

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13580

SUFFOLK, ss.

THE ATTORNEY GENERAL, Appellant,

V.

TOWN OF MILTON & JOE ATCHUE, in his Official Capacity,
Appellees,

V.

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES,
Third-Party Defendant & Appellant.

On a Reservation and Report by a
Single Justice of the Supreme Judicial Court

**BRIEF OF AMICUS CURIAE ABUNDANT HOUSING MA, INC.
AND ITS AFFILIATES; A BETTER CAMBRIDGE, INC.;
BROOKLINE FOR EVERYONE INC.; DR. CHRIS HERBERT; DR.
JENNY SCHUETZ; & PROFESSOR JOHN INFRANCA IN SUPPORT OF
THE ATTORNEY GENERAL AND THE EXECUTIVE OFFICE OF
HOUSING AND LIVABLE COMMUNITIES**

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DISCLOSURE STATEMENT

Under Supreme Judicial Court Rule 1:21, Abundant Housing MA, Inc. ("Abundant Housing"), A Better Cambridge, Inc., and Brookline for Everyone Inc. state that they are nonprofit corporations organized under the laws of the Commonwealth of Massachusetts, they do not issue stock or any other form of securities, and they do not have any parent corporations.

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STATEMENT OF IDENTITY AND INTEREST

Abundant Housing is a non-profit organization that believes in—and advocates for—increased home production at all income levels, from deeply affordable housing to market-rate housing. Abundant Housing's advocacy is rooted in the understanding that the only way out of the housing affordability crisis in Massachusetts is to create more housing supply. To that end, Abundant Housing maintains that improving zoning to require as-of-right multifamily housing near public transportation hubs, as done by the Massachusetts Zoning Act amendments at issue in this case, is a necessary and modest tool to address the housing affordability crisis.

Located in Boston, Massachusetts, Abundant Housing has more than 20 affiliate organizations in municipalities subject to the amendments to the Massachusetts Zoning Act. Many of those organizations, including Abundant Housing's affiliate in the Town of Milton, are also amicus curiae and join in this brief: A Better Cambridge, Inc.; Affordable Inclusive Milton; Belmont Town of (More!) Homes; Brookline for Everyone Inc.; Dorchester Growing Together; Engine 6; Homes 4 All Ipswich; Housing 4 All Gloucester; Housing for All Watertown; Housing Medford; Marblehead Housing

Coalition; Norwood for All; Somerville YIMBY; WalkUp Roslindale; Waltham Inclusive Neighborhoods; and Winthrop Working Together. Furthermore, Abundant Housing represents more than 400 individual members across the entire Commonwealth.

To further its pro-housing agenda, Abundant Housing drives policy at the state and local level by identifying pro-housing changemakers, building the power of local organizers, and connecting a statewide network of advocates. As the only statewide organization focused exclusively on zoning reform as a tool for driving housing production, Abundant Housing works closely with elected officials to draft and file legislation and utilizes its statewide network to conduct educational campaigns on the oftentimes arcane and technocratic rules that govern land-use.

To address the state's housing shortage, in January 2021, the Massachusetts legislature amended the Massachusetts Zoning Act to require cities and towns accessible by public transportation—referred to as “MBTA Communities”—to create zoning districts in which multi-family housing is allowed by right (the “MBTA Communities Act”).

Abundant Housing has been instrumental at the local level to encourage compliance with the MBTA Communities Act. Over the past year and a half, Abundant Housing has provided on-the-ground support to individuals and affiliate organizations in 26 of those MBTA Communities. This support has included conducting educational workshops, organizing residents into official organizations, and canvassing ahead of upcoming local elections and town meetings, all with the goal of ensuring municipal compliance with the MBTA Communities Act.

Chris Herbert is Managing Director of the Joint Center for Housing Studies of Harvard University. Dr. Herbert has extensive experience conducting research related to housing. He is co-editor of *A Shared Future: Fostering Communities of Inclusion in an Era of Inequality* (2018) and *Homeownership Built to Last: Balancing Access, Affordability, and Risk After the Housing Crisis* (Brookings Institution Press, 2014). Dr. Herbert holds a PhD and Masters in Public Policy from Harvard University and a BA in History from Dartmouth College.

