

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

No. SJC-13580

The Attorney General,
Plaintiff-Appellant,

v.

Town of Milton, *et al.*,
Defendant-Appellees,
(and a companion case).¹

On A Reservation And Report By A Justice Of
The Supreme Judicial Court For Suffolk County

**Amicus Brief for Central Massachusetts Housing
Alliance, Greater Boston Latino Network, Inquilinos
Boricuas en Acción, Haitian-Americans United, Inc. and
Immigrant Family Services Institute**

Jacob M. Love (BBO #699613)
Oren M. Sellstrom (BBO #569045)
Lawyers for Civil Rights
61 Batterymarch St., 5th Floor
Boston, MA 02110
Tel: 857-264-0416
jlove@lawyersforcivilrights.org
osellstrom@lawyersforcivilrights.org

Elizabeth Ritvo (BBO #421440)
Meghan E. McCafferty (BBO #705629)
BROWN RUDNICK LLP
One Financial Center
Boston, MA 02111
Telephone: (617) 856-8200
eritvo@brownrudnick.com
mmccafferty@brownrudnick.com

Dated: September 16, 2024

¹ Att'y General v. Town of Milton, et al., SJ-2024-0078

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, *Amici Curiae*, Central Massachusetts Housing Alliance, Greater Boston Latino Network, Inquilinos Boricuas en Acción, Haitian-Americans United, Inc., and Immigrant Family Services Institute, make the following disclosures: they are non-profit corporations with no parent corporations, and with no stock, and therefore with no publicly held companies owning 10% or more of their stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....	2
TABLE OF AUTHORITIES.....	5
IDENTITY AND INTERESTS OF <i>AMICI CURIAE</i>	14
INTRODUCTION.....	17
BACKGROUND.....	18
i. Local Restrictions on Multi-Family Housing are a Key Driver of High Housing Costs and Residential Segregation in the Commonwealth.....	19
ii. The Affordable Housing Crisis, Driven by Widespread Restrictive Local Zoning, Is Ongoing and Severe.....	25
iii. The Housing Crisis Disproportionately Harms Massachusetts Communities of Color.....	28
iv. Precipitated By Widespread Multi-Family Zoning Restrictions, Segregated Housing Patterns Persist in Massachusetts.....	31
ARGUMENT.....	33
i. The MCA's Text Shows that Local Zoning Discretion is the Problem the Statute Sought to Eliminate and that Compliance is Mandatory for MBTA Communities.....	34
ii. Extrinsic Sources Demonstrate the Legislature's Clear Intent for the MCA to be Mandatory.....	39
a. Floor Statements by Legislators.....	40
b. Commentary by Legislative Champions.....	41
iii. § 3A Preempts Municipal Discretion for Non-Compliance.....	45

iv. Milton's Non-Compliance is a Watershed Event.....	46
CONCLUSION.....	48
CERTIFICATE OF COMPLIANCE.....	49
CERTIFICATE OF SERVICE.....	50

TABLE OF AUTHORITIES

CASES :

<i>Adams v. Boston,</i> 461 Mass. 602 (2012)	35
<i>Board of Appeals of Hanover v. Housing Appeals</i> <i>Comm. in Dept. of Cmty. Affairs,</i> 363 Mass. 339 (1973)	19
<i>Champigny v. Comm.,</i> 442 Mass. 249 (1996)	47-48
<i>Commonwealth v. K.W.,</i> 490 Mass. 619 (2022)	40
<i>Conservation Comm'n of Norton v. Pesa,</i> 488 Mass. 325 (2021)	34
<i>Dowling v. Registrar of Motor Vehicles,</i> 425 Mass. 523 (1997)	39
<i>Easthampton Sav. Bank v. City of Springfield,</i> 470 Mass. 284 (2014)	45, 46
<i>Halebian v. Berv,</i> 457 Mass. 620 (2010)	34
<i>Harvard Crimson, Inc. v. President & Fellows of</i> <i>Harvard Coll.,</i> 445 Mass. 745 (2006)	35
<i>Kartell v. Blue Shield of Mass., Inc.,</i> 384 Mass. 409 (1981)	42
<i>Lazlo L. v. Commonwealth,</i> 482 Mass. 325 (2019)	40
<i>Locator Servs. Grp., Ltd. v. Treasurer & Receiver</i> <i>General,</i> 443 Mass. 837 (2005)	37
<i>Marengi v. 6 Forest Rd. LLC,</i> 491 Mass. 19 (2022)	39
<i>Mullaly v. Waste Mgt. of Mass., Inc.,</i> 452 Mass. 526 (2008)	35

<i>Narmore v. Kawafuchi</i> , 112 Haw. 69 (2006).....	38
<i>Nat'l Fed. of Republican Assemblies v. U.S.</i> , 148 F. Supp. 2d 1273 (S.D. Ala. 2001).....	38
<i>Ross v. Comm'r of Revenue</i> , 430 Mass. 431 (1999).....	42
<i>Simmons v. DuBose</i> , 142 Ill. App. 3d 1077 (1986).....	38
<i>Tilton v. Haverhill</i> , 311 Mass. 572 (1942).....	37
<i>Town of Dartmouth v. Greater New Bedford Reg'l Vocational Tech. High Sch.</i> , 461 Mass. 366 (Mass. 2012).....	45
<i>Watrov v. Greater Lynn Mental Health and Retardation Ass'n, Inc.</i> , 421 Mass. 106 (1995).....	47
<i>Wendell v. Attorney Gen.</i> , 394 Mass. 518 (1985).....	45
<i>Worcester v. College Hill Props., LLC</i> , 465 Mass. 134 (2013).....	39
CONSTITUTIONAL PROVISIONS:	
Article 89 of the Massachusetts Constitution.....	19
STATUTES:	
G.L. c. 40A, § 1A.....	36
G.L. c. 40A, § 3A.....	<i>passim</i>
OTHER AUTHORITIES:	
2019 <i>Analysis of Impediments to Fair Housing Choice</i> , MASS. DEP'T OF HOUS. AND CMTY. DEV. 4 (2019), https://www.mass.gov/doc/analysis- of-impediments-to-fair-housing-choice- 2019/download	33

2019 <i>Analysis of Impediments to Fair Housing Choice</i> , MASS. DEP'T OF HOUS. AND CMTY. DEV. 9 (2019), https://www.mass.gov/doc/analysis-of-impediments-to-fair-housing-choice-2019/download	32
<i>America's Rental Housing 2017</i> , JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. 14 (2017), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017_0.pdf	24
<i>America's Rental Housing 2022</i> , JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. 22 (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf	24
Mark Arsenault et al., <i>Beyond the Gilded Gate</i> , THE BOSTON GLOBE (Oct. 18, 2024), https://apps.bostonglobe.com/2023/10/special-projects/spotlight-boston-housing/milton-restrictive-zoning/	21
<i>Building Momentum: New Housing Policies to Unlock the Commonwealth's Potential</i> , MASS. HOUS. P'SHIP 2 (Aug. 2023), https://www.mhp.net/assets/resources/documents/MHP-Building-Momentum-2023.pdf	21
Anne Calef et al., <i>The Greater Boston Housing Report Card 2022</i> , BOSTON FOUNDATION 4 (Oct. 2022), https://www.tbf.org/-/media/tbf/reports-and-covers/2022/october/gbhrc2022_interactive_web.pdf	29
Anne Calef et al., <i>A Long Road Home: A Racial Equity Analysis of Homeownership Support Programs in Massachusetts</i> , BOSTON INDICATORS 6 (Sept. 8, 2023), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/bi_lmi_homeownership_report_final_digital_090823_singles.pdf	30

