AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Texas

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To: Big Spring Mayor and City Council
Date: November 26, 2019

Re: Request for Consideration as a "Sanctuary City for the Unborn"

We are aware that the Big Spring City Council currently plans to consider the adoption of an ordinance at its December 10 meeting that would make abortion access unlawful and declare several organizations to be criminal entities. Doing so would not only violate the United States Constitution but also expose Big Spring to costly legal liability. We urge you to abide by the Constitution and forgo consideration of this ordinance. It is lawful in the state of Texas for organizations to provide the reproductive services declared to be illegal in the proposed ordinance. The personal views of government officials cannot outweigh the constitutional rights of their constituents.

As a threshold matter, the ordinance you are considering targets lawful, constitutionally protected behavior. In Texas, as in every other state, abortion is legal and treated as such by state law. The Supreme Court ruled in *Roe v. Wade*, 410 U.S. 113 (1973), that access to abortion is a fundamental right guaranteed by the Constitution. It clarified in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), that until the point when a fetus can survive outside the womb, or viability, every person has a constitutional right to access abortion care without undue interference from the government. Even after viability, governments cannot pass restrictions that do not have exceptions for when someone's life or health is in danger. These requirements bind the governments of every state, including Texas.

In addition to implicating the right to abortion, targeting organizations for performing important and constitutional work implicates other rights that the ACLU holds dear, such as free speech and free association. The organizations named in the proposed ordinance are law-abiding organizations with which any person may associate. While some may personally view membership in or association with such organizations to be undesirable, politicians cannot dictate the political or religious views of their constituents. As the Supreme Court reminds us, "[T]he freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." *Healy v. James*, 408 U.S. 169, 188 (1972).

Separate and apart from the legal infirmities, passing the ordinance would be bad fiscal and public policy. In the last year, the ACLU has filed lawsuits in Alabama, Arkansas, Georgia, Kentucky, and Ohio challenging unconstitutional abortion bans. This type of litigation can be

immensely costly. Texas' misguided 2013 restrictions on abortion—declared unconstitutional in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016)—tangled the state of Texas in legal proceedings for years, costing the state more than $1 million.[1] Last but not least, even leaving aside abortion, any policy that encourages family members to sue one another is problematic from both legal and policy perspectives.

The ACLU of Texas urges Big Spring to consider the best interests of its citizens and comply with its constitutional obligations. In the meantime, we will be closely monitoring the proposed ordinance.

Regards,

Anjali Salvador
Staff Attorney

[1] Alexa Ura, *Abortion Legal Fight Cost Texas More Than $1 Million*, THE TEXAS TRIBUNE (June 29, 2016) https://www.texastribune.org/2016/06/29/abortion-legal-fight-cost-texas-more-1-million/.