John Infranca is a Professor of Law at Suffolk University Law School. His scholarship focuses on land

use regulation, affordable housing policy, and local government law. His articles include *Singling Out Single-Family Zoning* (Georgetown Law Journal) and *The New State Zoning: Land Use Preemption amid a Housing Crisis* (Boston College Law Review). Professor Infranca is also a co-editor of the Elgar Research Agenda for Land Use and Planning Law (2024) and lead researcher for the Massachusetts Zoning Atlas. Professor Infranca graduated from the University of Notre Dame, where he received his B.A. in the Program of Liberal Studies and an M.T.S. in Moral Theology, and New York University School of Law. He served as Florence Rogatz Visiting Professor of Law at Yale Law School in Spring 2024.

Jenny Schuetz is a Senior Fellow at Brookings Metro, where her research focuses on improving housing and land use policies. Dr. Schuetz has written extensively for academic and public audiences. Her recent book, *Fixer Upper: How to Repair America's Broken Housing Systems*, received coverage on Marketplace, The Ezra Klein Show, Slate, and Bloomberg CityLab. Dr. Schuetz earned a PhD in public policy from Harvard University, a master's in city planning from M.I.T., and a B.A. with Highest Distinction in economics and

political and social thought from the University of Virginia.

DECLARATION OF AMICUS CURIAE

Under Mass. R. App. P. 17(c)(5), amicus curiae Abundant Housing MA, Inc. and its affiliate organizations A Better Cambridge, Inc., Affordable Inclusive Milton, Belmont Town of (More!) Homes, Brookline for Everyone Inc., Dorchester Growing Together, Engine 6, Homes 4 All Ipswich, Housing 4 All Gloucester, Housing for All Watertown, Housing Medford, Marblehead Housing Coalition, Norwood for All, Somerville YIMBY, WalkUp Roslindale, Waltham Inclusive Neighborhoods, and Winthrop Working Together; Dr. Chris Herbert; Dr. Jenny Schuetz; and Professor John Infranca hereby declare that (a) no party or party's counsel involved in this action authored this brief; (b) no party or party's counsel, or any other person or entity, other than the amicus curiae, their members, or their counsel, contributed money that was intended to fund the preparation or submission of this brief; (c) neither amicus curiae nor their counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues; and (d) neither amicus curiae nor their counsel was a party or

represented a party in a proceeding or legal transaction that is at issue in the present appeal.

ARGUMENT

I. MASSACHUSETTS HAS A HOUSING AFFORDABILITY AND SUPPLY CRISIS.

Costs have made housing out of reach for many Massachusetts individuals and families. In 2024, “the median sales price for a single-family home in [Greater Boston] reached \$950,000.” Brinker, ‘A sobering statistic’: The typical house here now costs \$950,000, The Boston Globe (May 21, 2024), <https://www.bostonglobe.com/2024/05/21/business/greater-boston-home-prices/>. Moreover, that median price has increased by an astonishing \$400,000 since 2017. Id. “Statewide, the median single-family home price jumped 10 percent from the previous year to \$610,000.” Id. Rents have spiked as well, with renters in Greater Boston now paying some of the highest rents in the country: the median rent in Greater Boston is \$3,940 per month, up nearly \$700 since 2019. Gardner, The Rent.Report, Rent.Research (Apr. 15, 2024), <https://www.rent.com/research/average-rent-price-report/>.

Due to the dramatic increase in housing costs, most renters in Greater Boston are now rent-burdened, meaning that they pay more than 30% of their income for rent. According to a study by the Joint Center for Housing Studies of Harvard University (JCHS), 52% of renter households in Greater Boston are rent-burdened, impacting more than 390,000 local households. Joint Center for Housing Studies of Harvard University, Renter Cost-Burden Shares Remain High (2024), <https://www.jchs.harvard.edu/arh-2024-cost-burden-share>.¹ Worse, more than 200,000 local households, or 27%, are severely rent-burdened, spending more than 50% of their income on housing. Id.