<i>CHAS: Background</i> , OFFICE OF POL'Y DEV. AND RSCH., <a href="https://www.huduser.gov/portal/datasets/cp/C
HAS/bg_chas.html">https://www.huduser.gov/portal/datasets/cp/C HAS/bg_chas.html	27
Commonwealth of Mass., <i>State Senate Session</i> 26:47-27:54 (Jul. 29, 2020), <a href="https://malegislature.gov/Events/Sessions/De
tail/3711">https://malegislature.gov/Events/Sessions/De tail/3711	41
<i>Compliance Status Sheet as of 9-4-24</i> , COMMONWEALTH OF MASS. (Sept. 4, 2024), <a href="https://www.mass.gov/info-details/multi-
family-zoning-requirement-for-mbta-
communities#complying-with-section-3a-
guidelines-">https://www.mass.gov/info-details/multi- family-zoning-requirement-for-mbta- communities#complying-with-section-3a- guidelines-	47
Hanna Chugg, <i>The Homeownership Gap between Black and White Families in the United States</i> , BALLARD BRIEF (May 2023), <a href="https://static1.squarespace.com/static/
5f088a46ebe405013044f1a4/t/667b37b76795aa74a
a277dc9/1719351226294/HannaChuggPDF.pdf">https://static1.squarespace.com/static/ 5f088a46ebe405013044f1a4/t/667b37b76795aa74a a277dc9/1719351226294/HannaChuggPDF.pdf	31
Amy Dain, <i>The State of Zoning for Multi-Family Housing in Greater Boston</i> iv (June 2019), <a href="https://www.housingtoolbox.org/assets/files/
resources/AMY-DAIN_Multi-
Family_Housing_Report.pdf">https://www.housingtoolbox.org/assets/files/ resources/AMY-DAIN_Multi- Family_Housing_Report.pdf . at iv.....	21, 22
Amy Daim, <i>An Investigation of Zoning's Use as a Tool of Race, Class, and Family Exclusion in Boston's Suburbs, 1920 to Today</i> , BOSTON INDICATORS 18 (Nov. 2023), <a href="https://www.bostonindicators.org/-
/media/indicators/ boston-indicators-
reports/report-
files/exclusionarybydesign_report_nov_8.pdf">https://www.bostonindicators.org/- /media/indicators/ boston-indicators- reports/report- files/exclusionarybydesign_report_nov_8.pdf	20
Vince Dixon, <i>\$217,000 a year to afford a home in Boston? Who can even afford that?</i> , THE BOSTON GLOBE (Aug. 15, 2024, 7:49 AM), <a href="https://www.bostonglobe.com/
2024/08/15/metro/housing-crisis-boston-
black-latino-homebuyers/">https://www.bostonglobe.com/ 2024/08/15/metro/housing-crisis-boston- black-latino-homebuyers/	31

- Stacy Elliot et al., *Rent Burden and Depression Among Mothers: an Analysis of Primary Caregiver Outcomes*, 2 J. of Pol. Practice & RSCH. 285 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8435361/>.....27
- Anthony Gardner, *Renting Trends*, RENT (Apr. 15, 2024), <https://www.rent.com/research/average-rent-price-report/>.....25
- Christopher Gavin, *The median home price is edging toward \$1m. Expect to pay more.*, BOSTON.COM (Aug. 7, 2024), <https://www.boston.com/real-estate/home-buying/2024/08/07/home-price-toward-1m-expect-pay-more/>.....26
- Chris Hess, *Cumulative housing cost burden exposures and disadvantages to children's well-being and health*, 119 Soc. Sci., <https://www.sciencedirect.com/science/article/abs/pii/S0049089X24000061?dgcid=author>.....27
- Housing Cost Burden in Massachusetts*, AM. HEALTH RANKINGS, https://www.americashealthrankings.org/explore/measures/cost_burden/MA.....27
- Eric Robsky Huntly et al., *Housing Justice Beyond the Emergency: An Analysis of Racial Inequity in Eviction Filings across Massachusetts*, HOMES FOR ALL MASSACHUSETTS 13 (2022), <https://www.homesforallmass.org/covid-evictions-report/hfamass-covid-evictions-report-short-03-22-screen-rfs.pdf>.....29
- Matija Jankovic, *HOUSING STABILITY MONITOR: Massachusetts Evictions & Foreclosures*, MASSACHUSETTS HOUSING PARTNERSHIP (Apr. 30, 2024), <https://www.mhp.net/news/2024/housing-stability-monitor#:~:text=Prior%20to%20the%20pandemic%2C%20Massachusetts,August%202022%20and%20February%202024>.....28

Aja Kennedy et al., <i>The Greater Boston Housing Report Card 2023 With a Special Analysis of Community Land Trusts</i> , BOSTON FOUNDATION 17 (2023), https://www.tbf.org/-/media/tbf/reports-and-covers/2023/gbhrc2023-full-report.pdf	32
Gerrit Knaap et al., <i>Zoning as a Barrier to Multifamily Housing Development</i> (Report No. 548), AM. PLAN. ASS'N 25(2007), https://www.huduser.gov/publications/pdf/zoning_multifmlydev.pdf	23
Letter from Wrentham Select Board to Gov. Maura Healy (Feb. 27, 2024), https://bloximages.chicago2.vip.townnews.com/statehousenews.com/content/tncms/assets/v3/editorial/3/7c/37c0b520-d715-11ee-bf2a-cf9822dc213f/65e09f5cc56bc.pdf	47
Andrew Mikula, <i>Supply Stagnation: The Root Cause of Greater Boston's Housing Crisis and How to Fix it</i> 4 (Pioneer Inst. Pub. Pol'y Rsch., White Paper No. 271, 2024), https://pioneerinstitute.org/wp-content/uploads/Supply-Stagnation-The-Root-Cause-of-Greater-Bostons-Housing-Crisis-and-How-to-Fix-It.pdf	23
Alicia Sasser Modestino et al., <i>The Greater Boston Housing Report Card 2019: Supply, Demand and the Challenge of Local Control</i> , BOSTON FOUNDATION 84(June 2019), https://www.tbf.org/-/media/tbf/reports-and-covers/2019/gbhrc2019.pdf	24-25
<i>Most to Least Segregated Metro Regions in 2020</i> , OTHERING & BELONGING INST. (2020), https://belonging.berkeley.edu/most-least-segregated-metro-regions-2020	31
NATIONAL LOW INCOME HOUSING COALITION, <i>OUT OF REACH: THE HIGH COST OF HOUSING</i> 4, MA-130 (2023)	25

Press Release, MA April Single-Family Home Sales See Largest Year-Over-Year Increase Since 2021, The Warren Group (May 21, 2024), https://www.thewarrengroup.com/wp-content/uploads/2024/05/MA-April-2024-Sales.pdf	26
Press Release, MA Single-Family Home, Condo Sales Increase for Second Straight Month, The Warren Group (June 18, 2024, https://www.thewarrengroup.com/wp-content/uploads/2024/06/MA-May-2024-Sales.pdf	26
Press Release, Mike Breed, June Home Sales Down, Prices Hit New Highs in Massachusetts (Jul. 23, 2024), https://www.thewarrengroup.com/press-releases/june-home-sales-down-prices-hit-new-highs-in-massachusetts/	26
Matthew Resseger, <i>The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders</i> , HARVARD UNIV. 4 (Nov. 26, 2013) https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf	24
Aradhya Sood & Nicholas Chiumenti, <i>Local Zoning Laws and the Supply of Multifamily Housing in Greater Boston</i> (Rsch. Rep. No. 22-1), NEW ENGLAND PUB. POL'Y CENTER 7 (Oct. 2022), https://www.bostonfed.org/publications/new-england-public-policy-center-research-report/2022/local-zoning-laws-and-the-supply-of-multifamily-housing-in-greater-boston.aspx	22
<i>The Rehousing Data Collective Public Dashboard</i> , COMMONWEALTH OF MASS. (Jul. 13, 2022), https://www.mass.gov/info-details/the-rehousing-data-collective-public-dashboard#who-is-experiencing-homelessness?	30

