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Jennifer L. Brinkley

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Sanctuary Cities and Counties for the Unborn: The Use of Resolutions and Ordinances to Restrict Abortion Access

BY JENNIFER L. BRINKLEY*

Santa Rosa County in Florida is the first county in Florida to be designated as a pro-life sanctuary. Florida joins other states--including Illinois, New Mexico, Texas, North Carolina, and Utah--in passing resolutions and ordinances declaring localities as sanctuaries for the unborn. Some localities declare life begins at conception, ban abortion services (including access to emergency contraception), classify abortion as murder with malice aforethought, label pro-choice organizations as criminal enterprises, and create civil causes of action against abortion providers and those who assist women in obtaining an abortion. Most of the localities that have enacted the ordinances and resolutions have small populations and do not have abortion clinics. This article examines the sanctuary movement at the local level across the United States. It discusses the intersection of romantic paternalism with reproductive jurisprudence, the emergence and proliferation of TRAP laws, and the resolutions and ordinances making up the sanctuary movement.

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* Jennifer L. Brinkley is an Assistant Professor of Legal Studies at the University of West Florida and a licensed attorney in the Commonwealth of Kentucky. Thanks to Professor Mary Ziegler for her feedback and advice. Thanks also to Emily Turner for helping revise this article. I would like to also thank Kristina Bitzer, Abigail Cabanin, Shannon Cervantes, Sarah Freund, Megan Fitzgerald, Austin Kelley, Julia Lobo, Biljana Mora, and Will Owens for their help in revising the manuscript. Their hard work and editing skills greatly improved the piece and they should be recognized.

I. INTRODUCTION

“What good is *Roe* if you have put all of these blocks in the way?”¹
-Marsha Jones, Executive Director of the Afiya Center

Santa Rosa County, located outside of Pensacola, recently attempted to become Florida’s first “pro-life sanctuary” county. A county commissioner brought forth a resolution declaring said status.² The resolution in Santa Rosa County attempted to designate the county as “a sanctuary for life where the dignity of every human being will be defended and promoted from life inside the womb through all stages of development in life up and until a natural death.”³ Instead of passing the resolution, the commission unanimously voted to put the question on the ballot in November 2020 for voters to make the decision. Voters answered the following question: “Shall citizens of Santa Rosa County declare that Santa Rosa County is a Sanctuary for Life?”⁴ Voters approved the sanctuary for life referendum with 57 percent of the vote.⁵ Currently, Santa Rosa County does not have an abortion clinic.⁶

Though Santa Rosa County is the first county in Florida to establish this designation, it is not the first county to obtain sanctuary status in the United States. In fact, resolutions and ordinances have been presented to local governments from North Carolina to New Mexico. City councils and county commissions are being asked to pass resolutions and ordinances that designate their specific localities “sanctuaries for the unborn.” Some declare life begins at conception, ban abortion services (including access to emergency

1. Esther Wang, *Inside the Plan to End Legal Abortion*, JEZEBEL (May 22, 2020, 10:00 AM), <https://theslot.jezebel.com/inside-the-plan-to-end-legal-abortion-1843155358> [<https://perma.cc/QL59-NL6W>].

2. Annie Blanks, *Santa Rosa Will Let Voters Decide Abortion Issue*, SANTA ROSA’S PRESS GAZETTE, Feb. 15, 2020, at A1.

3. *A Resolution of the Board of County Commissioners of Santa Rosa County, Florida, Declaring Santa Rosa County, Florida To Be a Sanctuary for Life*, SANTA ROSA CNTY. COMM’N (Feb. 13, 2020), <https://santarosacofl.civicclerk.com/Web/GenFile.aspx?ad=4616> [<https://perma.cc/7ZS7-P3VM>].

4. Pam Brannon, *Voters to Decide if Santa Rosa Is a Sanctuary for Life*, GULF BREEZE NEWS (Aug. 27, 2020), <https://news.gulfbreezenews.com/articles/voters-to-decide-if-santa-rosa-is-a-sanctuary-for-life/> [<https://perma.cc/KF7Z-KRU9>].

5. Annie Blanks, *Santa Rosa County Votes Yes on Referendum*, SANTA ROSA’S PRESS GAZETTE, Nov. 7, 2020, at 3A.

6. Annie Blanks, *Santa Rosa County Poised to Be Florida’s First ‘Pro-Life Sanctuary’*, NWF DAILY NEWS (Feb. 10, 2020, 4:01 PM), <https://www.nwfdailynews.com/news/20200210/santa-rosa-county-poised-to-be-floridas-first-pro-life-sanctuary> [<https://perma.cc/F6E7-U35P>].

contraception like Plan B), classify abortion as murder with malice aforethought, label pro-choice organizations as criminal enterprises, and create civil causes of action against abortion providers and those who assist women in obtaining an abortion. This article examines the movement pushing local governments to create sanctuary status across the country. Most of the localities that have enacted the ordinances and resolutions have small populations and do not have abortion clinics.⁷

The American College of Obstetricians and Gynecologists states that “safe, legal abortion is a necessary component of women’s health care.”⁸ In the United States, almost one-fourth of women aged fifteen to forty-four years will seek an abortion by the age of forty-five.⁹ Decades of data indicate abortion procedures are safe, yet this particular medical procedure has become highly stigmatized and politicized, resulting in atypical regulation. It is essential health care for women yet is often not offered by a woman’s usual health care provider.¹⁰ States are increasingly passing laws restricting abortion access for women, placing the procedure out of reach for many, without improving patient care. This article briefly examines the history of laws making abortion more difficult to obtain, particularly state statutes enacted since *Roe v. Wade*. It is important to understand what has happened at the state level, leading to the creation of local abortion bans. Not only are these local resolutions and ordinances legally ineffective under *Roe v. Wade*, they are confusing as to what legal reproductive health care options exist.

Therein lies the crux of the problem with sanctuary resolutions and ordinances. Though largely symbolic and not legally actionable, when localities wade into this area and pass piecemeal resolutions and ordinances, citizens become confused about what is legal reproductive care. The name itself brings confusion as most think of immigration when sanctuary cities or counties are mentioned. How does the lay person understand what a sanctuary city truly means? How do physicians properly provide reproductive care when their recommendations for patients are undermined by local governmental bodies? Who do women trust when the opinion of physicians and local city council members or county commissioners are in contradiction? If local ordinances conflict with state laws, how do physicians act without fear of civil

7. Harmeet Kaur, *Small Towns in Texas Are Declaring Themselves ‘Sanctuary Cities for the Unborn,’* CNN (Jan. 25, 2020, 9:53 AM), <https://www.cnn.com/2020/01/25/us/sanctuary-cities-for-unborn-anti-abortion-texas-trnd/index.html> [https://perma.cc/FJZ5-6AW3].

8. THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, COMMITTEE OPINION NUMBER 815: INCREASING ACCESS TO ABORTION (2020), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2020/12/increasing-access-to-abortion.pdf> [https://perma.cc/4U84-AGZB] [hereinafter ACOG OPINION].

9. Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904, 1904-09 (2017).

10. See ACOG OPINION, *supra* note 8.

or criminal consequences? How do women act without fear of legal consequences?

Designations of sanctuaries for life or sanctuaries for the unborn attempt a simple, black and white answer to the complex abortion issue: it should not be permitted in that locality. This cannot be the end of the story, however, when abortion is a legal, constitutional right. Instead of clarifying this area, resolutions and ordinances add misunderstanding to an already layered subject. It is important to note most of the counties and cities do not have abortion clinics. Additionally, most of the city councils and county commissions are made up of mostly men, if not all men. As Part II discusses, there is a long history in the United States of men making decisions with the intention of protecting women. However, as time has progressed, the consequence of this type of legislative decision-making has served only to oppress women, and not to alleviate their burdens.

II. ROMANTIC PATERNALISM AND ITS INTERSECTION WITH REPRODUCTIVE JURISPRUDENCE

The ability to physically bear a child is a major differentiation between the sexes. Yet, historically, the decisions surrounding reproductive rights have primarily been made by males. Legislative bodies have been predominantly male. Judiciaries have been largely male. Women were not permitted to practice before the United States Supreme Court until 1879. A woman did not sit opposite the advocates at the Court until 1981, when Sandra Day O'Connor was confirmed as an Associate Justice. Finally, there was a female voice interpreting and applying the law in the cases argued before the Court.

Historically, the doctrine of romantic paternalism is entrenched in the jurisprudence of the United States Supreme Court and past legislative actions alike. Romantic paternalism is the idea that women need increased legal protection because they are the weaker sex.¹¹ When women married in the 1800s, they immediately reverted to the legal rights of a child. Husbands, under the principle of coverture, were legally superior. Women lost their ability to contract, draft wills, sue or be sued in court, or own property upon marriage.¹² Men were the providers and protectors; women were expected to perform domestic functions and raise children. Men were permitted to use acts of abuse, including rape, to maintain order within the home. Considered heads

11. SUP. CT. HISTORICAL SOC'Y, SUPREME COURT DECISIONS AND WOMEN'S RIGHTS: MILESTONES TO EQUALITY 1 (Clare Cushman ed., 2011).

12. *Id.*

of the household, men were permitted by courts to use force in order to uphold control.¹³ It was not until the 1830s that states began to pass Married Women's Property Acts which extended some legal rights to married women.¹⁴

As married women began to obtain limited property rights in some states, a movement to diminish reproductive rights was afoot. Prior to the nineteenth century, abortion was governed by traditional British Common Law in the United States.¹⁵ The common law did not "recognize the existence of a fetus in criminal cases until it had quickened," meaning the perception of fetal movement by the pregnant woman usually in the fourth or fifth month of pregnancy.¹⁶ Before quickening, women were permitted to take actions to end an early pregnancy under the law. Women had access to home medical manuals advising them how to obtain a release of "obstructed menses," as well as access to midwives and other healers.¹⁷ Opposition to this practice would come during the late 1840s when the American Medical Association (AMA) began a movement opposing abortion. In support, the AMA cited health concerns and felt it necessary to prevent women from "overlooking the duties imposed" by the marriage contract.¹⁸

Dr. Horatio Storer, an anti-abortion professor of obstetrics and medical jurisprudence, co-authored a book in 1868 titled *Criminal Abortion: Its Nature, Its Evidence, and Its Law*.¹⁹ In the book, he argued for criminal liability to attach to abortion and to recognize as murder the willful killing of a human being in any form of its existence.²⁰ The book also argued "[t]hat medical men are the physical guardians of women and their offspring; from their position and peculiar knowledge necessitated in all obstetric matters to regulate public sentiment, and to govern the tribunals of justice." This passage makes clear romantic paternalism extended beyond legislatures and courtrooms.

