

ARTICLE 20

TWENTIETH ARTICLE

Submitted by: Rebecca Stone, TMM3, on behalf of the Brookline Commission for Women; Valerie Frias, TMM13; Scott Gladstone, TMM16; Anthony Ishak, TMM1; Janice Kahn, TMM15; Alec Lebovitz, TMM8; Arden Reamer, TMM8; Pam Roberts, TMM2; Felina Silver Robinson, TMM3; Chloe Zera, M.D., MPH

*To see if the Town will amend the General By-laws to add the following Article:
[deletions are ~~crossed through~~; new language is in **bold face**]*

~~8.39 MENSTRUAL HYGIENE PRODUCT ACCESS BY LAW~~

8.XX REPRODUCTIVE and GENDER HEALTH ACCESS & EQUITY

Section 8.XX.1 Intent and Purpose

This by-law codifies Brookline’s commitment to access for all to safe, caring, and equitable reproductive and gender health care and establishes Brookline as a safe haven for anyone seeking or providing reproductive or gender-affirming health care, consistent with the amendments to G.L. chapters 12, 218, 223A, 233 set forth in [Chapter 127](#) of the Acts of 2022, *An Act expanding protections for reproductive and gender-affirming care*. Reproductive and gender health protections in Brookline are specified as including, but not limited to, menstrual regulation or products, prevention or termination of pregnancy, gender-affirming care, and support for healthy pregnancy and childbirth.

Section 8.XX.2 MENSTRUAL HYGIENE PRODUCT ACCESS ~~BY LAW~~

- 8.XX.2.i** Definitions
- 8.XX.2.ii** Access to Menstrual Hygiene Products
- 8.XX.2.iii** Manner of Dispensing
- 8.XX.2.iv** Green Products
- 8.XX.2.v** Effective Date

Section 8.XX.3 SAFE ACCESS TO LEGALLY PROTECTED HEALTH CARE

8.XX.3.i Definitions

The terms ‘Gender-affirming health care services’, ‘Legally protected health care activity’, and ‘Reproductive health care services’ shall have the same meanings as under M.G.L. c. 9A, s. 1.

“Abusive litigation” means litigation or other legal action to deter, prevent, sanction or punish any person engaging in legally-protected health care activity that is: (i) filed or prosecuted in any state other than the Commonwealth where liability, in

whole or part, directly or indirectly, is based on legally protected health care activity that occurred in the Commonwealth, including any action in which liability is based on any theory of vicarious, joint or several liability derived therefrom; or (ii) an attempt to enforce any order or judgment issued in connection with any such action described in subsection (1), by any party to the action or any person acting on behalf of a party to the action. For purposes of this definition, the term “occurred in the Commonwealth” means any part of any act or omission which occurs or is initiated in the Commonwealth, that forms the basis of the litigation or other legal action described above, whether or not explicitly alleged or included in any of the pleadings.

“Client” means an individual who is inquiring about or seeking pregnancy-related or gender-affirming services.

“Health information” means any oral or written information in any form or medium that relates to health insurance or the past, present, or future physical or mental health or condition of a client.

“Town agent” means any employee of the Town of Brookline, whether full time or part time, regular or seasonal, any intern or volunteer when acting on behalf of the Town of Brookline, any contractor for the Town of Brookline while a contract between the Town of Brookline and said contractor is in effect, and any recipient of Town funding, grants, awards, or appropriations.

Section 8.XX.3.ii Protection from Abusive Litigation

- a. Acting in their capacity as a Town agent, no Town agent may furnish information, assistance, or aid to any person or jurisdiction when such information, assistance, or aid is knowingly intended for use in abusive litigation as defined in this article, except as so ordered by a court in the Commonwealth. Additionally, no Town resources, materials, or funds shall be so used.**
- b. Acting in their capacity as a Town agent, no Town agent may furnish information, assistance, or aid to any person or jurisdiction for the purposes of prohibiting, criminalizing, sanctioning, authorizing a person to bring a civil action against, or otherwise interfering with a person, entity or carrier that seeks, receives, causes, aids in access to, aids or abets or provides, or attempts or intends to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally protected health care activities. Additionally, no Town resources, materials, or funds shall be so used.**
- c. Pursuant to G.L. c. 147, § 63 no person, regardless of residency or citizenship status, shall be held in custody by the Brookline Police Department, nor remanded, transferred, or extradited to another**

jurisdiction for seeking, receiving, causing, aiding in access to, aiding or abetting or providing, or attempting or intending to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally protected health care activities, except as required by the order of a court of competent jurisdiction. This restriction shall not apply to any investigation or proceeding where the conduct that is subject to potential liability under the investigation or proceeding initiated in or by the other State would be subject to civil or criminal liability or professional sanction under the laws of the Commonwealth if committed in this Commonwealth.