As housing costs have skyrocketed, so has the percentage of rent-burdened households in Massachusetts—from 38% in 2001 to 52% today. Id. See Joint Center for Housing Studies of Harvard University, Cost Burdens Climb The Income Scale (2024), <https://www.jchs.harvard.edu/arh-2024-cost-burdens-climb-income-scale>. Cost burdens have also moved up the income scale, with the percentage of rent-burdened

¹ The Joint Center for Housing Studies analysis uses the U.S. Census Bureau's Boston-Cambridge-Newton MA-NH Metro Area.

households earning \$45,000-74,999 per year increasing from 32% to 60% and the percentage of rent-burdened households earning \$75,000 or more per year increasing from 6% to 15%. Joint Center for Housing Studies of Harvard University, Cost Burdens Climb The Income Scale (2024), <https://www.jchs.harvard.edu/arh-2024-cost-burdens-climb-income-scale>.

According to a July 2021 report commissioned by the Commonwealth, 200,000 new homes are needed by 2030 to bring Massachusetts up to a vacancy rate reflecting a healthier balance between housing supply and housing demand. Preparing for the Future of Work in the Commonwealth of Massachusetts (2021), mass.gov/doc/future-of-work-in-massachusetts-report/download. The 2021 study found that Massachusetts had “the lowest vacancy rates for both rental (3.4 percent) and homeowner properties (1.0 percent) in the country.” Id. Astonishingly, these benchmarks have worsened since that time, to 2.5% and 0.4% respectively, suggesting that Massachusetts now needs even more new

homes to achieve a healthy vacancy rate and more stable housing costs.²

Other signs of the housing supply crisis abound. Many residents, unable or unwilling to pay the ever-increasing amount needed to obtain housing in Massachusetts, have chosen to leave. Ciurczak, Mass. Migration: An Analysis of Outmigration from Massachusetts Over the Last Two Decades, Boston Indicators (Apr. 4, 2024), <https://www.bostonindicators.org/article-pages/2024/april/domestic-migration>. “Perhaps most concerning, the state is losing young adults, with higher numbers of 25-44-year-olds leaving than any other age group.” Id.

Other residents, unable to keep up with fast-rising housing costs, have become homeless, with Boston now having “the second highest rate of homelessness” among large American cities. Ciurczak et al., Homelessness in Greater Boston, Trends in the Context of Our Broader Housing Crisis, Boston Indicators (Aug. 5, 2024), <https://www.bostonindicators.org/reports/report->

² Data available at: <https://fred.stlouisfed.org/graph/fredgraph.png?g=1tqg1>.

detail-pages/homelessness_and_housing. The common denominator for cities with high rates of homelessness “is low housing production leading to high home prices and rents.” Id. Residential overcrowding has also increased 55% in Greater Boston since 2005. Id. These impacts do not affect all residents equally; for example, “Black residents are far more likely to experience homelessness in Greater Boston than people of other races.” Id.

These facts make clear that Massachusetts faces a severe housing supply crisis, as municipalities that regulate land use through zoning have failed to allow sufficient additional housing to keep up with demand. In response to this housing supply crisis, and to encourage infill development rather than sprawl, the state legislature passed the MBTA Communities Act, requiring municipalities in Greater Boston to adopt zoning that modestly allows multifamily housing near public transportation hubs.

II. RESTRICTIVE AND EXCLUSIONARY ZONING INCREASES HOUSING COSTS.

“For decades, municipalities have been limiting development of family-suitable apartments and condos through a few zoning mechanisms, including . . .

discretionary approval processes.” Dain, Overcoming the restrictions on multi-family housing: MBTA Communities law seeks to end all the end-arounds, Commonwealth Beacon (Jan. 6, 2023), <https://commonwealthbeacon.org/opinion/overcoming-the-restrictions-on-multi-family-housing>. These efforts have resulted in a lack of housing options across the spectrum of incomes, limiting supply, driving up housing costs, and constraining Massachusetts’ ability to adequately respond to its housing shortage. These “systematic restrictions have disadvantaged multi-generational households seeking homes in condo or apartment buildings. The restrictions have also undermined the housing market’s dynamism and its ability to meet the region’s housing needs.” Id.

