OT2017/16-476/16-476-3.pdf

⁴ <https://ago.mo.gov/wp-content/uploads/attachments/2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf>

⁵ <https://ago.mo.gov/wp-content/uploads/attachments/2023-02-01-fda-rule---cvs-letter-tom-moriarty.pdf>

Why is the Marshfield City Council considering this issue if the Supreme Court of the United States said this was a matter for each individual state to decide? The Supreme Court of the United States did not say that the issue of abortion was only to be dealt with at a state level. On June 24, 2022, the Supreme Court of the United States ruled in *Dobbs v. Jackson Women’s Health Organization*, “The Constitution does not confer a right to abortion; Roe and Casey are overruled; and the authority to regulate abortion is returned to the people and their elected representatives.” Notice that the Supreme Court of the United States did not say that the authority to regulate abortion is returned to the States, but they said the authority to regulate abortion is returned “to the people and their elected representatives.” That is at all levels of government: local, state, and federal. Amos 5:15 reads, “Hate evil, and love good, and establish justice in the gate; it may be that the LORD, the God of hosts, will be gracious to the remnant of Joseph.” If abortion-inducing drugs are being mailed into Marshfield, it is not just a state problem but a local problem as well.

Are abortion-inducing drugs really a problem? Abortion-inducing drugs almost always end the lives of unborn children and sometimes abortion-inducing drugs can even take the lives of pregnant mothers. In a February 2023 letter to Walgreens, Missouri Attorney General Andrew Bailey warned the pharmacy chain of the dangers surrounding dispensing abortion-inducing drugs when he wrote:

“Abortion pills are far riskier than surgical abortions, according to established scientific consensus: ‘Medication abortions were 5.96 times as likely to result in a complication as first-trimester aspiration abortions.’ Abortion pills carry the added risk that when these heightened complications invariably occur, women suffer those harms at home, away from medical help. And finally, mail-order abortion pills also invite the horror of an increase in coerced abortions. When abortion drugs are mailed or consumed outside a regulated medical facility, the risk of coercion is much higher—indeed, guaranteed—because there is no oversight. Outside the regulated medical context, a person can obtain an abortion pill quite easily and then coerce a woman into taking it.”⁶

Why was the Marshfield SCFTU Ordinance written to be enforced by a private right of action? The private right of action authorizes private citizens to enforce the ordinance through civil lawsuits while simultaneously barring the city and its officials from having any enforcement role. The ordinance is written this way to shield the city and its officials from lawsuits brought by opponents of the ordinance.

If citizens can already sue under violations of 18 U.S.C. §§ 1461–62 and 18 U.S.C. § 1531, why is a local ordinance requiring compliance to these federal statutes even needed? Federal law allows only individuals who suffer certain types of injuries to sue over violations of 18 U.S.C. §§ 1461–62 and 18 U.S.C. § 1531. What’s more, the federal courts are divided on whether a person who sues to enforce 18 U.S.C. §§ 1461–62 can obtain injunctive relief; many have held that only money damages are available. The ordinances go further by conferring near-universal standing and allowing anyone (other than the city or its officials) to sue those who violate 18 U.S.C. §§ 1461–62, and by authorizing and requiring injunctions to be issued against anyone who violates these federal laws.

Does the Marshfield SCFTU Ordinance have a statute of limitations? Yes. The Marshfield SCFTU ordinance does have a statute of limitations. The ordinance reads, “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.”

⁶ <https://ago.mo.gov/wp-content/uploads/attachments/2023-02-01-fda-rule---walgreens-letter-danielle-gray.pdf>

Should the Marshfield SCFTU Ordinance prevent doctors or nurse practitioners / midwives or other advanced practice providers from providing prenatal, labor, delivery or emergency care for pregnant women in Marshfield? No. Under § 241.001, the proposed ordinance states, “The term [abortion] does not include... an act performed with the purpose to... save the life or preserve the health of the unborn child.” This means drugs shipped or received for the purpose of delivering an unborn child – either preterm or term – should never be affected by this ordinance. Nothing in this proposed ordinance will change anything about the standard of care currently being provided by healthcare professionals in Labor and Delivery in Marshfield, Missouri.

Does the Marshfield SCFTU Ordinance impact the removal of an ectopic pregnancy? No. § 241.001 states, “The term [abortion] does not include ... an act performed with the purpose to ... remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.” This means drugs shipped or received for the purpose of the removal of an ectopic pregnancy will never be affected by this ordinance.

Does the Marshfield SCFTU Ordinance impact the treatment of miscarriages? No. § 241.001 states, “The term [abortion] does not include ... an act performed with the purpose to ... remove a dead unborn child caused by spontaneous abortion.” This means drugs shipped or received for the purpose of the removal of a dead child due to a miscarriage will never be affected by this ordinance.

Does the Marshfield SCFTU Ordinance prohibit birth control, IUD’s, or emergency contraception? No, the proposed ordinance does not even prohibit abortion or abortion-inducing drugs. Still, the proposed Marshfield SCFTU Ordinance goes out of the way to make clear that it does not prohibit birth control, IUD’s or emergency contraception. § 241.001’s definition of abortion states, “The term [abortion] does not include ... The use, prescription, administration, procuring, or selling of Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception.”

Does the Marshfield SCFTU Ordinance protect medical professionals who have no intention to violate the ordinance? Yes, the proposed ordinance has built-in affirmative defenses for medical professionals who have no intention to violate 18 U.S.C. §§ 1461–62, which prohibits the shipping or receiving of abortion-inducing drugs or abortion-related paraphernalia, or 18 U.S.C. § 1531, which prohibits the performing or the aiding or abetting of a partial-birth abortion. § 241.004 reads, “A defendant against whom an action is brought under § 241.003 may assert an affirmative defense to liability under this section if ... The conduct which the defendant is being sued ... was not intended to assist or facilitate the performance of an elective abortion; or 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.” “Major bodily function” is defined in this section to include, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

What if the City of Marshfield is sued for passing the Marshfield SCFTU Ordinance? If the proposed ordinance is adopted by the Marshfield City Council and the city faces a lawsuit as a result of the adoption of this ordinance Attorney Jonathan F. Mitchell, the former Texas Solicitor General, has agreed to represent the City of Marshfield, Missouri at no cost to the city and at no cost to taxpayers for any litigation which results in their passage of this ordinance.