Notwithstanding the general prohibition of this section, agencies and individuals acting on their behalf may provide information or assistance in connection with such an investigation or proceeding in response to the written request of a person who is the subject of such an investigation or proceeding.

- d. All Town agents shall comply with any state law or regulation pertaining to reproductive and gender-affirming health care not otherwise explicitly stated in this by-law.**

Section 8.XX.3.iii Violations

- a. Any Town employee/agent found to have violated this article shall be subject to the relevant discipline policies of the Town of Brookline, if applicable.**
- b. Any Town contractor found to have violated this article shall be subject to review and potential termination of contract.**

Section 8.XX.3.iv Severability

The sections, paragraphs, sentences, clauses, and phrases of this article are severable, and if any phrase, clause, sentence, paragraph, or section of this article shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this article.

or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

The June 24, 2022, U.S. Supreme Court opinion in *Dobbs v. Jackson Women's Health Organization* returned the issue of abortion access to the states, and shortly after the *Dobbs* decision, new and so-called "trigger" laws in 26 states meant that as many as 33 million persons capable of being pregnant do not or will not have access to safe abortion services. At the same time, many of the states restricting abortion have also passed laws banning or restricting gender-affirming care.

In response, the Governor of Massachusetts in July 2022 signed the law "[An Act Expanding Protections for Reproductive and Gender-Affirming Care](#)." That Act, put forward by the ROE Coalition of Reproductive Equity Now, Planned Parenthood, and the ACLU and building on the advances of the previously passed ROE Act, anticipated the influx of pregnant people from abortion-banning states seeking care in Massachusetts and, crucially, protects abortion providers and patients from out-of-state lawsuits and extradition.

While many are confident that, with those Acts, Massachusetts is a "safe haven" for abortion and for gender-affirming care, even here we still have challenges from anti-abortion individuals and organizations, as well as a vocal and hostile population opposed to gender-affirming care. Municipalities have therefore been urged, if possible, to take local action affirming a local commitment to reproductive and gender-affirming care. The city of Salem, MA, has done so with a local ordinance, and this proposed by-law borrows from the Salem ordinance's language.

Petitioners believe the Town has a compelling governmental interest in promoting public health and protecting people seeking or providing reproductive health care services against harassment and legal penalties from states where such services have been curtailed, eliminated, and/or criminalized. We chose to express this with a by-law, instead of a non-binding and therefore weaker resolution, in order to have Brookline be unequivocal in its commitment to enforcing the state's safe haven provisions and also, crucially, to include language about the consequences of violations. Additionally, we see this act as a natural partner to Brookline's first-in-the-nation 2019 by-law ensuring free access to menstrual products, so this new proposed by-law puts these provisions together in a single by-law addressing reproductive and gender-related health care and equity of access, explicitly including transgender and gender-diverse communities. A stand-alone "safe haven" resolution would not accomplish those goals.

The new proposed by-law language incorporates comments from Town Counsel so that it conforms with the language in relevant Mass General Laws, in particular those referenced above. Petitioners have also relied substantially on Reproductive Equity Now's Action Tool-Kit, created to help municipalities like ours take productive, actionable steps to support competent, compassionate care for both patients and providers in our midst. We

are confident, therefore, that it is very likely to pass muster with the Attorney General's office when it is reviewed.

DIRECTOR OF HEALTH AND HUMAN SERVICES REPORT



**TOWN OF BROOKLINE
DEPARTMENT OF PUBLIC HEALTH**

11 Pierce Street, Brookline, Massachusetts, 02445
Telephone: (617) 730-2300 Facsimile: (617) 730-2296
Website: www.brooklinema.gov/health

Sigalle Reiss, MPH, RS/REHS
Director of Public Health
& Human Services

To: Select Board
Advisory Committee

From: Sigalle Reiss, Commissioner of Public Health & Human Services

Date: May 1, 2023

Re: Spring 2023 Town Meeting Warrant Article 20 - Amend the Menstrual Hygiene Product Access By-Law of the Town's General By-Laws, currently Article 8.39, to change the Article's duplicative numbering and add provisions relative to reproductive and gender health care.