Additionally, the authors wanted to push for a male-centered obstetric approach, thereby removing midwives from the baby business. Though male physicians replaced midwives in service to white upper- and middle-class women, midwives still delivered the lion's share of babies in rural and

13. Ruth H. Bloch, *The American Revolution, Wife Beating, and the Emergent Value of Privacy*, 5 EARLY AM. STUD. 223, 246-47 (2007).

14. J. SHOSHANNA EHRLICH, FUNDAMENTALS OF FAMILY LAW 3 (2016).

15. James C. Mohr, *The Abortion Landscape, 1800-1880* in WOMEN'S AMERICA: REFOCUSING THE PAST 169 (Linda K. Kerber et al. eds., 2020).

16. *Id.*

17. *Id.*

18. Christopher P. Keleher, *Double Standards: The Suppression of Abortion Protesters' Free Speech Rights*, 51 DEPAUL L. REV. 825, 834 (2002).

19. HORATIO STORER & FRANKLIN FISKE HEARD, CRIMINAL ABORTION: ITS NATURE, ITS EVIDENCE, AND ITS LAW 1 (1868).

20. *Id.* at 9.

Black communities.²¹ Michele Goodwin argues the takeover of women's medical care by male physicians, with the support of the AMA, needs greater attention. In her groundbreaking book, *Policing the Womb: Invisible Women and the Criminalization of Motherhood*, Goodwin claims the history of this monopolization discredits the "notion that anti-abortion sentiment is rooted historically in care for the fetus, and illuminates the entanglement of social status, political power, and the fight over control of women's bodies."²² The anti-abortion movement grew out of a patriarchal, and segregationist, desire to monopolize an industry: reproductive care.²³ States soon began passing statutes criminalizing abortion. Each state had laws prohibiting abortion, with the exception to save the life of the mother, by the turn of the twentieth century.²⁴

The notion of romantic paternalism did not shift by the turn of the century, however. Eugenics laws were enacted, and upheld by the United States Supreme Court, to sterilize those deemed "manifestly unfit from continuing their kind."²⁵ The Court clearly upheld the doctrine of romantic paternalism in 1961 when it refused to apply the Equal Protection Clause of the Fourteenth Amendment in a jury selection case.²⁶ Women in Florida had to go to the courthouse and opt into jury service to be considered, while men were automatically drawn for service. The Court noted that women were "still regarded as the center of home and family life"²⁷ and states could exempt them from jury service "based solely on their sex."²⁸ It was not until 1971, in *Reed v. Reed*, that the Court applied the Equal Protection Clause of the Fourteenth Amendment to sex-based differentials within the law.²⁹

The United States Supreme Court decided *Roe v. Wade* in 1973, establishing a fundamental right to privacy, which included a woman's choice whether to have an abortion.³⁰ The Court used the Due Process Clause of the Fourteenth Amendment in the recognition of this privacy right and set out a trimester approach. In the first trimester, states would have limited power to regulate abortion. In the second trimester of pregnancy, states would have increased power to regulate abortion in an effort to protect the health and life

21. Sharon A. Robinson, *A Historical Development of Midwifery in the Black Community: 1600-1940*, 29 J. NURSE-MIDWIFERY 247 (1984).

22. MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* 52 (2020).

23. *Id.*

24. NANCY LEVIT & ROBERT R. M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 132 (2016).

25. *Buck v. Bell*, 274 U.S. 200, 207 (1927).

26. *Hoyt v. Florida*, 368 U.S. 57, 59 (1961).

27. *Id.* at 62.

28. *Id.* at 61.

29. *Reed v. Reed*, 404 U.S. 71, 75 (1971).

30. *Roe v. Wade*, 410 U.S. 113 (1973).

of the mother. In the third trimester, states could pass legislation to protect fetal life.³¹

Roe v. Wade certainly did not settle disputes once and for all regarding abortion access. Federal and state legislation was soon to come in attempts to test the decision. Passed in 1976, the Hyde Amendment banned Medicaid funding for abortion, making abortion next to impossible for poor women.³² The Hyde Amendment was tested in *Harris v. McRae* with the United States Supreme Court holding states participating in Medicaid were not obligated to fund medically necessary abortions.³³ Skip ahead to 1992, when the Court took up the case *Planned Parenthood v. Casey*.³⁴ A Pennsylvania law required informed consent and a twenty-four hour waiting period prior to an abortion. A minor was required to have parental consent from one parent and a married woman was required to notify her spouse of the abortion.³⁵ The Court upheld *Roe v. Wade* but held a state regulation is only unconstitutional if it creates an “undue burden” on the woman’s right to choose, defining “undue burden” as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”³⁶ The Court did not reach its decision using the Equal Protection Clause, but the opinion cited Rosalind Petchesky’s work regarding equality: “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”³⁷

In 2016, the Court issued its decision in *Whole Woman’s Health v. Hellerstedt*.³⁸ The Texas Legislature had passed House Bill 2, which restricted abortion access in several ways, including requiring physicians to have admitting privileges at a hospital within thirty miles of the clinic and that clinics comply with regulations expected of ambulatory surgical centers. In its decision, the Court held the requirements in House Bill 2 did not confer any medical benefits to patients that could justify the burdens imposed. As such, the law was unconstitutional. In her concurrence, Justice Ruth Bader

31. *Id.* at 164-65.

32. Mary Ziegler, *The Supreme Court’s June Medical Decision Is Part of a Decades-Long Shift in the Fight Over Abortion—And Offers a Clue About What’s Next*, TIME (June 29, 2020, 2:18 PM), <https://time.com/5861196/june-medical-abortion-history/> [<https://perma.cc/DB7B-5WYP>]. As this article cannot fully address all of the Supreme Court cases in this line, the author highly recommends Mary Ziegler’s book, *Abortion and the Law in America: From Roe v. Wade to Present*. It provides an in-depth and expert analysis of this subject. MARY ZIEGLER, *ABORTION AND THE LAW IN AMERICA: FROM ROE V. WADE TO PRESENT* (2020).

33. *Harris v. McRae*, 448 U.S. 297, 326 (1980).

34. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992).

35. *Id.* at 844.

36. *Id.* at 924-25.

37. *Id.* at 856 (citing ROSALIND POLLACK PETCHESKY, *ABORTION AND WOMAN’S CHOICE: THE STATE, SEXUALITY, AND REPRODUCTIVE FREEDOM* 109, 133 (1990)).

38. *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

Ginsburg pointed out abortions are inherently safe medical procedures, more so than childbirth, and laws that restrict abortion by arguing patient safety could not pass judicial review.³⁹

At the end of June 2020, the United States Supreme Court issued its decision in *June Medical Services v. Russo*.⁴⁰ Louisiana had passed Act 620 which required any doctor who performs abortions to hold “active admitting privileges at a hospital . . . located not further than thirty miles from the location at which the abortion is performed or induced.”⁴¹ Act 620 was similar to Texas House Bill 2, which was deemed unconstitutional by the Court in 2016.⁴² The Court agreed with the District Court’s finding that Act 620 was unconstitutional, also recognizing the District Court’s finding as proper that abortion providers having hospital admitting privileges had not been proven to show patients have better outcomes.⁴³

It is highly unlikely that city councils and county commissions are well versed in the history of reproductive jurisprudence. It is a complicated area with overlapping state and federal issues. As such, localities should defer to state and federal legislation in these areas. Should citizens wish to lobby localities to pass resolutions and ordinances impacting abortion access, the response should be to take the concerns to the elected representatives at the state or federal level. Those lawmakers possess the resources to make fully realized decisions based on scientific evidence presented at committee hearings as well as to engage in debate on the legislative floor. It is imperative that any regulation of abortion rely upon best evidentiary practices to improve patient health and safety. To do so effectively, however, there must first be an agreement by legislators that abortion is essential health care.

III. THE EMERGENCE AND PROLIFERATION OF TRAP LAWS

Abortion is legal in the United States; however, individual states have been passing TRAP laws in recent years to chip away at the *Roe* guarantees. TRAP laws are targeted regulation of abortion providers designed to make abortion access increasingly difficult for women. There is now a movement at the local level to bring forward resolutions and ordinances that recognize a specific city or county as a sanctuary for the unborn. Before discussing the local movement, it is important to examine ways state legislatures pass statutes that make abortion inaccessible for the poor and marginalized.

39. *Id.* at 2320-21.

40. *June Med. Servs. v. Russo*, 140 S. Ct. 2103 (2020).

41. *Id.* at 2108.

42. *Whole Woman’s Health*, 136 S. Ct. at 2318.

43. *June Med. Servs.*, 140 S. Ct. at 2132.

These strategic statutes “cripple access to safe, legal abortion” while undermining constitutional rights.⁴⁴

A common type of abortion restriction imposes requirements on the physician or on the facility—for example, requiring that the physician have admitting privileges in a nearby hospital or that the building meet the requirements of an ambulatory surgical center, including hallways of a certain width and procedure rooms. There is no evidence that these laws make abortion any safer. But they do require costly investments into the building that few clinics can afford. As a result, clinics close, as happened when Texas enacted House Bill 2 in 2013, shuttering 17 of 41 clinics in the state, increasing the distance women had to travel, and reducing the abortion rate by 14%. Passing laws that shutter clinics is like a ban on abortion for people who cannot easily travel to a more distant facility.⁴⁵

Laws requiring admitting privileges for abortion providers offer little impact to the patient and give great power to hospitals.⁴⁶ In essence, hospitals have state-mandated veto power over whether the abortion provider can perform their job.⁴⁷ Additionally, even if abortion providers can obtain admitting

44. MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* 3 (2020).

45. DIANA GREEN FOSTER, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING—OR BEING DENIED—AN ABORTION* 71 (2020). This book contains a fascinating longitudinal study of what happens when women are turned away from obtaining an abortion. The data indicates how women are harmed when they are unable to access abortion.

