

A key housing law gets its day in court as SJC hears state's lawsuit against Milton

High court's ruling could shape the future of the state's most ambitious housing law in decades.

By [Andrew Brinker](#) and [Travis Andersen](#) Globe Staff, Updated October 7, 2024, 4:50 p.m.



In February, Milton residents voted against a plan that would open key sections of the town to more housing development. DAVID L. RYAN/GLOBE STAFF

The state's highest court heard oral arguments Monday on Attorney General Andrea Campbell's [closely watched lawsuit against the town of Milton](#) for rejecting a state

housing law.

The arguments before the Supreme Judicial Court lasted for about an hour, and spectators filled up two courtrooms to watch attorneys representing Milton and Campbell's office argue a case that could shape the state's attempts to dig out of [its housing crisis](#). Campbell is suing Milton for defying [the MBTA Communities Act](#), the state law that requires cities and towns served by the T to allow more multifamily housing.

The SJC's six justices Monday questioned the attorneys over [a set of fairly narrow legal questions](#), but acknowledged that their ruling will carry wide-reaching implications.

A ruling in Campbell's favor would speed along the rollout of a law that is nearly four years old and aimed at alleviating the state's devastating housing crisis, and affirm the attorney general's authority to enforce the law in other communities. Any ruling for Milton — where voters in February [overturned the town-approved MBTA zoning plan](#) — would likely fuel opposition elsewhere and could introduce a host of logistical questions that could complicate the law's future.

One of the central questions before the SJC is whether or not Campbell has the power to enforce the law.

As written, the MBTA Communities language — which lawmakers included in a 2021 economic development bill — does not specifically empower the attorney general with enforcement. But Campbell's office and some legal experts have argued that the attorney general, as the state's chief law enforcement officer, has the authority to enforce laws unless the Legislature specifically indicates otherwise, especially when it comes to issues that are a matter of the public good, like the housing crisis. The law, they have said, says communities "shall" draft compliant zoning.



Attorney General Andrea Campbell. CHARLES KRUPA/ASSOCIATED PRESS

Assistant Attorney General Eric Haskell, who appeared for the state on Monday, said the Legislature clearly has authority to write the laws and create a legal mandate for the new zoning.

“The Legislature ordinarily intends its mandates to be obeyed,” said Haskell. “It has expressly assigned enforcement of state laws to the attorney general.”

Milton’s attorneys have zeroed in on a section of the legislation that outlines several grant funds that the state can withhold from communities that don’t follow the law. Losing those funds, the attorneys argue, is the Legislature’s intended punishment for noncompliance, with no further consequences.

“We know that they’re laser focused on what the remedy should be, because originally the statute provided for three sources of grant funding to be withheld if you weren’t in compliance,” Kevin Martin, an attorney at the law firm Goodwin Proctor that is

representing Milton told the court Monday. “The Legislature went back a couple of years later and increased that to four. They’re focused on this issue, and they’ve decided that weighing all of the different values that are at stake here, that’s the appropriate remedy. If they wanted to provide for something more they could’ve.”

The funds — which include several infrastructure grant programs — are fairly insignificant; Many towns haven’t received large awards from them in years. Justice Scott Kafker questioned if withholding those grants is an adequate enforcement mechanism.

