Analysis: Resolution NO. 2021-059 Not "True and Correct"

Resolution NO. 2021-059 states that its "'WHEREAS' clauses are ratified and confirmed to be true and correct," but it is inescapable that this Resolution asserts as fact many things which simply are not so. To wit . . .

1. *WHEREAS, in a 1973 landmark decision, Roe v. Wade, the United States Supreme Court established that, while not unqualified, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides a right of personal privacy that includes a pregnant woman's decision whether or not to terminate her pregnancy*

   It is certainly true the Supreme Court *asserted* the right to abortion in *Roe*, but its hollow and unfounded assertions "established" nothing. Instead of legal reasoning grounded in the text of the Constitution, *Roe v. Wade* is, as Justice Byron White stated in 1973, "an exercise of raw judicial power."

   By imposing a nationwide rule with its fiat pronouncement, *Roe* did nothing to settle the issue, as subsequent history—including the controversy over this Resolution—abundantly shows.

   The Court's use of the 14th Amendment's due process clause for its proclaimed right to abortion is contradicted by the fact that nearly every state and territory in the U.S. had laws protecting the unborn from abortion dating in most cases to the 19th century. Some 23 of 36 states banned abortion before the end of the Civil War. The states ratified the 14th Amendment in 1868, but these laws banning abortion faced no serious legal challenge until the late 1960s.[1]

   The emptiness of *Roe* as constitutional reasoning is best attested by the friends of abortion rights, including these legal experts[2]:

   - "One of the most curious things about *Roe* is that, behind its own verbal smokescreen, the substantive judgment on which it rests is nowhere to be found."
     Laurence Tribe — Professor, Harvard Law School. "The Supreme Court, 1972 Term—Foreword: Toward a Model of Roles in the Due Process of Life and Law," 87 *Harvard Law Review* 1, 7 (1973).

   - "*Roe*, I believe, would have been more acceptable as a judicial decision if it had not gone beyond a ruling on the extreme statute before the court. … Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict."

Ruth Bader Ginsburg — Associate Justice of the U.S. Supreme Court, *North Carolina Law Review*, 1985

- "As a matter of constitutional interpretation and judicial method, *Roe* borders on the indefensible. I say this as someone utterly committed to the right to choose, as someone who believes such a right has grounding elsewhere in the Constitution instead of where *Roe* placed it, and as someone who loved *Roe*'s author like a grandfather."
  ….
  "What, exactly, is the problem with *Roe*? The problem, I believe, is that it has little connection to the Constitutional right it purportedly interpreted. A constitutional right to privacy broad enough to include abortion has no meaningful foundation in constitutional text, history, or precedent - at least, it does not if those sources are fairly described and reasonably faithfully followed."
  Edward Lazarus — Former clerk to Harry Blackmun. "The Lingering Problems with *Roe v. Wade*, and Why the Recent Senate Hearings on Michael McConnell's Nomination Only Underlined Them," FindLaw Legal Commentary, Oct. 3, 2002

It is also crucial to note that by hitching its wagon to *Roe*, the Coral Springs City Commission is endorsing an opinion which, by its own terms, permits abortion on demand, which is to say, abortion until birth. This is because *Roe* permits abortion to save the life or health of the mother and, in its companion case, *Doe v. Bolton*, expansively defines health to include "all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well-being of the patient. All these factors relate to health."[3] This gaping loophole allows elective abortion up to term and puts our nation "within the top 4% of most permissive abortion policies in the world (7 out of 198)," as a 2014 Charlotte Lozier Institute study found.[4] That places the U.S. on par with two brutal, human-rights abusing regimes, China and North Korea, when it comes to abortion practice.

2. *WHEREAS, according to reports published by the Guttmacher Institute in 2003 and 2006, before Roe v. Wade, illegal abortions were estimated to range from 200,000 to 1.2 million per year and constituted at least 17 percent of all maternal deaths attributed to pregnancy and childbirth in 1965 alone*

The Resolution relies on the Planned Parenthood-linked Guttmacher Institute for its assertion that "before *Roe v. Wade*, illegal abortions were estimated to range from 200,000 to 1.2 million per year and constituted at least 17 percent of all maternal deaths attributed to pregnancy and childbirth in 1965 alone."