46. *Targeted Regulations of Abortion Providers*, GUTTMACHER INST. (Aug. 1, 2020), <https://www.guttmacher.org/print/state-policy/explore/targeted-regulation-abortion-providers> [<https://perma.cc/97VR-NMB3>]. The Guttmacher Institute published the following highlights about Targeted Regulation of Abortion Providers as of Aug. 1, 2020. Some of the highlights include: twenty-three states have laws or policies that regulate abortion providers and go beyond what is necessary to ensure patients’ safety (all apply to clinics that perform surgical abortion); seventeen states have onerous licensing standards many of which are comparable or equivalent to the state’s licensing standards for ambulatory surgical centers; eighteen states have specific requirements for procedure rooms and corridors, as well as requiring facilities be near and have relationships with local hospitals; eleven states place unnecessary requirements on clinicians that perform abortions. *Id.*

47. Rachel Benson Gold & Elizabeth Nash, *TRAP Laws Gain Political Traction While Abortion Clinics—and the Women They Serve—Pay the Price*, 16 GUTTMACHER POL’Y REV. 9 (2013).

privileges, hospitals can require a certain number of patients per year be admitted in order for the physician to maintain privileges. As abortion providers rarely need to admit patients, compliance cannot be had with these onerous regulations.⁴⁸ Other examples of TRAP laws include waiting periods, ultrasounds, counseling requirements (often not in compliance with scientific data), telemedicine bans—all to fit a narrative that abortion is a dangerous procedure. TRAP laws have been effective, as noted by the National Academies of Sciences, Engineering, and Medicine 2018 report on the safety and quality of abortion care:

The overall number of facilities providing abortions—especially specialty abortion clinics—is declining. The greatest proportional decline is in states that have enacted abortion-specific regulations. In 2014, there were 272 abortion clinics in the United States—17 percent fewer than in 2011—and 39 percent of women of reproductive age resided in a county without an abortion provider. Twenty-five states have five or fewer abortion clinics; five states have only one abortion clinic. An estimated 17 percent of women travel more than 50 miles to obtain an abortion.⁴⁹

Abortion is among the most regulated medical procedure conducted in the United States.⁵⁰ States are at the forefront of regulating health care services and facilities.⁵¹ Abortion services are regulated differently than other office-based procedures. The laws appear on the face to be passed in the spirit of protecting women who are having abortions. However, continuing pregnancy and giving birth can bring far greater risks than having an abortion procedure.⁵² The risk of death from childbirth is about fourteen times higher than the risk of death from abortion.⁵³ One in four births in the United States involves a serious complication.⁵⁴ The National Academies of Sciences, Engineering, and Medicine report concluded the “clinical evidence

48. *Id.* at 10.

49. NAT'L ACADS. OF SCIS., ENG'G, & MED., *THE SAFETY AND QUALITY OF ABORTION CARE IN THE UNITED STATES* 6 (2018).

50. *Id.*

51. *Id.*

52. FOSTER, *supra* note 45, at 151.

53. Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *OBSTETRICS & GYNECOLOGY* 215, 216 (2012).

54. FOSTER, *supra* note 45, at 143.

makes clear that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective.”⁵⁵ Women are endangered when they do not have access to safe abortion.

A 2015 study looked at 2009-2010 data among women covered by Medicaid in California who had abortions. The study analyzed complications following the procedure, defined as “receiving an abortion-related diagnosis or treatment at any source of care within 6 weeks after an abortion.”⁵⁶ The researchers identified 54,911 abortions among 50,273 fee-for-service Medical beneficiaries in 2009 and 2010. Among the identified abortions, a 2.1% abortion-related complication occurred.⁵⁷ The results show the complication rate is lower than what is found during childbirth.⁵⁸ The researchers encouraged state legislative bodies to review the data when determining policy regarding the regulation of abortion.

State legislatures have passed regulations such as ambulatory surgical center requirements (23 states), transfer agreement laws (eight states), and hospital admitting privileges requirements (13 states) with the stated intent to increase safety. Given that in practice their ultimate effect often is the closure of abortion facilities, there is a need to consider the public health effect of these policies, weighing any theoretical incremental reduction in patient risk that may occur against any increases in risk that may occur with reduced access to abortion care.⁵⁹

Roe v. Wade sanctioned abortion procedures to be performed in safe settings by experienced providers. As such, following the decision, American women who chose abortion saw reduced abortion-related complications.⁶⁰ Abortion is less likely than a penicillin injection to cause death.⁶¹ It is imperative that when abortion is restricted, it is done so with the best evidentiary practices in mind. Statutes and regulations should not be punitive; they should be enacted only for the purpose of improving patient safety and care.

55. NAT'L ACADS. OF SCIS., ENG'G, & MED., *THE SAFETY AND QUALITY OF ABORTION CARE IN THE UNITED STATES* 10 (2018).

56. Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 *OBSTETRICS & GYNECOLOGY* 175 (2015).

57. *Id.* at 181.

58. *Id.*

59. *Id.* at 182.

60. *Id.*

61. Willard Cates, Jr., David A. Grimes & Kenneth F. Schulz, *The Public Health Impact of Legal Abortion: 30 Years Later*, 35 *PERSPS. ON SEXUAL & REPROD. HEALTH* 25 (2003).

Regulations intended to stigmatize and shame women interfere with routine clinical care and result in harm to the health of women.⁶²

The abortion debate is often framed as a fetus's rights vs. the rights of the mother. As Diana Greene Foster points out in her book, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion*, it is important to recognize the debate involves other considerations. She submits abortion is “also about whether women get to have children when they are ready to care for them.”⁶³ Nationally, more than half of the women choosing abortion are already mothers to prior-born children.⁶⁴ In making this choice, they are thinking of their existing children and how to meet their needs. When TRAP laws make abortion inaccessible and women are turned away, the existing children are negatively impacted, along with the mothers.

It may be challenging to understand the detrimental impact TRAP laws have without looking at the impacts within a state, for example, Texas. Data show Texas can be a dangerous place to live for a woman who is pregnant, in the process of giving birth, or postpartum. A 2016 research study of mortality death rates shows after 2010 the reported maternal mortality rate for Texas doubled within a two-year period to levels not seen in other states.⁶⁵ Maternal mortality is an important indicator of the quality of health care in a particular area.⁶⁶ Using data showing maternal deaths in 2011-2012, Black women are the most at risk in Texas for maternal death.⁶⁷ Texas has the highest uninsured rate in the United States, yet has rejected a federally funded expansion of Medicaid that would cover 1.1 million additional Texans.⁶⁸ More than half of the childbirths in Texas are covered by Medicaid funding; however, it expires sixty days following the birth.⁶⁹ Even in light of the high mortality rate, and the funding needs, Texas is one of several states

62. See ACOG OPINION, *supra* note 8.

63. FOSTER, *supra* note 45, at 214.

64. *Id.* at 199.

65. Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues*, 128 *OBSTETRICS & GYNECOLOGY* 447, 447–55 (2016).

66. *Id.*

67. TEX. DEP'T OF STATE HEALTH SERVS., *MATERNAL MORTALITY AND MORBIDITY TASK FORCE AND DEPARTMENT OF STATE HEALTH SERVICES JOINT BIENNIAL REPORT 5* (2016), <https://www.dshs.texas.gov/mch/pdf/2016BiennialReport.pdf> [<https://perma.cc/82ZX-Q82V>].

68. Sophie Novack, *Texas' Maternal Mortality Rate Tops Any Developed Country. What are Lawmakers Doing About It?*, *TEX. OBSERVER* (Apr. 18, 2017, 1:11 PM), <https://www.texasobserver.org/texas-maternal-mortality-rate-tops-developed-country-lawmakers/> [<https://perma.cc/BH9V-RCE7>].

69. TEX. DEP'T OF STATE HEALTH SERVS., *supra* note 67.

to bar Planned Parenthood affiliates from providing health care services from the use of public funds.⁷⁰

In 2011, Texas enacted the most radical legislation to date, cutting funding for family planning services by two thirds — from \$111 million to \$37.9 million for the 2-year period. The remaining funds were allocated through a three-tiered priority system, with organizations that provide comprehensive primary care taking precedence over those providing only family planning services...The Texas legislature also imposed new restrictions on abortion care and reauthorized the exclusion of organizations affiliated with abortion providers from participation in the state Medicaid waiver program, the Women's Health Program (WHP), which was due for renewal in January 2012. Although the exclusion had not previously been enforced by the state Health and Human Services Commission, it runs contrary to federal policy, and the renewal of the WHP was declined by the Centers for Medicare and Medicaid Services. In 2010, the WHP provided services to nearly 106,000 women 18 years of age or older with incomes below 185% of the federal poverty level who had been legal residents of Texas for at least 5 years. Almost half of these women were served at Planned Parenthood clinics. To implement the legislation and funding cuts, the Texas Department of State Health Services reduced the number of funded family planning organizations from 76 to 41. Some of the largest organizations that continue to receive funding lost up to 75% of their budgets.⁷¹

In light of the 2016 study, two bills addressing the high mortality rate were filed in the Texas Legislature; however, the bills did not survive the

70. Amanda J. Stevenson et al., *Effect of Removal of Planned Parenthood from the Texas Women's Health Program*, 374 *NEW ENG. J. MED.* 853, 853-60 (2016).

71. Kari White et al., *Cutting Family Planning in Texas*, 367 *NEW ENG. J. MED.* 1179, 1179-81 (2012).

House floor.⁷² The demographics of the Texas Legislature in 2017 is an important factor to consider. In 2017, women made up half of the Texas population yet represented only one of every five legislators.⁷³ Forty-three percent of the Texas population was white yet white lawmakers made up nearly two-thirds of the legislature.⁷⁴ In the 2017 legislative session, the number of white Democrats in the legislature had decreased to six.⁷⁵ Nearly twenty anti-abortion bills were filed in the Texas legislature in the 2017 session.⁷⁶ Though Texas legislators pride themselves on being anti-choice, their efforts have proven costly to the state. As of January 2020, litigation surrounding anti-abortion statutes had cost Texas taxpayers \$5.6 million.⁷⁷

A 2017 study found twenty-seven U.S. cities where people had to travel more than 100 miles to access abortion services. Ten of the twenty-seven cities were in Texas.⁷⁸ Research conducted by the Texas Policy Evaluation Project found that 100,000 women of reproductive age in Texas had attempted to end a pregnancy without medical assistance.⁷⁹ The researchers found poverty was a commonality between respondents.⁸⁰ The researchers found four primary reasons for self-induction: financial barriers to traveling to a clinic and/or paying for the abortion; clinic closures; recommendations from others to self-induce; and the desire to avoid stigma from going to a

72. Kolten Parker, *This Week: In 'Mother's Day Massacre,' Tea Party Caucus Derails 100+ Bills*, TEX. OBSERVER (May 12, 2017, 1:54 PM), <https://www.texasobserver.org/week-mothers-day-massacre-tea-party-caucus-derails-100-bills/> [<https://perma.cc/J9AT-DYJV>].

73. Alexa Ura & Jolie McCullough, *Once Again, the Texas Legislature is Mostly White, Male, Middle-Aged*, TEX. TRIB. (Jan. 9, 2017, 12:00 AM), <https://www.texastribune.org/2017/01/09/texas-legislature-mostly-white-male-middle-aged/> [<https://perma.cc/87JU-PNA2>].

74. *Id.*

75. *Id.*

76. MICHELE GOODWIN, *POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD* 3 (2020).

77. Andrea Zelinski, *Texas Has Spent Close to \$6 Million Fighting Abortion. Here's How.*, HOUSTON CHRON. (Jan. 1, 2020), <https://www.houstonchronicle.com/politics/texas/article/Texas-has-spent-close-to-6-million-fighting-14942477.php> [<https://perma.cc/7TBR-VVKM>].

78. Alice F. Cartwright et al., *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systematic Online Search*, 20 J. MED. INTERNET RSCH. 1 (2018).

