

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

Texas Equal Access Fund;  
Lilith Fund for Reproductive Equity,

Plaintiffs,

v.

Civil Action No.

City of Waskom, Texas;  
City of Naples, Texas;  
City of Joaquin, Texas;  
City of Tenaha, Texas;  
City of Rusk, Texas;  
City of Gary, Texas;  
City of Wells, Texas,

Defendants.

**COMPLAINT**

1. The right to access abortion is protected by the United States Constitution. But in recent months, at the behest of anti-abortion activists, several east Texas municipalities have passed ordinances that claim to ban abortion. Although this section of the ordinances cannot be enforced while *Roe v. Wade* is in effect, the ordinances' existence misleads residents of these cities as to whether individuals can in fact exercise their right to access abortion.

2. Yet while the ordinances concede that they cannot ban abortion under current law, several other provisions are in effect. The ordinances deem Plaintiffs Texas Equal Access Fund ("TEA Fund") and Lilith Fund for Reproductive Equity ("Lilith Fund"), and other pro-choice organizations, as "criminal organizations." This means that Plaintiffs have been judged criminal without ever having been charged with a crime, much less afforded a trial. The list of "criminal

organizations” includes not only groups that provide abortions but also those that, like Plaintiffs, work to educate the public about their rights and to challenge restrictions on access to such services.

3. As a result of being designated criminal, Plaintiffs are prohibited from operating, speaking, and associating within these cities. Consequently, Plaintiffs are hampered from countering or clarifying the confusion created by the ordinances as to the legality of abortion services.

4. Plaintiffs, and many other pro-choice organizations, view educating people about their right to access abortion—and restrictions on that right—as a central component of their missions. Because of these anti-abortion ordinances, there is a critical need to make sure that people residing in or near these cities have an accurate understanding of their rights. However, the ordinances subject Plaintiffs to liability for carrying out their work.

5. These problems are exacerbated by the vague wording of, among other things, the provision that prevents Plaintiffs from “operat[ing] within” these cities, which is so unclear that no reasonable person would be able to discern the scope of the conduct that is prohibited.

6. The ordinances also discriminate against Plaintiffs and others who support abortion access because their prohibition of speech and association applies only to those with a pro-choice viewpoint. Organizations with an anti-abortion viewpoint, such as the one that promoted the ordinances, may operate and speak freely about their anti-abortion views within these cities.

7. Plaintiffs seek declaratory relief finding these punishing and discriminatory ordinances unconstitutional.

### **JURISDICTION AND VENUE**

8. This civil action is brought pursuant to 42 U.S.C. § 1983 and the United States Constitution to vindicate rights secured by the First Amendment, the Bill of Attainder Clause, and the Due Process Clause.

9. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

10. Plaintiffs' claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rule 57 of the Federal Rules of Civil Procedure, and by the powers of this Court.

11. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(1) and (b)(2) because the Defendants are located in this district and because a substantial part of the events giving rise to the claims at issue in this case occurred in this district.

12. Venue is proper in this division because Defendant city Waskom is located in Harrison County and Defendant city Naples is located in Morris County; both counties are located in this division.

### **THE PARTIES**

#### **A. Plaintiffs**

13. TEA Fund is a 501(c)(3) non-profit organization that assists Texans in exercising their constitutional right to abortion by removing barriers to access. In addition to providing direct financial assistance to individuals who want to end a pregnancy but cannot afford the full cost of an abortion procedure, TEA Fund's seven-person staff has been building an extensive advocacy program throughout north and east Texas.

14. Lilith Fund is a 501(c)(3) non-profit organization that assists Texans in exercising their constitutional right to abortion by removing barriers to access. In addition to providing

direct financial assistance to individuals who want to end a pregnancy but cannot afford the full cost of an abortion procedure, Lilith Fund has made advocacy work a core part of its mission. It focuses its advocacy work on educating people about reproductive rights and abortion access in Texas.