<i>Ticker: Home prices hit all-time high in Massachusetts; Good news for former pot defendants</i> , BOSTON HERALD (Apr. 17, 2024, 5:00 AM), https://www.bostonherald.com/2024/04/17/ticker-median-home-price-hits-all-time-high-in-massachusetts-good-news-for-former-pot-defendants/	26
Town of Winthrop Letter to Gov. Maura Healey (Mar. 11, 2024), https://www.winthropma.gov/DocumentCenter/View/1099/Letter-to-Secretary-Augustus-Letter-regarding-Winthrop-MBTA-Zoning-Compliance-3-18-24?bidId=	47
Sam Turken, <i>Homelessness in Worcester County increases for third straight year</i> , GBH (Jun. 28, 2024), https://www.wgbh.org/news/local/2024-06-28/homelessness-in-worcester-county-increases-for-third-straight-year	28
<i>Unlocking the Commonwealth</i> , MASS. HOUS. P'SHIP 2 (Nov. 5, 2014), https://www.mhp.net/assets/resources/documents/unlocking_the_commonwealth_nov2014.pdf	21, 22
Andy Vargas & Nate Robertson, <i>Why the MBTA is key – to easing the housing crunch</i> , COMMONWEALTH BEACON (Mar. 12, 2022), https://commonwealthbeacon.org/opinion/why-the-mbta-is-key-to-easing-the-housing-crunch/	44
Andy X. Vargas et al., <i>It costs a fortune to live in Greater Boston. A new zoning law could help</i> , WBUR (June 23, 2022), https://www.wbur.org/cognoscenti/2022/06/23/mbta-zoning-law-affordable-housing-massachusetts-andy-x-vargas-kevin-honan-rachel-heller	42

Eileen Woods, *'We can fully expect to see more record-setting prices'*, BOSTON HERALD (Mar. 27, 2024), <https://www.boston.com/real-estate/home-buying/2024/03/27/we-can-fully-expect-to-see-more-recording-setting-prices/>....26

Grace Zokovitch, *January housing prices hit new all-time high in Massachusetts, relief for homebuyers in coming months 'unlikely'*, BOSTON HERALD (Feb. 20, 2024, 6:57 PM), <https://www.bostonherald.com/2024/02/20/january-housing-prices-hit-new-all-time-high-in-massachusetts-relief-for-homebuyers-in-coming-months-unlikely/>.....26

IDENTITY AND INTERESTS OF *AMICI CURIAE*

This brief is submitted by the Central Massachusetts Housing Alliance, Greater Boston Latino Network, Inquilinos Boricuas en Acción, Haitian-Americans United, Inc. and Immigrant Family Services Institute as *Amici Curiae*. *Amici* urge the Court to rule for the Attorney General's Office ("Attorney General") and hold that G.L. c. 40A, § 3A's zoning provisions are mandatory for all MBTA Communities and enforceable by the Attorney General in court.

The **Central Massachusetts Housing Alliance** (CMHA) is a non-profit organization that seeks to eliminate homelessness in Worcester County. It does so by providing services to families that are homeless or at risk of homelessness, working to increase the supply of affordable housing, and educating the public about homelessness and its causes. Among its wide array of services, CMHA operates an emergency shelter program, which houses families in need and provides them with aid designed to foster long-term housing stability, including help with housing search and placement.

The **Greater Boston Latino Network** (GBLN) is a non-profit coalition of Latinx-led community-based organizations endeavoring to address the historical

marginalization and underrepresentation of Boston's Latinx community. GBLN harnesses the collective power of Latinx leaders to advocate for policies that will bring about positive socio-economic change. Together, GBLN anchor organizations also directly serve Latinx and immigrant communities through a wide range of free programs, reaching over 50,000 people annually, including Spanish-speaking households and youth.

Inquilinos Boricuas en Acción (IBA) is a non-profit community development corporation that provides low-income families in Boston with affordable housing and supportive programming to increase their social and economic mobility. For over 50 years, IBA has developed housing that is financed by different supportive programs, while developing leaders who support themselves, their families, and their neighbors.

Haitian-Americans United, Inc. (HAU) is a non-profit membership organization committed to improving the quality of life of Haitian-American families and children through advocacy, education, training, cultural programming, social support, and other services. Among its other efforts, HAU connects recently arrived families with resources to help them find housing.

Immigrant Family Services Institute (IFSI) is a non-profit organization with a mission to support immigrant families and ensure their success through direct services and advocacy. IFSI takes a one-stop approach, offering newly arrived immigrants with case management services to help them access legal aid, housing, health care, and public benefits. On the housing front, IFSI educates families about housing search, helps them identify temporary housing, and often provides them with furnishings and funds for rent.

Pursuant to Mass. R. App. 17(c)(5), *Amici* jointly declare that: (A) no party or party's counsel had any part in authoring this brief; (B) no person other than *Amici* contributed any money intended to fund the preparation and submission of this brief; (C) neither *Amici* nor their counsel represented one of the parties to the present appeal in another proceeding involving similar issues; and (D) of the *Amici*, only CMHA has been a party to another proceeding involving similar issues. Counsel to *Amici*, Lawyers for Civil Rights and Brown Rudnick LLP, represent CMHA in *Central Massachusetts Housing Alliance et al. v. Town of Holden et al.*, a declaratory judgment action involving the interpretation of G.L. c. 40A, § 3A. The Plaintiffs in that matter

appealed an order granting dismissal and the appeal has been stayed (Appeals Court Docket No. 2024-P-0314) pending a ruling in this case.

INTRODUCTION

For decades, municipalities across Massachusetts have abused their power over local zoning to inhibit multi-family housing development. The most glaring consequence of this is the Commonwealth's ongoing affordable housing crisis. Cities and towns have played a major role in this crisis, by opting for restrictive zoning measures—particularly as to multi-family housing—that prevent housing supply from keeping up with demand. This supply-and-demand imbalance, in turn, inflates housing costs.

These restrictive multi-family zoning choices drive high rent and home prices in the Commonwealth, and disproportionately harm Black and Latino families. Even more invidious, they perpetuate residential segregation along racial and ethnic lines.

Recognizing all this, the Legislature passed the MBTA Communities Act (the "MCA" or the "Act"), G.L. c. 40A, § 3A, to increase multi-family housing production in the MBTA region. The Act seeks to achieve that goal by eliminating local zoning discretion as a

barrier to development. The MCA states that the more than 170 MBTA Communities “shall have” a zoning district where multi-family housing can be built “as of right,” i.e. without municipal approval. Plainly, this requires each covered community to designate an area wherein it cannot uniformly disapprove multi-family housing. The Act’s text and its legislative history reflect the Legislature’s determination that, to achieve its housing production goals, every covered community would have to do its part by adopting one of these districts.

Fundamentally, that is why the Attorney General’s position—that the MCA’s zoning provisions are mandatory and enforceable in court—is correct. Only that reading effectuates the legislative judgment that local discretion on multi-family zoning must yield to the region-wide need for multi-family housing. Milton’s interpretation, that the funding penalty is the Law’s only enforcement mechanism, leaves MCA-compliance within the discretion of individual MBTA Communities. That cannot be squared with the intent underlying the MCA, and *Amici* urge the Court to reject it.

BACKGROUND

The Commonwealth’s affordable housing crisis is inflicting pain on families across the socio-economic

spectrum. But that pain is not distributed evenly. People of color—particularly the Black and Latino communities—suffer inordinate harm in nearly every metric related to housing unaffordability.

Local zoning policies that inhibit denser forms of development, such as multi-family housing, are a primary driver of both the affordable housing crisis and continued *de facto* racial and ethnic segregation in Massachusetts. *Amici* begin by outlining how local zoning choices have precipitated these dual crises and discussing the severity of those crises.

i. Local Restrictions on Multi-Family Housing are a Key Driver of High Housing Costs and Residential Segregation in the Commonwealth.

