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To: Rolla City Council
Date: January 3rd, 2025

Re: Consideration of Rolla as a “Sanctuary City for the Unborn”

It has come to our attention that Rolla’s City Council is considering a “Sanctuary City for the Unborn” ordinance. The ACLU of Missouri strongly recommends that the Council decline to act on this proposal and reject the ordinance in its entirety. The proposed ordinance is clearly invalid under Missouri statute and the Missouri Constitution and will result in costly litigation.

Article I, Section 36 of the Missouri Constitution prohibits the government from infringing on the fundamental constitutional right to reproductive freedom, which includes the right to make and carry out all decisions related to abortion care. Section 36 applies not only to the State of Missouri, but to municipalities like the City of Rolla. *See* Mo. Const. Art. I, § 36.8. Additionally, Section 188.010 of Missouri’s Revised Code further preempts local abortion restrictions, including those under consideration by the Rolla City Council.

While the draft ordinance claims to ensure "compliance" with federal laws, including the Comstock Act, it instead imposes requirements that conflict with how courts and the Department of Justice (DOJ) have long interpreted the Comstock Act. As set forth in a lengthy analysis by the DOJ’s Office of Legal Counsel, courts have consistently held that the Comstock Act does not apply to drugs and articles sent and received for *lawful* abortions.¹ Congress has ratified this limiting interpretation, and the DOJ has endorsed it. Therefore, this ordinance is not about "compliance" with federal law but rather about imposing a misguided interpretation, which contradicts established legal precedents and Congressional intent.

Additionally, the proposed ordinance could have severe repercussions beyond abortion access particularly in the realm of reproductive healthcare. Medications like mifepristone and misoprostol, as well as instruments used in procedural abortion care, are critical for numerous aspects of reproductive health care, including managing miscarriages. The language of the ordinance could authorize lawsuits against hospitals and other providers receiving these materials for numerous healthcare services, including miscarriage management, even when abortion is not involved. Since the medications and other materials used by healthcare providers to treat patients experiencing miscarriages, as well as many other health conditions, were—under the draft ordinance’s terms—“designed” for abortion care, “adapted” for abortion care, and/or “described in a manner calculated to lead another to use or apply it for producing abortion,” this ordinance poses a significant risk of undermining essential medical care, including for individuals experiencing miscarriages in emergency situations. The consequences could jeopardize women's healthcare broadly, not just constitutionally protected abortion care.

¹ U.S. Dep’t of Justice, Office of Legal Counsel Opinion, <https://www.justice.gov/olc/opinion/file/1560596/dl?inline> (last visited Jan. 3, 2025).

A municipality cannot override the Missouri Constitution or ignore the will of Missouri voters who have established clear protections for reproductive freedom. The proposed ordinance is not only an overreach of local authority but also a threat to the health and well-being of Rolla residents.

We strongly encourage the Council to respect the will of the people, legal realities, and medical realities governing reproductive healthcare in Missouri. Rejecting this ordinance would demonstrate the City's commitment to upholding the law and prioritizing the health and well-being of its community. Attempting to impose such a measure would invite expensive legal challenges, divert valuable city resources, and, most importantly, cause unnecessary harm and delay to individuals in need of critical healthcare.

The ACLU of Missouri urges the Council 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.

Sincerely,

Tori Schafer
Director of Policy and Campaigns
ACLU of Missouri