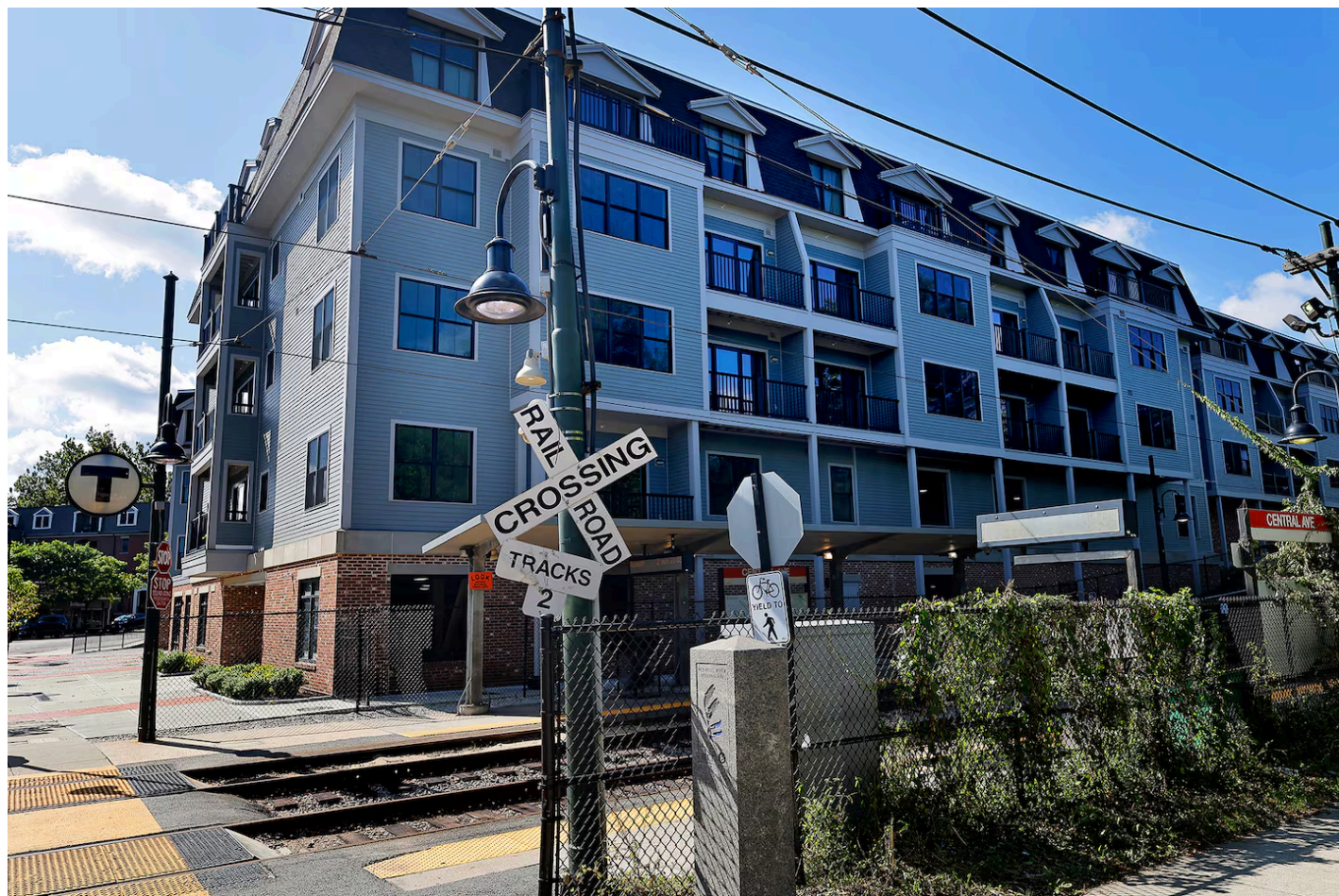
“This is a significant piece of legislation,” said Kafker. “We’re dealing with one of the biggest problems in Massachusetts, and the legislature’s only remedy — if you don’t combine with their ‘shall’ language — is three minor grant programs that most towns haven’t gotten money on.”

The other question the justices focused in on Monday was whether or not the zoning guidelines [developed by the state housing department](#) were developed legally and are enforceable. The MBTA Communities legislation is brief — only three paragraphs long — and vague, and the housing department’s guidelines inform where each town’s zoning district should be and how many units it should allow.

Milton’s lawyers argued Monday that the guidelines have significantly shaped what the law actually means for different communities, and serve more like regulations — which state statute defines as a formal set of rules that must undergo a formal public hearing process. The MBTA Communities guidelines did not, though the state did solicit feedback from cities and towns. Milton’s lawyers argued that the MBTA Communities guidelines go beyond the traditional reach of guidelines, and should be thrown out. Some of the justices indulged their argument.

“The point at which Milton, in your view, violated the statute was when it didn’t enact a zoning plan by a certain date,” Justice Gabrielle Wolohojian said to Campbell’s office.

“But if the certain date only comes from the guidelines and the guidelines need to be done over, then what is there to enforce against Milton?”



New housing at a stop on the Red Line's Mattapan Trolley in Milton. LANE TURNER/GLOBE STAFF

Now, both sides will wait for a ruling. The justices could take anywhere from a few weeks to a few months to issue a decision.

Meanwhile, dozens more communities across Eastern Massachusetts are [set to vote this fall on MBTA Communities plans](#) of their own. Most cities and towns served by the Commuter Rail face a year-end deadline to write their plans — about 75 have already done so — and some of those are watching the Milton lawsuit with keen interest.

Dissent against the law is [brewing in pockets](#), and in some places has overtaken the zoning process. And Campbell, in a news conference before Monday's hearing, made clear that while she does “not make the decision to sue a municipality lightly,” towns that do not meet their deadlines to draft MBTA zoning plans should expect to face

consequences. The housing crisis, she said, has become the state’s most pressing issue, and no one “should be able to pick and choose which laws they want to comply with,” she said.

“Our argument is very simple: When the statute says that covered communities ‘shall’ create a compliant zone, ‘shall’ means ‘shall,’” she said. “We’d much rather collaborate with the community than take them to court ... but when a choice is made to break the law, my office will be ready to meet our obligation to enforce it.”

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