**B. Defendants**

15. Waskom is a city located in Harrison County, Texas.

16. Naples is a city located in Morris County, Texas.

17. Joaquin is a city located in Shelby County, Texas.

18. Tenaha is a city located in Shelby County, Texas.

19. Rusk is a city located in Cherokee County, Texas.

20. Gary is a city located in Panola County, Texas.

21. Wells is a city located in Cherokee County, Texas.

22. It is the official policy of these cities, enacted through ordinances promulgated by the legislative body of each city, to prohibit Plaintiffs from exercising their freedoms of speech and assembly, discriminate against pro-choice speech, and levy punishment on Plaintiffs without trial.

**FACTUAL ALLEGATIONS**

**A. Plaintiffs' Advocacy Work**

23. Plaintiffs' shared goals of using advocacy to educate people about the importance of abortion and increasing access to abortion are central to their work.

24. Speaking about abortion is a significant part of TEA Fund's work. TEA Fund has grown to have a staff of seven people since its founding in 2005. While it has a statewide

manager and a grassroots organizer on staff, all of TEA Fund's employees participate in advocacy work in some capacity.

25. As the organization has expanded, the scale of the advocacy work it has undertaken has grown. In recent years, its advocacy work has included planning and participating in outreach in regions throughout Texas. Staff frequently present on abortion access at conferences and events, and they directly communicate with and engage state and local officials on abortion access. TEA Fund also communicates information to the public in a variety of ways, including through digital campaigns and other social media advocacy. It also works with individuals to help them share their stories about their abortion experiences with the public to emphasize the importance of access and to reduce the stigma associated with abortion. It often engages in this work along with other reproductive rights and reproductive justice organizations. It plans to continue expanding its advocacy work.

26. TEA Fund also runs a volunteer program. Its volunteers generally participate as helpline volunteers, clinic escorts (ensuring that people visiting an abortion clinic feel supported and safe), or clinic legal observers (monitoring anti-abortion protestors outside clinics to make sure they are complying with the law). TEA Fund also encourages other types of volunteering as the need arises, such as hosting events or promoting TEA Fund on social media. It has over 125 active volunteers who provide this assistance throughout the state.

27. TEA Fund recruits and sustains volunteers who advocate for abortion access by providing active mentorship and resources to its volunteers. It is planning to expand the scope of this work, particularly in rural areas in north and east Texas. It also hopes to send people to east Texas towns to discuss their personal experiences with abortion in order to break down the stigma associated with it.

28. Advocacy is also a crucial component of Lilith Fund’s work and mission. The overarching mission of its advocacy work is to break down the shame and stigma associated with abortion by bringing it into the open, thereby creating culture change that will increase people’s ability to access care. Founded in 2001, Lilith Fund has continued to grow its advocacy work to meet these goals.

29. An important component of Lilith Fund’s advocacy work involves education and communication efforts to raise awareness about abortion access. In 2015, recognizing that there was confusion about the legality of abortion access and how to seek services after the passage of extensive state restrictions, Lilith Fund co-founded a website called needabortion.org to educate people about their rights and worked to promote it as a useful resource. It continues to regularly hold events in Texas to educate people about reproductive justice.

30. Lilith Fund’s work also includes working with government officials to advance legislation that would help people access abortion services. Like TEA Fund, it uses digital media to share information about abortion access throughout the state. It also has volunteers who share their personal experiences with abortion with officials and the public in order to advocate for greater access to services. And it trains people to become effective messengers on abortion rights. Lilith Fund staff frequently speak on panels at conferences and partner with other organizations and coalitions to advocate for change at the local level.

## **B. The Ordinances**

31. On June 11, 2019, the City of Waskom, Texas, passed Ordinance Number 336 (the “Waskom Ordinance”), declaring itself a “sanctuary city for the unborn.” *See* Ex. 1. This was the first municipal ordinance in the state of Texas to attempt to make abortion and emergency contraception unlawful within its city limits. Waskom’s motivation in passing its

ordinance was clear: Mayor Jesse Moore told a CBS News affiliate that a group called “Right to Life approached us because the abortion laws are changing in Louisiana, Alabama and Mississippi and that the abortion clinics may start moving to Texas . . . . With Waskom being the first city, 18 miles (west) from (Shreveport,) Louisiana, they were anticipating one moving over here.”