79. Press Release, Tex. Pol'y Evaluation Project, Study Finds at Least 100,000 Women Have Attempted to Self-Induce Abortion, (Nov. 17, 2015), <https://liberalarts.utexas.edu/txpep/releases/self-induction-release.php> [<https://perma.cc/RQT7-MWTH>].

80. *Id.*

clinic.⁸¹ State laws set up several obstacles, specifically for low-income individuals, by requiring women to see physicians on multiple occasions, separated by twenty-four hours, and undergo mandatory sonograms.⁸²

Texas was not alone—Iowa, Kentucky, and South Carolina moved to restrict public funding for family planning services in 2017.⁸³ Nineteen states adopted sixty-three new abortion restrictions in 2017, the largest number enacted in a year since 2013.⁸⁴ As of May 30, 2019, at least sixteen states introduced bills to ban abortion as early as six weeks into the pregnancy.⁸⁵ At the end of 2019, twenty-five new abortion bans, enacted in twelve states, had been signed into law.⁸⁶ At least seventeen states enacted fifty-eight restrictions on abortion access.⁸⁷

In 2020, the Tennessee Legislature passed an abortion bill banning abortion as early as six weeks of pregnancy. The bill also required providers to conduct an ultrasound and fetal heartbeat test, “and inform the patient that a medication abortion could be reversible (a notion that scientists have widely debunked).”⁸⁸ By mid-2020, 236 provisions were introduced in state legislative bodies that would restrict abortion access; ten provisions were enacted.⁸⁹ State legislative efforts have diminished the right to an abortion without the necessity for a reversal of *Roe v. Wade*, while causing much confusion and delay. The Executive Director of the Texas Equal Access Fund, Kamyon Conner, explains that people in Texas are unsure if they have the right to access abortion services. Conner says, “We’ll overhear conversations and have conversations with folks who are seeking abortions who think they are currently seeking abortions illegally.”⁹⁰

81. *Id.*

82. Sophie Novack, *Texas Has the Most Cities More than 100 Miles from an Abortion Clinic, Study Finds*, TEX. OBSERVER (May 15, 2018, 5:03 PM), <https://www.texasobserver.org/texas-most-cities-more-than-100-miles-from-abortion-clinic/> [<https://perma.cc/XD7T-X7Y5>].

83. Elizabeth Nash et al., *Policy Trends in the States, 2017*, GUTTMACHER INST. (Jan. 2, 2018), <https://www.guttmacher.org/article/2018/01/policy-trends-states-2017> [<https://perma.cc/3V9E-9XBA>].

84. *Id.*

85. *Legislative Tracker: Heartbeat Bans*, REWIRE NEWS GRP. (May 30, 2019), <https://rewire.news/legislative-tracker/law-topic/heartbeat-bans/> [<https://perma.cc/D9YQ-LESN>].

86. Elizabeth Nash et al., *State Policy Trends 2019: A Wave of Abortion Bans, But Some States Are Fighting Back*, GUTTMACHER INST. (Dec. 10, 2019), <https://www.guttmacher.org/article/2019/12/state-policy-trends-2019-wave-abortion-bans-some-states-are-fighting-back> [<https://perma.cc/ZT5S-YKX7>].

87. *Id.*

88. Elizabeth Nash et al., *State Policy Trends at Mid-Year 2020: Reproductive Health and Rights Take a Back Seat to Pandemic*, GUTTMACHER INST. (July 15, 2020), <https://www.guttmacher.org/article/2020/07/state-policy-trends-mid-year-2020-reproductive-health-and-rights-take-back-seat> [<https://perma.cc/C8AE-L8PE>].

89. *Id.*

90. Wang, *supra* note 1.

IV. RESOLUTIONS AND ORDINANCES RESTRICTING ABORTION ACCESS

Anti-abortion activists, growing impatient with state legislatures, have begun lobbying city council members and county commissioners. Typically, local governmental bodies discuss infrastructure concerns, utility matters, and budget issues. Now, councils and commissions are discussing issues of public health and morality, often passing ordinances and resolutions directly in conflict with current state and federal laws. The shift to local governmental bodies is discussed below, via specific states and localities that have considered these measures.

Some localities choose to pass ordinances, and some choose to pass resolutions. A resolution expresses the sentiment of the city council whereas an ordinance becomes part of the city code and can be enforced.⁹¹ Most localities do not have abortion services within the area and are making attempts to deter abortion providers from setting up services. Sanctuary status appears to be rooted in political ideals more so than legal arguments.⁹² However, a commonality in several of the below resolutions and ordinances is the idea that *Roe v. Wade* is a flawed decision and the drafted language by the locality is in conflict with federal and state legislation.

Illinois: “In Illinois, we have contradictory laws . . . If you kill a pregnant woman, that’s two murders. However, if she has an abortion, it isn’t. It doesn’t make sense.”⁹³ Chairman Jim Niemann of the Effingham County Board in Illinois said this, arguing on behalf of the resolution he made naming the county a “Sanctuary for the Life of Unborn Human Beings. He proposed the resolution based on the success of the board’s prior resolution making the county a gun sanctuary whereby any laws unconstitutionally restricting the Second Amendment would not be enforced.”⁹⁴ The Sanctuary for Life

91. Daniel Friend, “Sanctuary City for the Unborn” Ordinance Passes in West Texas Town, *THE TEXAN* (Nov. 22, 2019), <https://thetexan.news/sanctuary-city-for-the-unborn-ordinance-passes-in-west-texas-town/> [<https://perma.cc/4MWV-CNZE>].

92. John E. Finn, *Sanctuaries Protecting Gun Rights and the Unborn Challenge the Legitimacy and Role of Federal Law*, *THE CONVERSATION* (Oct. 15, 2019, 7:14 AM), <https://theconversation.com/sanctuaries-protecting-gun-rights-and-the-unborn-challenge-the-legitimacy-and-role-of-federal-law-122988> [<https://perma.cc/TNY4-ZT9F>].

93. Keith Stewart, *Effingham County Leaders Declare County ‘Sanctuary for the Unborn’*, *HERALD & REV.* (June 19, 2018), https://herald-review.com/news/state-and-regional/govt-and-politics/effingham-county-leaders-declare-county-sanctuary-for-the-unborn/article_60af0129-88aa-549e-85c0-a8f32e3b3573.html [<https://perma.cc/BP7Z-KDXK>].

94. Graham Mildrum, *Effingham County Poised To Become ‘Sanctuary for the Unborn’*, *HERALD & REV.* (June 12, 2018), https://herald-review.com/news/local/govt-and-politics/effingham-county-poised-to-become-sanctuary-for-the-unborn/article_d6f1913a-76d7-5a52-9a75-e7e5d450b660.html [<https://perma.cc/A2GW-MQNT>].

resolution opposed abortion within Effingham County, with the exception to save the life of the mother, and declared that life begins at conception.⁹⁵ Abortions are not performed in Effingham County.⁹⁶ The resolution passed with a vote of 8-1.⁹⁷ The State's Attorney of Effingham County commented that the resolution had no legal authority, stating abortion providers could operate within the county "as long as it follows Illinois law."⁹⁸

New Mexico: Cities and counties in New Mexico joined the movement to pass sanctuary city resolutions in an effort to restrict abortion access and to support life beginning at conception.⁹⁹ On February 28, 2019, the Lea County Board of Commissioners in New Mexico took up a Resolution in Support of the Unborn, a nonbinding resolution supporting life at conception.¹⁰⁰ It passed unanimously.¹⁰¹ The Roswell City Council in New Mexico passed a resolution on March 14, 2019, titled "A Resolution in Support of the Unborn."¹⁰² The resolution declares that "innocent human life, including fetal life, must always be protected" and that the city council opposes any efforts by the New Mexico Legislature to diminish this limitation on abortion placed by the resolution.¹⁰³ Additionally, the city council honors the rights of healthcare providers to use moral objections in opposition to performing abortions.¹⁰⁴ The resolution passed 7-1.¹⁰⁵ Eddy County in New Mexico

95. *Id.*

96. *Id.*

97. Stewart, *supra* note 93.

98. *Id.*

99. Kyla Asbury, *New Mexico Cities Look To Become 'Sanctuary Cities' for Unborn Children*, SANDOVAL NEWS (Nov. 27, 2019), <https://sandovalnews.com/stories/520531050-new-mexico-cities-look-to-become-sanctuary-cities-for-unborn-children> [https://perma.cc/L4V3-WC5B].

100. Danielle Prokop, *New Mexico at Forefront of Nationwide Sanctuary Cities for the Unborn Movement*, SANTA FE NEW MEXICAN (Oct. 14, 2019, 6:00 AM), <https://www.lcsun-news.com/story/news/local/new-mexico/2019/10/14/new-mexico-abortion-resolution-sparks-sanctuary-cities-unborn-movement-texas/3969509002/> [https://perma.cc/YKZ6-VW6Q].

101. *Minutes of Meeting*, LEA COUNTY BD. COMM'RS (Feb. 28, 2019), https://d38trduahtodj3.cloudfront.net/files.ashx?t=fg&rid=Lea-County&f=20190228_LCBCC_Reg_Mtg_Minutes_Approved.pdf [https://perma.cc/KK9K-TXX9].

102. Bowen Xiao, *New Mexico City Council Passes Resolution 'In Support of the Unborn'*, EPOCH TIMES (Mar. 18, 2019), https://www.theepochtimes.com/new-mexico-city-council-passes-resolution-in-support-of-the-unborn_2843287.html [https://perma.cc/QAS4-85B5].

103. *Agenda*, CITY ROSWELL COUNCIL (Mar. 14, 2019), http://www.roswell-nm.gov/AgendaCenter/ViewFile/Agenda/_03142019-1514 [https://perma.cc/N7KJ-2GEM].

104. *Id.*

105. Xiao, *supra* note 102.

passed a similar resolution following the Roswell City Council meeting on March 19, 2019.¹⁰⁶

Not all cities have been receptive to the resolution. A draft resolution was withdrawn by the Farmington City Council on October 8, 2019.¹⁰⁷ The resolution had stated life began at conception but was withdrawn by a 3-2 vote, citing concerns that this was outside the scope of duties of a locally elected body.¹⁰⁸ Mayor Nate Duckett made the motion to withdraw and cast the tie-breaking vote, stating, “I don’t think it’s germane to what our duties are as a locally-elected body.”¹⁰⁹ No clinic exists in Farmington that offers abortion services.¹¹⁰

Some anti-abortion groups are reluctant to offer resources toward the sanctuary movement, citing concerns with potential legal challenges. The founder and director of the New Mexico Alliance for Life is concerned a potential lawsuit could be appealed to the New Mexico Supreme Court, where only one Republican justice sits. She fears this type of appeal “could create bad case law” and refers to a past ruling which required New Mexico to use Medicaid funding for medically necessary abortions.¹¹¹ Other anti-abortion groups have warned resolutions could serve as a method of divisiveness instead of winning citizens to their cause. The groups would prefer state legislative bodies pass restrictions rather than local governments.

