

Velva L. Price
District Clerk
Travis County
D-1-GN-20-003113
Victoria Benavides

CAUSE NO. D-1-GN-20-003113

The Lilith Fund for Reproductive Equity,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	53RD
	§	____ JUDICIAL DISTRICT
	§	
Mark Lee Dickson, and	§	
Right to Life East Texas,	§	
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

A “criminal” is a person who breaks the law, not a person with whom you disagree politically. In Texas, calling a person or a business who has committed no crimes “criminal” is *per se* defamation. There is no level of commitment to a particular political outcome and no amount of fervent belief in any one particular political position that relieves a person of his duty to avoid defaming others. Simply put, there are rules that apply to everyone in Texas and one of them is you cannot falsely accuse your political enemies of crimes.

Defendants Mark Lee Dickson (“Dickson”) and Right to Life East Texas (“RLET”) have been breaking that rule with impunity for months by lying about Plaintiff The Lilith Fund for Reproductive Equity (“Lilith Fund” or “Plaintiff”) and other pro-choice organizations. Defendants’ lies about Lilith Fund and the other organizations are as simple as they are appalling. They have repeatedly stated that Lilith Fund and the other organizations are literal criminals when Defendants know that is not true. Worse still, Defendants have encouraged others, including members of local government in cities throughout the state, to also lie about Lilith Fund and other organizations.

When Defendants made these false statements and encouraged others to do so, Defendants knew that Lilith Fund and the other organizations had committed no crimes. Abortion is not a

crime in Texas. Abortion is not murder under Texas law. Providing information about abortion is not illegal under Texas law and is, in fact, protected activity and speech. Providing financial assistance to a private citizen is not illegal under Texas law. And none of those things are or ever have been murder under Texas law. Yet, Defendants continue to publicly say that Lilith Fund and other similar organizations are literally “criminal organizations” who are assisting with murder “with malice aforethought.”

As described in detail below, Defendants’ statements were made before and during coordinated efforts to get various city councils to pass an ordinance that enshrines the lies into the municipal books; they were made at city council meetings, but also online, to news media, or on social media. They were also often made after enactment of various ordinances, in order to confuse the public about the legal effects of those ordinances and to defame Lilith Fund and similar organizations. The available facts disclose that this campaign has been strategic and thorough, and that its principle aims are to (1) defame Lilith Fund and other reproductive justice advocates and (2) confuse the public about the state of the law in support of this defamatory purpose. This conduct continues to the present day, and the defamation is ongoing. Because Defendants refuse to stop lying and refuse to correct the false record they have created, Lilith Fund asks this Court to find the statements are false and defamatory, require Dickson and RLET to set the record straight, and award such damages as are necessary to compensate Lilith Fund for the injuries caused by Defendants’ lies.

I.
RELIEF SOUGHT AND DISCOVERY LEVEL

1. Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00 and intend to conduct discovery under Level Three pursuant to Texas Rule of Civil Procedure 190.4.

II.
PARTIES

2. Plaintiff the Lilith Fund for Reproductive Equity is a Texas nonprofit which may be served with process through the undersigned counsel.

3. Defendant Mark Lee Dickson is a resident and citizen of Texas, and on information and belief may be served with process at 1233 E. George Richey Rd., Longview, TX 75604-7622.

4. Defendant Right to Life East Texas is a Texas nonprofit organization, and may be served with process through its director, Mark Lee Dickson, at 1233 E. George Richey Rd., Longview, TX 75604-7622.

III.
JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction because no other court has exclusive jurisdiction of the subject matter of these causes and the amount in controversy is within the jurisdictional limits of this Court.

6. Venue is proper in Travis County, Texas, pursuant to § 15.017 of the Texas Civil Practice and Remedies Code because Plaintiff resided in Travis County at the time of accrual of the cause of action.