32. Soon after, six other east Texas cities— Naples, Joaquin, Tenaha, Rusk, Gary, and Wells—enacted similar ordinances. *See* Exs. 2–7. These ordinances, promulgated by the legislative body of each city, constitute official policies of these cities.

33. As Mayor Moore indicated, the idea to pass these ordinances did not start with residents of the cities. Members of anti-abortion groups Right to Life of East Texas and Texas Right to Life traveled to each of these cities to convince city officials to enact these ordinances. They brought with them a template ordinance that bans abortion within city limits if *Roe v. Wade* is overturned and that designates organizations engaged in reproductive rights work as criminal.

34. The ordinances declare organizations that “perform abortions and assist others in obtaining abortions” to be “criminal organizations.” It specifically names eight reproductive rights and reproductive justice organizations, including Plaintiffs, as criminal organizations.

35. The ordinances make it unlawful for the named “criminal organizations,” including Plaintiffs, to “operate within” the cities. “Operat[ing] within” the cities is defined broadly and “includes, but is not limited to: (a) offering services of any type,” “renting office space or purchasing real property,” or “establishing a physical presence of any sort.”

36. The ordinances also designate as unlawful procuring or performing an abortion, aiding or abetting an abortion, and causing an abortion; some also designate as unlawful the sale or distribution of emergency contraception.

37. All of the ordinances declare abortion to be an “act of murder with malice aforethought.” Abortion is legal in Texas, and the Texas penal code does not classify it as unlawful.

38. The ordinances contain multiple enforcement provisions, none of which includes a defined statute of limitations period. Plaintiffs challenge the “criminal organizations” declaration and the provision that forbids them from “operat[ing] within” Defendant cities, which is currently enforceable through a provision that allows “[a]ny private citizen [to] bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act.” Qui tam relator actions authorize a suit in the name of the government, in order to assert a government interest.

39. The ordinances also contain two other enforcement mechanisms. One creates a civil cause of action against a person or entity that procures, aids, or abets an abortion, making them “liable in tort to any surviving relative” of the fetus. It is immediately enforceable. The other provides that the commission of an act deemed unlawful by the ordinance “shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health.” However, the ordinances are explicit that this last provision may not be used “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).

### **C. The Impact of the Ordinances**

40. These ordinances violate the U.S. Constitution in several ways:
- a. First, the ordinances suppress lawful speech about abortion and other reproductive healthcare.

- b. Second, the ordinances discriminate against speech that has a pro-choice viewpoint.
- c. Third, the ordinances restrict the rights of Plaintiffs and their staff to associate within and with individuals in these cities on issues of abortion and reproductive healthcare.
- d. Fourth, the ordinances are unconstitutionally vague, failing to adequately describe the conduct that is prohibited. It is impossible for a person to know how to abide by the law.
- e. Fifth, by declaring Plaintiffs to be criminal and prohibiting them from operating within the cities, the ordinances unconstitutionally punish them through the legislative process, without a trial.

41. Further, by purporting to ban abortion, the ordinances create the impression that residents of Defendant cities can no longer exercise their right to an abortion. Although that part of the ordinances will not take effect unless *Roe v. Wade* and *Planned Parenthood v. Casey* are overturned, all residents of these cities are likely not aware of this limitation.

42. Plaintiffs have informed people in and around these cities that they continue to have the constitutional right to access reproductive healthcare, including abortion, because it is part of their missions to educate people about their reproductive rights. But by branding Plaintiffs as criminal, blocking their speech, and preventing them from associating within Defendant cities, the ordinances impede Plaintiffs' ability to disseminate truthful information to the people of these cities.

43. Both Plaintiffs have attempted to inform east Texans, including residents of these cities, about their rights since the ordinances have passed. Lilith Fund has rebranded and updated

the content on needabortion.org to provide people with easy-to-access knowledge and resources. Both Plaintiffs have undertaken extensive work to promote the website in the cities that passed the ordinances through digital media. They have paid Facebook to display ads directing residents of the cities who use Facebook to needabortion.org, and have plans to continue to do so.