Proactively zoning for multifamily housing will reduce the cost to build new multifamily housing, increase housing production, and, in turn, reduce housing costs. When projects are allowed by right, all that is required to obtain a building permit is review by building department staff to verify compliance. S. Bronin, Key to the City: How Zoning Shapes Our World, at 33 (2024). When zoning allows for “by-right” development, where projects that meet zoning

requirements can proceed without special permits or conditional approvals (and without the potential of costly abutter litigation seeking to invalidate those approvals), the process is predictable and less costly.

In contrast, the largely discretionary regime that dominates Massachusetts' municipal land use policies increases costs significantly by increasing risk, adding process, and inserting uncertainty and ambiguity into project permitting. "While each zoning code lays out the criteria that would enable granting of a variance, the general rule is that to receive one, a property owner has to demonstrate that she would suffer a hardship if the zoning code were applied as written." *Id.* at 36. See Mass. Gen. Laws ch. 40A, § 10 ("The permit granting authority shall have the power after public hearing . . . to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that . . . a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant."). This standard is often difficult to meet, adding another layer of complexity and uncertainty. Moreover, due to

the overly restrictive zoning that was adopted by municipalities over the last few decades, requiring a variance is a common occurrence rather than the intended rare exemption that is described in the Massachusetts Zoning Act. Mass. Gen. Laws ch. 40A, § 10. See also Pendergast v. Board of App. Of Barnstable, 331 Mass. 555, 557 (1954) (“variances are to be granted sparingly”). In a by-right regime, homebuilders and their architects design a building once to comply with set specifications, rather than preparing multiple plans for a subjective review by the community and volunteer members of a local zoning or planning board.

The uncertainty as to both process and cost does not end once a project escapes the variance procedures. Under the Massachusetts Zoning Act, once a variance or special permit is obtained, any single person, including, but not limited to, an unhappy abutter is afforded an opportunity to further stall or kill a project through judicial review of discretionary zoning decisions. See Mass. Gen. Laws ch. 40A, § 17. Through recent legislative action, Massachusetts has acknowledged that abutter appeals that are intended to prevent multifamily housing need to be discouraged. In 2021, Massachusetts enacted a legislative package known

as Housing Choice, which, *inter alia*, gave courts the ability to require project opponents to post a bond. St. 2020, c. 358. This year, the legislature went a step further by proposing the elimination of the requirement that a project proponent show actual malice on the part of the project opponent in appeals and allow courts to require a bond of up to \$250,000 without demonstrating actual malice on the part of the project opponent. St. 2024, c. 150, § 12.

III. RELAXING ZONING RESTRICTIONS ON MULTIFAMILY HOUSING IS GOOD PUBLIC POLICY.

Communities with diverse housing options are stronger and more resilient. They provide the starter homes that young families need and affordable and accessible options for older adults as they experience life changes such as the death of a spouse, financial insecurity, or mobility challenges. Longstanding Massachusetts municipal zoning policies have prevented the construction of housing of different types, sizes, and price points. Providing a variety of housing types allows a community to serve all its residents, stabilizing and diversifying the population's demographics to continue to fill schools with students,

house a local workforce, and support an aging population within its borders.

A. Aging Communities Need Diverse Housing Supply to Prevent Outmigration of Younger Populations.

Many communities in Greater Boston lack significant amounts of vacant land available for new housing as larger lot single-family zoning has become more commonplace in the region. See A. Mikula, Supply Stagnation: The Root Cause of Greater Boston's Housing Crisis and How to Fix It, Pioneer Institute, at 10 (May 2024), <https://pioneerinstitute.org/wp-content/uploads/Supply-Stagnation-The-Root-Cause-of-Greater-Bostons-Housing-Crisis-and-How-to-Fix-It.pdf> ("Even in leafy Boston suburbs, it's not uncommon for local newspapers and town officials to describe their communities as 'built-out' or 'nearly built-out,' as most of the individual land parcels have already been developed at relatively low densities."). The local zoning barriers to building more, up, and out are forcing younger generations who cannot afford to stay in aging communities to go elsewhere. For example, in Marblehead, an MBTA Community, the population has decreased by 5% from its peak in the 1970s as household sizes have decreased and net new housing production has remained

largely stagnant for much of the past half-century.
QuickFacts: Marblehead CDP, Massachusetts, U.S. Census
Bureau, Quickfacts,
<https://www.census.gov/quickfacts/marbleheadcdpmassachusetts>.