IV.
FACTS

A. Defendants' Campaign and Lies.

7. Defendants, led by Mark Lee Dickson, have been attempting to persuade various cities and local governments to enact a patently unconstitutional ordinance purporting to ban abortion and designating as “criminal” organizations like Planned Parenthood (which provides abortion procedures) and Lilith Fund (which advocates for abortion rights and assists people in obtaining legal abortions by providing information about legal abortions and by providing funding to private citizens, but does not provide abortion procedures). The proposed ordinance, which has now been passed in several localities (with some variations), not only violates almost fifty years of settled Supreme Court precedent in *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Whole Women's Health v. Hellerstedt* and their progeny, it also (as originally enacted by many of the jurisdictions) operates as an unconstitutional bill of attainder, since (as originally enacted) it declared certain groups, including Lilith Fund, to be “criminal” or “unlawful” without any judicial process. Although many cities have now amended their versions to strike Dickson’s specific list of political enemies from their code of ordinances, Dickson’s statements and advocacy in favor of the original ordinance remain defamatory and evidence an ongoing and concerted effort to perpetuate their lies about Lilith Fund.

8. Dickson’s campaign has been going on for months, and the records of the City Council meetings he has attended show that his campaign has been coordinated, not only with Defendant RLET (of which he is the director) but also with other organizations, like Texas Right to Life. The campaign shows the breadth and scope of Dickson’s lies, and the endorsement and ratification of them—even the participation in dissemination of them—by RLET.

9. Dickson goes from city to city (cities Dickson does not live in and has no personal connection to), often accompanied by people associated with Texas Right to Life, to spread his lies and pursue his unconstitutional ordinance. His usual practice is to stir up fear that an abortion facility could open within the city limits unless the ordinance is passed when there is no reason to believe that is likely to happen. He typically brings with him stuffed animals, as well as dolls allegedly depicting twelve-week old fetuses.

10. Dickson's first target for the ordinance was Waskom, Texas. The official minutes of the Board of Aldermen for June 11, 2019 reflect that Mark Lee Dickson, "representing Right of Life of East Texas" proposed and advocated for the ordinance, claiming that the city "was at risk with an abortion clinic moving in[.]" Another speaker, Rusty Thomas, apparently asked the board to "make a stand" and "pass the ordinance outlawing abortion." Alderman James King moved to adopt the ordinance, and the motion was seconded by Alderman Russell Allbritton. The Board adopted the ordinance on a 5-0 vote.

11. On July 23, 2019, Dickson spoke to the City Council of Gilmer, Texas. The Council Minutes reflect that Dickson was representing Right to Life East Texas (his attendance is recorded as "Mark Lee Dickson, Right to Life East Texas"). But it wasn't until September 24, 2019, when Dickson again visited the Gilmer City Council (again representing Right to Life East Texas according to the minutes), that Gilmer adopted the ordinance by 4 votes to 1. The minutes reflect that at this meeting Dickson was accompanied by Katherine "Pilcher" (it appears that this is a misspelling of "Pitcher") and John Seago of Texas Right to Life.

12. On September 9, 2019, Dickson attended the meeting of the City Council of Naples, Texas, again apparently accompanied by Katherine Pitcher. Pitcher testified in favor of adoption of Dickson's ordinance, further showing the coordination between Dickson and Texas Right to

Life. Dickson, misidentified in the minutes as “Mark Lee Dickerson” advocated for the ordinance as well. The City Council adopted the ordinance with one opposing vote.

13. The City of Joaquin passed the ordinance on September 17, 2019, though the City Council minutes reflect little about this decision. More informative are the minutes from the City Council for the City of Tenaha on September 23, 2019. Dickson was in attendance at that meeting and claimed that, due to a new fetal heartbeat bill passed by Louisiana, Tenaha was at risk of an abortion clinic opening if it did not pass his ordinance. Tenaha passed the ordinance.

14. Dickson then moved on to the City of Gary, Texas, attending the October 17, 2019 Gary City Council meeting. The City Council voted to table his proposed ordinance. Dickson returned to the Gilmer City Council on January 16, 2020 and made another presentation, after which the Gary City Council adopted Dickson’s ordinance.

15. “A citizen” presented Dickson’s ordinance to the Big Spring City Council on November 12, 2019. “Several citizens” spoke in favor of the resolution. The minutes do not name these speakers. On December 10, 2019, Dickson’s ordinance was again entertained, and “many citizens spoke in favor and against” the ordinance. Finally, on January 14, 2020, “many citizens” again spoke in favor and against the ordinance. The Big Spring City Council then passed the ordinance, though they modified it by substituting the word “unlawful” in for “criminal organizations” when describing (and listing) organizations like Lilith Fund. The ordinance was adopted three votes to two.

16. Dickson was at the November 14 and November 18, 2019 meetings of the City Council for the City of Westbrook, Texas, and presented his ordinance, persuading Westbrook to adopt it.