Article 89 of the Massachusetts Constitution grants cities and towns the power to pass local laws exercising the police power of the state, including the power to zone. However, as this Court has explained, the Legislature retains “supreme power in zoning matters.” *Board of Appeals of Hanover v. Housing Appeals Comm. in Dept. of Cmty. Affairs*, 363 Mass. 339, 409 (1973). Thus, municipalities have discretion to implement zoning laws so long as those laws do not “frustrate[] the purpose or implementation of a general or special law” properly passed by the Legislature. *Id.* Municipalities across the

Commonwealth have long exploited this discretion to implement zoning measures that suppress multi-family housing development within their borders.

In the late 1960s and early 1970s, cities and towns across Massachusetts changed their zoning laws to limit multi-family production.² As Amy Dain outlines in her comprehensive study of this time period, a clear motivation for the zoning shift in Boston's predominantly white suburbs was to resist the demographic changes and racial integration happening in Boston.³ Then, as now, Bostonians of color primarily lived in multi-family rentals, and suburban communities understood that limiting their own multi-family options would have an exclusionary effect.⁴

Since that stretch of rezoning in the 1960s and 1970s, Commonwealth housing production has declined dramatically. The number of new housing units permitted annually has trended steadily downward since 1960,

² Amy Dain, *An Investigation of Zoning's Use as a Tool of Race, Class, and Family Exclusion in Boston's Suburbs, 1920 to Today*, BOSTON INDICATORS 18 (Nov. 2023), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/exclusionarybydesign_report_nov_8.pdf.

³ See *id.* at 18-30

⁴ See *id.*

culminating in recent permitting totals that are far below historic levels.⁵ Overall housing production has also dropped precipitously. During the last two decades, Massachusetts has produced an average of 188,000 new units per decade, which is a third lower than 1950s production.⁶ And in Greater Boston, annual housing production fell by 52% between the 1960s and 1990s, with multi-family development dropping by more than 80%.⁷

Cities and towns in Greater Boston have continued to place significant restrictions on multi-family development all the way through to the present. A 2019 examination of land use policies in 100 Greater Boston municipalities found that they all either prohibited multi-family housing or “highly” restricted its development relative to demand.⁸ These municipalities

⁵ *Building Momentum: New Housing Policies to Unlock the Commonwealth's Potential*, MASS. HOUS. P'SHIP 2 (Aug. 2023), <https://www.mhp.net/assets/resources/documents/MHP-Building-Momentum-2023.pdf>.

⁶ Mark Arsenault et al., *Beyond the Gilded Gate*, THE BOSTON GLOBE (Oct. 18 2024), <https://apps.bostonglobe.com/2023/10/special-projects/spotlight-boston-housing/milton-restrictive-zoning/>.

⁷ *Unlocking the Commonwealth*, MASS. HOUS. P'SHIP 2 (Nov. 5, 2014), https://www.mhp.net/assets/resources/documents/unlocking_the_commonwealth_nov2014.pdf.

⁸ Amy Dain, *The State of Zoning for Multi-Family Housing in Greater Boston* iv (June 2019), https://www.housingtoolbox.org/assets/files/resources/AMY-DAIN_Multi-Family_Housing_Report.pdf. at iv.

utilize many different policies to curb new multi-family development, including imposing minimum lot size and parking requirements for multi-family projects that can make those projects infeasible for developers.⁹

Another major impediment is that many municipalities limit the amount of land where multi-family housing can be built as of right.¹⁰ A 2022 analysis of Greater Boston found that multi-family housing is only allowed by right on 16% of the region's land area, whereas it is allowed by special permit on 26% of that area.¹¹ This suppresses multi-family production because the discretionary permitting process is time consuming, expensive, and often results in rejections.¹² Indeed, a third of Massachusetts municipalities permitted nothing but single family homes in the decade prior to 2014.¹³

⁹ *Id.* at 21, 38-42.

¹⁰ *Id.* at 19-20, 25-26.

¹¹ Aradhya Sood & Nicholas Chiumenti, *Local Zoning Laws and the Supply of Multifamily Housing in Greater Boston* (Rsch. Rep. No. 22-1), NEW ENGLAND PUB. POL'Y CENTER 7 (Oct. 2022), <https://www.bostonfed.org/publications/new-england-public-policy-center-research-report/2022/local-zoning-laws-and-the-supply-of-multifamily-housing-in-greater-boston.aspx>.

¹² Daim, *supra* note 7.

¹³ *Unlocking the Commonwealth*, *supra* note 6 at 9.

These kinds of zoning measures are a major cause of high housing costs in Massachusetts. A 2007 study of Greater Boston, recognized “tightly controlled land markets that do not accommodate housing stock growth” as the source of the region’s housing unaffordability.¹⁴ And more recently, a 2024 policy paper found—based on permitting and population data—that housing production has lagged behind household growth, creating “enormous competitive pressure that ultimately raises home prices.”¹⁵ That paper specifically identified restrictive local zoning measures, including minimum lot size and parking requirements, as a cause of inflationary housing underproduction in Greater Boston.¹⁶

Similarly, local restrictions on multi-family housing perpetuate racial and ethnic segregation. Multi-

¹⁴ Gerrit Knaap et al., *Zoning as a Barrier to Multifamily Housing Development* (Report No. 548), AM. PLAN. ASS’N 25(2007), https://www.huduser.gov/publications/pdf/zoning_multifmlydev.pdf.

¹⁵ Andrew Mikula, *Supply Stagnation: The Root Cause of Greater Boston’s Housing Crisis and How to Fix it* 4 (Pioneer Inst. Pub. Pol’y Rsch., White Paper No. 271, 2024), <https://pioneerinstitute.org/wp-content/uploads/Supply-Stagnation-The-Root-Cause-of-Greater-Bostons-Housing-Crisis-and-How-to-Fix-It.pdf>.

¹⁶ *Id.* at 10-11.

family units comprise most of the country's rental stock,¹⁷ and people of color are more likely to rent rather than own their homes.¹⁸ Multi-family zoning restrictions thus entrench segregation by limiting the housing options available to people of color outside segregated areas. A 2013 analysis of Commonwealth census data found robust evidence that restrictive land use regulations "negatively impact minority population shares" and that as-of-right multi-family housing development increases Black and Hispanic populations in the cities and suburbs.¹⁹ Moreover, a 2019 examination of Greater Boston census data demonstrated that "places that are building more multifamily housing are becoming more diverse across multiple dimensions."²⁰

¹⁷ *America's Rental Housing 2017*, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. 14 (2017), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_americas_rental_housing_2017_0.pdf.

¹⁸ *America's Rental Housing 2022*, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. 22 (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.

¹⁹ Matthew Resseger, *The Impact of Land Use Regulation on Racial Segregation: Evidence from Massachusetts Zoning Borders*, HARVARD UNIV. 4 (Nov. 26, 2013) https://scholar.harvard.edu/files/resseger/files/resseger_jmp_11_25.pdf.

²⁰ Alicia Sasser Modestino et al., *The Greater Boston Housing Report Card 2019: Supply, Demand and the*

ii. The Affordable Housing Crisis, Driven by Widespread Restrictive Local Zoning, Is Ongoing and Severe.

The supply-and-demand imbalance in Massachusetts housing—heavily driven by restrictive local zoning—has caused rent and home prices to skyrocket in recent years, taking an enormous toll on Commonwealth families.

In 2023, the average fair market rent for a two-bedroom unit in Massachusetts was nearly 50% higher than the national average.²¹ That disparity was even worse in Greater Boston where the average rent was more than 80% higher than the national average.²² 2024 has not provided relief so far. A report examining year-over-year rent changes nationally found that, as of March 2024, Massachusetts' median rent was the highest in the country and up 1.42% from the previous March.²³

The Massachusetts home market has been on a similarly steep upward trajectory. For example, in every single month from January to June 2024, the median home

Challenge of Local Control, BOSTON FOUNDATION 84 (June 2019), <https://www.tbf.org/-/media/tbf/reports-and-covers/2019/gbhrc2019.pdf>.

²¹ NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH: THE HIGH COST OF HOUSING 4, MA-130 (2023).