Between 2010 and 2022, Marblehead's housing supply increased just 1.3%. In 2000, residents age 55 and older represented only one fourth of the town's population. By 2017, that proportion had jumped to nearly one half of the population. During that same time frame, the number of residents between ages 25 and 44 shrank by 63%. This demographic change is due to a lack of new and affordable housing production as current zoning constraints limit most of the town to large lot, single-family-only zoning.

Marblehead has largely been developed to the extent allowed by current zoning regulations. This is the primary constraint on new housing development Existing zoning limits residential development other than single-family housing in most parts of town. Restrictions and dimensional requirements for moderate to larger multifamily housing and mixed-use housing essentially prevents this type of housing from being developed, even in the few areas of town where it is allowed by special permit.

Metropolitan Area Planning Council, Marblehead
Housing Production Plan, at 34 (2020),

https://www.marblehead.org/sites/g/files/vyhlif4661/f/uploads/final_marblehead_hpp_for_dhcd_review_06.18.2020_1_0.pdf. Marblehead's Housing Production Plan references the clear impact of these dramatic demographic changes and their connection to the community's housing supply: "Without new housing for a range of different life stages and income levels, the town's public institutions, local economy, and sense of community could suffer." Id. at 8.

The American Association for the Advancement of Retired Persons, in its advocacy for seniors, has also come out in strong support of housing supply diversity. "[C]ommunities with a variety of housing options attract households of diverse sizes and income levels. They also support an individual's choice to age in their home, in the community or in assisted living." A. Ramos & T. Carey, *An Age-Friendly Bay State, A Team Effort*, AARP (June 26, 2024), <https://states.aarp.org/massachusetts/livable-wednesdays>.

B. Diversifying Housing Types By Increasing Multifamily Housing Production Will Improve Housing Affordability.

With land values exceedingly high and most buildable land already developed to the extent allowed

under existing zoning, most households in Greater Boston have no options other than single-family homes, with a median price tag of nearly \$1 million—and significantly more in many towns. Woods, Median sales price for a single-family home hits \$961,250, breaks record, Boston.com (July 18, 2024), <https://www.boston.com/real-estate/real-estate-news/2024/07/18/median-sales-price-single-family-home-hits-961250>. “Building smaller, lower-cost homes in affluent communities would allow households who currently cannot afford to live in those communities an opportunity to move there, adding socio-economic diversity. New condos in Wellesley Hills and Needham would be affordable to households earning under \$100,000, well below the median income of current residents (\$153,000 in Needham and \$188,000 in Wellesley).” S. Crump, J. Schuetz, T. Mattos, & L. Schuster, Zoned Out: Why Massachusetts Needs to Legalize Apartments Near Transit, Boston Indicators (Oct. 21, 2020), <https://www.bostonindicators.org/reports/report-website-pages/zoned-out>.

The approach to lifting zoning restrictions on multifamily housing types near public transportation in applicable MBTA Communities provides a ‘release valve’

from the housing crisis, which ensures any upward pressure on land values is distributed more evenly across the region:

Allowing smaller, higher-density housing offers the greatest affordability improvements in the most expensive communities. In less expensive communities like Beverly and Melrose, newly built condos would not offer substantial savings relative to older existing homes. The advantage of a consistent statewide policy [like MBTA Communities] is that it enables new housing to be built in the places with highest demand, while lifting some market pressures from moderate-income communities that currently are providing most of the region's new housing.

Id.

IV. THE MBTA COMMUNITIES ACT IS A MODEST MEANS TO RELIEVE MASSACHUSETTS' HOUSING SUPPLY AND AFFORDABILITY CRISIS.

Given the scope of the housing crisis that Massachusetts is facing and the need for significant new housing supply, the MBTA Communities Act is a modest reform. In contrast with bolder interventions in other states, it channels local decision-making. Massachusetts grants local governments the power to impose zoning through the Massachusetts Zoning Act. The MBTA Communities Act does not change that.