17. On November 21, 2019 Dickson (described as “President, East Texas Chapter Right to Life”) and Katherine Pitcher (described as “Legislative Associate, Texas Right to Life”) spoke to the City Council for the City of Rusk, Texas, advocating for the ordinance. The Council tabled the ordinance for later discussion. On January 9, 2020, the City of Rusk took up the ordinance again. Speaking then were Defendant Dickson (described as “Director, Right to Life, East Texas Chapter”), Katherine Pitcher (“Legal and Legislative Dept[.], Texas Right to Life”), and Jackson Melton (“Legal and Legislative Dept[.], Texas Right to Life”) among others. After an executive session, the City Council approved the ordinance three votes to two.

18. The prior paragraphs are just a summary of Dickson’s initial campaign, and the list is not exhaustive. In addition to the above, the City Council of Colorado City, Texas adopted the ordinance after meetings on December 10, 2019 and January 14, 2020, in which a representative of Texas Right to Life named Rebecca Parma told the council that the ordinance could outlaw abortion constitutionally, that persons who broke the law between enactment and the date *Roe* was overturned could be held retroactively criminally liable, and that the ordinance “was supplied by Texas National Right to Life.” Dickson presented the ordinance to the City Council for Wells, Texas on February 10, 2020, and persuaded them to adopt it. Dickson also presented the ordinance to the Whiteface, Texas City Council on March 12, 2020, and persuaded them to pass it three votes to two. The Omaha City, Texas, City Council was persuaded to pass the ordinance on September 9, 2019, but repealed it in favor of a nonbinding resolution on October 14, 2019.

19. In the proposed ordinance itself, and in connection with the above-summarized campaign, Defendants have repeatedly exceeded the bounds of protected political speech. Both in the ordinance itself—which was drafted at Defendant Dickson’s behest—and in Defendants’ arguments in support of that ordinance, Defendants have repeatedly claimed that the named

organizations, including Lilith Fund, are “criminal organizations,” due to their support for abortion, which Defendants characterize as the literal crime of murder.

20. For instance, the text of the ordinances originally adopted in Waskom, Big Spring, Colorado City, Joaquin, and other cities and counties in Texas, includes an express declaration that “[o]rganizations that perform abortions and assist others in obtaining abortions are declared to be criminal [or unlawful] organizations. These organizations include, but are not limited to: ... The Lilith Fund for Reproductive Equality [sic]....” A copy of the original Waskom is attached to this Petition as Exhibit A as an example of this language.

21. This alleged criminality is not merely hypothetical or a comment on the moral character of Lilith Fund or other similar organizations. Dickson, in concert with RLET, instead accuses Lilith Fund, and other organizations, of literal murder and of aiding and abetting literal murder in the very text of the proposed and passed ordinances.

22. The text of the ordinance itself shows that this use of the term “murder” is not merely a rhetorical device. The text of the Waskom ordinance, for instance, begins with a series of recitations indicating that abortion is the criminal act of murder:

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

23. This is a recitation—one of the assumed facts intended to justify the ordinance. So this statement is not even defensible as a statement of the intended effect of the ordinance. It is also not true, for the simple reasons that (1) abortion is legal in Texas, as it is everywhere in the United States (within legal parameters, as with any medical procedure), because laws criminalizing abortion are unconstitutional and (2) because abortion has *never* been murder in Texas. Indeed,

even before its anti-abortion law was declared unconstitutional almost fifty years ago, Texas law provided that abortion or assistance with an abortion was a separate offense from murder, punishable by a maximum of five years in prison (or ten if the abortion was done without the consent of the patient). *See* TEX. REV. CIV. STAT. ANN. ART. 4512.1 (recodified version of Texas’s unconstitutional prohibition on abortion). The ordinance uses the phrase “malice aforethought,”¹ specifically invoking a historical legal standard associated with the crime of murder, even though Texas law specifically exempts a person who obtains or performs an abortion from the murder law. Tex. Pen. Code. Ann. § 19.06. Moreover, present Texas law authorizes and regulates abortion as a medical procedure, which is incompatible with the position that abortion is “murder” or in any way illegal under Texas law. *See* TEX. HEALTH & SAFETY CODE ANN. § 245.001, *et seq.*

