



Members of the Worcester City Council  
455 Main Street  
Worcester, MA 01608

August 21, 2023

Via Email

**Re: Draft Ordinances Targeting Pregnancy Resource Centers**

Dear Members of the City Council,

I am again writing on behalf of Massachusetts Family Institute to urge you to reject any ordinance that would target pro-life pregnancy resource centers (PRCs). At your direction, the City Solicitor drafted two such ordinances, the “Deceptive Advertising” ordinance and the “Transparency in Advertising” ordinance, which are included in the agenda packet for tomorrow’s City Council meeting. At the same time, however, the Solicitor outlines many compelling reasons why the ordinances that he drafted *should not* be passed. Most obvious among these is the fact that these ordinances are *blatantly unconstitutional* and would subject the City of Worcester to significant liability. I write to echo the statements of the Solicitor, to provide additional information on the unconstitutionality of these draft ordinances, and to warn the Council that should either of these ordinances pass, the City will face litigation.

**The “Deceptive Advertising” Ordinance**

The Solicitor correctly outlined the many constitutional issues inherent in the “Deceptive Advertising” ordinance, which would clearly violate the First Amendment by singling out pro-life PRCs for censorship and punishment. As the Solicitor points out, the ordinance would target the speech of PRCs based on their pro-life viewpoints on abortion. Using City resources to silence speakers that the City may not like is a textbook First Amendment violation. And again, as the Solicitor explained, similar measures are failing in Massachusetts and across the country: in Easthampton, the Mayor vetoed an ordinance due to well-founded concerns about its legality;<sup>1</sup> in Connecticut, the Attorney General stated that he would not enforce an anti-PRC law after the state was sued for violating the First Amendment;<sup>2</sup> in Illinois, a federal judge enjoined a similar

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<sup>1</sup> <https://www.masslive.com/news/2023/08/veto-stands-on-easthampton-gender-affirming-care-ordinance-after-failed-override-vote.html>.

<sup>2</sup> <https://www.ncregister.com/news/connecticut-crisis-pregnancy-center-withdraws-lawsuit-against-deceptive-advertising-ban>.

law, calling it “both stupid and very likely unconstitutional;”<sup>3</sup> in Vermont, the Alliance Defending Freedom has filed suit based on that state’s anti-PRC law;<sup>4</sup> and finally, the Massachusetts Attorney General’s Office is also recommending that cities not pass these types of ordinances due to constitutional issues.<sup>5</sup> In short, by passing this ordinance, Worcester would be opening itself up to a legal challenge that it would almost certainly lose.

### **The “Transparency in Advertising” Ordinance**

Like the “Deceptive Advertising” ordinance, the “Transparency in Advertising” ordinance suffers from numerous constitutional defects, as established by a robust consensus of federal caselaw. Among this caselaw is a Supreme Court case from 2018 that is *directly* on point, *NIFLA v. Becerra*.<sup>6</sup> As the City Solicitor mentioned, in *NIFLA*, the Supreme Court held that a California law violated the First Amendment by compelling PRCs to state on all of their advertising materials whether they were licensed medical facilities and how to obtain free abortion services.<sup>7</sup> This requirement, the Court stated, was unduly burdensome and not justified by any real evidence that such a disclosure was necessary.<sup>8</sup> And even before *NIFLA*, federal appeals courts agreed that city governments could not compel PRCs to post signs or print disclaimers about what services they do not offer.<sup>9</sup>

Here, the “Transparency in Advertising” ordinance would force pregnancy services centers to “prominently display” – on *all* materials that they publish – a statement about whether they are a licensed medical facility and whether they provide abortions or contraception. The City has presented no evidence that this is necessary. There is no evidence that women in Worcester mistakenly believe non-medical PRCs are licensed medical facilities. There is also no evidence that women believe that PRCs offer abortions: as the Solicitor points out, both of the PRCs that are currently active in Worcester already state on their websites that they do not provide abortions. Forcing PRCs to put unnecessary disclaimers on all of their published materials would place an undue burden on them. It would require them to expend thousands of dollars rewriting their materials and signify government disapproval of their operations. This kind of unjustified compelled speech requirement has been tried before in New York, Baltimore, and elsewhere, and has been struck down as unconstitutional every time. Worcester should not go down the same path.<sup>10</sup>

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<sup>3</sup> <https://news.wttw.com/2023/08/04/federal-judge-temporarily-blocks-illinois-law-subjecting-crisis-pregnancy-centers-civil>.

<sup>4</sup> <https://adflegal.org/press-release/faith-based-pregnancy-centers-sue-vermont-unconstitutional-restrictions>.

<sup>5</sup> <https://newbostonpost.com/2023/07/20/state-attorney-generals-office-is-advising-massachusetts-cities-and-towns-not-to-target-crisis-pregnancy-centers-two-worcester-officials-say/>.

<sup>6</sup> *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).

<sup>7</sup> *Id.* at 2375-78.

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g., Greater Balt. Ctr. for Pregnancy Concerns v. Mayor & City Council*, 879 F.3d 101 (4<sup>th</sup> Cir. 2018) (striking down Baltimore ordinance which required PRCs to post signs stating that they did not provide abortion or contraception); *Evergreen Ass'n v. City of New York*, 740 F.3d 233 (2<sup>d</sup> Cir. 2014) (striking down New York City ordinance that required PRCs to tell clients that they did not provide abortions).

<sup>10</sup> *Id.*

## The Consequences of Passing These Ordinances

The City Council does not have to guess about the outcome if it passes either of these ordinances, because it would not be the first to do so: California, Illinois, New York City, Baltimore, Austin, and Montgomery County, Maryland, to name a just a few examples, have all passed similar ordinances and have *all* suffered the consequences. In California, the *NIFLA* litigation forced the state to pay \$399,000.00 in legal fees to the plaintiffs' counsel after their successful lawsuit. Montgomery County, Maryland paid \$375,000.00 in attorney's fees after losing a similar suit. Baltimore paid over \$1 million in legal fees and costs when its ordinance was struck down. And Austin may have paid around \$1 million as well.<sup>11</sup> In all cases, these cities and states wasted taxpayer money enacting laws and ordinances that they should have known were unconstitutional, all to signal support for pro-abortion ideology.

If Worcester passes either draft ordinance, it will experience the same result as the cities and states listed above, and the city councilmembers who voted in favor will have to answer to their constituents about why they wasted city money on such a clearly unconstitutional measure. Massachusetts Family Institute stands ready to partner with Worcester PRCs to immediately litigate this matter should the need arise. We are confident that these ordinances would not withstand a legal challenge.

### Conclusion

These draft ordinances, as the City Solicitor and City Manager point out, are unnecessary and unconstitutional. We urge you to reject them.

Very truly yours,



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<sup>11</sup> [https://lozierinstitute.org/continued-attempts-to-regulate-pro-life-pregnancy-help-centers-amount-to-lipstick-on-a-pig/#\\_edn2](https://lozierinstitute.org/continued-attempts-to-regulate-pro-life-pregnancy-help-centers-amount-to-lipstick-on-a-pig/#_edn2).