CC: Charles Carey, Town Administrator

The intersection of public health, gender, health equity, access to menstrual hygiene products, and reproductive healthcare has become much more complex in light of recent legal developments in the US. In June of 2022, the US Supreme Court ruled that a Mississippi law banning abortions after 15 weeks of pregnancy was constitutional.¹ This decision led to trigger laws banning or restricting access to reproductive healthcare

¹ [19-1392 Dobbs v. Jackson Women's Health Organization \(06/24/2022\)](https://www.supremecourt.gov/opinions/2201/19-1392.pdf) ([supremecourt.gov](https://www.supremecourt.gov))

being enacted in more than a dozen states across the US impacting millions of women.²

During the discussion at ACPH's March 22nd meeting, the petitioners for Warrant Article 20 stressed the importance of reaffirming Brookline's support for reproductive and gender health equity in light of recent legal developments. The Presenting Petitioner, Rebecca Stone (TMM Precinct 3), explained Warrant Article 20 was to clarify the Town's commitment to support and protect those seeking full-spectrum, compassionate, and safe pregnancy and gender-affirming care, including legal abortion. In addition, the Warrant Article sets up a local accountability structure enforcing consequences for those who violate policies protecting reproductive and gender-affirming rights. This Warrant Article will protect people from out of state who are provided care and providers in Brookline from being prosecuted by other state law enforcers.³ The Petitioners noted Walgreens' decision to discontinue the sale of mifepristone an over-the-counter abortion pill, in nearly two dozen states including several where abortion remains legal.⁴ Both ACPH members and Department staff expressed their support for reaffirming the importance of gender and health equity through access to menstrual hygiene products and reproductive healthcare.

On March 22nd, the Advisory Council on Public Health held a public hearing⁵ on Warrant Article 20 for the Spring 2023 Brookline Town Meeting. After hearing from the petitioners' and Department of Public Health staff, the ACPH voted to recommend Warrant Article 20 to Town Meeting by a vote of 4 in favor, 0 opposed. Roll call in favor: Natalia Linos; Charles Homer; Leonard Jokubaitis; and Andy Epstein.

SCHOOL COMMITTEE STATEMENT

On April 27, 2023, the School Committee voted unanimously (6-0-0) to recommend passage of WA20. Voting in favor were Mr. Pearlman (Chair), Dr. Liu (Vice Chair), Ms. Charlupski, Dr. Ehrenberg, Ms. Federspiel and Ms. Nobrega. Further, the School Policy Review Subcommittee, at their March 31, 2023 meeting, voted unanimously to recommend passage of WA20. Voting in favor were Mr. Pearlman and Ms. Frias.

The School Committee supports this new by-law as part of the Town of Brookline's commitment to reproductive and gender health and equity for all residents. Massachusetts

² [Abortion Laws by State - Center for Reproductive Rights](#)

³ [Microsoft Word - ACPH Agenda Minutes MAR 22 2023 \(brooklinema.gov\)](#)

⁴ [Walgreens won't sell abortion pills in red states that threatened legal action : NPR](#)

⁵

<https://brooklinema.zoomgov.com/rec/share/0EL69gqRSNRlkB4PCy9PNJrRwP6rCQVRSiPqY9YQg4SEw97yBj2F3texdzH04Hzo.KgtWWOUf5lJ0s9jH?startTime=1679520188000>

has some of the strongest reproductive health access laws in the nation, but enforcement of those laws relies upon the informed cooperation of those on the municipal level. As integral members of the Brookline community, we strongly affirm our commitment to the health and safety of all residents, including students, teachers and staff in the Public Schools of Brookline, through the passage of Warrant Article 20.

SELECT BOARD’S RECOMMENDATION

Article 20 is a petition to amend the Town’s General By-laws to reaffirm the Town’s commitment to reproductive and gender health access and equity including by establishing the Town as a “safe haven” for access to reproductive and gender-affirming health care. Article 20 also amends section 8.39 of the General Bylaws, Menstrual Hygiene Product Access By Law, by changing the section number to place it within the new proposed by-law sections.

