

April 24, 2023

VIA EMAIL

Danville City Council Public Services Committee  
Robert E. Jones Municipal Building  
Lower Level – City Council Chambers  
17 W. Main Street  
Danville, IL 61832

Dear Chair Strebing and members of the Danville City Council Public Services Committee:

As longtime defenders of reproductive rights in the State of Illinois, the ACLU of Illinois calls on you to reject the proposed ordinance titled “An Ordinance Adding Chapter 142 to the Danville, Illinois Code of Ordinances; Requiring Compliance with Federal Abortion Laws” (hereinafter “the ordinance”). Such an ordinance would be unlawful and unenforceable in the State of Illinois.

It is without question that Illinois law protects reproductive rights—including the right to obtain an abortion within the state. The City of Danville is not above this law. Attempts to impose restrictions on access to reproductive health care in Danville will do nothing other than expose the City to significant legal liability and fees.

**I. THE ORDINANCE WOULD VIOLATE ILLINOIS LAW.**

Abortion is a fundamental right in Illinois. It is protected both by the Illinois constitution, *see Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 760 (Ill. 2013), and the Illinois Reproductive Health Act (the “RHA”). The RHA plainly states that:

- (a) Every individual has a fundamental right to make autonomous decisions about the individual’s own reproductive health, including the fundamental right to use or refuse reproductive health care.
- (b) Every individual who becomes pregnant has a fundamental right to continue the pregnancy and give birth or to have an abortion, and to make autonomous decisions about how to exercise that right.
- (c) A fertilized egg, embryo, or fetus does not have independent rights under the laws of this State.

775 ILCS 55/1-15.

The RHA prohibits the City of Danville from restricting or interfering with the exercise of these fundamental rights. 775 ILCS 55/1-20. The ordinance violates the RHA by regulating the provision of reproductive health care in a way that is not narrowly tailored to protect a compelling City interest as the RHA sets forth: “consistent with accepted standards of clinical practice, evidence based, and narrowly tailored for the limited purpose of protecting the health of people seeking such care and in the manner that least restricts a person’s autonomous decision-making.” 775 ILCS 55/1-5. Prohibiting the receipt of medications or instruments that can be used for abortions that are protected under state law and performed consistent with accepted standards of clinical practice falls far short of that standard.

There also cannot be any doubt that the RHA would apply to Danville’s ordinance. By its plain terms, the RHA preempts any local government ordinance that attempts to restrict a person’s ability to freely exercise their fundamental rights within its municipal boundaries. 775 ILCS 55/1-35 (“A unit of local government may not regulate an individual’s ability to freely exercise the fundamental rights set forth in this Act in a manner more restrictive than that set forth in this Act.”).<sup>1</sup>

## **II. THE COMSTOCK ACT IS INAPPLICABLE IN ILLINOIS.**

The ordinance references the federal Comstock Act, which is a century-and-a-half old federal law that purports to prohibit the sending of abortion-inducing drugs and supplies by mail or common carrier. The ordinance’s attempted reliance on this law is misplaced and misguided.

As the federal Department of Justice has explained, there is over a century of judicial, congressional, and administrative understanding that the Comstock Act’s reach is “narrower than a literal reading might suggest.” Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions, 46. Op. O.L.C. \_\_ (Dec. 23, 2022) at 5. The Comstock Act does not apply where the sender did not intend the materials to be used unlawfully. *Id.* at 1, 5-11. It is thus impossible for the mailing of abortion-inducing drugs or supplies to violate the Comstock Act in Illinois as abortion care is lawful and affirmatively protected by law throughout the state.

Furthermore, regardless of the meaning or scope of the Comstock Act, this ordinance exceeds Danville’s authority under state law and is preempted by the RHA.

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We urge you to reject this ordinance. Voting yes on the proposed ordinance will only cause confusion and fear in our communities, all while exposing Danville to significant legal liability. The New Mexico Supreme Court has already held similar ordinances in that state in abeyance. *See Order, State ex rel. Torrez v. Board of County Commissioners for Lea County et al.*, No. S-1-SC-39742 (N.M. Mar. 31, 2023). Moreover, while public media coverage suggests

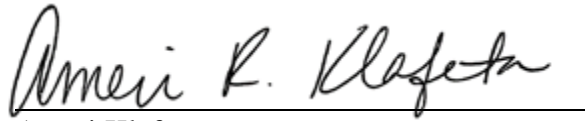
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<sup>1</sup> Here, state law preempts local law because the “legislature has specifically limited the concurrent exercise of this power or specifically declared that the state’s exercise of this power is exclusive.” *City of Chicago v. Roman*, 705 N.E.2d 81, 88 (1988) (citing Ill. Const. art. VII, §§6(h)(i)).

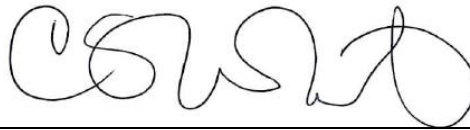
an attorney, apparently not licensed to practice in Illinois, has made promises to defend local governments if an ordinance such as this is challenged, such an arrangement simply does not reflect the reality of potential costs, fees, attorney's fees, damages, or declaratory or injunctive relief for which Danville may be liable. With the recent closure of labor and delivery services at OSF Sacred Heart Danville, public officials should be focused on expanding access to comprehensive reproductive health care for the Danville community, not choosing to spend time and resources on this ordinance that will end in litigation in which the city cannot prevail.

Regardless of efforts by some to restrict access to health care, abortion remains safe and legal in Illinois, and the ACLU of Illinois will continue to work every day to ensure every Illinoisan's reproductive freedom and autonomy is respected.

Sincerely,



Ameri Klafeta  
Director, Women's & Reproductive Rights Project



Chaundre White  
Senior Supervising Attorney, LGBTQ & HIV, and  
Women's and Reproductive Rights Projects

cc: Mayor Rickey Williams, Jr. (*via email* at [mayor@cityofdanville.org](mailto:mayor@cityofdanville.org))  
James Simon, City Attorney (*via email* at [jsimon@cityofdanville.org](mailto:jsimon@cityofdanville.org))