²² *Id.*

²³ Anthony Gardner, *Renting Trends*, RENT (Apr. 15, 2024), <https://www.rent.com/research/average-rent-price-report/>.

price in the Commonwealth hit a record high for the relevant month and increased substantially relative to the same month in 2023.²⁴ Greater Boston residents feel this impact most acutely as the median home price in that region reached nearly \$1 million in June 2024.²⁵

²⁴ See Grace Zokovitch, *January housing prices hit new all-time high in Massachusetts, relief for homebuyers in coming months 'unlikely'*, BOSTON HERALD (Feb. 20, 2024, 6:57 PM), <https://www.bostonherald.com/2024/02/20/january-housing-prices-hit-new-all-time-high-in-massachusetts-relief-for-homebuyers-in-coming-months-unlikely/>; Eileen Woods, *'We can fully expect to see more record-setting prices'*, BOSTON HERALD (Mar. 27, 2024), <https://www.boston.com/real-estate/home-buying/2024/03/27/we-can-fully-expect-to-see-more-record-setting-prices/>; *Ticker: Home prices hit all-time high in Massachusetts; Good news for former pot defendants*, BOSTON HERALD (Apr. 17, 2024, 5:00 AM), <https://www.bostonherald.com/2024/04/17/ticker-median-home-price-hits-all-time-high-in-massachusetts-good-news-for-former-pot-defendants/>; Press Release, MA April Single-Family Home Sales See Largest Year-Over-Year Increase Since 2021, The Warren Group (May 21, 2024), <https://www.thewarrengroup.com/wp-content/uploads/2024/05/MA-April-2024-Sales.pdf>; Press Release, MA Single-Family Home, Condo Sales Increase for Second Straight Month, The Warren Group (June 18, 2024), <https://www.thewarrengroup.com/wp-content/uploads/2024/06/MA-May-2024-Sales.pdf>; Press Release, Mike Breed, June Home Sales Down, Prices Hit New Highs in Massachusetts (Jul. 23, 2024), <https://www.thewarrengroup.com/press-releases/june-home-sales-down-prices-hit-new-highs-in-massachusetts/>.

²⁵ Christopher Gavin, *The median home price is edging toward \$1m. Expect to pay more.*, BOSTON.COM (Aug. 7, 2024), <https://www.boston.com/real-estate/home-buying/2024/08/07/home-price-toward-1m-expect-pay-more/>.

The Department of Housing and Urban Development considers families that spend more than 30% of their monthly income on housing to be “cost burdened.”²⁶ Households that need to spend such outsized portions of their income on housing are often forced to sacrifice on basic needs like food and healthcare. Indeed, empirical research has linked cost burden to poorer mental and physical health,²⁷ as well as to worse educational outcomes and behavioral issues for children.²⁸

Consistently high rents thus ensure that many Massachusetts families remain cost burdened, endangering their health and wellness. For example, every year from 2012 to 2022, the share of Bay State households with at least one cost burdened adult was around 35%.²⁹ And, in

²⁶ CHAS: *Background*, OFFICE OF POL’Y DEV. AND RSCH., https://www.huduser.gov/portal/datasets/cp/CHAS/bg_chas.html.

²⁷ Stacy Elliot et al., *Rent Burden and Depression Among Mothers: an Analysis of Primary Caregiver Outcomes*, 2 J. of Pol. Practice & RSCH. 285 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8435361/>.

²⁸ See Chris Hess, *Cumulative housing cost burden exposures and disadvantages to children’s well-being and health*, 119 Soc. Sci., <https://www.sciencedirect.com/science/article/abs/pii/S0049089X24000061?dgcid=author>.

²⁹ *Housing Cost Burden in Massachusetts*, AM. HEALTH RANKINGS, https://www.americashealthrankings.org/explore/measures/cost_burden/MA.

Greater Boston, a staggering 51% of renter households were cost burdened in 2022.³⁰

High rent and home prices have also contributed to a surge of evictions and homelessness in the Commonwealth. The Massachusetts Housing Partnership recently reported that “from August 2022 to February 2024, eviction filings have surpassed average pre-pandemic rates” with “non-payment ... the most common cause ... by a wide margin.”³¹ Additionally, homelessness has increased substantially in the cities. The annual homelessness count in Worcester County, for example, has gone up in each of the last three years.³²

iii. The Housing Crisis Disproportionately Harms Massachusetts Communities of Color.

As the Boston Foundation reported in 2022, Black and Latino households “experience disproportional harm in almost every measure related to housing. They are

³⁰ *Id.*

³¹ Matija Jankovic, *HOUSING STABILITY MONITOR: Massachusetts Evictions & Foreclosures*, MASSACHUSETTS HOUSING PARTNERSHIP (Apr. 30, 2024), <https://www.mhp.net/news/2024/housing-stability-monitor#:~:text=Prior%20to%20the%20pandemic%2C%20Massachusetts,August%202022%20and%20February%202024.>

³² Sam Turken, *Homelessness in Worcester County increases for third straight year*, GBH (Jun. 28, 2024), <https://www.wgbh.org/news/local/2024-06-28/homelessness-in-worcester-county-increases-for-third-straight-year.>

cost-burdened at greater rates, they have lower rates of homeownership, and they are faced with eviction proceedings at higher rates.”³³ For example, in Greater Boston, less than 42% of White renter households were cost burdened, whereas Black and Latino renter households were cost burdened at rates of 52% and 53% respectively.³⁴

Similar disparities exist in eviction filings, homelessness, and homeownership. An analysis of eviction cases filed in Massachusetts from October 2020 to October 2021 found that: “landlords filed nearly twice as many eviction [cases] per renter in predominantly non-white neighborhoods than in predominantly white neighborhoods”; and “[p]laces with larger percentages of Black and Latinx renters, in particular, tended to see higher rates of eviction filing.”³⁵

³³ Anne Calef et al., *The Greater Boston Housing Report Card 2022*, BOSTON FOUNDATION 4 (Oct. 2022), https://www.tbf.org/-/media/tbf/reports-and-covers/2022/october/gbhrc2022_interactive_web.pdf.

³⁴ *Id.* at 45.

³⁵ Eric Robsky Huntly et al., *Housing Justice Beyond the Emergency: An Analysis of Racial Inequity in Eviction Filings across Massachusetts*, HOMES FOR ALL MASSACHUSETTS 13 (2022), <https://www.homesforallmass.org/covid-evictions-report/hfamass-covid-evictions-report-short-03-22-screen-rfs.pdf>.

State government homelessness data shows that Black Bay Staters make up a hugely disproportionate share of the homeless population. Although only 7% of Massachusetts residents identify as Black or African American,³⁶ such residents made up more than 30% of the Commonwealth's homeless population for all of 2023, including highs of 42% and 45% in the third and fourth quarters of that year, respectively.³⁷

Additionally, an enormous homeownership gap persists along racial and ethnic lines. As of 2021, among householders 35 years or older in Greater Boston, 73% of White households owned a home versus only 40% of Black households and 37% of Latino households.³⁸ Ever-increasing home prices perpetuate this gap by pricing out non-homeowners, especially Black and Latino

³⁶ *The Rehousing Data Collective Public Dashboard*, COMMONWEALTH OF MASS. (Jul. 13, 2022), <https://www.mass.gov/info-details/the-rehousing-data-collective-public-dashboard#who-is-experiencing-homelessness?-.>

³⁷ *Id.*

³⁸ Anne Calef et al., *A Long Road Home: A Racial Equity Analysis of Homeownership Support Programs in Massachusetts*, BOSTON INDICATORS 6 (Sept. 8, 2023), https://www.bostonindicators.org/-/media/indicators/boston-indicators-reports/report-files/bi_lmi_homeownership_report_final_digital_090823_singles.pdf.

households,³⁹ disproportionately hindering them from building wealth and achieving economic security.⁴⁰

iv. Precipitated By Widespread Multi-Family Zoning Restrictions, Segregated Housing Patterns Persist in Massachusetts.