In recent years, other states have been significantly more aggressive in addressing the housing

crisis by constraining local land use regulation. See S. Furth & E. Hamilton, Housing Reform in the States: A Menu of Options for 2023, Mercatus Center Policy Brief (July 2022), <https://www.mercatus.org/research/policy-briefs/housing-reform-states-menu-options-2023>. See also J. Infranca, Singling Out Single-Family Zoning, 112 Geo. L.J. 659, 667-70 (2023); J. Infranca, The New State Zoning: Land Use Preemption Amid a Housing Crisis, 60 B.C.L. Rev. 823, 846-75 (2019). Several states have effectively eliminated single-family exclusive zoning statewide, allowing “missing-middle” housing, in the form of duplexes, quadplexes, and similar small-scale multifamily development, to be built in existing single-family districts statewide.

Washington State requires local governments to modify their relevant zoning regulations to permit denser development in single-family districts. Washington House Bill 1110 (Engrossed) (2023), Chapter 332, Laws of 2023, (Effective July 23, 2023) (An act relating to creating more homes for Washington by increasing middle housing in areas traditionally dedicated to single-family detached housing).³ Cities

³ The Act defines this (mildly) denser “middle housing” broadly as “buildings that are compatible in scale,

between 25,000 and 75,000 residents must allow at least two units per lot on all residential lots, and four units per lot on lots within one-quarter mile of a major transit stop. Id. at 9.⁴ Cities with populations over 75,000 must allow at least four units on all residential lots, and six units on all lots if at least two of the units are affordable. While cities retain some flexibility in the types of middle housing they permit, they must allow at least six of the nine specific types of middle housing identified in the statute. Id. at 11. California's Senate Bill 9 created the potential for up to four units to be built on existing single-family lots by requiring local governments, subject to some limitations, to permit homeowners to both split any single-family lot (so long as the newly created lots are at least 1,200 square feet) and build up to two houses on each of the split lots. California Senate Bill 9 (2021). Similar measures allowing the development of

form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing."

⁴ In addition, at least four units can be developed on all residential lots if at least one of those units is affordable.

duplexes or quadplexes on lots statewide also have become law in states including Oregon⁵ and Vermont.⁶ These states have chosen to directly revise local zoning, effectively rewriting the regulations for most single-family districts.

Some states have focused on areas near transit, directly preempting local regulations in these areas. Maryland's House Bill 538 provides a density bonus for "qualified projects" located within three-quarters of a mile of a rail station. Maryland H.B. 538, Housing Expansion and Affordability Act of 2024 (2024). Such projects, which must set aside at least fifteen percent of units as affordable housing, are allowed to exceed local density restrictions and the local jurisdiction "may not impose any unreasonable limitation or requirements" related to height, setback, bulk, parking, and similar requirements. Id. at 7-505. In Colorado, a recent law prohibits local laws from establishing

⁵ H.B. 2001, 80 Leg. Assembly, Reg. Sess. (Or. 2019) (allowing duplexes on all single-family lots in cities of over 10,000 people). In addition, cities with populations of more than 25,000 were required to allow quadplexes within residential zoning districts.

⁶ Vermont S.100, "An act relating to housing opportunities made for everyone" (2023) (allowing quadplexes on parcels served by sewers and duplexes on other parcels statewide).

minimum parking requirements for multifamily and certain mixed-used developments within one-quarter mile of transit. Colorado H.B. 24-1304 (2024). California similarly prohibits cities, counties, and any other “public agency” from enforcing parking minimums within one-half mile of a major transit stop. California A.B. 2097 (2022).⁷ In 2022, California allowed multifamily housing in existing districts zoned for office, retail, or parking uses. California A.B. 2011, Affordable Housing and High Road Jobs Act of 2022 (2022); California S.B. 6, Middle Class Housing Act of 2022 (2022). Finally, the Affordable Housing on Faith and Higher Education Lands Act allows religious institutions and non-profit colleges in California to build affordable housing on their land. California SB 4 (2023). Each of these measures effectively rewrites or overrides portions of existing local zoning ordinances.