Due to a recent U.S. Supreme Court decision that ruled certain abortion bans constitutional, laws in several states restricting access to reproductive health have come into effect that would criminalize both seeking and providing access to abortion care including when that care takes place in a different state. Article 20 would protect people coming to Brookline from out of state to seek abortion care and protect providers in Brookline from being held in custody or extradited for providing reproductive or gender-affirming health care services. The Article would also enforce consequences for any Town agent or employee found to be in violation of these provisions. The Commonwealth of Massachusetts has already established itself as a safe haven for reproductive care access, following the signing into law of “An Act Expanding Protections for Reproductive and Gender-Affirming Care” by the Governor in July 2022, but this Article would make a clear and unambiguous commitment to enforcing the State’s safe haven laws in the Town of Brookline.

A unanimous Select Board voted 4-0 for FAVORABLE ACTION on the motion offered by the Advisory Committee.

ROLL CALL VOTE:

Aye:

Greene

Aschkenasy

VanScoyoc

Sandman

ADVISORY COMMITTEE'S RECOMMENDATION

Recommendation: FAVORABLE ACTION, on Article 20 as amended by the Advisory Committee and agreed to by the Petitioners, by a vote of 23-1-1.

Executive Summary	Article 20 creates a section in the general bylaws for reproductive and gender health and related policies, incorporating the Menstrual Produce Access bylaw, and adding a new section that protects anyone seeking or providing full spectrum, safe, compassionate pregnancy and gender-affirming care, including legal abortion, from abusive litigation, and outlines consequences for non-compliance.
Voting Yes will...	Commit Brookline to enforcing protections outlined in state law for medical providers and for patients seeking pregnancy and gender-affirming care, including legal abortion, from abusive litigation.
Voting No will...	Maintain the status quo
Financial impact	None
Legal implications	None

Introduction

According to the petitioners, there is a growing threat to safe, established reproductive care in Massachusetts in spite of the recent passage of two state statutes: a) the Roe Act in 2020 which protects access to abortion in Massachusetts, and b) in 2022, *An Act expanding protections for reproductive and gender-affirming care*, which provides legal protections to abortion providers and out-of-state patients, expands access to contraception, and allows women to receive care in Massachusetts to treat dangerous late-term pregnancies.

A local bylaw is necessary, petitioners assert, because of the unexpected nature of so many new challenges to all aspects of reproductive and gender-affirming care. Building strong local laws now will establish guardrails against what may come next.

- Petitioners note Brookline’s related history, recalling that in 1994, Brookline was the location of shootings at two local clinics, acts that permanently changed reproductive health care for women in Brookline and in Massachusetts.
- They also argue that the use of local “safe haven” statutes to support state statutes has a precedent in immigration law with the creation of sanctuary cities.

Health providers joining as petitioners feel particularly strongly that the article specifies accountability for non-compliance, giving it more teeth than a resolution of support.

Evaluation Methodology/research

- The Human Resources Subcommittee of the Advisory Committee conducted a public hearing by Zoom on this warrant article on March 31, 2023.
Hearing Recording:
https://brooklinema.zoomgov.com/rec/share/H70cngqdM77TbQSNovRTbJqwFHg5dj8LAu7KZpRIais9qSiS0Qhs4oXk1Q37M0gi.pcu_5G5-A1mLyWLM
- Town Counsel Jonathan Simpson was consulted by petitioners when drafting the language of this warrant article.
- The warrant article was vetted by the director of Human Resources. The director stated during the full Advisory Committee meeting on April 27 that she supported the Committee’s proposed addition of the word “knowingly” in the Violations section of the article and, with that amendment, has no objections to the article’s requirements for town employees.

Discussion

The discussion was centered on two concerns, the first, regarding the language of the By-Law in relation to town employees, and second, was a bylaw the correct approach.

The Committee expressed the concern that a town employee could be censured for simply doing their job as they understood it and proposed, with the approval of the Petitioners, ensuring that only “knowing” violations of the new By-Law would be subject to any action. After joining the Advisory Committee meeting, and vetting the article, the director of Human Resources stated that she had no objections to the amended version of the article with respect to the requirements imposed by this warrant article on town employees.

The arguments given against a local bylaw were that the behavior of town employees is already regulated by the state statute, and that town employees were subject to town employment policies which require town employees to enforce state laws.