As noted above, multi-family zoning restrictions help entrench segregation in Commonwealth. Numerous analyses and reports in recent years have found that Massachusetts remains heavily segregated along racial and ethnic lines. For example, one analysis of 2020 census data found that, out of nearly 200 large metro areas in the United States, the Boston metro region had the 24th highest rate of residential racial segregation.⁴¹

The Boston Foundation has repeatedly highlighted the issue of residential segregation in its annual Greater Boston Housing Report Card. The 2023 version emphasized that the Commonwealth's Black and Latino

³⁹ Vince Dixon, *\$217,000 a year to afford a home in Boston? Who can even afford that?*, THE BOSTON GLOBE (Aug. 15, 2024, 7:49 AM), <https://www.bostonglobe.com/2024/08/15/metro/housing-crisis-boston-black-latino-homebuyers/>.

⁴⁰ Hanna Chugg, *The Homeownership Gap between Black and White Families in the United States*, BALLARD BRIEF (May 2023), <https://static1.squarespace.com/static/5f088a46ebe405013044f1a4/t/667b37b76795aa74aa277dc9/1719351226294/HannaChuggPDF.pdf>.

⁴¹ *Most to Least Segregated Metro Regions in 2020*, OTHERING & BELONGING INST. (2020), <https://belonging.berkeley.edu/most-least-segregated-metro-regions-2020>.

populations are heavily concentrated in just a few predominantly low-income areas. Specifically, the Report stated that “60 percent of Massachusetts’ Black population resides in just 10 cities, with 52 percent in Boston, Brockton, Worcester, Springfield, and Randolph” and that “[j]ust 10 cities are home to over half the state’s Latino population.”⁴² It further noted that no municipality in Greater Boston “that has even moderately high incomes [is] paired with a moderately large Black and Latino Population share.”⁴³

Additional evidence establishes the statewide nature of this problem. HUD data evidences high levels of both Black-White and Latino-White segregation in Greater Springfield.⁴⁴ And the Commonwealth itself has cited statistics showing “exceptionally severe levels of

⁴² Aja Kennedy et al., *The Greater Boston Housing Report Card 2023 With a Special Analysis of Community Land Trusts*, BOSTON FOUNDATION 17 (2023), <https://www.tbf.org/-/media/tbf/reports-and-covers/2023/gbhrc2023-full-report.pdf>.

⁴³ *Id.*

⁴⁴ *2019 Analysis of Impediments to Fair Housing Choice*, MASS. DEP’T OF HOUS. AND CMTY. DEV. 9 (2019), <https://www.mass.gov/doc/analysis-of-impediments-to-fair-housing-choice-2019/download>.

White-Hispanic segregation” in the Commonwealth’s large metropolitan areas such as Worcester.⁴⁵

This *de facto* segregation causes real world harm to people of color. A 2019 report from the Massachusetts Department of Housing and Community Development explains that “historic patterns of segregation” have pushed communities of color into “areas of concentrated poverty.”⁴⁶ As a result, according to the Commonwealth, Black and Hispanic families are “more likely to live in neighborhoods with greater exposure to poverty, higher exposure to unemployment, lower levels of educational attainment, less labor market engagement, and poorer air quality than neighborhoods where White households are more likely to reside.”⁴⁷

ARGUMENT

The Legislature designed the MCA to eliminate the every-town-for-itself approach to multi-family zoning in the MBTA region. The Act’s plain language, and its legislative history, conclusively demonstrate that the

⁴⁵ *2019 Analysis of Impediments to Fair Housing Choice*, MASS. DEP’T OF HOUS. AND CMTY. DEV. 4 (2019), <https://www.mass.gov/doc/analysis-of-impediments-to-fair-housing-choice-2019/download>.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 12.

Legislature: (a) recognized local zoning discretion as the impediment to increased multi-family housing production in the MBTA region; and (b) intended the Act's zoning provisions to be mandatory for all MBTA Communities. Indeed, the Act's legislative proponents have repeatedly emphasized those points in formal legislative debate and informal commentary. All of this reflects the Legislature's determination that only region-wide zoning reform could begin to combat the long-term negative effects of restrictive local zoning measures employed by Massachusetts cities and towns.

i. The MCA's Text Shows that Local Zoning Discretion is the Problem the Statute Sought to Eliminate and that Compliance is Mandatory for MBTA Communities.

Statutory interpretation "begin[s] with the language of the statute" *Halebian v. Berv*, 457 Mass. 620, 628 (2010), because it "is the primary source of insight into legislative intent." *Conservation Comm'n of Norton v. Pesa*, 488 Mass. 325, 340 (2021) (citation omitted). But that is just the starting point as courts do not consider the language of the statute alone. *Id.* Rather, to ascertain legislative intent, courts examine all of the statute's words "*considered in connection with the cause of [the statute's] enactment, the*

mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of [the statute's] framers may be effectuated." *Id.* (emphasis added).

This Court has repeatedly expressed that it must pursue the best interpretation of a statute based on all of these factors. *See, e.g., Adams v. Boston*, 461 Mass. 602, 613 (2012) ("Having discussed the statutory objectives, we now analyze the statute to determine the interpretation that best advances those objectives[,]"); *Harvard Crimson, Inc. v. President & Fellows of Harvard Coll.*, 445 Mass. 745, 749 (2006) ("Courts must ascertain the intent of a statute" and interpret it "so as to render the legislation effective"); *Mullaly v. Waste Mgt. of Mass., Inc.*, 452 Mass. 526, 531 (2008) (noting that statutory construction should not "frustrate the general beneficial purposes of the legislation").

Here, the MCA's plain text makes clear that municipal zoning discretion's artificial depression of multi-family development is the "mischief" the MCA seeks to eliminate. The first paragraph of the statute (§3(a)(1)) states that MBTA Communities "shall have" one "as of right" multi-family zoning district of "reasonable size" and that such district "shall ... have

a minimum gross density of 15 units per acre." G.L. c. 40A, § 3A. Section 1A of the Zoning Act defines both "as of right" and "MBTA Community." G.L. c. 40A, § 1A. "As of right" means that a "development may proceed" without any "discretionary zoning approval" from the municipality. *Id.* Over 170 communities in Greater Boston currently fall within the statute's coverage formula.⁴⁸

This paragraph thus requires MBTA Communities to have a zoning district where multi-family housing can be built relatively densely without the need for municipal approval.⁴⁹ The goal of such a requirement is to catalyze multi-family housing development in each MBTA Community. The Legislature's decision to cut out the municipal approval process within these zoning districts underscores the MCA's mandatory nature. It reflects the legislative judgment that municipal zoning discretion has long impeded multi-family housing development and, therefore, required the Legislature to eliminate municipal discretion in this area. Additionally, the broad coverage formula demonstrates that the Legislature

⁴⁸ *Id.*; see also RA I:173.

⁴⁹ As the Attorney General notes in her brief, a statute's use of "shall" connotes a mandate. See Attorney General's Blue Brief at 33.

recognized region-wide zoning reform was necessary to achieve its ultimate housing production goals.