However, no reporting system existed to track illegal abortions in the years prior to legalization. The *estimate* stems from a 1955 conference on abortion in the U.S. convened by Planned Parenthood whose 39 participants included such figures as Alan Guttmacher (a medical doctor, eugenicist, and Planned Parenthood president

from 1962 to 1974), controversial sex researcher Alfred Kinsey and an anonymous abortionist.[5]

While asserting a range of abortion in the U.S. between 200,000 and 1,200,000 million in 1955, the conference statistical committee acknowledged that "there is no objective basis for the selection of a particular figure between these two estimates as an approximation of the actual frequency."[6]

A review of the book-length published report of the 1955 Planned Parenthood conference sheds light on the dubious statistical foundation for both the low and the high estimate of abortion prevalence in the U.S.:

> The lower estimate is based on a ratio of 3.1 induced abortions per 100 pregnancies found by C. Kiser and P. K. Whelpton for their Indianapolis sample and also by D. G. Wiehl and K. Berry for a New York City sample. The upper limit is based on a ratio of 18.9 induced abortions per 100 pregnancies reported by the staff of the Institute of Sex Research from their analysis of 5,293 women. The appropriateness of the upper limit is placed in doubt by an appendix in which Tietze analyzes the representativeness of the ISR respondents in relation to estimates of 1945 distributions for urban white women in the United States. Tietze concludes that the ISR respondents are usefully representative but **his tables contradict this conclusion by showing not only gross differences with respect to age, education, and marital status, but also and more important, tangible differences with respect to age-specific marital fertility**.[7]

The other claim that abortion "constituted at least 17 percent of all maternal deaths attributed to pregnancy and childbirth in 1965 alone" implies illegal abortions led to a large number of maternal deaths. The actual number of maternal deaths in 1965 from illegal abortions was just under 200, according to the Guttmacher Institute. That number fell to just 39 by 1972, the year before *Roe v. Wade*.[8]

Moreover, Planned Parenthood medical director, Dr. Mary S. Calderone, asserted as "fact" in 1959 that

> abortion is no longer a dangerous procedure. This applies not just to therapeutic abortions as performed in hospitals but also to so-called illegal abortions as done by physicians. In 1957 there were only 260 deaths in the whole country attributed to abortions of any kind.[9]

Additionally, the 1955 Planned Parenthood conference cited above, also estimated, as Calderone noted, that

> 90 per cent of all illegal abortions are presently being done by physicians. Call them what you will, abortionists or anything else, they are still

physicians, trained as such; and many of them are in good standing in their communities. They must do a pretty good job if the death rate is as low as it is.[10]

3. *WHEREAS, the legalization of abortion in the United States led to safer practices and drastically reduced the incidences of maternal deaths and hospitalizations related to abortion;*

   Maternal deaths linked to abortion had already dramatically fallen *before* the Court announced a right to abortion in *Roe* in 1973. The chart below from Live Action, a pro-life organization, shows maternal deaths for illegal and legal abortions through 1979.[11]

Abortion deaths, prior to Roe and after legalization

Year	Illegal Abortion Deaths	Legal Abortion Deaths	Source
1930	2,700	Abortion not legal	Guttmacher Institute
1940	1,407	Abortion not legal	Dr. John C. Willke
1940	1,700	Abortion not legal	Guttmacher Institute
1950	Just over 300	Abortion not legal	Guttmacher Institute
1957	260	Abortion not legal	Mary S. Calderone, Planned Parenthood Medical Director
1964	264	Abortion not legal	Department of Health Education and welfare (HEW)
1964	267	Abortion not legal	Statistician Dr. Christopher Tietze
1965	Just under 200	Abortion not legal	Guttmacher Institute
1965	193	Abortion not legal	Planned Parenthood
1966	160	Abortion not legal	Dr. John C. Willke
1966	189	Abortion not legal	National Center for Health Statistics, reported by CDC
1972	39	24	Centers for Disease Control (CDC)
1973*	19	25	Centers for Disease Control (CDC)
1974	6	26	Centers for Disease Control (CDC)
1975	4	29	Centers for Disease Control (CDC)
1976	2	11	Centers for Disease Control (CDC)
1977	4	17	Centers for Disease Control (CDC)
1978	7	9	Centers for Disease Control (CDC)
1979	0	22	Centers for Disease Control (CDC)

