

**TOWN OF BROOKLINE ADVISORY COMMITTEE**

**Human Services Committee**

**Public Hearing via Zoom**

**March 31, 2023 12:00 p.m.**

**Warrant Article 20: Create new By-Law Section 8.XX Reproductive and Gender Health  
Access & Equity**

**Recommendation:** By a vote of 4 in favor, 0 opposed, and no abstentions, the subcommittee recommends favorable action on Warrant Article 20, as amended by the subcommittee and agreed to by the petitioners.

**Attendance:** Susan Granoff (Chair), Katherine Florio, David-Marc Goldstein, Markus Penzel; petitioners Rebecca Stone TMM 3, Alec Lebovitz TMM 8, Arden Reamer TMM 8.

<b>Executive Summary:</b>	<ul style="list-style-type: none"><li>• WA20 creates a bylaw that protects anyone seeking or providing full spectrum, safe compassionate pregnancy and gender-affirming care, including legal abortion, from abusive litigation<sup>1</sup>.</li><li>• It outlines consequences for non-compliance.</li><li>• It creates the space in the general bylaws that recognizes reproductive and gender health as an area of local policy concern.</li><li>• It creates a home in those bylaws for related policies, such as the 2019 menstrual product access bylaw, and for future actions the town may wish to take.</li><li>• It is supported by the Brookline chief of police, the director of Public Health and Human Services, and the Advisory Committee on Public Health.</li></ul>
<b>Voting Yes will...</b>	Commit Brookline to enforcing protections medical providers and patients seeking pregnancy and gender-affirming care, including legal abortion, from abusive litigation (see footnote).

<sup>1</sup> “Abusive litigation” means litigation, criminal prosecution, 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 (i), 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.

<b>Voting No will...</b>	Maintain the status quo.
<b>Financial impact [if any]</b>	None.
<b>Legal implications [if any]</b>	Commit Brookline to enforcing protections medical providers and patients seeking pregnancy and gender-affirming care, including legal abortion, from abusive litigation (see footnote), as well as prevent Brookline town employees from cooperating with out-of-state abusive litigation requests.

**Hearing Recording:**

[https://brooklinema.zoomgov.com/rec/share/H70cngqdM77TbQSNovRTbJqwFHg5dj8LAu7KZpRIAs9qSiS0Qhs4oXk1Q37M0gi.pcu\\_5G5-A1mLyWlM](https://brooklinema.zoomgov.com/rec/share/H70cngqdM77TbQSNovRTbJqwFHg5dj8LAu7KZpRIAs9qSiS0Qhs4oXk1Q37M0gi.pcu_5G5-A1mLyWlM)

**Overview**

At the public hearing, petitioner Rebecca Stone presented the growing threat to safe, established reproductive care in Massachusetts in spite of the passage of the two state statutes, a) t the Roe Act in 2020<sup>2</sup> which created a state statute to protect access to abortion in Massachusetts, and b) the passage in 2022 of *An Act expanding protections for reproductive and gender-affirming care*,<sup>3</sup> which provides legal protections to abortion providers and out-of-state patients, expands access to contraception, and allows women to remain in Massachusetts and decide with their doctors how to treat dangerous late term pregnancies.

Among the threats mentioned by the petitioners were:

- The Dobbs Supreme Court decision in June 2022, declaring abortion is not a fundamental constitutional right, overruling Roe v. Wade (1973) and Planned Parenthood v. Casey (1992)<sup>4 5</sup>
- Florida’s attempt to ban discussion of menstruation before 6<sup>th</sup> grade, after many students will have begun menstruating, along with laws limiting discussion of AIDS, sexually transmitted diseases or health education to students in the 6<sup>th</sup> – 12<sup>th</sup> grade.<sup>6</sup>

<sup>2</sup> Romo, Vanessa, “Massachusetts Senate Overrides Veto, Passes Law Expanding Abortion Access” NPR, December 29, 2020, <https://www.npr.org/2020/12/29/951259506/massachusetts-senate-overrides-veto-passes-law-expanding-abortion-access>

<sup>3</sup> An Act expanding protections for reproductive and gender-affirming car, 2022 MA Session Laws Acts (2022) Ch127 (passed July 29, 2022) <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter127>

<sup>4</sup> *Dobbs v. Jackson Women’s Health Organization*, Supreme Court of the United States, June 24, 2022, [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf).

<sup>5</sup> “Explaining SCOTUS’s Abortion Decision in *Dobbs v. Jackson Women’s Health Organization*” July 22, 2022, <https://www.lwv.org/blog/explaining-scotuss-abortion-decision-dobbs-v-jackson-womens-health-organization>

<sup>6</sup> “Florida considers ban on discussion of menstruation before sixth grade”, *The Guardian*, March 19, 2023 <https://www.theguardian.com/us-news/2023/mar/20/florida-considers-ban-on-discussion-of-periods-menstruation-before-sixth-grade>

- Bans on mifepristone, widely used in the U.S. since it was approved by the FDA in 2000.<sup>7</sup>
- Doctors, hospitals, and pharmacies, such as Walgreens, even in states where abortion remains legal, have already begun restricting care out of fear of legal or other reprisals.<sup>8 9 10</sup>

Health providers in Brookline some of whom are petitioners, want to highlight the importance of the bylaws' accountability provision.