Milton places great weight on the penalty provision of the statute's second paragraph (§ 3A(b)), claiming that the Legislature's inclusion of the administrative penalty provision precludes both § 3A-(a)(1)'s mandatory effect, and judicial enforcement for non-compliance. See Milton's Red Brief at 23-25.⁵⁰ But the MCA's legislative considerations and objectives, apparent from the plain text of the statute, must be considered in interpreting the funding penalty. See *Tilton v. Haverhill*, 311 Mass. 572, 577 (1942) (noting that "abuses which the statute aims to correct ... and the purpose[s] sought to be accomplished are to be considered") (citation omitted); see also *Locator Servs. Grp., Ltd. v. Treasurer & Receiver General*, 443 Mass. 837, 859 (2005) ("where possible, we construe the various provisions of a statute in harmony with one another"). Milton's reading—that the penalty is the MCA's sole enforcement mechanism—does not do so. Milton's Red Brief at 22. That interpretation, in effect, turns the funding

⁵⁰ The *Amici* fully support and adopt the Attorney General's argument as to why § 3A(b) is not an exclusive remedy and does not bar judicial review. See Attorney General's Gray Brief at 11-17.

penalty into an opt-out clause for communities that would prefer to maintain the zoning status quo.⁵¹

In fact, the Legislature's inclusion of the penalty provision of § 3A(b) supports the conclusion that the Legislature intended for § 3A(a) to be mandatory for all MBTA communities. Courts in other jurisdictions have found that if a statute specifically includes a penalty for non-compliance, it strengthens the Court's view that the statute's obligations are mandatory.⁵²

The plain language of § 3A(a) makes clear that local zoning discretion is the impediment to multi-family housing that the MCA seeks to address. If this Court accepts Milton's interpretation that compliance with the MCA is optional, then the statute perpetuates the very

⁵¹ As the Attorney General detailed in her Brief, § 3A came after (and diverges from) the Legislature's failed attempts over the years to enact these same goals through opt-in statutes. See Attorney General Blue Brief at 33-34 (contrasting § 3A(a) with true "opt-in" statutes).

⁵² See e.g. *Nat'l Fed. of Republican Assemblies v. U.S.*, 148 F. Supp. 2d 1273, 1282 (S.D. Ala. 2001) ("The mere fact that it is possible for an organization to choose to violate the requirements of the statute and pay the resulting penalty does not render those requirements optional. Under this approach, one could argue that most traffic laws are optional, because they can be disregarded with the "option" of paying any ensuing penalties."); *Simmons v. DuBose*, 142 Ill. App. 3d 1077, 1080 (1986) ("Since the statute prescribes the penalty for non-compliance, its terms should be regarded as mandatory."); *Narmore v. Kawafuchi*, 112 Haw. 69, 82 (2006) (accord).

problem it seeks to fix. Such an outcome would be contrary to the purpose of the MCA. See *Dowling v. Registrar of Motor Vehicles*, 425 Mass. 523, (1997) (declining to adopt the defendant's interpretation of statute because it "would be contrary to the objective of the statute").

Instead, the Court should adopt the Attorney General's interpretation of the MCA. That interpretation effectuates the intent and objectives of the statute by giving the Commonwealth the full range of tools necessary to ensure the region-wide multi-family zoning compliance that the Legislature intended.

ii. Extrinsic Sources Demonstrate the Legislature's Clear Intent for the MCA to be Mandatory.

The Court need look no further than the plain text to accept the Attorney General's interpretation of the MCA. Further, the other sources of MCA's legislative intent bolster the Attorney General's argument.⁵³ Those

⁵³ The *Amici* submit the statute is unambiguously mandatory by its plain text. But if "the statute's plain language suggests ambiguity, however, then 'we look to external sources, including the legislative history of the statute, its development, its progression through the Legislature, prior legislation on the same subject, and the history of the times.'" *Marengi v. 6 Forest Rd. LLC*, 491 Mass. 19, 25 (2022) (quoting *Worcester v. College Hill Props., LLC*, 465 Mass. 134, 139 (2013)).

sources include a formal statement by the Act's legislative sponsor and other proponents during floor debate, and published commentary by legislative proponents.

a. Floor Statements by Legislators.

In examining legislative history to interpret a statute, this Court frequently looks to the legislator's contemporaneous statements of intent. See, e.g., *Commonwealth v. K.W.*, 490 Mass. 619, 631-632 (2022) (citing "[s]tatements made by legislators around the time the act was adopted" including a floor statement made "later that year"); *Lazlo L. v. Commonwealth*, 482 Mass. 325, 333, n.13 (2019) (reciting statements by various legislative leaders and noting that "[w]e think it helpful to look to the statements of proponents of legislation in order to discern its purpose.")

During floor debate in the State Senate on the Amendment that would become the MCA, two Senators advocated for the Amendment: Brendan Crighton, who sponsored the Amendment, and Eric Lesser, who was then Chairperson of the Joint Committee on Economic Development and Emerging Technologies. These statements confirm that the Legislature intended that: the MCA's zoning provisions would be compulsory for MBTA

Communities; and the Act would combat both the affordable housing crisis and housing injustice.

Senator Crighton testified that the Amendment “is a modest *requirement* for the municipalities with public transportation at their doorstep” and “a significant step toward solving our housing affordability and production crisis.”⁵⁴ Senator Lesser explicitly acknowledged the existence of racial injustice in Massachusetts housing and discussed how the Amendment would make the housing market fairer for everyone. Specifically, he noted that “the struggle with the issues around civil rights and racial justice are inextricably linked” to the housing crisis, “and this housing choice legislation begins to move the needle toward a more fair and just process.”⁵⁵

b. Commentary by Legislative Champions.

State Representatives who supported the MCA also published op-eds around the time the Legislature passed

⁵⁴ See Commonwealth of Mass., *State Senate Session* 26:47-27:54 (Jul. 29, 2020), <https://malegislature.gov/Events/Sessions/Detail/3711>.

⁵⁵ See *id.* at 20:50-26:17.

⁵⁶ Andy X. Vargas et al., *It costs a fortune to live in Greater Boston. A new zoning law could help*, WBUR (June 23, 2022), <https://www.wbur.org/cognoscenti/2022/06/23/mbta-zoning-law-affordable-housing-massachusetts-andy-x-vargas-kevin-honan-rachel-heller>.

the Act to expound on its purpose and goals. In doing so, they provided a detailed account of the legislative considerations and motives underlying the MCA. The Legislators made clear that local zoning discretion is the primary impediment to multi-family housing development, and that compliance with the MCA is mandatory to combat that discretion.

To the extent such legislative commentary is not formal legislative history, this Court has noted that it "may turn to unofficial sources in order to gain a contemporary understanding of the underlying purposes of the legislation." *Ross v. Comm'r of Revenue*, 430 Mass. 431, 438 n. 6 (1999); see *Kartell v. Blue Shield of Mass., Inc.*, 384 Mass. 409, 420-421 (1981) (noting same and relying on, *inter alia*, observations by organizational drafter of legislation that were published in organization's official journal).

In 2022, State Representatives Andy X. Vargas and Kevin Honan published a commentary piece on the MCA entitled, "[i]t costs a fortune to live in Greater Boston. A new zoning law could help."⁵⁶ In it, they

⁵⁶ Andy X. Vargas et al., *It costs a fortune to live in Greater Boston. A new zoning law could help*, WBUR (June 23, 2022), <https://www.wbur.org/cognoscenti/>

explained that they had “championed” the Act alongside Senator Crighton and provided significant details about the Law’s motivating factors as well as its meaning and goals. For example, they stated that “[t]he law truly meets the moment, by *mandating* that 175 communities serviced by the MBTA [have] to have at least one zone where multi-family housing is allowed by right.”⁵⁷

They further explained that “[w]e advocated for this bill because,” among other things, “we’ve seen what high home prices and rents mean for our constituents and neighbors.”⁵⁸ Critically, the representatives next discussed how local zoning discretion was the primary problem the Act sought to address, writing that:

For 30 years, many communities in the state have said no to building new housing, resulting in escalating rents and home prices. *Zoning serves as the primary, persistent barrier* with decisions made locally that are often prescribed by a small group of individuals who do not always represent the needs of the larger community Massachusetts needs at least 200,000 more homes by 2030 to keep pace with demand and the MBTA multi-family zoning *mandate* will help us get there.⁵⁹

2022/06/23/mbta-zoning-law-affordable-housing-massachusetts-andy-x-vargas-kevin-honan-rachel-heller.

⁵⁷ *Id.* (emphasis added).

⁵⁸ *Id.*

⁵⁹ *Id.* (emphasis added).