* Supreme Court rules in favor of Roe v. Wade to legalize abortion

4. *WHEREAS, specifically, the Texas law, titled the "Texas Heartbeat Act" (the "Texas Law"), prohibits most abortions after six weeks and carries no exceptions for termination of a pregnancy resulting from rape or incest.*

   The Texas Heartbeat Law protects infants once their beating heart is detected, generally around 28 days after conception or six weeks post last menstrual period. The still-developing heart begins beating around day 22 after conception.

   This "WHEREAS" pronouncement, as with others, studiously avoids the stark reality at the heart of the abortion debate: the unborn child whose existence as a matter of science begins at the moment of conception. Here, for example

> *At fertilization, the human being emerges as a whole, genetically distinct, individuated zygotic living human organism, a member of the species Homo sapiens, needing only the proper environment in order to grow and develop.*
>
> —American College of Pediatricians[12]

> *Human life begins at fertilization, the process during which a male gamete or sperm (spermatozoon development) unites with a female gamete or oocyte (ovum) to form a single cell called a zygote. This highly specialized, totipotent cell marked the beginning of each of us as a unique individual. . . . A zygote is the beginning of a new human being (i.e., an embryo).*
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> —Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*, 7th edition. Philadelphia: Saunders, 2003. Pp. 16, 2.

The Resolution's failure to acknowledge that a distinct, living and whole human being is at the center of this debate is a grotesque inversion of reality. It does a disservice to the people of Coral Springs who deserve, at the least, candor from its elected officials. Instead, the Resolution speaks of the "right to choose"—but never spells out just what that choice is.

In 1970, *California Medicine* called it a "schizophrenic sort of subterfuge" when facts about the unborn person are hidden or denied to promote the abortion cause. "The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception. . . ."[13]

But 50 years later that fact, which we all know and can see via ultrasound and fetoscopy, goes unmentioned here.

5. *WHEREAS, according to a review published in Reviews in Obstetrics and Gynecology in 2009, each year, about five million women worldwide are hospitalized for complications arising from unsafe, illegal abortions*

It is disconcerting to see the number of hospitalizations reported in 2009 worldwide, however that figure from 12 years ago is demonstrably irrelevant to abortion in the U.S. Again, the number of maternal deaths due to illegal abortion before 1973 trended downward from 260 in 1957 to 39 in 1972. Of course, the number of unborn children killed by abortion—legal or illegal—now numbers more than 63 million.

6. *WHEREAS, a 2018 National Academies of Science, Engineering, and Medicine study concluded that abortion is safe and effective, but medically unnecessary regulations of abortion can diminish the quality of abortion care by contributing*

to the decline of facilities that provide abortion, needlessly delaying abortion, and making it unnecessarily difficult to access abortion care

Despite the 2018 National Academies of Science, Engineering, and Medicine study's claim that abortion is safe and effective, abortion in fact hurts women. Both physical and emotional complications plague many women after abortion. Late-term abortionist Dr. Warren Hern acknowledged this in his book, *Abortion Practice:* "In medical practice, there are few surgical procedures given so little attention and so underrated in its potential hazards as abortion. It is a commonly held view that complications are inevitable."[14]

In a 2019 friend of the court brief four former abortion doctors testified to the risk abortion entails to women, citing "the largest government study, the Report of the South Dakota Task Force [which] reviewed the scientific studies and heard testimony from medical experts and post-abortive women."[15] That Task Force cataloged risks to women, reporting that

