

October 12, 2021

Sent via email to Councilinfo@seafordde.com

Dear Mayor and Seaford City Council,

We understand that you intend to vote today, October 12, 2021, on a proposed Ordinance Relative to Abortion (“Proposed Ordinance”). This Proposed Ordinance is a clear violation of Delaware state law and the U.S. Constitution and will be struck down after a costly legal challenge. We respectfully suggest that the City Council either eliminate the Proposed Ordinance from the agenda altogether and refrain from voting on it, or alternatively vote against it.

1. The ordinance creates an undue burden on access to abortion.

The Proposed Ordinance violates the United States’ Constitutional rights of every Delawarean to have an abortion prior to viability. The Proposed Ordinance purports to solve a problem that does not exist, imposing on clinics performing lawful abortions a host of unnecessary administrative and financial burdens. The Proposed Ordinance also creates an impediment to patients seeking lawful abortions, as they will be forced to sign additional paperwork intended to shame and guilt patients and make the process more complex. It may also add significant financial barriers to patients who seek abortion care. Such laws are cruel and entirely unnecessary. They do nothing to respect or support a patient’s decision; instead, they impose intrusive mandates on abortion patients, regardless of their own wishes.

Such burdens violate the United States’ Constitution. Five decades ago the United States Supreme Court held that the Due Process Clause of the United States’ Constitution protects a person’s right to decide to have an abortion prior to viability. *Roe v. Wade*, 410 U.S. 113, 153-154 (1973). This holding has been repeatedly upheld. *June Med. Servs., LLC v. Russo*, __ U.S. __, 140 S.Ct. 2103, 2135, 207 L.Ed.2d 566 (2020); *Whole Women’s Health v. Hellerstedt*, __ U.S. __, 136 S.Ct. 2292, 2309, 195 L.Ed.2d 665 (2016). *See also Delaware Women’s Health Organization, Inc. v. Wier*, 441 F.Supp. 497 (D.Del. 1977) (Delaware’s state chief law enforcement officer concedes Delaware’s restrictions on abortion are unconstitutional).

In recent years, Delaware state legislators have sought to fortify peoples’ access to abortion by enshrining *Roe v Wade* in state law and repealing antiquated laws the criminalized abortion care. State leaders recognize that access to abortion is critical, and we believe



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even more so in Seaford and surrounding communities. Currently, people must travel far distances to access abortion care, which presents a significant barrier to low-income patients, young people, and those without access to reliable transportation. Adding unnecessary and complex regulations to those seeking abortion care in Seaford will make it harder to access an abortion and threatens this fundamental right.

2. Seaford does not have the right to contravene state law.

The terms of the Proposed Ordinance contradict and burden the statutory right of Delaware physicians to perform abortions prior to viability. *See* Section 1790 of Title 24, which clearly states “[a] physician may terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability.” The City of Seaford lacks the authority to pass an ordinance that contradicts and hinders the objective of Section 1790, a duly-enacted state law. *See Cantinca v. Fortuna*, 884 A.2d 468, 473 (Del. 2005) (explaining that local ordinances that hinder the objectives of the state statute are preempted by state law.) Those council members who vote in favor of the Proposed Ordinance, knowing that it contradicts and hinders state law, are violating their duties as elected officials.

3. The ordinance violates state law regarding minors seeking an abortion.

The terms of the Proposed Ordinance create a parental consent requirement for the disposal of fetal remains (See Section 8.9.7 of the Proposed Ordinance.) Yet Delaware state law expressly allows pregnant people over 12 to consent to an abortion regardless of the views of their parents. *See* 13 Del.C. s 708; *see also In re Diane*, 318 A.2d 629, 631-32 (1974). While we all want our youth to be safe, good family communication cannot be mandated and forced parental involvement often harms rather than helps our most vulnerable youth, which is why the leading pediatric medical associations oppose mandatory parental consent laws for abortion. This section of the Proposed Ordinance essentially requires that a young person obtain parental consent because of the new requirements on fetal remains disposal. Clearly, this would unduly burden a young person’s right to access abortion, violate state law, and would be struck down by courts.

In sum, if the City Council knowingly passes the Proposed Ordinance, it will be acting to undermine Delaware law and the United States’ Constitution. Seaford residents and those from surrounding communities are entitled to the same access to



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abortions as any other Delawarean. Trying to stigmatize and limit access to abortion by erecting medically unnecessary hurdles is a disservice to the very people you were elected to represent. We strongly caution the City Council against acting in such a reckless and unlawful manner.

As our organization is committed to defending the civil rights of all Delawareans, we will be forced to bring litigation, which likely will conclude with a judicial finding that the City of Seaford exceeded its authority in passing the Proposed Ordinance. Given that the unlawfulness of the Proposed Ordinance is so evident, and purports to govern a problem that does not even exist, please be advised that we will seek punitive damages and attorneys' fees. Please feel free to reach out should you have any questions. Thank you for your prompt attention to this matter.



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