Earlier in 2022, Representative Vargas published an article titled, "Why the MBTA is key-to easing the housing crunch." In it, he said the "purpose" of the Act was to "to legalize housing development near transit corridors and ensure that the responsibility of housing Massachusetts residents is shared across municipalities."⁶⁰ He also wrote that the Act responded to the "decentralized" local approach to zoning.⁶¹ Elaborating, he explained: "As we see the housing crisis continue to get worse every year, it's become clear that the Commonwealth needs to have a stronger response. This law is necessary to help push through needed zoning changes that may have never otherwise happened."⁶²

The detailed observations about the MCA in these commentaries all demonstrate that the Attorney General's interpretation is most consistent with the Act's purpose and goals. In particular, the Representatives make clear that the "mischief" the Law aimed to eliminate was local zoning discretion; and that they as legislators have

⁶⁰ Andy Vargas & Nate Robertson, *Why the MBTA is key - to easing the housing crunch*, COMMONWEALTH BEACON (Mar. 12, 2022), <https://commonwealthbeacon.org/opinion/why-the-mbta-is-key-to-easing-the-housing-crunch/>.

⁶¹ *Id.*

⁶² *Id.*

always understood the Act's zoning provisions to be mandatory for all MBTA Communities.

iii. § 3A Preempts Municipal Discretion for Non-Compliance.

The Legislature designed § 3A and inserted it into the wider Zoning Act, to preempt municipal discretion related to multi-family zoning and to address the Commonwealth's housing shortage. As the SJC has explained, "[w]here legislation deals with a subject comprehensively, it may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated." *Town of Dartmouth v. Greater New Bedford Reg'l Vocational Tech. High Sch.*, 461 Mass. 366, 375-376 (Mass. 2012) (internal citations and quotations omitted).

To determine whether the Legislature intended to preempt local authority related to multi-family zoning, the question is "whether the Legislature intended to deny a municipality the right to legislate the subject in question." *Easthampton Sav. Bank v. City of Springfield*, 470 Mass. 284, 288 (2014) (quoting *Wendell v. Attorney Gen.*, 394 Mass. 518, 524 (1985)). Here, with

the Legislature's enactment of § 3A to require one reasonably sized multi-family housing zoning district as of right,⁶³ it intended to "occupy the field" of multi-family housing zoning "to the exclusion of other options - including further regulation at the local level." *Easthampton Sav. Bank*, 470 Mass. at 291 (2014) (holding that the local ordinance in question was preempted because it "frustrate[d] the purpose" of the countervailing state statute).

iv. Milton's Non-Compliance is a Watershed Event.

Milton is far from the only MBTA Community opposed to the MCA's zoning mandate. The Town of Holden is currently in violation of the Act. It repudiated responsibility to comply and refused to submit the preliminary action plan. Two other MBTA Communities (Middleborough and Hamilton) have filed amicus briefs in

⁶³ As the Attorney General states in her Brief, "the Legislature could permissibly have drafted §3A to preempt all local regulation of multi-family housing within 0.5 miles of a transit station. . .[b]ut the Legislature instead afforded each MBTA community *some* discretion to determine the location and other features of its §3A(a) compliant district[.]" Attorney General Blue Brief at 35. But the discretion of whether or not to create a §3A compliant zoning district as of right is preempted.

support of Milton's position.⁶⁴ While Milton is the sole community out of compliance with the year-end 2023 compliance deadline for rapid transit communities, the year-end 2024 compliance deadline for commuter rail and adjacent communities is fast approaching. Of the 130 communities that must adopt zoning compliant with § 3A by year end 2024, 56 communities have and 74 have not.⁶⁵ Officials in many more have voiced opposition to MCA-compliance.⁶⁶ Adopting Milton's interpretation of § 3A as optional will make it impossible for the statute to achieve region-wide compliance and, worse still, could spark a domino effect of non-compliance. See *Wattros v. Greater Lynn Mental Health and Retardation Ass'n, Inc.*, 421 Mass. 106, 113 (1995); *Champigny v. Comm.*, 442 Mass.

⁶⁴ The Town of Hamilton filed an amicus brief, see Dkt. No. 26, and the Town of Middleborough filed an amicus brief, see Dkt. No. 30.

⁶⁵ *Compliance Status Sheet as of 9-4-24*, COMMONWEALTH OF MASS. (Sept. 4, 2024), <https://www.mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities#complying-with-section-3a-guidelines->.

⁶⁶ See e.g. Letter from Wrentham Select Board to Gov. Maura Healy (Feb. 27, 2024), <https://bloximages.chicago2.vip.townnews.com/statehousenews.com/content/tncms/assets/v3/editorial/3/7c/37c0b520-d715-11ee-bf2a-cf9822dc213f/65e09f5cc56bc.pdf.pdf>; Town of Winthrop Letter to Gov. Maura Healey (Mar. 11, 2024), <https://www.winthropma.gov/DocumentCenter/View/1099/Letter-to-Secretary-Augustus-Letter-regarding-Winthrop-MBTA-Zoning-Compliance-3-18-24?bidId=>.

249, 251 (1996) (declining to adopt interpretation of statute that would have given "[t]he legislative effort ... no practical effect").

CONCLUSION

The *Amici* support the position of the Attorney General that compliance with § 3A is mandatory, and support the relief sought by the Attorney General. The *Amici* believe that compliance with § 3A by all MBTA Communities is necessary step toward increasing housing affordability and racial equity in Massachusetts.

Respectfully submitted,

**CENTRAL MASSACHUSETTS HOUSING
ALLIANCE, INC., GREATER BOSTON
LATINO NETWORK, INQUILINOS BORICUAS
EN ACCIÓN, HAITIAN-AMERICANS UNITED,
INC., IMMIGRANT FAMILY SERVICES
INSTITUTE**

By their attorneys,

/s/ Jacob M. Love

Jacob M. Love (BBO #699613)
Oren M. Sellstrom (BBO #569045)
Lawyers for Civil Rights
61 Batterymarch St., 5th Floor
Boston, MA 02110
Tel: 857-264-0416
jlove@lawyersforcivilrights.org
osellstrom@lawyersforcivilrights.org

Dated: 9/16/2024

/s/ Elizabeth Ritvo

Elizabeth Ritvo (BBO #421440)
Meghan E. McCafferty (BBO #705629)
BROWN RUDNICK LLP
One Financial Center
Boston, MA 02111
Telephone: (617) 856-8200
eritvo@brownrudnick.com
mmccafferty@brownrudnick.com

CERTIFICATE OF COMPLIANCE

This brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 17; Mass. R. A. P. 16(a)(3)-(4); Mass. R. A. P. 16(a)(12); Mass. R. A. P. 16(h) (length of briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers); Mass. R. A. P. 17(c) (cover, length, and content of amicus curiae).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12 point, 10.5 characters per inch, and contains 35 total non-excluded pages, prepared with Microsoft Word 2013.

/s/ *Meghan McCafferty*

Meghan McCafferty (BBO #705629)

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2024, I have served on all parties the foregoing Brief of Amicus Curiae Central Massachusetts Housing Alliance, Greater Boston Latino Network, Inquilinos Boricuas en Acción, Haitian-Americans United, Inc. and Immigrant Family Services Institute via the Massachusetts Tyler Host electronic filing system and email upon:

Eric A. Haskell
Jonathan Burke
Erin E. Fowler
Assistant Attorneys General
Attorney General of
Massachusetts
One Ashburton Place
Boston, Mass. 02108
(617) 963-2855
eric.haskell@mass.gov
jonathan.burke@mass.gov
erin.e.fowler@mass.gov

Peter L. Mello
Murphy Hesse Toomey &
Lehane, LLP
50 Braintree Hill
Office Park, Suite 410
Braintree, MA 02184
(617) 479-5000
pmello@mhtl.com

Jaime A. Santos
Kevin P. Martin
Christopher J.C. Herbert
Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000
jsantos@goodwinlaw.com
Kmartin@goodwinlaw.com
Cherbert@goodwinlaw.com

/s/ *Meghan McCafferty*

Meghan McCafferty (BBO #705629)