Ellie Rushforth, a reproductive rights lawyer with the ACLU of New Mexico, succinctly states the threat posed by local governments passing ordinances and resolutions.

In a state with a shortage of rural health care providers, resolutions like these only create confusion and stigma, and have a chilling effect on access to safe and legal abortion . . . Enforcement of these resolutions, which attempt to rewrite and redefine the law, carry no legal weight.¹¹²

Utah: On May 7, 2019, the Riverton City Council in Utah took up a Resolution in Support of Human Life. The resolution declares life begins at conception. It further supports providers who decline to participate in abortions due to moral objection “and opposes any regulation or law seeking to

106. *Eddy County Passes Resolution to Support Unborn Children*, KRQE NEWS (Mar. 21, 2019, 7:26 AM), <https://www.krqe.com/news/new-mexico/eddy-county-passes-resolution-to-support-unborn-children/> [<https://perma.cc/G9XU-88RU>].

107 Hannah Grover, *Five Takeaways from the City Council’s Decision to Withdraw an Abortion-related Resolution*, FARMINGTON DAILY TIMES (Oct. 9, 2019, 12:45 PM), <https://www.daily-times.com/story/news/local/farmington/2019/10/09/farmington-city-council-withdraws-abortion-related-resolution/3920533002/> [<https://perma.cc/8KNZ-Q6TA>].

108. *Id.*

109. *Id.*

110. Prokop, *supra* note 100.

111. *Id.*

112. *Id.*

violate their abstention.”¹¹³ Public comment was divided at the meeting discussing the resolution. One resident said the impact of *Roe v. Wade* has gone too far and change “starts with the residents of the community who get to step forward through the city council’s representation” to respect the lives of the unborn.¹¹⁴ Another resident said the resolution created a “‘hostile living environment in the city’ for women” who needed a legal medical procedure.¹¹⁵ Some applauded the city council members for their courageous action while others objected stating this was a state or federal issue, not a city council one. In response to some concerns of residents that the resolution would cause “frivolous lawsuits,” a council member stated the resolution did not attempt to change any law or ordinance and was a nonbinding resolution made as an effort to take a stand on this social issue.¹¹⁶ The resolution passed on a vote of 3-1.¹¹⁷

The Utah County Commission unanimously voted on June 25, 2019, to pass a nonbinding resolution stating life begins at conception and declaring the county a safe haven for the unborn. Three Utah cities passed similar resolutions following the Utah County Commission: Highland (July 16, 2019),¹¹⁸ Enterprise City (October 23, 2019),¹¹⁹ and Lehi (February 25, 2020).¹²⁰

113. Ryan Carter, *Approval of Resolution in Support of Human Life*, RIVERTON CITY COUNCIL (May 7, 2019), https://rivertoncity.granicus.com/Viewer.php?view_id=1&clip_id=275&meta_id=17652 [https://perma.cc/SDE6-4EYQ].

114. *Minutes*, RIVERTON CITY COUNCIL 8-9 (May 7, 2019), https://docs.google.com/gview?url=https%3A%2F%2Frivertoncity.granicus.com%2FDocumentViewer.php%3Ffile%3Driver-toncity_a031cf5aff18fc48c91771f318c7e8d0.pdf%26view%3D1&embedded=true [https://perma.cc/8UUC-TYKC].

115. *Id.* at 8.

116. Taylor Stevens, *Riverton Becomes a ‘Sanctuary City for the Unborn’ with City Council Passage of Anti-abortion Resolution*, SALT LAKE TRIB. (May 8, 2019), <https://www.sltrib.com/news/politics/2019/05/08/riverton-becomes/> [https://perma.cc/NSK4-XZKK].

117. RIVERTON CITY COUNCIL. *supra* note 114 at 11.

118. Alyssa Roberts, *Highland City Leaders Unanimously Pass Anti-abortion Resolution*, KUTV NEWS (July 17, 2019), https://kutv.com/news/local/highland-city-leaders-pass-resolution-formally-taking-anti-abortion-stance?fbclid=IwAR2Ucj_uXtfy-ZwitJuUIDng_cRXsU-U8VmcoftFh6bNy3xxbtbBxo85URk [https://perma.cc/FCM2-6UZM].

119. *Our Mission*, UTAH SANCTUARY CITIES FOR UNBORN, <https://utahsanctuarycitiesfortheunborn.com/#cities> [https://perma.cc/Z752-BP7Q].

120. Connor Richards, *Lehi Proclaims Itself a ‘Sanctuary City for the Unborn,’* DAILY HERALD (Feb. 25, 2020), https://www.heraldextra.com/news/local/north/lehi/lehi-proclaims-itself-a-sanctuary-city-for-the-unborn/article_e0ed5d06-92bd-57f8-9a69-96cd4638c98e.html [https://perma.cc/D7XT-NEPF].

North Carolina: On August 19, 2019, the Yadkin County Board of Commissioners unanimously passed a “[r]esolution for [l]ife.”¹²¹ A local pastor spoke in favor of the passage, stating he did not want this resolution “confused with sanctuary cities that promote lawlessness and protect lawbreakers.”¹²² Instead, his group wanted the board to uphold the Constitution and “promote the inalienable God-given rights of life, liberty, and the pursuit of happiness that are clearly spelled out in both the 5th and 14th Amendments.”¹²³ Another citizen questioned the board’s authority to return the county to a place of morality and encouraged focus on topics of economic development instead of social issues.¹²⁴

The Yadkin County resolution closely aligns with the template presented by the Personhood Alliance—a pro-life organization that provides a draft template for local governments to pass declaring the city or county a sanctuary city.¹²⁵ The group’s intention is to have local governments pass the resolution through a three-phase process: to present the resolution to the local government, build a coalition of support to encourage the passage of the resolution, and to be prepared to defend the resolution against legal challenges.¹²⁶

The language in the Yadkin County resolution states the United States Supreme Court has abused its judicial review function in an attempt to “legislate and impose its policy preferences upon the people.”¹²⁷ The resolution specifically states:

1. That the Yadkin County Board of Commissioners hereby recognizes and declares the full humanity of the preborn child and declares Yadkin County to be a strong advocate for the preborn where the dignity of every human being will be defended and promoted from conception or fertilization through all stages of development.
2. The Yadkin County Board of Commissioners hereby resolves to use all means within its power to support the sanctity of human life in accordance

121. *Agenda*, YADKIN CNTY. BD. COMM’RS (Aug. 19, 2019), https://www.yadkincountync.gov/AgendaCenter/ViewFile/Agenda/_08192019-547 [<https://perma.cc/2ZEB-AXRH>].

122. *Minutes*, YADKIN CNTY. BD. COMM’RS (Aug. 19, 2019), https://www.yadkincountync.gov/AgendaCenter/ViewFile/Minutes/_08192019-547 [<https://perma.cc/BVL7-ZUAN>].

123. *Id.*

124. *Id.*

125. *Safe Cities and Counties*, PERSONHOOD ALL., <https://personhood.org/take-action/sanctuary-cities-for-life/> [<https://perma.cc/TS4Y-FMCG>].

126. *Id.*

127. *Minutes*, *supra* note 122.

with the God-given responsibilities as the people's elected governing body.¹²⁸

When the board passed the resolution, the sanctuary language had been removed.¹²⁹ It was adopted with a vote of 5-0.¹³⁰

Tension was evident at a city council meeting in June 2019 when the council was asked to make Raleigh a “sanctuary city for the unborn.”¹³¹ The discussion continued at meetings through 2020. At a January meeting, the city council examined the resolution again. Anti-abortion activists were hoping it would include language similar to what was passed in Yadkin County—establishing life begins at conception, banning abortion services, and banning the sale of emergency contraception.¹³² The city attorney advised the resolution was outside Raleigh's jurisdiction. Anti-abortion activists were advised they should take their movement to the state legislature, as the city could not pass the resolution.¹³³

Texas: The Right to Life of East Texas, along with its director, Mark Lee Dickson, has led the movement in Texas to push for localities to pass sanctuary city resolutions. Dickson has traversed the state speaking to more than forty local governments in an effort to criminalize abortion services and

128. *Id.*

129. Lisa O'Donnell, *Pro-Life Groups Praise Yadkin, but County Board Didn't Actually Declare It a 'Sanctuary,'* WINSTON-SALEM J. (Aug. 31, 2019), https://www.journal-now.com/news/local/pro-life-groups-praise-yadkin-but-county-board-didn-t-article_ebc62bc6-5d6d-554c-b781-4daafeec9395.html [<https://perma.cc/KU8C-9SC4>]. It is important to note that both the Santa Rosa County Board of Commissioners and the Yadkin County Board of Commissioners consist only of male Commissioners.

130. *Minutes*, *supra* note 122.

131. Anna Johnson, *Teen's Anti-abortion Plea Leads to Shouting, Crying at Raleigh City Council Meeting*, NEWS & OBSERVER (June 5, 2019, 4:12 PM), <https://www.newsobserver.com/news/local/article231201838.html>. A thirteen-year-old girl was one of the first anti-abortion speakers, comparing abortion to slavery, making the following statement:

On ultrasounds the baby tries to run away from the disturbing instruments that try to kill the baby. The baby's mouth opens wide in a scream when being killed. These babies are alive. They feel being killed. It hurts them and there is nothing they can do about it. There is no way around it. Abortion is murder . . . Are you choosing to be like the plantation owner flogging the little black child? Or are you going to protest even if it is going to cost you your life like Martin Luther King Jr?

Id. This comparison caused the crowd to shout, with one attendee asking the Mayor Pro Tem, a black man, to “stand up” against this language. Council Member, Stef Mendell, left the council chambers at one point during the meeting as an anti-abortion activist told her God would hold her accountable. Following the meeting, Mendell stated her belief was that abortion should be safe and legal. She reiterated that community members have the right to free speech, but she also has the right not to listen to certain types of speech.

132. Anna Johnson, *Raleigh City Leader to Anti-abortion Speakers: Let's Chat Outside*, NEWS & OBSERVER (Jan. 9, 2020, 5:23 PM), <https://www.newsobserver.com/news/local/counties/wake-county/article239075158.html>.

133. *Id.*

emergency contraception.¹³⁴ He has had some success with governments while others have modified the language presented in the template, passed along from other jurisdictions.