24. But the ordinance goes further than merely stating a legal falsehood. Instead it states a legal falsehood and then accuses Lilith Fund, and other organizations, of committing or abetting this fictional crime. As proposed by Dickson and originally adopted by numerous Texas jurisdictions, the ordinance not only *recites* that abortion is murder, it then *declares* that abortion is murder in Section B.2., then in the immediately following subsection declares that Lilith Fund, and other organizations, are “criminal organizations” because they “perform abortions” or “assist others in obtaining abortions.” *See* Ex. A, p. 3. There is no way to read these provisions together except as an assertion that Lilith Fund and the other named organizations are being accused, by Dickson and (on his recommendation) by a legislative body and without any judicial findings or action, of committing or abetting murder.

¹ The accusation by Dickson, enshrined in text drafted at Dickson’s and RLET’s behest and advocated for, is that abortion is murder “with malice aforethought”—a term taken from criminal law and clearly intended to refer to murder as a specific crime, and not as a moral concept. Although Texas law no longer uses this term, “malice aforethought” is a term commonly associated with the crime of murder, and lends the ordinance a veneer of legitimacy that is likely (and intended) to confuse people about what the law is and whether Defendants’ political enemies are criminals.

25. Dickson has admitted that the ordinances were drafted at his behest with the assistance of an unnamed “legal expert” who allegedly clerked for Justice Antonin Scalia. The relevant text of these ordinances is Dickson’s responsibility, and RLET has, in its support for this ordinance, ratified its text. Dickson and RLET are responsible for the statements of alleged fact the ordinance contains, including the recitals, and including the specific list of Dickson’s political enemies he has encouraged various cities to declare as “criminal,” even if many of these cities have since thought better of keeping this list in their ordinance books.

26. To summarize, Defendants’ positive assertion, in the text of the very ordinance they had drafted and sought to have enacted, is not that Lilith Fund or the other named organizations have abetted murder in some figurative or rhetorical sense, but that Lilith Fund has abetted actual, criminal murders. Because this accusation of criminality is false, it is *per se* defamatory under Texas law. In drafting this ordinance, and in advocating for its passage, Defendants have defamed Plaintiff.

27. Ultimately, defamation is the purpose of the ordinance; Dickson’s campaign is designed to confuse people about the legal status of abortion *and* abortion advocacy, and paint abortion rights organizations like Lilith Fund as criminals. This is revealed by Dickson’s own statements. For example, in Dickson’s November 26, 2019 Facebook statement, set out below, in which he tries to defend his unconstitutional proscription list, Dickson gives the game away—implicitly admitting that his ordinance will be struck down (by referencing previously unsuccessful attempts to restrict abortion in Texas), while implying that the chilling effect of these ordinances on abortion rights groups will ultimately have been worth it. *See infra*, ¶ 20 (“Also, when you point out how the abortion restrictions in 2013 cost the State of Texas over a million dollars, you should also point out how many baby murdering facilities closed because of those restrictions. We went

from over 40 baby murdering facilities in the State of Texas to less than 20 baby murdering facilities in the State of Texas in just a few years. Even with the win for abortion advocates with *Whole Woman’s Health v. Hellerstedt*, how many baby murdering facilities have opened back up? Not very many at all.”)

B. Dickson’s Other Lies.

28. In his own personal statements, Dickson has made even clearer that he is talking about literal, criminal murder and not speaking in moral terms when he accuses Lilith Fund and other abortion-rights groups of criminality. Dickson said in a July 2, 2019 Facebook post responding to two billboards put up in Waskom, Texas by the Lilith Fund and NARAL Pro-Choice Texas, that:

“Abortion is Freedom” in the same way that a wife killing her husband would be freedom - Abortion is Murder. The Lilith Fund and NARAL Pro-Choice Texas are advocates for abortion, and since abortion is the murder of innocent life, this makes these organizations advocates for the murder of those innocent lives. This is why the Lilith Fund and NARAL Pro-Choice Texas are listed as criminal organizations in Waskom, Texas. They exist to help pregnant Mothers murder their babies.

