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

WHEREAS, the City Council of the City of Tenaha hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder “with malice aforethought” since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their unborn children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, 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.”);

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Tenaha, including the unborn and pregnant women, the City Council has found it necessary to outlaw human abortion within the city limits.

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

A. DEFINITIONS

1. "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices, oral contraceptives, 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. “Child” means a natural person from the moment of conception until 18 years of age.

3. “Unborn child” means a natural person from the moment of conception who has not yet left the womb.

4. “Abortionist” means any person, medically trained or otherwise, who causes the death of the child in the womb. The term does not apply to any pharmacist or pharmaceutical worker who sells birth control devices, oral contraceptives, or emergency contraception. The term includes, but is not limited to:

(a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind.

(b) Any other medical professional who performs abortions of any kind.

(c) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind.

(d) Any remote personnel who instruct abortive women to perform self-abortions at home.

5. “City” shall mean the city of Tenaha, Texas.

6. “Emergency contraception” means any chemical or substance which is manufactured for the express purpose of use after unprotected sexual intercourse and which may function as an abortifacient to end the life of an unborn child by preventing implantation of the zygote in the uterine lining. This definition includes Ella, Plan B, Next Choice One Dose, and My Way.

B. DECLARATIONS

1. We declare Tenaha, Texas to be a Sanctuary City for the Unborn.

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.4.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. Any organization which merely provides birth control devices or oral contraceptives to prevent pregnancy, or which merely dispenses emergency contraception, and does not perform abortions or assist others in obtaining abortions is not declared to be a criminal organization under this section.

These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;

(b) Jane's Due Process;

(c) The Afiya Center;

(d) The Lilith Fund for Reproductive Equality;

(e) NARAL Pro-Choice Texas;

(f) National Latina Institute for Reproductive Health;

(g) Whole Woman's Health and Whole Woman's Health Alliance;

(h) Texas Equal Access Fund;

4. The Supreme Court's rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a unborn child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Tenaha.

5. The sale of emergency contraception by any entity which physically resides within the jurisdiction of the City is declared to be unlawful.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Tenaha, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Tenaha, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside of the city limits of Tenaha, TX. This includes, but is not limited to, the following acts:

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

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

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

3. EMERGENCY CONTRACEPTION --- It shall be unlawful for any person or entity which physically resides within the jurisdiction of the City to sell, distribute, or otherwise provide emergency contraception. This section may not be construed to prohibit the use of emergency contraception, or to prohibit the sale, distribution, or provision of emergency contraception via an entity outside the jurisdiction of the City.

4. AFFIRMATIVE DEFENSE — It shall be an affirmative defense to the unlawful acts described in Sections C.1, C.2, and C.3 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.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Tenaha, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Tenaha, Texas;

(b) Renting office space or purchasing real property within the City of Tenaha, Texas;

(c) Establishing a physical presence of any sort within the City of Tenaha, Texas;

6. No provision of Section C may be construed to prohibit any action which occurs outside of the jurisdiction of the City.

D. PUBLIC ENFORCEMENT

1. Neither the City of Tenaha, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

Provided, that no punishment shall be imposed upon the mother of the unborn child that has been aborted, or upon a woman who has purchased emergency contraception solely for her own use in or outside the city of Tenaha, Texas.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1, C.2, or C.3, other than the mother of the unborn child that has been aborted, shall be liable in tort to any surviving relative of the aborted unborn child, including the child's mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted unborn child for:

(a) Compensatory damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Costs and attorneys' fees.

There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

(a) Injunctive relief;

(b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

(c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the unborn child that has been aborted, or against a woman who has purchased emergency contraception solely for her own use. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Tenaha, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY

1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications

in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council's intent in Section F.1

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would "rewrite" the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2, for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

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

PASSED, ADOPTED, SIGNED and APPROVED,
MONDAY, SEPTEMBER 23rd, 2019