On June 11, 2019, the city of Waskom, Texas passed an ordinance outlawing abortion within city limits.¹³⁵ The ordinance, passed by a city council composed of only men, made Waskom the first sanctuary city for the unborn in Texas.¹³⁶ Waskom, at the time of the vote, had a population of approximately 2,200 people and provided no abortion services within the city.¹³⁷ The ordinance declares surgical or chemical abortions as “murder with malice aforethought” and criticizes *Roe v. Wade* as an “illegitimate act of judicial usurpation.”¹³⁸ The city council deemed *Roe v. Wade*, *Planned Parenthood v. Casey*, *Stenberg v. Carhart*, and *Whole Woman’s Health v. Hellerstedt* as null and void in Waskom.¹³⁹ The ordinance further finds “the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority.”¹⁴⁰ In an effort to protect the health and welfare of Waskom residents, the city council voted to “outlaw human abortion within the city limits.”¹⁴¹ The city council deemed certain organizations that performed abortions and assisted individuals in obtaining abortions as “criminal organizations.” The reproductive rights and reproductive justice organizations named specifically are: Planned Parenthood and any of its affiliates; Jane’s Due Process; The Afiya Center; The Lilith Fund for Reproductive Equality; NARAL Pro-Choice Texas; National Latina Institute for Reproductive Health; Whole Woman’s Health and Whole Woman’s Health Alliance; and Texas Equal Access Fund.¹⁴² The prohibited criminal organizations are foreclosed from offering services within the city, renting office space or purchasing real property within the city, or establishing a physical

134. Edgar Walters, *Anti-abortion Activists Take Their Fight to Small-Town East Texas*, TEX. TRIB. (Oct. 15, 2019, 12:00 AM), <https://www.texastribune.org/2019/10/15/anti-abortion-ordinances-spread-east-texas/> [<https://perma.cc/W4LF-Y8Y8>].

135. *Texas Equal Access Fund, Lilith Fund for Reproductive Equity v. City of Waskom, et al. Complaint, Exhibit 1*, ACLU (Feb. 25, 2020), <https://www.aclu.org/legal-document/texas-equal-access-fund-lilith-fund-reproductive-equity-vs-city-waskom-et-al> [<https://perma.cc/G426-EGSZ>] [hereinafter ACLU Complaint].

136. Ryan W. Miller, ‘Sanctuary City for the Unborn’: All-male City Council in Texas Town Bans Most Abortions, USA TODAY (June 13, 2019, 2:00 PM), <https://www.usatoday.com/story/news/nation/2019/06/13/waskom-texas-declared-sanctuary-city-unborn-bans-abortion/1443699001/> [<https://perma.cc/43MQ-NDDC>].

137. Isaac Stanley-Becker, *East Texas Town with No Abortion Clinics Passes Ordinance Attempting to Ban the Procedure*, WASH. POST (June 13, 2019, 5:02 AM), <https://www.washingtonpost.com/nation/2019/06/13/waskom-texas-outlaws-abortion-five-men/> [<https://perma.cc/2C94-QPHE>].

138. ACLU Complaint, *supra* note 135, at 8.

139. *Id.* at 38.

140. *Id.* at 35.

141. *Id.* at 35.

142. *Id.* at 37.

presence within Waskom.¹⁴³ Regarding enforcement, Waskom concedes the ordinance provision making abortion unlawful cannot be enforced until the United States Supreme Court overrules *Roe v. Wade* and *Planned Parenthood v. Casey*.¹⁴⁴ However, the ordinance creates a civil cause of action against a person or entity who assists in abortion access, which is immediately enforceable and results in monetary damages.¹⁴⁵

The mayor of Waskom, Jesse Moore, said Right to Life of East Texas had approached them about passing the ordinance due to the changing abortion laws in the surrounding states, including Louisiana, Alabama, and Mississippi.¹⁴⁶ Fearing a clinic could move across state lines to Texas, the city council passed the “ordinance and resolution that will make abortions in the city of Waskom a criminal offense.”¹⁴⁷ Upon the ordinance passing, Dickson of Right to Life of East Texas commented, “It is good to see the men of Waskom rise up to protect women and children.”¹⁴⁸ Explaining its passage, Mayor Moore said, “The citizens in Waskom, they don’t want to have an abortion clinic in Waskom.”¹⁴⁹

Following the passage of Ordinance No. 336 in Waskom, six other East Texas cities passed similar ordinances: Naples (enacted September 9, 2019), Joaquin (enacted September 17, 2019), Tenaha (enacted September 23, 2019), Rusk (enacted January 9, 2020), Gary (enacted January 16, 2020), and Wells (enacted February 10, 2020).¹⁵⁰ These ordinances were modeled on, and similar to, the Waskom ordinance. None of the named cities had abortion clinics within city limits.¹⁵¹ The ordinances outlaw abortion, outlaw aiding or abetting an abortion, and make it unlawful to sell, distribute or otherwise provide emergency contraception like Plan B, Ella, Next Choice One Dose, and My Way, should the Supreme Court overrule prior precedent.¹⁵² It further criminalizes the named reproductive rights and reproductive justice organi-

143. ACLU Complaint, *supra* note 135.

144. *Id.*

145. *Id.*

146. Robin Y. Richardson, *Waskom Becomes First ‘Sanctuary City for the Unborn’*, MARSHALL NEWS MESSENGER (June 13, 2019), https://www.marshallnewsmessenger.com/news/local/waskom-becomes-first-sanctuary-city-for-the-unborn/article_6f3a821a-8d64-11e9-af16-d3b45e7a7667.html [<https://perma.cc/2XBB-N2YB>].

147. *Id.*

148. *Texas Town Bans Abortion in All-Male City Council Vote*, BBC NEWS (June 13, 2019), <https://www.bbc.com/news/world-us-canada-48628224> [<https://perma.cc/XJ64-4CFQ>].

149. Wang, *supra* note 1.

150. ACLU Complaint, *supra* note 135.

151. Stephen Young, *ACLU of Texas Sues 7 Towns over Abortion Sanctuary Ordinances*, DALL. OBSERVER (Feb. 26, 2020, 4:00 AM), <https://www.dallasobserver.com/news/texas-towns-sued-over-abortion-bans-11878447> [<https://perma.cc/5PCG-M7F6>].

152. ACLU Complaint, *supra* note 135.

zations in the Waskom ordinance and allows monetary damages against physicians for performing abortions and those aiding and abetting abortions.¹⁵³ The makers of Plan B One-Step, Foundation Consumer Healthcare, points out the pill does not abort existing pregnancies but works to prevent ovulation and fertilization of an egg. A statement from Foundation Consumer Healthcare clarifies: “The availability and access of Plan B is governed nationally by the [Food and Drug Administration], not by any individual municipality. Plan B is not in any way connected to the Supreme Court ruling of *Roe v. Wade*, as incorrectly implied in the East Texas legislation.”¹⁵⁴

One of the above-named cities, Joaquin, Texas has a population of approximately 900 and does not permit the sale of emergency contraception, like Plan B. The nearest pharmacy providing this type of contraception is fifteen miles away in Louisiana. As well, the nearest abortion clinic is fifty miles away, also in Louisiana. When Joaquin passed its ordinance, it classified certain abortion providers and their supporters as “criminal organizations” and permitted the emotional distress cause of action to be filed by family members of women who used emergency contraception or underwent abortion procedures. “We don’t want you here,” said the mayor.¹⁵⁵ He was addressing abortion providers but women who have accessed abortion and contraception services could infer this message was also directed at them.

The American Civil Liberties Union (ACLU) of Texas and ACLU National filed a lawsuit on February 25, 2020, against the above-named seven cities in East Texas for the passage of the ordinances. The complaint was brought in the Eastern District of Texas, Marshall Division, with the ACLU representing Lilith Fund and Texas Equal Access Fund (TEA Fund).¹⁵⁶ Both organizations were deemed as criminal pursuant to the city ordinances and both support individuals needing abortions.¹⁵⁷ The ACLU asserted the ordinances violate the First Amendment rights of the Lilith Fund and the TEA Fund by branding them as criminal organizations and preventing them from disseminating information within the named cities.¹⁵⁸ The ACLU withdrew

153. Emily Wax-Thibodeaux, *Anti-abortion Law Spreads in East Texas as ‘Sanctuary City for the Unborn’ Movement Expands*, WASH. POST (Oct. 1, 2019, 6:00 AM), https://www.washingtonpost.com/national/antiabortion-law-spreads-in-east-texas-as-sanctuary-city-for-the-unborn-movement-expands/2019/09/30/cfef46d8-daf1-11e9-bfb1-849887369476_story.html [https://perma.cc/HR2W-AXNV].

154. *Id.*

155. Walters, *supra* note 134.

156. ACLU Complaint, *supra* note 135.

157. *ACLU Sues Seven Texas Cities Over Anti-abortion Ordinances*, ACLU (Feb. 25, 2020), <https://www.aclu.org/press-releases/aclu-sues-seven-texas-cities-over-anti-abortion-ordinances> [https://perma.cc/V48A-N9E2].

158. ACLU Complaint, *supra* note 135. The five claims for relief were unconstitutional abridgment of free speech rights, unconstitutional abridgment of free association rights, content and viewpoint discrimination, violation of prohibition of bills of attainder, and void for vagueness. *Id.*

its lawsuit after the cities named in the complaint agreed to remove the names of the reproductive rights and reproductive justice organizations within the ordinances and allow the organizations to distribute messaging within city limits.¹⁵⁹ The ordinances retained the provisions prohibiting abortion should *Roe v. Wade* and *Planned Parenthood v. Casey* be overturned by the Supreme Court.¹⁶⁰ Of note, the Lilith Fund for Reproductive Equity sued Mark Dickson and Right to Life of East Texas on June 11, 2020, in Travis County, Texas for defamation.¹⁶¹ The TEA Fund and the Afiya Center sued Mark Dickson and Right to Life of East Texas in Dallas County, Texas, also alleging defamation.¹⁶² The petition filed by the Lilith Fund outlines the coordinated campaign Dickson and Right to Life of East Texas waged by attending various city council meetings to lobby for the ordinance.¹⁶³

Westbrook passed an ordinance naming the city a sanctuary for the unborn on November 18, 2019.¹⁶⁴ The ordinance passed unanimously and was similar to the ordinance originally passed in Waskom, Texas, containing a public enforcement mechanism and a private enforcement mechanism.¹⁶⁵ The public enforcement mechanism penalizes the abortion provider, along with those who assist in obtaining the abortion through funding it or transporting the woman to the provider.¹⁶⁶ The public penalties would have to wait for the reversal of *Roe v. Wade* in order to be enforceable. However, the private enforcement mechanism—the ability to bring a civil suit as a family member on the mother’s or father’s side against the abortion provider for

159. Valerie Richardson, ‘Sanctuary City for Unborn’ Ordinances Take Off in Texas Despite Pro-choice Pushback, WASH. TIMES (June 29, 2020), <https://www.washington-times.com/news/2020/jun/29/mark-lee-dickson-sanctuary-city-unborn-expands-tex/> [<https://perma.cc/6UP2-3PXR>]. The amended ordinance for Waskom can be located here: https://www.scribd.com/document/463274139/Amended-Abortion-Ord-No-343#from_embed.