29. Dickson’s statement here is that Lilith Fund (and NARAL Pro-Choice Texas) are criminal organizations merely for *advocating* abortion. This statement was made after the Waskom enactment of the ordinance—it was not a statement made to persuade Waskom to adopt it or to persuade others to support its adoption. And the statement equates abortion with the murder of an adult person, then continues by indicating that this is the justification for these organizations being designated as “criminal organizations” in the ordinance Dickson himself had drafted and persuaded Waskom to pass. Dickson’s argument is that Waskom, Texas officially designates the Lilith Fund a “criminal organization” because, he alleges, it abets the crime of murder. His status as the primary advocate for these ordinances and his statements arguing that the ordinance passes

legal muster are very likely to confuse reasonable people into believing that his characterization of Lilith Fund as an organization that commits criminal acts is accurate.

30. Speaking about another version of his ordinance enacted in Big Spring, Texas, Dickson said in a November 26, 2019 Facebook post that:

Nothing is unconstitutional about this ordinance. Even the listing of abortion providers as examples of criminal organizations is not unconstitutional. We can legally do that. This is an ordinance that says murdering unborn children is outlawed, so it makes sense to name examples of organizations that are involved in murdering unborn children. That is what we are talking about here: The murder of unborn children. Also, when you point out how the abortion restrictions in 2013 cost the State of Texas over a million dollars, you should also point out how many baby murdering facilities closed because of those restrictions. We went from over 40 baby murdering facilities in the State of Texas to less than 20 baby murdering facilities in the State of Texas in just a few years. Even with the win for abortion advocates with *Whole Woman's Health v. Hellerstedt*, how many baby murdering facilities have opened back up? Not very many at all. So thank you for reminding us all that when we stand against the murder of innocent children, we really do save a lot of lives.

31. Again, these statements are not merely philosophical statements that “abortion is murder” in some moral sense. In light of the ordinance Dickson has advocated, these social media posts argue that Lilith Fund and other similar organizations are *literally* assisting in criminal murder by advocating for abortion rights and educating women about those rights.

32. Further demonstrating that defamation—including confusion about whether abortion rights organizations are presently committing crimes—is the purpose of this entire quixotic ordinance campaign is the statement Dickson made immediately after Waskom, Texas, became the first city to pass his ordinance:

Congratulations Waskom, Texas for becoming the first city in Texas to become a “Sanctuary City for the Unborn” by resolution and the first city in the Nation to become a “Sanctuary City for the Unborn” by ordinance. Although I did have my disagreements with the final

version, the fact remains that abortion is now OUTLAWED in Waskom, Texas! ... All organizations that perform abortions and assist others in obtaining abortions (including 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 Woman's Health Alliance, Texas Equal Access Fund, and others like them) are now declared to be criminal organizations in Waskom, Texas. This is history in the making and a great victory for life!

33. Again, the point here is that Dickson wants people to believe that these ordinances *really do* criminalize abortion, assisting women to obtain abortions, and advocacy and education in support of abortion rights. Since this statement was made *after* the ordinance was adopted, its intent was not to persuade Waskom to adopt the ordinance, but to persuade people that the ordinance actually does make abortion illegal. Indeed, Dickson specifically claims, in present-tense language, that Waskom has "OUTLAWED" abortion. That way, Dickson has an excuse to falsely claim that his political opponents are committing crimes by opposing his anti-choice agenda, which Dickson then proceeds to do, using his *own ordinance* as cover for that statement.

34. Similarly, Dickson claimed in an interview with CNN, published in a January 25, 2020 article, that "[t]he idea is this: in a city that has outlawed abortion, in those cities if an abortion happens, then later on when *Roe v. Wade* is overturned, those penalties can come crashing down on their heads." Dickson wants people to genuinely believe that providing abortion services, or assisting others to do so, is *presently* a crime, and that present abortions or assistance therewith—undertaken while *Roe* is still the governing law—will be subject to future penalties if the Supreme Court's view of the constitution changes. Dickson is genuinely trying to persuade people that organizations like Lilith Fund are currently violating the law by providing assistance to women who are seeking abortion services.

35. Dickson repeatedly claims that these ordinances actually outlaw abortion even though his own ordinance shows that he knows this to be false. As Dickson knows, his conning of the city councils of various municipalities to unconstitutionally enshrine his proscription list in city ordinances does not alter the legality of Lilith Fund's actions, or those of any of the other named organizations. Since these organizations have not committed—and are not committing—criminal acts (whether murder or any other crime), his characterization of them is false and defamatory.

C. Conspiracy with Right to Life East Texas.

36. Dickson is the director of RLET. Its resources have been leveraged in support of Dickson's campaign, and RLET supports and advocates for the passage of variants of Dickson's ordinance with defamatory language similar to that described above.

