
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 2020¹ which protects access to abortion in Massachusetts, and b) in 2022, *An Act expanding protections for reproductive and gender-affirming care*,² 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

¹ 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>

² 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>

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/H70cngqdM77TbQSNovRTbJqwFHg5dj8LAu7KZpRlAis9qSiS0Qhs4oXk1Q37M0gi.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 ~~erossed-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

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 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.

“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 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	