> abortion places women at increased risk of physical injury including the risk of: infection, fever, abdominal pain and cramping, bleeding, hemorrhage, blood transfusion with its subsequent risks, deep vein thrombosis, pulmonary or amniotic fluid embolism, injury to the cervix, vagina, uterus, Fallopian tubes and ovaries, bowel, bladder, and other internal organs, anesthesia complications (which are higher with general anesthesia), failure to remove all the contents of the uterus (leaving behind parts of the fetus/baby or placenta), need to repeat the surgery, possible hospitalization, risk of more surgery such as laparoscopy or exploratory laparotomy, possible hysterectomy (loss of the uterus and subsequent infertility), allergic reactions to medicines, mis-diagnosis of an intrauterine pregnancy with a tubal or abdominal pregnancy being present (which necessitates different treatment with medicines or more extensive surgery), possible molar pregnancy with the need for further treatment, emotional reactions (including but not limited to depression, guilt, relief, anxiety, 5 Id. at 5. 6 etc.) death of the woman, and risk of a living, injured baby.[16]

The best answer to the National Academies of Science, Engineering, and Medicine study's assertion that abortion regulations diminish care and conditions is Kermit Gosnell, the Philadelphia abortionist convicted in 2013 of murdering three babies, along with a host of lesser charges. Pennsylvania health inspectors steered clear of Gosnell's clinic for years, providing almost no government oversight. When investigators finally entered his abortion facility in an illegal drug probe, they found a house of horrors. As the grand jury report stated:

> they were appalled, describing it to the Grand Jury as "filthy," "deplorable," "disgusting," "very unsanitary, very outdated,

> horrendous," and "by far, the worst" that these experienced investigators had ever encountered. There was blood on the floor. A stench of urine filled the air. A flea-infested cat was wandering through the facility, and there were cat feces on the stairs. Semi-conscious women scheduled for abortions were moaning in the waiting room or the recovery room, where they sat on dirty recliners covered with blood-stained blankets.[17]

The grand jury report urged aggressive regulatory oversight as a solution:

> If oversight agencies expect to prevent future Dr. Gosnells, they must find the fortitude to enact and enforce the necessary regulations. Rules must be more than words on paper.
>
> We recommend that the Pennsylvania Department of Health plug the hole it has created for abortion clinics. They should be explicitly regulated as ambulatory surgical facilities, so that they are inspected annually and held to the same standards as all other outpatient procedure centers.[18]

8. *WHEREAS, according to leading public health organizations such as the American College of Obstetricians and Gynecologists, the American Medical Association, American Academy of Family Physicians, and the American Osteopathic Association, blocking women's access to legal abortion "jeopardize[s] women's health;"*

   Abortion is not health care. As noted above, it carries grave risks to women, quite apart from the fact it dismembers tiny members of the human family, extinguishing their young lives and futures. As the U.S. Conference of Catholic Bishops has noted:

   > Abortion is a marginal practice, neither performed nor accepted by most health care providers; it does not improve (and can even jeopardize) women's life and health; and American law has recognized for decades that it is not "just another medical procedure." Far from being integral to our health care system, abortion is something that supporters seek to impose on that system by force of law.[19]

9. *WHEREAS, the Florida standard for privacy extends even further than the federal standard, as Article I, Section 23 of the Constitution of the State of Florida explicitly provides, in part, that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life…";*

In fact, the plain text of Article 1, Sec. 23 of the Florida Constitution does not include a right to abortion. Instead, the Florida Supreme Court inferred that unstated right into Sec. 23 nine years after it was adopted by amendment. As Liberty Counsel, a pro-life legal ministry, has noted, the state constitutional provision

> was intended to apply strictly to protect citizens from government intrusion into their private data and information.
>
> The privacy provision, adopted by amendment in 1980 to protect informational privacy, arose out of the post-Watergate-era regarding the collection of personal information. All the testimony proposing the amendment clearly centered around the need to protect personal information. No one ever suggested this provision could apply to abortion. Beginning in 1989, the Florida Supreme Court redefined the right of informational privacy to create a right of abortion. The Court has continued to expand its rulings so that even parental consent and 24-hour waiting periods have been invalidated.[20]

Conclusion

On the basis alone of the Resolution's misstatements of fact, as documented above, the City Commission would be well-advised to reject it. Beyond that, however, it is simply unwise, extreme and unjustified for the Commission to plunge itself and the City into the abortion controversy. This is a matter on which Commission members, as private citizens, may freely opine, but one which they, in their official capacity, have no jurisdiction or authority.

Approving this Resolution will, inevitably, sully the City's good name, divide the populace, and expend tax dollars on purposes not consonant with the City's salutary Vision, Missions, Values and Goals, especially its commitment to be a "family-friendly community," one with an "inclusive, welcoming nature."