44. Lilith Fund has also placed information on road-side billboards in east Texas to direct people to needabortion.org, and it hopes to expand its use of billboards to share this information. TEA Fund has done volunteer recruitment work in Defendant cities to ensure that communities have locally-based advocates to increase awareness that abortion is still legal. TEA Fund provides extensive guidance and training, including on how to speak about abortion and how to host events, and education on reproductive healthcare. TEA Fund also offers resources and support for volunteers to host events.

45. However, the ordinances chill Plaintiffs from expanding the scope of this important advocacy. The ordinances subject Plaintiffs to civil liability if they “operate within” any of Defendant cities. This includes offering services of any type, renting office space or purchasing property, and establishing a physical presence of any sort—but is not limited solely to those three types of conduct. Because of the undefined scope of prohibited conduct, Plaintiffs and others are unsure of what they are barred from doing.

46. For example, Lilith Fund does not know whether the ordinances will subject them to prosecution for their advocacy work, such as their billboard and social media campaigns. TEA Fund is likewise unclear as to whether its current work and planned work will subject it to liability. It hopes to host events in east Texas and to bring individuals to these towns to discuss their experiences with reproductive healthcare. Plaintiffs are also concerned that the ordinances

have exacerbated hostility to abortion advocacy, making any advocacy in these cities more difficult and also potentially unsafe for employees.

47. Both Plaintiffs seek to expand their work with volunteers on the ground in east Texas. As a concrete step, they signed on to co-brand and distribute a toolkit created by the ACLU of Texas to train volunteers on how to advocate against local anti-abortion restrictions, like the ordinances at issue. However, the ordinances are so overly broad and vague that it is unclear whether volunteer recruitment and engagement, done locally or even remotely, would constitute “operat[ing] within” these cities and thus open Plaintiffs up to liability. Plaintiffs are apprehensive that doing so might increase the likelihood that they are held liable under the ordinances.

48. And by prohibiting Plaintiffs from having a “physical presence of any sort” within these cities, the ordinances impede Plaintiffs from associating with volunteers in or residents of the cities on issues central to their mission. Plaintiffs cannot participate in or host events in these cities to discuss reproductive health without the possibility of incurring liability. Nor can they assemble with like-minded residents, or recruit additional volunteers—at least not without assuming risk of liability. This risk directly impedes Plaintiffs’ work and mission.

49. The ordinances also unlawfully target Plaintiffs by name, thereby punishing them outside of the judicial system and without the protections of a judicial trial. In addition to banishing Plaintiffs from these cities, where they would otherwise be able to operate freely, the ordinances cause harm to their reputation and exacerbate the extensive stigma against the issue of abortion. The ordinances also negatively impact the Plaintiffs’ ability to form and maintain relationships with people and organizations who might aid in that work. In other words, people will be directly discouraged from associating or working with a declared criminal entity.

50. And of course, the ordinances impose these barriers only against organizations who speak in support of abortion and reproductive justice. East Texas Right to Life, and any other organization opposed to abortion, can enter these cities freely to cultivate volunteers and discuss its mission with residents. It and other anti-abortion groups can establish offices in these cities to effectuate their work without restraint.

51. Because these ordinances prevent Plaintiffs and similar organizations from speaking and associating within these cities, while at the same time permitting speech and association advocating the abolishment of abortion, the confusion created about the right to access abortion is compounded. These ordinances enact a barrier to information for those who reside in or around these cities, and simultaneously prevent organizations like Plaintiffs from helping to overcome that barrier to information.

52. Abortion is legal and constitutionally protected in these cities—officials there just do not want their residents to know it.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE— UNCONSTITUTIONAL ABRIDGMENT OF FREE SPEECH RIGHTS**

53. The foregoing allegations are repeated and incorporated as though fully set forth herein.

54. The ordinances violate the right to free expression protected under the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

55. Plaintiffs engage in speech to protect and advance the constitutional right to access abortion. On their face and as applied, the ordinances passed by Defendants burden protected expression by subjecting Plaintiffs to liability for operating within these cities.

**COUNT TWO—UNCONSTITUTIONAL ABRIDGMENT OF FREE ASSOCIATION RIGHTS**

56. The foregoing allegations are repeated and incorporated as though fully set forth herein.

57. The ordinances violate Plaintiffs' right to freedom of association under the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

58. Plaintiffs seek to educate and raise awareness among the public by conducting outreach, holding events, and recruiting and associating with volunteers. On their face and as applied, the ordinances passed by Defendants burden Plaintiffs' right to associate with others in carrying out their work by subjecting them to liability for operating within these cities.