37. RLET has endorsed not only the statements enshrined in the ordinance (including the Waskom and Big Spring ordinances) but also the statements Dickson has made outside of the four corners of these ordinances. RLET posted on Facebook a statement signed by Dickson substantially repeating his July 2, 2019 Facebook post:

As I have said before, abortion is freedom in the same way that a wife killing her husband is freedom. Abortion is murder. The thought that you can end the life of another innocent human being and not expect to struggle afterwards is a lie. In closing, despite what these groups may think, what happened in Waskom was not a publicity stunt. The Lilith Fund was in error when they said on a July 2nd Facebook post, "Abortion is still legal in Waskom, every city in Texas, and in all 50 states." We said what we meant and we meant what we said. Abortion is illegal in Waskom, Texas. In the coming weeks more cities in Texas will be taking the same steps that the City of Waskom took to outlaw abortion in their cities and become sanctuary cities for the unborn. If NARAL Pro-Choice Texas and the Lilith Fund want to spend more money on billboards in those cities we welcome them to do so. After all, the more money they spend on billboards the less money they can spend on funding the murder of innocent unborn children.

38. RLET also reposted Dickson's June 11, 2019 Facebook post, set out above, in which Dickson attempts to persuade people that the adoption of his ordinance *actually means* that Lilith Fund is literally a criminal organization, because the ordinance *he designed* asserts that.

39. RLET's support for this defamatory campaign, and endorsement and publication of Dickson's statements, show that RLET has aided and strengthened Dickson's defamation of Lilith Fund and the other organizations named in Dickson's unconstitutional ordinance.

D. Falsity of the Statements.

40. It is, of course, false that Lilith Fund, or any of the other named organizations, have abetted murder, committed crimes, or are criminal organizations in any sense. Abortion is not illegal anywhere in the United States. Nor is it illegal anywhere in the United States to advocate for abortion rights or assist people in obtaining a legal abortion. Legal abortion is not a crime and is not classified as murder, anywhere in the United States (and, as noted above, even before *Roe*, abortion was not classified as murder in Texas). Dickson's declarations to the contrary were not true when he was shopping his unconstitutional ordinance around, and they are not any more true now that some cities have been defrauded into passing it.

41. The text of the proposed ordinance as enacted *itself* demonstrates that Defendants know that their statements are false. As the Waskom ordinance shows, but as is replicated in all the jurisdictions that have passed variations of Dickson's ordinance, the efficacy of the penalties the ordinance purports to exact are forestalled until a hypothetical future in which *Roe* and *Casey* and their progeny are all overturned:

Neither the City of Waskom, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local government entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules *Roe v. Wade*, 410 U.S. 113

(1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

42. Defendants know that they cannot argue that criminal penalties can issue from the ordinances they have proposed for enactment, because they know that laws forbidding abortion are unconstitutional. Consequently, Defendants *know* that providing legal abortions, advocating for abortion rights, and assisting people in obtaining legal abortions is legal (even in Waskom, and Big Spring, and the other places Defendants have persuaded to adopt their ineffectual ordinance). After all, “[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.” *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S. Ct. 1121, 1125, 30 L. Ed. 178 (1886). Although this principle does not literally unwrite or physically remove the laws that have been written when they are struck down as unconstitutional, it does render unconstitutional criminal laws ineffectual such that an offense created by an unconstitutional law is “not a crime.” *Ex parte Siebold*, 100 U.S. 371, 376, 25 L. Ed. 717 (1879); *see also Hiatt v. United States*, 415 F.2d 664, 666 (5th Cir. 1969) (“It is well settled that if the statute under which appellant has been convicted is unconstitutional, he has not in the contemplation of the law engaged in criminal activity; for an unconstitutional statute in the criminal area is to be considered no statute at all.”); *Karenev v. State*, 281 S.W.3d 428, 437 (Tex. Crim. App. 2009); *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 760, 115 S. Ct. 1745, 1752, 131 L. Ed. 2d 820 (1995) (Scalia, J. writing in concurrence “a law repugnant to the Constitution is void, and is as no law[.]”)