The arguments given for a local bylaw supported petitioners’ statements regarding unforeseen challenges to reproductive freedom and the need for a local response with teeth. Further, that by creating local accountability, that this By-Law would strengthen enforcement, and that it would provide further support an employee might need to

withstand pressure from family, friends or faith-based organizations to facilitate litigation from out of state.

An Advisory Committee member used the example of an employee receiving a phone call or an email requesting information about local health care practitioners, the existence of or address for local clinics or information regarding the availability of certain medications at local pharmacies to support the argument for a local By-Law. This information may appear innocent, but it could be used by entities in another state to build a legal case against a local resident, local health care practitioner, or against a person who was receiving medical care or was accompanying someone who was receiving medical care in Massachusetts.

Recommendation

By a vote of 23 in favor, 1 opposed, and 1 abstention, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 20, as amended by the committee and agreed to by the petitioners. The full text of the motion is included below:

VOTED: That the Town will amend the General By-laws to add the following Article:
[deletions are ~~crossed through~~; new language is in **bold face**; amended language from the AC is in **bold italic**]

~~8.39 MENSTRUAL HYGIENE PRODUCT ACCESS BY LAW~~

8.XX REPRODUCTIVE and GENDER HEALTH ACCESS & EQUITY

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Section 8.XX.3 SAFE ACCESS TO LEGALLY PROTECTED HEALTH CARE

8.XX.3.i Definitions

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Section 8.XX.3.ii Protection from Abusive Litigation

a. Acting in their capacity as a Town agent, no Town agent may furnish information, assistance, or aid to any person or jurisdiction when such information, assistance, or aid is knowingly intended for use in abusive litigation as defined in this article, *and no Town resources, materials, or funds shall be so used, except as so ordered by a court in the Commonwealth.*

b. Acting in their capacity as a Town agent, no Town agent may furnish information, assistance, or aid to any person or jurisdiction for the purposes of prohibiting, criminalizing, sanctioning, authorizing a person to bring a civil action against, or otherwise interfering with a person, entity or carrier that seeks, receives, causes, aids in access to, aids or abets or provides, or attempts or intends to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care

services or gender-affirming health care services, if such services are legally protected health care activities. Additionally, no Town resources, materials, or funds shall be so used.

c. Pursuant to G.L. c. 147, § 63 no person, regardless of residency or citizenship status, shall be held in custody by the Brookline Police Department, nor remanded, transferred, or extradited to another jurisdiction for seeking, receiving, causing, aiding in access to, aiding or abetting or providing, or attempting or intending to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally protected health care activities, except as required by the order of a court of competent jurisdiction. This restriction shall not apply to any investigation or proceeding where the conduct that is subject to potential liability under the investigation or proceeding initiated in or by the other State would be subject to civil or criminal liability or professional sanction under the laws of the Commonwealth if committed in this Commonwealth.

Notwithstanding the general prohibition of this section, agencies and individuals acting on their behalf may provide information or assistance in connection with such an investigation or proceeding in response to the written request of a person who is the subject of such an investigation or proceeding.

d. All Town agents shall comply with any law or regulation *of this Commonwealth* pertaining to reproductive and gender-affirming health care not otherwise explicitly stated in this by-law.

Section 8.XX.3.iii Violations

a. Any Town employee/agent found to have *knowingly* violated this article shall be subject to the relevant discipline policies of the Town of Brookline, if applicable.

b. Any Town contractor found to have *knowingly* violated this article shall be subject to review and potential termination of contract.

Section 8.XX.3.iv Severability

The sections, paragraphs, sentences, clauses, and phrases of this article are severable, and if any phrase, clause, sentence, paragraph, or section of this article shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this article.

ARTICLE 20 ADVISORY COMMITTEE VOTES

Article Description	Reproductive and Gender Health Access & Equity
AC recommendation (Favorable Action unless indicated)	23-1-1
Ben Birnbaum	Y
Harry Bohrs	Y
Cliff Brown	Y
Patty Correa	Y
John Doggett	Y
Katherine Florio	Y
Harry Friedman	A
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	Y
Amy Hummel	Y
Anita Johnson	Y
Alisa Jonas	Y
Janice Kahn	Y
Pam Lodish	Y
Joslin Murphy	Y
Donelle O’Neal, Sr.	Y
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	N
Carlos Ridruejo	
Lee Selwyn	Y
Alok Somani	Y
Carolyn Thall	
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	