ORDINANCE OUTLAWING ABORTION IN MANATEE COUNTY, DECLARING MANATEE COUNTY A SANCTUARY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA THAT:

A. FINDINGS

The Board of County Commissioners finds that:

(1) Human life begins at conception.

(2) Abortion is an act of violence that purposefully and knowingly terminates an unborn human life.

(3) Unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings.

(4) The Board of County Commissioners has a constitutional obligation to protect the life and safety of its residents, including the unborn, to the maximum possible extent.

(5) The Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), which invented a supposed "constitutional right" for pregnant women to kill their unborn children through abortion, is a lawless and unconstitutional act of judicial usurpation, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right. *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." (emphasis in original)); 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.").

(6) The Florida Supreme Court's decision in *In re TW*, 551 So. 2d 1186 (Fla. 1989), which invented a state "constitutional right" for pregnant women to kill their unborn children through abortion, is an equally lawless and usurpatious decision, as there is no language anywhere in the Florida Constitution that even remotely suggests that abortion is a state constitutional right.

(7) The pro-abortion jurists that have concocted and perpetuated the falsehood is abortion is a constitutional right have lost their majority on the Supreme Court of

the United States and the Supreme Court of Florida, and the Board of County Commissioners urges the current membership of these courts to overrule *Roe* and *TW* as soon as possible.

(8) As there are no abortion providers in Manatee County, an ordinance that outlaws abortion within Manatee County cannot be challenged in court, as there is no one who has standing to challenge a county-wide abortion ban.

(9) Neither the Supreme Court of the United States nor the Supreme Court of Florida has ever recognized a constitutional right of employers or insurers to pay for another person's abortion, and an ordinance prohibiting employers from offering, providing, or arranging for health insurance for its employees that covers abortion can be enforced without violating anything in *Roe* or *TW*.

(10) To protect the health and welfare of all residents within Manatee County, including the unborn, the Board of County Commissioners finds it necessary to outlaw abortion in Manatee County, to prohibit employers from providing abortion coverage to their employees, and to establish penalties and remedies as provided in this ordinance.

B. DECLARATIONS

(1) We declare Manatee County, Florida to be a Sanctuary for the Unborn.

(2) Abortion at all times and at all stages of pregnancy is declared to be an unlawful act unless the mother's life is in danger.

(3) Abortion-inducing drugs are declared to be contraband, and we declare the possession of abortion-inducing drugs within county limits to be an unlawful act.

(4) We declare that the incorporated municipalities within Manatee County will have both the support and the resources of Manatee County in anything related to the passage of this ordinance.

(5) We further declare that all incorporated municipalities within the State of Florida, who wish to protect unborn children in their communities, should consider passing an ordinance outlawing abortion within their jurisdiction - especially if their county is unwilling to pass their own county-wide ban on abortion.

C. AMENDMENTS TO CODE OF LAWS

The Manatee County Code of Laws is amended by adding chapter 2-2.1 to read as follows:

Chapter 2-2.1 — ABORTION

Sec. 2-2.1-1. Definitions

(a) For the purposes of this chapter, the following definitions shall apply:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by accidental miscarriage; or

(C) remove an ectopic pregnancy.

(2) "Unborn child" means a natural person from the moment of conception who has not yet completely left the womb.

(3) "Abortion-inducing drugs" includes mifepristone, misoprostol, and any drug or medication that is used to terminate the life of an unborn child. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. The term also does not include drugs or medications that are possessed or distributed for a purpose that does not include the termination of a pregnancy.

Sec. 2-2.1-2. Abortion Prohibited

(a) It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in Manatee County, Florida.

(b) It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in Manatee County, Florida. This section does not prohibit referring a patient to have an abortion which takes place outside Manatee County, Florida. The prohibition in this section includes, but is not limited to, the following acts:

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

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

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

(4) Providing or arranging for insurance coverage of an abortion;

(5) Providing "abortion doula" services; and

(6) Coercing or pressuring a pregnant mother to have an abortion against her will.

(c) It shall be an affirmative defense to the unlawful acts described in Subsections (a) and (b) if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs in Manatee County, Florida.

(e) No provision of this section may be construed to prohibit any action which occurs outside the jurisdiction of Manatee County, Florida.

(f) No provision of this section may be construed to prohibit any conduct protected by the First Amendment of the U.S. Constitution, as made applicable to state and local governments through the Supreme Court's interpretation of the Fourteenth Amendment, or by Article 1, Section 4 of the Florida Constitution.

(g) Under no circumstance may the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(h) Whoever violates this section shall be subject to a fine of five hundred dollars ($500) and imprisonment in the county jail for sixty (60) days, and each violation shall constitute a separate offense.

(i) Until the Supreme Court of the United States overrules *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 874 (1992), the penalty described in Subsection (h) may be enforced only against:

(1) Individuals or entities that lack third-party standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the Supreme Court of the United States; or

(2) Individuals or entities whose prosecution will not result in an undue burden on women seeking abortions, or otherwise violate the

rights of women seeking abortions under the United States Constitution or the Florida Constitution.

Provided, that the penalty provided in Subsection (h) may not be imposed if a previous decision of the Supreme Court of the United States established that the prohibited conduct was constitutionally protected at the time it occurred.