43. There is thus no legal sense in which Lilith Fund has committed *any* crime, and yet Dickson and Defendants have repeatedly characterized it as guilty of abetting the literal crime of murder. This misrepresentation—both of Lilith Fund’s actions themselves *and* of the legal status

of same—is defamatory *per se* under Texas law. There is a categorical difference between accusing someone of immorality, and accusing someone of criminality. People can disagree on the morality of actions, as people discussing the abortion issue certainly do, but whether an action is criminal is not a philosophical matter. In advocating for these ordinances, Defendants repeatedly crossed this line, both before and after enactment.

44. To be perfectly clear, Lilith Fund is not arguing it has been defamed because Defendants believe or argue that abortion is murder in some moral sense; instead, Lilith Fund has been defamed because Defendants have falsely accused it of assisting in the commission of the specific crime of murder. Lilith Fund has not been defamed because Defendants hope one day to make abortion a crime, but because Defendants *presently state* that Lilith Fund is, at this moment, breaking the law. These statements are baseless and provably false, and Defendants knew these statements were false when they were uttered as their own statements and the text of the ordinance itself demonstrates. In Texas, this is enough, on its own, to support a claim of defamation, even in the absence of damages.

45. In addition, Lilith Fund has suffered damages to its reputation as a result of Defendants’ lies. Although this action seeks compensatory damages, its primary purpose is to set the record straight: Lilith Fund abides by the law. It is not a “criminal organization” engaging in activities that have been “outlawed.” It has not once abetted “murder.” Dickson’s dishonorable campaign of lies transgresses the boundaries of political debate, and Lilith Fund asks this Court to put a stop to it.

V.
CAUSES OF ACTION

Count 1: Defamation, against Defendants Dickson and RLET.

46. Dickson's statements, both in the ordinance he had drafted, and in his arguments in support thereof, can only be reasonably read as accusing Lilith Fund of the literal crime of murder, of abetting the literal crime of murder, or of committing other presently criminal acts.

47. Dickson is the director of Defendant RLET, and regularly makes statements on its behalf. Some of Dickson's defamatory statements have been made specifically via Defendant RLET's outlets, including its Facebook page.

48. Defendant RLET publicized both the ordinance itself (which it has materially supported) and certain of Dickson's defamatory statements (as described above).

49. A reasonable person could be deceived, on the basis of Dickson's and RLET's statements, into believing that Lilith Fund has committed the criminal acts Dickson has accused them of.

50. Dickson and RLET actually knew that their statements regarding Lilith Fund's alleged criminality were false at the time they had the ordinance drafted, advocated for its passage, and made the described statements.

51. These statements are assertions of fact that are provably false.

52. False allegations of criminal acts are *per se* defamatory under Texas law, entitling Lilith Fund to damages.

53. Additionally, these statements have caused Lilith Fund significant reputational harm in an amount to be determined at trial.

Count 2: Conspiracy to Commit Defamation, against Defendant Right to Life East Texas.

54. Defendant Right to Life East Texas is directed by Defendant Dickson, and to the extent his statements are not directly attributable to RLET, RLET has taken actions to strengthen, enhance, and publicize Dickson's defamatory statements. As described above, this includes (1) publicizing Dickson's defamatory statements on RLET's own Facebook page, and (2) financially and materially supporting Dickson's campaign to pass ordinances drafted at Dickson's behest that contain defamatory statements.

55. RLET intends, by its support of Dickson's campaign and statements, to further Dickson's defamatory goal of persuading people that Lilith Fund has committed and is committing criminal acts. RLET and Dickson combined together and conspired to further this defamatory goal. To be clear, RLET and Dickson, to the extent they are treated as separate individuals, had the same defamatory goal in mind.

56. RLET's support to Dickson enhanced his defamatory ordinance campaign and brought wider publicity to his defamatory statements, causing reputation damages in an amount to be determined at trial.

**VI.
CONDITIONS PRECEDENT**

57. All conditions precedent to Lilith Fund's claims for relief have been performed or have occurred.

**VII.
REQUEST FOR DISCLOSURE**

58. Pursuant to Texas Rule of Civil Procedure 194, Lilith Fund requests that the Defendants disclose, within fifty (50) days of the service of this request, all of the information or material described in Rule 194.2 (a)-(l).