Colorado’s House Bill 1313, the Housing in Transit-Oriented Communities Act, applies to approximately thirty “transit oriented communities” along Colorado’s

⁷ California similarly provides an exception if the public agency makes written findings that the absence of minimum parking requirements would cause a “substantially negative impact” on certain specified interests. California A.B. 2097, § 2 (2022).

Front Range, the most populated area of the state. Colorado HB 24-1313, "Housing in Transit Oriented Communities Act" (May 13, 2024). It requires each community to meet a zoning capacity goal (termed a "Housing Opportunity Goal") of 40 dwelling units per acre multiplied by "the total area of the [community's] transit areas." Colorado HB 24-1313 at 29-37-204(2). The statute's legislative declarations emphasize the relationship between residential density and the cost effectiveness of both affordable housing development and maintaining public transit services. Colorado HB 24-1313 at 29-37-201.

Some states require local governments to choose and implement a specified number of zoning reforms from a list of possibilities. For example, Montana's recent slate of housing reforms included a requirement that local governments incorporate into their zoning regulations a minimum of five strategies for encouraging the development of housing. Montana Session Laws 2023, Chapter No. 502 (SB 528) at 1424 (Section 19). These strategies must be chosen from a specified list of fourteen possibilities, which includes, among others, allowing duplexes (or triplexes or fourplexes) on all single-family lots, upzoning for more density near

transit, allowing ADUs on single-family lots, eliminating or reducing minimum lot sizes or setback requirements, and allowing multi-unit developments on all lots zoned for office, retail, or commercial uses. Montana Session Laws 2023, Chapter No. 502 (SB 528) at 1424-25 (Section 19).

In sum, states across the country have sought to address the housing crisis by directly displacing local zoning restrictions on homeowner's control of their property. Viewed in the context of these reforms, the MBTA Communities Act represents a modest intervention in local zoning and one that maintains significant control over development at the local level. The law allows communities to choose, in light of their own unique characteristics, how to comply and rezone in a manner that makes it possible to contribute to the regional need for more housing. The power to zone, which states delegate to local governments, must be, as this Court has declared, exercised in service to "the general welfare of the Commonwealth." Zuckerman v. Town of Hadley, 442 Mass. 511, 519 (2004). The MBTA Communities Act represents a modest step in that direction. One cannot foresee how Massachusetts could ever escape from and reverse the ongoing housing supply and affordability

crisis if even the modest reforms mandated in the MBTA Communities Act do not survive.

CONCLUSION

To address Massachusetts' housing supply and affordability crisis by allowing multifamily homes near transit and for the other reasons stated above, Abundant Housing and its affiliates; A Better Cambridge, Inc.; Brookline for Everyone Inc.; Dr. Chris Herbert; Dr. Jenny Schuetz; and Professor John Infranca respectfully submit this Amicus Brief in support of the Attorney General and urge this Honorable Court to award the relief requested in the Appellants' blue brief (p. 59).

[Signature block appears on the following page]

Respectfully submitted,

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Date: September 16, 2024

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. 16(k), undersigned counsel hereby certifies that the foregoing brief complies with the rules of the court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a) (13);
Mass. R. A. P. 16 (e);
Mass. R. App. 17(c) (9);
Mass. R. A. P. 18;
Mass. R. A. P. 20; and
Mass. R. A. P. 21.

The foregoing is comprised of 26 non-excluded pages of 12 pt. Courier New font not exceeding 10.5 characters per inch and is therefore in compliance with Mass. R. A. P. 20(a) (2) (c).

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CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13(d), undersigned counsel hereby certifies that on September 16, 2024, in the matter captioned *Attorney General v. Town of Milton and Joe Atchue, in his Official Capacity*, a true copy of the Brief of Amicus Curiae Abundant Housing MA, Inc. et al. was served on the following counsel of record by filing this document electronically through the e-filing system on the Massachusetts Court System Odyssey File and Serve Site ("EfileMA.com"):

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