160. Ben Fenton, *ACLU Withdraws ‘Sanctuary Cities for Unborn’ Lawsuit After Cities Amend Ordinances*, LONGVIEW NEWS-JOURNAL (May 28, 2020), https://www.news-journal.com/news/local/aclu-withdraws-sanctuary-cities-for-unborn-lawsuit-after-cities-amend-ordinances/article_08ed3d25-5d7a-5a9c-987f-b9942009b92b.html [<https://perma.cc/Q3KZ-RWLG>].

161. Robin Y. Richardson, *Defamation Lawsuit Filed Against Right to Life East Texas, Director*, PANOLA WATCHMAN (June 11, 2020), https://www.panolawatchman.com/news/defamation-lawsuit-filed-against-right-to-life-east-texas-director/article_ca13e8bd-daf8-5b68-ae33-f60564cc5f1a.html [<https://perma.cc/59G2-RKRS>].

162. Richardson, *supra* note 160.

163. Plaintiff’s Original Petition, *Lilith Fund for Reprod. Equity v. Dickson*, No. D-1-GN-20-003113 (June 11, 2020), <https://www.courthousenews.com/wp-content/uploads/2020/06/lilith-fund.pdf> [<https://perma.cc/K5C3-PYCC>].

164. Friend, *supra* note 91.

165. *Id.*

166. *Id.*

emotional distress—is immediately enforceable.¹⁶⁷ Colorado City (enacted January 14, 2020) also passed the ordinance with one city council member opposed.¹⁶⁸

Whiteface does not have an abortion facility within city limits, but residents wanted to ensure none would be permitted.¹⁶⁹ Dickson encouraged the city council to pass the ordinance. One lone resident of the city spoke out against the ordinance, citing concerns about expensive litigation.¹⁷⁰ Dickson responded that cities were being represented pro bono in the lawsuit brought by the ACLU, alleviating the financial concern.¹⁷¹ The ordinance passed in a 3-2 vote to cheers from the audience.¹⁷² This made Whiteface the thirteenth city in Texas to pass a similar ordinance, and the first to pass one since the filing of the lawsuit by the ACLU against seven cities in Texas.¹⁷³

The executive director of the anti-abortion advocacy group Texas Alliance for Life, Joe Pojman, is not supportive of the ordinance, criticizing how it is drafted. He says, “We just don’t think a court is going to uphold a right to bring a civil lawsuit for an action that the Supreme Court has held to be a constitutional right.”¹⁷⁴ Pojman would prefer groups focus resources on the election of pro-life individuals at the state and federal level with the hopes that conservative judicial appointments will occur.¹⁷⁵ Dickson disagrees with this strategy. His position is to create change from the bottom up instead of relying upon the state legislature to restrict access to abortion, saying:

For so long, we have put our hope in our state capitols, in our nation’s Capitol, when all along we need to be battling these battles on the home front of our cities . . . If an abortion clinic moves into our city, it’s not Austin’s problem, it’s not Washington D.C.’s problem, it’s our problem. It’s going to affect

167. *Id.* The author speculates this type of action could be similar to loss of consortium causes of action regarding standing and proof.

168. *Meeting Minutes*, CITY COUNCIL FOR COLO. CITY, TEX. (Jan. 14, 2020), <https://www.coloradocitytexas.org/1-14-20.pdf> [<https://perma.cc/UV4X-7UCW>].

169. Daniel Friend, *Whiteface Passes Ordinance Declaring “Sanctuary City for the Unborn,”* THE TEXAN (Mar. 13, 2020), <https://thetexan.news/whiteface-passes-ordinance-declaring-sanctuary-city-for-the-unborn/> [<https://perma.cc/KR9H-2W8Q>].

170. *Id.*

171. *Id.*

172. Wang, *supra* note 1.

173. Friend, *supra* note 170. The thirteen cities in Texas to pass an ordinance or resolution as of March 13, 2020, not listed in order of passage, are: Naples, East Mountain, Gilmer, Waskom, Gary, Joaquin, Tenaha, Rusk, Wells, Colorado City, Westbrook, Big Spring, Whiteface. *Id.*

174. Walters, *supra* note 134.

175. *Id.*

our communities, so that's why we've got to stand up and proactively do something.¹⁷⁶

At the Whiteface city council meeting, Dickson stated action had to be taken at the local level, as Texas had not passed “any aggressive abortion bans this legislative session.”¹⁷⁷ Recently, other Republican-held state legislatures like Alabama, Louisiana, and Georgia had passed “heartbeat” bills which outlawed abortion at about six weeks of pregnancy.¹⁷⁸ However, Texas did not follow the lead of the other states, encouraging individuals like Dickson to take the movement “straight to the people.”¹⁷⁹

In January 2020, county commissioners in Ellis County, Texas, voted unanimously in favor of a resolution declaring itself a sanctuary county for the unborn.¹⁸⁰ The measure makes Ellis County the first county in Texas to be a sanctuary county for the unborn.¹⁸¹ Gilmer passed an ordinance declaring the city a safe haven for the unborn instead of a sanctuary city for the unborn. It also removed several provisions of the ordinance: the classification of reproductive rights and reproductive justice organizations as criminal organizations, the ban of emergency contraception, and the classification of abortion as murder.¹⁸² The Gilmer city manager, Greg Hutson, criticized the lobbying efforts by Right to Life of East Texas, saying the director was pushing an ordinance that was “inflammatory, throwing gasoline on the fire.”¹⁸³ On January 28, 2020, Big Spring City Council passed the Sanctuary City Abortion Ordinance on a 4-2 vote.¹⁸⁴ Big Spring has a population of approximately twenty-eight thousand and is located within an abortion desert. Though the city has more than sixty churches, women have to travel 250 miles away for the closest abortion provider.¹⁸⁵

176. Kaur, *supra* note 7.

177. Wang, *supra* note 1.

178. Wax-Thibodeaux, *supra* note 153.

179. *Id.*

180. Stephen Young, *Sanctuary Cities for the Unborn Movement Sneaks Closer to Dallas*, DALL. OBSERVER (Jan. 31, 2020, 4:00 AM), <https://www.dallasobserver.com/news/ellis-county-now-sanctuary-city-for-fetuses-guns-11859088>. Meeting minutes found at <https://co.ellis.tx.us/ArchiveCenter/ViewFile/Item/2590> [<https://perma.cc/NMS3-U4HA>].

181. *Ellis County Now a Sanctuary for Unborn*, WAXAHACHIE DAILY LIGHT (Jan. 29, 2020, 11:27 AM), <https://www.waxahachietx.com/news/20200129/ellis-county-now-sanctuary-for-unborn> [<https://perma.cc/X3MB-SBRQ>].

182. *Id.*

183. Wax-Thibodeaux, *supra* note 153.

184. Amanda Duforat, *Big Spring Becomes Sanctuary City for the Unborn*, BIG SPRING HERALD (Jan. 28, 2020), https://www.bigspringherald.com/news/big-spring-becomes-sanctuary-city-for-the-unborn/article_6f91a8ce-423b-11ea-abfa-e785cf844e6d.html [<https://perma.cc/P87L-B4LL>].

185. Melissa Jeltsen, *The Traveling Salesman Bringing Abortion Bans to a Texas Town Near You*, HUFFPOST (Mar. 4, 2020, 5:45 AM), <https://www.huffpost.com/entry/the->

Some Texas cities have rejected lobbying efforts to pass the ordinance. In Mineral Wells, a city outside of Dallas, the council voted against the ordinance in July 2019.¹⁸⁶ On advice of the city attorney, asserting a conflict with federal law, city council members voted against the ordinance in a 5-2 vote.¹⁸⁷ In January 2020, the city council of Jacksboro decided to take no action on the ordinance.¹⁸⁸ One city council member said they did not have the authority to pass an ordinance that conflicts with federal law, and another member said the proper avenue for this type of change would be through the election process.¹⁸⁹ Omaha originally passed the ordinance on September 9, 2019, with a unanimous vote.¹⁹⁰ However, the city council, at the urging of the city attorney, walked back the ordinance in October 2019 and passed a resolution instead.¹⁹¹ Lindale also decided to pass a resolution instead of the ordinance at its February 18, 2020 meeting.¹⁹² Carthage City Commission unanimously rejected the ordinance on February 24, 2020, questioning the constitutionality of the ordinance as well as whether the city council was the proper governmental body to look at outlawing abortion.¹⁹³ The Coahoma City Council considered the ordinance at the May 7, 2020 meeting.¹⁹⁴ The

traveling-salesman-bringing-abortion-bans-to-a-texas-town-near-you_n_5e4479aec5b671eafe1e3880 [https://perma.cc/WPW7-V2YN].

186. Wax-Thibodeaux, *supra* note 153.

187. *City of Mineral Wells Votes Against Becoming a "Sanctuary City for the Unborn"*, FOX 4 NEWS DALLAS-FORT WORTH (July 17, 2019), <https://www.fox4news.com/news/city-of-mineral-wells-votes-against-becoming-a-sanctuary-city-for-the-unborn> [https://perma.cc/RW6U-ADE8].

188. Nathan Lawson, *Council Takes No Action on Ordinance Declaring Sanctuary for the Unborn*, JACKSBORO HERALD-GAZETTE (Jan. 21, 2020, 11:49 AM), <https://www.jacksboronewspapers.com/news-jacksboro/council-takes-no-action-ordinance-declaring-sanctuary-unborn> [https://perma.cc/9YYA-A49B].

189. *Id.*

190. Georgi Boorman, *Majority-Woman City Council in Texas Votes to Create Second 'Sanctuary City for the Unborn'*, THE FEDERALIST (Sept. 17, 2019), <https://thefederalist.com/2019/09/17/majority-woman-city-council-in-texas-votes-to-create-second-sanctuary-city-for-the-unborn/> [http://perma.cc/G23R-AHGP].

191. *Omaha, Texas*, SANCTUARY CITIES FOR UNBORN (2019), <https://sanctuarycitiesfortheunborn.com/omaha%2C-texas>.

192. Zak Weller, *Lindale City Council Stops Short of Outlawing Abortion Despite Community Push*, TYLER MORNING TEL. (Mar. 28, 2020), https://tylerpaper.com/news/local/lindale-city-council-stops-short-of-outlawing-abortion-despite-community-push/article_fadb22e4-52c5-11ea-8640-b73a2b147948.html [http://perma.cc/3YjP-8HWG].

193. Meredith Shamburger, *Carthage City Commission Denies Proposed Abortion Ordinance*, PANOLA WATCHMAN (Feb. 24, 2020), https://www.panolawatchman.com/news/carthage-city-commission-denies-proposed-abortion-ordinance/article_b3a7c2bc-5764-11ea-933b-c71e30dd2255.html [http://perma.cc/4PGU-KC62].