(j) The non-imposition of the penalties described in Subsection (h) does not in any way legalize the conduct that has been outlawed by this section, and it does not in any way limit or affect the availability of the private-enforcement remedies established in Section 2-2.1-4. Abortion remains and is to be regarded as an illegal act in Manatee County, except when abortion is necessary to save the life of the mother.

(k) Mistake of law shall not be a defense to the penalty established Subsection (h).

Sec. 2-2.1-3. Abortion Coverage Prohibited in Employer-Provided Health Insurance

(a) It shall be unlawful for any employer in Manatee County, Florida and for any person acting on that employer's behalf, to offer, provide, or arrange for health insurance for its employees that covers abortion, except for abortions performed 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) Whoever violates this section shall be subject to a fine of five hundred dollars ($500) and imprisonment in the county jail for sixty (60) days, and each violation shall constitute a separate offense.

Sec. 2-2.1-4. Private Right of Action.

(a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action in state court against any person who violates or intends to violate sections 2-2.1-2 or 2-2.1-3.

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating section 2-2.1-2 or 2-2.1-3 in the future;

(2) statutory damages in an amount of not less than $10,000 for each violation of section 2-2.1-2 or 2-2.1-3 that the defendant committed; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section if the defendant demonstrates that the defendant previously paid statutory damages in a previous action for the particular conduct that violated section 2-2.1-2 or 2-2.1-3.

(d) There is no statute of limitations for an action brought under this section.

(e) The following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this section, or the requirements of sections 2-2.1-2 or 2-2.1-3, are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates sections 2-2.1-2 or 2-2.1-3;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) nonmutual issue preclusion or nonmutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of sections 2-2.1-2 or 2-2.1-3 or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 2-2.1-5.

(f) An action under this section must be brought in state court and not in the local or municipal courts;

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 4 of the Florida Constitution;

(h) Neither Manatee County, nor any state or local official may intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) A civil action under this section may not be brought by any person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other unlawful act.

(j) Under no circumstance may a civil action under this section be brought against the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child.

Sec. 2-2.1-5. Civil Liability: Undue Burden Defense

(a) A defendant against whom an action is brought under Section 2-2.1-4 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the Supreme Court of the United States or the Supreme Court of Florida holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal or state constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the Supreme Court of the United States.

(b) A defendant in an action brought under Section 2-2.1-4 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion, or otherwise violate the rights of women seeking abortions under the United Constitution or the Florida Constitution.

(c) A court may not find an "undue burden" under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an "undue burden" under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and the Florida Supreme Court overrules *In re TW*, 551 So. 2d 1186 (Fla. 1989).

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 2-2.1-4, and a court may not award relief under Section 2-2.1-4 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 2-2.1-6. Severability

(a) 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, the provisions and applications of this chapter shall be severable as follows:

(1) It is the intent of the Board of County Commissioners that every section, provision, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other. If any application of any provision in this chapter 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 the provisions in this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Board of County Commissioners' intent and priority that the valid applications be allowed to stand alone. Even if a

reviewing court finds a provision of this chapter 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 applications and shall remain in force, and shall be treated as if the Board of County Commissioners had enacted an ordinance limited to the persons, group of persons, or circumstances for which the provision's application do not present an undue burden. The Board of County Commissioners further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared unconstitutional or to represent an undue burden.

(2) If any court declares or finds a provision in this chapter facially unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating the Constitution, then those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the Board of County Commissioners had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the Constitution.

(3) If any provision of this chapter 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 Board of County Commissioners' intent in Subsections (a)(1) and (a)(2), and the provision shall be interpreted as if the Board of County Commissioners had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application do not present constitutional vagueness problems.

(4) No court may decline to enforce the severability requirements in Subsections (a)(1), (a)(2), and (a)(3) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a locality or government 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 an executive official not to enforce a duly enacted statute or ordinance in a limited and defined set of circumstances.

(5) If any federal or state court ignores or declines to enforce the requirements of Subsections (a)(1), (a)(2), (a)(3), or (a)(4), or holds a provision of this chapter invalid or unconstitutional on its face after failing to enforce the severability requirements of Subsections (a)(1), (a)(2), (a)(3) and (a)(4), for any reason whatsoever, then the Chair of the Board of County Commissioners shall hold delegated authority to issue a saving construction of this chapter that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of this chapter to the maximum possible extent. The saving construction issued by the Chair of the Board of County Commissioners shall carry the same force of law as an ordinance; it shall represent the authoritative construction of this chapter 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 this chapter is overruled, vacated, or reversed.

(6) The Chair of the Board of County Commissioners must issue the saving construction described in Subsection (a)(5) within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this chapter after failing to enforce the severability requirements of Subsections (a)(1), (a)(2), (a)(3). and (a)(4). If the Chair fails to issue the saving construction required by Subsections (a)(5) 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 Subsections (a)(1), (a)(2), (a)(3), and (a)(4), or if the Chair'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 Chair to issue the saving construction described in Subsection (a)(5).

D. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote of the Board of County Commissioners.

PASSED, ADOPTED, SIGNED and APPROVED,

_____

Chairman of the Board

_____

Clerk of Circuit Court

FURTHER ATTESTED BY "WE THE PEOPLE," THE CITIZENS and WITNESSES TO THIS PROCLAMATION, THIS _____ DAY OF _____, THE YEAR OF OUR LORD _____.

WITNESS: _____

WITNESS: _____