Arden Reamer, another petitioner, spoke about the importance of ensuring access to safe established gender-affirming and reproductive care, describing her own experience with abortion in the early 1990s, and how in 1994, a shooting in Brookline at two local clinics permanently changed reproductive health care for women in Brookline and Massachusetts.

Alec Lebovitz, the third petitioner in attendance, made the case for local action. He asserted that this bylaw would support town employees in refusing to assist other states in prosecuting people who come to Massachusetts and stay or receive care in Brookline. He compared this bylaw to what is being done with immigration law and sanctuary cities. He stated Federal immigration enforcement can compel states to cooperate, but state cooperation often relies on the cooperation of local governments. The proposed new bylaw would make it clear that Brookline town employees would not be providing that cooperation.

### Discussion

Much of the discussion was about clarifying what might have been ambiguous in some of the language of the warrant article. The subcommittee suggested three minor wording changes and corrected one scrivener's error, which petitioners agreed to make. The work of the subcommittee is reflected in the edits and additions that are attached at the end of the report and highlighted in yellow.

A subcommittee member asked if this would be better addressed at the state level. Petitioners stated that this bylaw would prevent Brookline employees from cooperating with out-of-state prosecution because they were ignorant of state law, or because they did not agree with it. Petitioners also reminded subcommittee members that we cannot protect local health care providers from out-of-state prosecution for health care that they provide legally here if they were to travel to a state where the care they provide is not legal and there might be a warrant for their arrest, but we can protect them here.

<sup>7</sup> Weber, Paul, "FDA approval of abortion pill mifepristone in limbo after 2 federal judges order conflicting rulings" PBS, April 7, 2023, <https://www.pbs.org/newshour/politics/texas-judge-halts-fda-approval-of-abortion-pill-mifepristone>

<sup>8</sup> Oladipo, Gloria, "Idaho hospital to stop delivering babies as doctors flee over abortion ban" The Guardian, March 20, 2023 <https://www.theguardian.com/us-news/2023/mar/20/idaho-bonner-hospital-baby-delivery-abortion-ban>

<sup>9</sup> Ollstein, Alice "Walgreens won't distribute abortion pills in states where GOP AGs object" Politico, March 2, 2023, <https://www.politico.com/news/2023/03/02/walgreens-abortion-pills-00085325#:~:text=The%20nation's%20second%2Dlargest%20pharmacy,pressure%20from%20anti%2Dabortion%20activists.>

<sup>10</sup> Simmons-Duffin, Selena, "In Oklahoma, a woman was told to wait until she's 'crashing' for abortion care" NPR, April 25, 2023, <https://www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals>

Another subcommittee member pointed out that town employees who might be pressured to cooperate with out-of-state prosecution because of religious beliefs would find this bylaw helpful supporting their refusal to cooperate.

There was discussion of this law supporting the LGBTQ community in Brookline by creating a section on reproductive and gender health that could then be used in the future to support access and equity in our bylaws.

A subcommittee member asked if this bylaw would prevent abusive litigation against the people accompanying the patient, for example parents accompanying their child. The petitioners said yes, aiding in any abusive litigation is covered in this bylaw and so any person acting on behalf of a minor would be protected.

Subcommittee members agreed with the petitioners about the need for this new bylaw in order (1) to codify and provide additional protection to Brookline's residents, health care providers, and all visitors to Brookline with respect to the provision of health care related to reproductive and gender health and (2) to prevent Brookline Town employees from cooperating with out-of-state abusive litigation requests.

**Recommendation:** By a vote of 4 in favor, 0 opposed, and no abstentions, the subcommittee recommends favorable action on Warrant Article 20, as amended by the subcommittee and agreed to by the petitioners.

**Hearing Recording:**

[https://brooklinema.zoomgov.com/rec/share/H70cngqdM77TbQSNovRTbjqwFHg5dj8LAu7KZpRlAis9qSiS0Qhs4oXk1Q37M0gi.pcu\\_5G5-A1mLyWlM](https://brooklinema.zoomgov.com/rec/share/H70cngqdM77TbQSNovRTbjqwFHg5dj8LAu7KZpRlAis9qSiS0Qhs4oXk1Q37M0gi.pcu_5G5-A1mLyWlM)

8.XX.3.i Definitions

“Abusive litigation” means litigation, **criminal prosecution**, or other legal action . . .

. . . action described in subsection (i)

8.XX.3.ii

a. . . 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.

d. All Town agents shall comply with any state law or regulation **of the Commonwealth** pertaining to

**Proposed New Brookline By-Law on Reproductive & Gender Health and Equity**

Petitioners: 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, **criminal prosecution**, 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

Commented [RS1]: Added for clarity. Meaning unchanged.

any order or judgment issued in connection with any such action described in subsection (i), 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.

Commented [RS2]: Scrivners error: 1 replaced with i

“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, 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

Commented [RS3]: Deleted “Additionally,” and rearranged the other wording for clarity. Meaning unchanged.

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.

Commented [RS4]: Removed "state" and replaced it with "of this Commonwealth" for clarity. Meaning unchanged.

#### 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.*