194. *Agenda*, COAHOMA CITY COUNCIL (May 7, 2020), <http://www.cityofcoahoma.tx.citygovt.org/Portals/Coahoma/agenda%20for%20May%207,%202020.pdf> [http://perma.cc/D3JX-NPA6].

council voted against the ordinance, deeming its passage not to be in the best interest of the community.¹⁹⁵

On June 10, 2019, the Texas governor signed into law Senate Bill 22 barring local governments from contracting with an abortion provider, or its affiliates, for goods, property, or services.¹⁹⁶ The Austin City Council turned from the sanctuary movement in September 2019, instead approving \$150,000 for abortion assistance to women seeking abortions.¹⁹⁷ The money was budgeted to provide assistance for transportation, childcare, hotel costs, and other costs women face due to state laws impeding access to abortion.¹⁹⁸ It does not pay for the procedure itself.¹⁹⁹ While some view the move as a creative way to ensure access to abortion, others say it violates Texas law. Following the city council's passage of the budget, a lawsuit was filed by a member to block the funding as violating the recently enacted Senate Bill 22.²⁰⁰ The lawsuit argued Austin's funding for abortion-related costs served no legitimate public purpose. The city argued none of the funding had been disbursed, and no applicants had applied so the lawsuit was premature.²⁰¹ A district court judge ruled in favor of the city council, and an appeal was ongoing as of June 2020.²⁰² Dickson credits Senate Bill 22 as the impetus for the local ordinances and resolutions, as a provision stated a city or county was not prevented from prohibiting abortion. This spurred Dickson to contact a state senator who recruited attorneys to help draft boilerplate language for the proposed ordinance, first brought to Waskom, Texas.²⁰³

Florida: In Santa Rosa County, Florida, a county commissioner filed a resolution to declare the county Florida's first "sanctuary for life."

195. *Coahoma City Council Declines Proposed Ordinance To Become a Right to Life Sanctuary City*, KBST NEWS (May 2020), <https://kbestmedia.com/kbest-station-updates/507456> [<http://perma.cc/X4P7-L2D2>].

196. W. Gardner Selby & Rebekah Allen, *Texas Gov. Greg Abbott Signs Bill to Block Taxpayer Money from Going to Abortion Providers*, DALL. MORNING NEWS (June 10, 2019, 8:00 AM), <https://www.dallasnews.com/news/politics/2019/06/10/texas-gov-greg-abbott-signs-bill-to-block-taxpayer-money-from-going-to-abortion-providers/> [<http://perma.cc/9ZkC-46ZC>].

197. Wax-Thibodeaux, *supra* note 153.

198. Sophie Novack, *Some Small Texas Towns Are Declaring Themselves 'Sanctuary Cities for the Unborn'*, TEX. OBSERVER (Sept. 25, 2019, 3:00 PM), <https://www.texasobserver.org/sanctuary-cities-unborn-texas-small-town/> [<http://perma.cc/FT8B-DTS4>].

199. Ashley Lopez, *As Texas Cracks Down on Abortion, Austin Votes to Help Women Defray Costs*, NPR (Sept. 17, 2019, 5:09 AM), <https://www.npr.org/sections/health-shots/2019/09/17/761342576/as-texas-cracks-down-on-abortion-austin-votes-to-help-women-defray-costs> [<http://perma.cc/8GQ4-UWSZ>].

200. *Id.*

201. Ryan Autello, *Austin's Financial Support of Abortions Faces Second Challenge*, STATESMAN (June 3, 2020, 4:50 PM), <https://www.statesman.com/news/20200602/austins-financial-support-of-abortions-faces-second-legal-challenge> [<http://perma.cc/63PJ-S5AB>].

202. *Id.*

203. Wang, *supra* note 1.

The resolution cites the Declaration of Independence as affirming that “all men are created equal and have been endowed by the Creator with unalienable rights, chief among them the right to life, and that the protection of these rights is an affirmative duty of federal, state, and local governments.”²⁰⁴ It further states the “Board of County Commissioners of Santa Rosa County, Florida, desires to express its deep concern that all human life, beginning from inside the womb, through every stage of development...should be treated humanely and with dignity.”²⁰⁵ If the county commission passed the resolution, it would specifically state the following:

1. That the Board of County Commissioners of Santa Rosa County, Florida, hereby recognizes and declares the full humanity of the preborn child through all states of life up and until a natural death and declares Santa Rosa County, Florida, to be a sanctuary for life where the dignity of every human being will be defended and promoted from life inside the womb through all stages of development in life up and until a natural death.²⁰⁶
2. That the Board of County Commissioners of Santa Rosa County, Florida, hereby resolves to enforce this resolution by all means within its power and authority, in accordance with its responsibility as the people’s elected local representative.²⁰⁷

Public comment was had about the resolution on February 10, 2020,²⁰⁸ and on February 13, 2020.²⁰⁹ The county commission listened to over four hours of public debate. Several citizens voiced concern, arguing the commission should worry about taxes and infrastructure and not abortion. Other citizens

204. *A Resolution of the Board of County Commissioners of Santa Rosa County, Florida, Declaring Santa Rosa County, Florida To Be a Sanctuary for Life*, *supra* note 3.
205 *Id.*

206. As the resolution language states life will be defended until a natural death, it calls to question laws that regulate death decisions. For example, should this become an ordinance in Santa Rosa County in the future, how will Do Not Resuscitate orders be handled? Are males able to opt out of registering for selective service due to potential death in war situations? Florida has a death penalty—would the death penalty not be enforced within the county based on this language? What reach does the language “up until a natural death” include?

207. *A Resolution of the Board of County Commissioners of Santa Rosa County, Florida, Declaring Santa Rosa County, Florida To Be a Sanctuary for Life*, *supra* note 3.

208 Blanks, *supra* note 6.

209. Pam Brannon, *Right to Life Sanctuary? Voters Will Decide in November*, GULF BREEZE NEWS (Feb. 20, 2020), <https://news.gulfbreezenews.com/articles/right-to-life-sanctuary/> [<https://perma.cc/PC3J-FK2Y>].

wanted the commission to take a stand on this issue to send a resounding message that Santa Rosa County protects life from the stage of conception. Instead of voting to pass the resolution, the county commissioners directed staff to draft ballot language for the November general election.²¹⁰ Lane Lynchard, a county commissioner, did not feel this decision was appropriate for the commission to undertake, saying, “This resolution accomplishes nothing other than pitting people against one another. We can’t legislate people’s beliefs. I think we need to stick with governing the county.”²¹¹

The commission approved the ballot language unanimously, without an objection or discussion, at a meeting on August 20, 2020. The issue appeared on the ballot in the form of a nonbinding referendum for voters to decide, asking, “Shall citizens of Santa Rosa County declare that Santa Rosa County is a Sanctuary for Life?”²¹² The referendum was approved with 57% of the vote (56,724 ballots). Nearly 43% of voters (42,100 ballots) were opposed.²¹³ Santa Rosa County is officially the first pro-life sanctuary in Florida.²¹⁴ Unless voters researched the issue before mailing in their ballots or heading to the polls, the ballot language seems to be an extremely vague question. Does Sanctuary for Life apply to immigration, abortion, or Second Amendment status? It falls upon the voter to educate themselves on this issue, and particularly the meaning of the ballot question prior to voting, to avoid any confusion.

The impetus for anti-abortion resolutions and ordinances appear to be an effort to codify conservative policies, following a trend of passing Second Amendment sanctuaries. As of October 2019, five states and at least seventy-five cities and counties designated themselves as Second Amendment sanctuaries.²¹⁵ Obviously, sanctuaries for the unborn are not advocating for the same rights as Second Amendment sanctuaries. Both, however, advocate for immunity from federal laws believed to be unconstitutional.²¹⁶ As Professor John E. Finn of Wesleyan University writes, at its best “sanctuary movements are a sign of a strong and vibrant constitutional community” and at its worst “a sanctuary movement subverts the Constitution by denying its very authority.”²¹⁷

210. *Id.*

211. Rachel Olding, *The Wacky New Anti-Abortion Tactic Taking Off Across America*, DAILY BEAST (Feb. 14, 2020, 4:36 AM), <https://www.thedailybeast.com/sanctuary-city-for-the-unborn-is-the-wacky-new-anti-abortion-tactic-taking-off-across-america> [http://perma.cc/ZY68-G6LW].

212. Brannon, *supra* note 4.

213. Blanks, *supra* note 2.

214. *Id.*

215. Finn, *supra* note 92.

216. *Id.*

217. *Id.*

V. CONCLUSION

The decision whether or not to bear a child is central to a woman's life, to her well-being and dignity. It is a decision she must make for herself. When Government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.²¹⁸

In at least five states—Illinois, New Mexico, Texas, North Carolina, Utah—resolutions and ordinances declaring localities as sanctuaries for the unborn or sanctuaries for life have passed. Many of the localities go beyond the Santa Rosa County resolution language by banning abortion services and equating abortion to murder with malice aforethought, along with other provisions. However, that does not mean the Santa Rosa County language is harmless. It is yet another confusing and stigmatizing obstacle thrown in the path of women regarding abortion access.

What do these resolutions and ordinances actually do? Most local officials, even when voting to pass the controversial language, agree that these are largely symbolic documents with little to no chance of enforceability. As well, there is a potentially high cost to defend a lawsuit should one be brought. Some argue this is a new way anti-abortion groups can have their voices heard so to counter pro-choice efforts. Additionally, it allows local jurisdictions to be prepared for a reversal of United States Supreme Court precedent so abortion can be designated as illegal. Penalties would be in place for immediate use against abortion providers or those who assist women in obtaining abortions.

Perhaps the rationale behind the sanctuary for life movement is the most obvious: resolutions and ordinances are part of a larger movement to overturn *Roe v. Wade*. As localities pass anti-abortion restrictions in denunciation of federal and state laws, a worrisome trend appears—the desire of citizens “to wall themselves off from rules they disagree with, laws imposed by higher authorities that do not match their values.”²¹⁹ Abortion is a divisive issue, and not one to become less so anytime in the future. The proliferation of TRAP laws, coupled with sanctuary for life city and county designations, confound members of the general public and treat citizens of different jurisdictions quite differently. City councils and county commissions are not the

218. *Nomination of Ruth Bader Ginsburg, to be Associate Justice of the Supreme Court of the United States: Hearing Before the Comm. on the Judiciary United States Senate*, 103d Cong. 207 (1993) (statement of Ruth Bader Ginsburg, Circuit Court Judge, U.S. Court of Appeals for the District of Columbia).

219. Dionne Searcey, *The Wall Some Texans Want to Build Against Abortion*, N.Y. TIMES (Mar. 3, 2020), <https://www.nytimes.com/2020/03/03/us/politics/texas-abortion-sanctuary-cities.html> [<https://perma.cc/827T-XSHN>].

appropriate forums to examine the medical data, case law, and societal impacts involving abortion. By making abortion access more confusing and more difficult, the health and livelihoods of women are placed in peril.