**COUNT THREE—CONTENT AND VIEWPOINT DISCRIMINATION**

59. The foregoing allegations are repeated and incorporated as though fully set forth herein.

60. The ordinances discriminate on the basis of the content and viewpoint of speech in violation of the First Amendment, as incorporated by the Fourteenth Amendment to the United States Constitution.

61. On their face and as applied to Plaintiffs, the ordinances passed by Defendants discriminate against Plaintiffs based on their pro-choice stance and speech. By passing ordinances that prohibit Plaintiffs and other pro-choice organizations—and not anti-abortion organizations—from speaking and associating within these cities, Defendants have engaged in speaker-based discrimination, burdening speech based on its content and viewpoint.

**COUNT FOUR—VIOLATION OF PROHIBITION OF BILLS OF ATTAINDER**

62. The foregoing allegations are repeated and incorporated as though fully set forth herein.

63. The ordinances violate the Bill of Attainder Clause of the United States Constitution by impermissibly singling out and punishing Plaintiffs by specifically declaring them by name to be “criminal organizations.”

64. Defendants’ passage of the ordinances additionally violates the Bill of Attainder Clause because the ordinances impermissibly target and punish Plaintiffs by prohibiting them from operating within Defendant cities.

65. The ordinances are unconstitutional bills of attainder because they punish Plaintiffs without a judicial trial.

#### **COUNT FIVE—VOID FOR VAGUENESS**

66. The foregoing allegations are repeated and incorporated as though fully set forth herein.

67. The ordinances are void for vagueness under the Due Process Clause of the Fifth Amendment of the United States Constitution, as incorporated by the Fourteenth Amendment, by failing to define what it means to “operate within” Defendant cities with sufficient precision and particularity as to give Plaintiffs fair notice as to what conduct is prohibited.

68. Because the ordinances implicate the fundamental rights to free speech and association, they are subject to heightened scrutiny.

69. The ordinances articulate three examples of prohibited conduct with these cities: “(a) Offering services of any type,” “(b) Renting office space or purchasing real property,” and “(c) Establishing a physical presence of any sort.”

70. “Offering services of any type” and “physical presence of any sort” are sufficiently vague that it is unclear what behavior is barred.

71. Additionally, “operat[ing] within” Defendant cities “includes, *but is not limited to*” these examples. It is unclear to any reasonable person what conduct is actually prohibited and would carry legal consequences.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

72. Issue a declaratory judgment that the ordinances of each Defendant city violate the First Amendment to the United States Constitution on its face and as applied to Plaintiffs;

73. Issue a declaratory judgment that the ordinances violate the Bill of Attainder Clause of the United States Constitution on its face and as applied;

74. Issue a declaratory judgment that the ordinances are void for vagueness in violation of the Due Process Clause of the United States Constitution on its face and as applied;

75. Award Plaintiffs their costs and reasonable attorneys’ fees in this action; and

76. Grant such further relief as this Court deems just and proper.

Dated: February 25, 2020

Respectfully submitted,

Brigitte Amiri, NY Bar No. 3017167\*  
Clara Spera, NY Bar No. 5590229\*  
Brian Hauss, NY Bar No. 5437751\*  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004  
Tel. (212) 549-2600  
Fax: (212) 549-2652  
bamiri@aclu.org  
cspera@aclu.org  
bhauss@aclu.org

*Attorneys for Plaintiffs*

*\*Admission pro hac vice forthcoming*

/s/ Anjali Salvador  
Anjali Salvador, TX Bar No. 24110324,  
*Lead Attorney*  
Adriana Pinon, TX Bar No. 24089768  
Andre Segura, TX Bar No. 24107112  
ACLU Foundation of Texas, Inc.  
5225 Katy Freeway, Suite 350  
Houston, TX 77007  
Tel. (713) 942-8146  
Fax: (713) 942-8966  
asalvador@aclutx.org  
apinon@aclutx.org  
asegura@aclutx.org