

'The civil rights issue of our generation'? A battle over housing erupts in Massachusetts

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In a leafy suburb in a deep-rooted section of eastern New England, America's housing fissures are coming to a head.

Two years ago, the affluent, mostly white town of Milton, like several dozen others near it, was told by the Massachusetts state legislature that it must take steps to allow more, and denser, housing. But by February of 2024, after Milton spent thousands of dollars and countless hours of city staff's and elected officials time developing a plan, roughly 5,000 voters shot it down.

Days later, Massachusetts Attorney General Andrea Campbell filed suit to force Milton to comply, and on October 7, a panel of judges will hear arguments. The Milton matter is specific to Massachusetts, but the questions it raises are familiar to communities across the country.

When housing is so scarce that it slips out of reach of most people in the area, what is a community's responsibility to help? Should state government intervene, and if so, how far should it go?

For many progressive housing advocates, the impasse in Milton is just the latest volley in an age-old battle.

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"This is the civil rights issue of our generation," said David Dworkin, president of the National Housing Conference. In Milton, Dworkin sees echoes of the Deep South protests in the 1950s – and the work of Martin Luther King, Jr., in 1960's Chicago. "Zoning in America was developed and designed for racial segregation. This is not a subtle tool."

Thomas Silverstein, who runs fair housing and community development efforts at the Lawyers' Committee for Civil Rights Under Law, agrees. "It has long been a focus of civil rights and fair

housing litigation and advocacy to address affluent, often disproportionately white suburbs that are using their zoning powers to get out of providing their fair share of regional affordable housing, and also using their zoning powers in ways that disproportionately harm people of color,” Silverstein said in an interview.

But Milton residents opposed to the zoning change say they're not against affordable housing. Their concern is the scale of development being considered for their small community.

"I'm all for improving diversity in housing stock," said Denny Swenson, a long-time Milton resident who previously served on the town's planning committee. "I welcome it, I love to see it. This (litigation) is just a way for the developers to try to silence our town and other towns from saying we want better, more thoughtful zoning."

Build, baby, build

The 2021 law at the heart of the dispute required communities served by the regional public transportation authority to adopt zoning laws allowing multi-family housing in certain areas of the towns. The law, the MBTA Communities Act, specified that municipalities that did not comply would lose access to several sources of funding provided by the state.

Milton's planning department staff spent much of 2023 working, with consultants, to develop new "zoning language" to be considered by the town's elected officials, according to the attorney general's filing. That December, the elected officials approved a bylaw allowing the zoning. But in February 2024, when the bylaw was put to a referendum, it failed by a 54%-46% margin.

Among Milton residents that opposed the bylaw, most disagreed with the scale of development, Swenson said. The MBTA Communities Act required that the new zone accommodate more than 2,400 new housing units, she said - a big lift in a town of 24,000 where there's not much room to spread outward.

However, a representative for the state attorney general's office told USA TODAY in an email that the law allowed communities a great deal of flexibility and local discretion. It does require a certain level of density in the zone, but specifies no particular minimum number of units be built.

While residents were initially in discussion with state officials, once they decided to hold the referendum, "there was no communication," Swenson said. "They were threatening punitive things but I thought we would be able to hit pause and try to work together. I do think it's surprising that citizens would be sued for disagreeing with the state."

Many Milton residents who oppose the law feel blindsided by the lawsuit, Swenson said. The legislation specified that a community not in compliance would lose access to funding, a tradeoff

many residents were willing to make. "The Executive Branch cannot simply go in and legislate," she said.

In a February 2023 advisory reminding communities of the law's requirements, the state noted not only the possible loss of funds for those not in compliance with the original law, but also the possibility of those municipalities being in violation of federal or state fair housing laws.

In a statement to USA TODAY, Massachusetts Attorney General Andrea Joy Campbell said, "This mandatory law serves as an essential tool to address our housing affordability crisis by creating more zoning districts where more housing can be built. This is done through a collaborative process that gives municipalities considerable discretion over the location and size of the new zoning district."