Instead of identifying the City of Coral Springs with abortion—which stills a beating heart and kills an innocent, unborn human being—the City ought, instead, to welcome these little ones into life, to make Coral Springs a place where every child has the chance to be born and to realize his or her God-given gifts and potential.

[1] Beckwith, Francis J.. *Defending Life: A Moral and Legal Case against Abortion Choice*. Cambridge University Press. Kindle Edition. Pp. 22-23.
[2] Carney, Timothy P. "Honest pro-choicers admit Roe v. Wade was a horrible decision." *Washington Examiner.* January 22, 2011. https://www.washingtonexaminer.com/honest-pro-choicers-admit-roe-v-wade-was-a-horrible-decision.
[3] *Doe v. Bolton*, 410 U.S. 179, 192 (1973)
[4] Baglini, Angelina. "Gestational Limits on Abortion in the United States Compared to International Norms." Charlotte Lozier Institute. February 2014. https://lozierinstitute.org/internationalabortionnorms/.
[5] Fowler V. Harper, "Calderone: Abortion in the United States," 68 *Yale Law Journal*. (1958). Available at: https://digitalcommons.law.yale.edu/ylj/vol68/iss2/11.
[6] *Abortion in the United States*. Edited by Mary Steichen Calderone, with an Introduction by M. F. Ashley Montagu. New York: Hoeber-Harper, (1958). P. 180.
[7] Potter, Jr., Robert G. "Review: Abortion in the United States by Mary S. Calderone," Milbank Memorial Fund Quarterly, MARCH 1959, Vol. 37, p. 92. (Emphasis added.) https://www.milbank.org/wp-content/uploads/mq/volume-37/issue-01/37-1-Abortion-in-the-United-States-by-Mary-S.-Calderone.pdf.
[8] Novielli, Carole. "Don't Be Fooled: Abortion Bans Didn't Result in Thousands of Deaths." Live Action News. May 20, 2019. https://www.liveaction.org/news/fooled-abortion-bans-didnt-thousands-deaths/
[9] Calderone, Mary Steichen. "ILLEGAL ABORTION AS A PUBLIC HEALTH PROBLEM," July 1960. VOL. 50. NO. 7. *American Journal of Public Health*. P. 949. https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.50.7.948
[10] Ibid.
[11] Novielli, Carole. "Don't Be Fooled: Abortion Bans Didn't Result in Thousands of Deaths." Live Action News.
[12] "When Human Life Begins." American College of Pediatricians. 2017. https://acpeds.org/position-statements/when-human-life-begins.
[13] "A New Ethic for Medicine and Society," *California Medicine*, September 1970. P. 68. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1501546/pdf/calif med00141-0097.pdf.
[14] Hern, Warren. *Abortion Practice* (Philadelphia: J.B. Lippincott Company, 1990). Pp. 101, 103.
[15] "Amicus Curiae Brief of Former Abortion Providers; The National Association of Catholic Nurses, U.S.A.; and The National Catholic Bioethics Center in Support of Respondent." JUNE MEDICAL SERVICES, LLC, et al., Petitioners, v. DR. REBEKAH GEE. U.S. Supreme Court. https://www.supremecourt.gov/DocketPDF/18/18-1323/127325/20200102151514780_Amicus%20Brief.pdf.
[16] Ibid.
[17] Williams, R. Seth. "REPORT of the GRAND JURY." Court of Common Pleas, First Judicial District Of Pennsylvania, Criminal Trial Division. P. 20. https://cdn.cnsnews.com/documents/Gosnell%2C%20Grand%20Jury%20Report.pdf.
[18] Ibid. P. 16.
[19] "ABORTION IS NOT HEALTH CARE." Pro-Life Secretariat. U.S. Conference of Catholic Bishops. P. 1. https://www.usccb.org/resources/Abortion%20is%20Not%20Healthcare%20final.pdf.
[20] "Florida's Constitution Should Not Include Abortion" Liberty Counsel press release. Apr 27, 2017. https://lc.org/newsroom/details/042717-floridas-constitution-should-not-include-abortion.