VIII.
REQUEST FOR RELIEF

For the reasons set forth above, Plaintiff requests the following:

- (A) Compensatory damages in the amount of more than \$100,000 plus pre and post-judgment interest on all sums at the maximum rate allowed by law;
- (B) Punitive damages in the amount of more than \$300,0000;
- (C) Injunctive relief requiring Defendants to delete all present defamatory content from their websites, social media, and any other presently-extant physical or electronic media;
- (D) All costs of court;
- (E) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and
- (F) Such other relief to which this Court deems Plaintiff justly entitled.

Respectfully submitted,

By: /s/ Jennifer R. Ecklund
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ATTORNEYS FOR PLAINTIFF

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

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

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

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

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

WHEREAS, constitutional scholars have excoriated *Roe v. Wade*, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, see John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 Yale L.J. 920, 947 (1973) (“*Roe v. Wade* . . . is *not* constitutional law and gives almost no sense of an obligation to try to be.”); Richard A. Epstein, *Substantive Due Process By Any Other Name: The Abortion Cases*, 1973 Sup. Ct. Rev. 159, 182 (“It is simple fiat and power that gives [*Roe v. Wade*] its legal effect.”); Mark Tushnet, *Red, White, and Blue: A Critical Analysis of Constitutional Law* 54 (1988) (“We might think of Justice Blackmun’s opinion in *Roe* as an innovation akin to Joyce’s or Mailer’s. It is the totally unreasoned judicial opinion.”);

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

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

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

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

A. DEFINITIONS

1. "Abortion" means the death of a child as the result of purposeful action taken before or during the birth of the child with the intent to cause the death of the child. This includes, but is not limited to:

(a) Chemical abortions caused by the morning-after pill, mifepristone (also known as RU-486), and the Plan B pill.

(b) Surgical abortions at any stage of pregnancy.

(c) Saline abortions at any stage of pregnancy.

(d) Self-induced abortions at any stage of pregnancy.

The term "abortion" does NOT include accidental miscarriage.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Pre-born child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. This includes, but is not limited to:

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

(b) Any other medical doctor who performs abortions of any kind for any reason.

(c) Any nurse practitioner who performs abortions of any kind for any reason.

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

(e) Any remote personnel who instruct abortive women to perform self-abortions at home via internet connection.

(f) Any pharmacist or pharmaceutical worker who sells chemical or herbal abortifacients.

5. "City" shall mean the city of Waskom, Texas.

B. DECLARATIONS

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

2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.3.

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. These organizations include, but are not limited to:

- (a) Planned Parenthood and any of its affiliates;
- (b) Jane's Due Process;
- (c) The Afiya Center;
- (d) The Lilith Fund for Reproductive Equality;
- (e) NARAL Pro-Choice Texas;
- (f) National Latina Institute for Reproductive Health;
- (g) Whole Woman's Health and Whole Woman's Health Alliance;
- (h) Texas Equal Access Fund;

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

C. UNLAWFUL ACTS

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

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Waskom, Texas. This includes, but is not limited to, the following acts:

- (a) Knowingly providing transportation to or from an abortion provider;
- (b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;
- (c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;

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

3. AFFIRMATIVE DEFENSES — It shall be an affirmative defense to the unlawful acts described in Sections C.1 and C.2 if the abortion was:

(a) In response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(b) In response to a pregnancy caused by an act of rape, sexual assault, or incest that was reported to law enforcement;

The defendant shall have the burden of proving these affirmative defenses by a preponderance of the evidence.

4. CAUSING AN ABORTION BY AN ACT OF RAPE, SEXUAL ASSAULT, OR INCEST — It shall be unlawful for any person to cause an abortion by an act of rape, sexual assault, or incest that impregnates the victim against her will and causes her to abort the pre-born child.

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

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

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

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

D. PUBLIC ENFORCEMENT

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

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

Provided, that no punishment shall be imposed upon the mother of the pre-born child that has been aborted.

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

E. PRIVATE ENFORCEMENT

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

- (a) Compensatory damages, including damages for emotional distress;
- (b) Punitive damages; and
- (c) Costs and attorneys' fees.

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

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

- (a) Injunctive relief;
- (b) Statutory damages of not less than two thousand dollars (\$2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and
- (c) Costs and attorneys' fees;

Provided, that no damages or liability for costs and attorneys' fees may be awarded or assessed against the mother of the pre-born child that has been aborted. There is no statute of limitations for this *qui tam* relator action.

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

F. SEVERABILITY

1. Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

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

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

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid

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

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

G. EFFECTIVE DATE

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