The statement continued, "The Town of Milton submitted a bylaw to come into compliance with the MBTA Communities Law and had the full support of the state, until a group of private individuals called for a referendum that repealed that bylaw. My office is tasked with enforcing our laws, including this mandatory one, while always standing ready to assist any community working to come into compliance."

Joe Atchue, Milton's building commissioner, who is named in the attorney general's legal filings, and Nicholas Connors, Milton's assistant town administrator, did not respond to multiple emailed requests for comment for this story.

What can the state do?

Much of the town's legal response, according to public documents, rests on the idea that the attorney general has only the ability to withhold funds as specified in the MBTA Communities Act, and that any steps beyond that would be overreach.

Legal experts interviewed for this story disagreed with that argument.

While there are some nuances to individual state legal frameworks, broadly speaking, local communities exist at the pleasure of their states, Silverstein said, "It's sort of presupposed that states can force local governments to take particular actions or to forego taking particular actions."

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In September, Massachusetts' Real Estate Bar Association (REBA), the principal professional association for Massachusetts real estate lawyers, filed a brief in support of the attorney general.

"The withholding of funds is not the only remedy - the attorney general has broad power to take actions to enforce statutes in the public interest of the Commonwealth," said one of the authors of

the REBA brief, Kathleen Heyer, in an interview with USA TODAY.

Notably, Heyer said, the statue did not require that anything be built or permitted – it simply sought to change the zoning bylaw of the town. “It was just changing what uses would be allowed and people still came forward in droves to say ‘We don't want it. We'd rather forego these optional funds than comply with state law.’”

A regional housing crisis

Many observers of the case also believe that towns like Milton have not only an obligation to abide by the law, but also a responsibility to pitch in with what has become a deep regional social crisis.

A brief filed in support of the attorney general by more than a dozen area housing nonprofits lays out the numbers: In 2024, the median sales price for a single-family home in Greater Boston is \$950,000, while the median rent in the area is \$3,940 per month. The majority of renters in Greater Boston are “rent-burdened,” meaning that they pay more than 30% of their income for rent.

The phrase “exclusionary zoning” is used by scholars, activists, government officials, and others to refer to communities that make it impossible for certain populations to settle there. When zoning and other practices make single-family homes with yards the default, and those homes average over \$1 million for instance, it excludes people of lower socioeconomic classes. Among other things, it effectively becomes unaffordable for many people who work in town to also live there.

See: Residential real estate was confronting a racist past. Then came the commission lawsuits

“The people of exclusionary communities are freeloading,” Dworkin said. “They are accepting all the benefits of all of the things that all the workers do, but they won't actually allow them to live anywhere near where they work.”

Swenson says that Milton's "NO Campaign" would accept a smaller goal, of roughly 500-900 units, and stresses that most residents are in favor of making some of those units affordable.

What next?

Beyond the questions of legality, many advocates wonder what happens next. What if Massachusetts prevails but no new housing gets built in Milton?

The attorney general's initial brief lays out a long history of attempts by the state to induce construction of more housing, to little avail. A 2004 state law, for example, provided incentive payments to towns to create zoning districts near transit or in higher density areas.

“As of May 2024, however, only 49 municipalities had created such a district, and only roughly 5,903 new units had actually been built or permitted in the Massachusetts Bay Transportation Authority’s (“MBTA”) service area as a result,” the brief notes.

The current housing shortage in Massachusetts is estimated to be at least 200,000 units, according to the affordable housing advocates’ brief.

To Dworkin and others who view the case through a social justice lens, every little bit helps.

“There is no magic wand here," he said. "We're going to solve this crisis 10 and 50 and 100 units at a time.”

“The idea that they're pushing back and trying to resist change is sad, but it's not surprising,” Silverstein said. “That resistance in a way actually sort of proves the point behind the law, which is that you actually need to have robust requirements instead of incentives if you want to get things done. The places that really have not been doing their fair share will continue to do so unless someone's really pushing.”