

LAW OFFICES OF MICHAEL J. SEIBEL
Attorneys at Law

Telephone (505) 275-1700
Facsimile (505) 275-1705

July 1, 2022

Via Email

Peter Svarzbein
District One
District 1@elpasotexas.gov

Cassandra Hernandez
District Three
District 3@elpasotexas.gov

Joe Molinar
District Four
District 4@elpasotexas.gov

Isabel Salcido
District Five
District 5@elpasotexas.gov

Claudia Lizette Rodriguez
District Six
District 6@elpasotexas.gov

Henry Rivera
District Seven
District 7@elpasotexas.gov

Cissy Lizarraga
District Eight
District 8@elpasotexas.gov

Re: Proposed ordinance regarding decriminalization of abortion

Dear City Counselors:

I have been retained by Abortion on Trial, an organization that represents women who have been harmed by the abortion industry and other persons who act in concert with the abortion industry. It has been brought to my client's attention that you have introduced a City Counsel Ordinance that intends to withhold City funds for the investigation to solicit, catalog, report, or investigate reports of abolition and that police

8500 Menaul Blvd. NE, Suite A-410 • Albuquerque, New Mexico 87112
P.O. Box 14066 • Albuquerque, New Mexico 87191-4066

should make investigating abortion their lowest priority. This letter is to inform you that these actions may violate 42 U.S.C. § 1983 and expose the City to liability to women who have been harmed by abortions.

42 U.S.C. provides that:

Every person who, under color of any statute, ordinance, regulation, custom of any usage, of any state or territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Federal Constitution and its laws, is liable to the party injured in an action at law, suite in equity or other proper proceeding for redress.

I have detailed the arguments of why the city should not adopt such an ordinance below:

1. Misinformation

To first address this issue, one must dispel disinformation disseminated by the abortion industry. The alleged purposes of the ordinances are incongruent with the operation of the Texas Human Life Protection Act. First and foremost, the act does not provide for criminal prosecution of women. Any attempt to prosecute women or access their private medical records would also be a violation of 42 U.S.C. 1983. As such, the ordinance is unnecessary and would not protect the right of women. The attempt to scare women with misinformation by the industry is shameful at best and grossly negligent at its worst.

The definition of abortion under this act is “the act of using or prescribing a drug or instrument, a medicine or any other substance, device or means with the intent to cause death of an unborn child of a woman known to be pregnant (See Section 245.002 (1).

Your ordinance would protect perpetrators of domestic violence and traffickers from prosecution, illegal and unsafe abortion providers, and deprive women of malpractice claims.

2. Domestic violence perpetrators are protected

In October of 2006, Stephen Poaches was found guilty of murder after he killed a 24-year-old Latoyia Figueroa, after she refused to get an abortion. This is not an uncommon event. In December of 2021, Obstetrics and Gynecology found that pregnant women were twice as likely to die by homicide then pregnancy- related causes. It suggested that the perpetrator was most likely a partner. The ordinance that is being voted on will make the investigations of these crimes more difficult and encourage domestic violence in El Paso.

Furthermore, there is an increasing trend of intimate partners ordering and using the abortion pill to terminate their partner’s pregnancy without their knowledge and consent. This is a direct violation of women’s rights and their bodily autonomy.

The proposed ordinance would make investigations of this heinous crime exceedingly difficult. It may prevent the El Paso police Department from obtaining witness statements, credit card transactions or financial records necessary to prove the intent of the intimate partner to kill the child and/or injure the woman by failing to secure the necessary evidence these crimes may go unpunished and encourage others to commit such crimes in the future. This is a clear violation of 42 U.S.C. 1983.

3. The ordinance may prevent collaboration with authorities in human trafficking rings

Fifty-five percent of women involved in human trafficking had at least one abortion and 30% had multiple abortions. The adoption of the ordinance may, in fact, hinder collaboration with state or interstate investigations. This is due to the broad language of the ordinance and the lack of specific exceptions for human trafficking investigations. This will endanger women and deprive them of their civil rights to justice and prosecution of those that harmed them.

4. The ordinance will encourage unsafe medical procedures

Abortion is soon to be illegal in Texas. When it is illegal, the only option for abortions is the unlicensed or unqualified medical procedures. Passing of the ordinance will lead to people who are wholly unqualified to perform abortions, to begin to do business in El Paso. In the alternative, it will lead to substandard care as medical facilities are operating illegally. These unsafe procedures will injure or kill women.

Passing of the ordinance will deprive women of an investigation into these unsafe procedures.

5. The El Paso ordinance will deny women Texas Women relief in malpractice cases occurring out of state

It is undisputed that a large number of women travel from Texas to New Mexico for abortions. New Mexico abortion providers have had a history of malpractice complaints or injuries. It was reported by New Mexico Alliance For Life that patients of Southwestern Women's Options had a history of over fifty emergency transports to the emergency room in a 7-year time period. One of those resulted in the death of a woman.

In Santa Teresa, New Mexico, an El Paso woman was the victim of two botched abortions by Dr. Franz Theard. A significant investigation is ongoing in the El Paso area. Police assistance may be needed to effectuate a woman's right to investigate the malpractice claim.

Women have the right to have intentional acts of crimes investigated by local authorities. This right should not be abrogated by the abortion industry's political power to stop such investigations. The ordinance proposed clearly will impede upon their right to investigation of wrongs that may have been perpetuated against them.

The exception to the ordinance for criminally negligent conduct and where coercion or force are used too broad to encompass the protection of women and provide confusion to police officers.

The ordinance specifically bars creating a record that could prosecute as a violation of criminal law or civil liability. It further bars electronic surveillance devices. This equipment is necessary to surveil unqualified or unlicensed medical providers, as well as trafficking organizations that use the abortion clinics to carry out these activities. It would be nearly impossible not to collect the data for these prosecutions.

Furthermore, without specific guidelines or administrative tools, such a broad ordinance sends a confusing message to law enforcement. When will the city consider these cases against unlicensed providers and criminally negligent persons low or high priority? What information should be kept? Clearly an administrative code should be implemented to protect women to the fullest- extent possible.

6. There is no exceptions for licensing agencies and civil liability

Medical boards and licensing agencies have a clear purpose in preventing unlicensed providers and grossly negligent providers from practicing medicine without a license. By failure to investigate and/or prosecute these cases, you are creating an environment where these non-qualified organizations can harm women.

Additionally, you are harming the malpractice cases. As we have seen, abortion malpractice cases are on the rise. There have been 7 figure verdicts and settlements against providers that fall below the acceptable standard of care. Your policy currently prevents the provision of crucial evidence which would establish a civil cause of action. This will adversely affect a woman's right to pursue civil remedies.

Furthermore, your exceptions in the ordinance do not make any exceptions for the prosecution of malpractice and tort actions, unduly burdening women who have been harmed by the abortion industry.

Conclusion

The proposed ordinance does not in any way benefit women. They will not be protected under Texas law. Instead, it only benefits perpetrators of domestic violence, human trafficking organization, and unsafe abortion providers, by protecting them from civil and criminal liability. This is not helping women, but rather deprives them of civil rights and encourages future harm against women. The proposed ordinance arguably is a basis for civil liability under 42 U.S.C. 1983 and other state and federal statutes. Please protect El Paso women by voting no.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Seibel". The signature is fluid and cursive, with the first name "Michael" being larger and more prominent than the last name "Seibel".

Michael J. Seibel

cc: Jamie Jefferies