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Subject Lawmakers say MBTA Communities law meant to have teeth

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New from Commonwealth Beacon

GUN LAW: When it comes to gun law, everyone needs to be a historian in the wake of the US Supreme Court's *Bruen* decision. All policies need to be tied to a founding era policy or practice. Jennifer Smith has the in-depth story.

OPINION: Middle school teacher Peter Sipe has developed an obituary curriculum centered on informative, interesting, and inspirational stories of life.

OPINION: The UMass Poll's Adam Eichen, Jesse Rhodes, and Tatishe Nteta say racism appears to explain why Massachusetts is divided over replacing Columbus Day with Indigenous People's Day.

Lawmakers say MBTA Communities law meant to have teeth

October 15, 2024

By **JENNIFER SMITH**

Four years ago, at the start of the pandemic, Sen. Brendan Crighton of Lynn stood masked on the floor of the state Senate and argued that an ambitious new housing law should make its way into a sprawling new development bill.

His brief remarks, and statements at the time from other lawmakers, are now key considerations before the Supreme Judicial Court as it weighs what tools the state granted to enforce the MBTA Communities law.

“That’s probably stood out the most – having your name mentioned in court,” Crighton said on [The Codcast](#) a few days after the high court [heard arguments](#) about the law. “Not always a great thing, but in this instance, I was proud to have that referenced. Certainly would’ve been a little more careful drafting my speech and practiced a few more times before giving it, had I known it was gonna be such a big deal.”

What legislators meant to include in the MBTA Communities Act – requiring 177 mostly Eastern Massachusetts cities and towns near public transit to zone for a district of reasonable size where multifamily housing is allowed by right – has dredged up an age-old fight over local versus state power.

Attorney General Andrea Campbell’s suit to force Milton to comply with its obligations under the law turns in part on who gets to make the rules about how Massachusetts tries to address a crippling housing crisis. Lawmakers say they thought they were being clear at the time that they wanted the AG to have that authority – to give the law “teeth.”

“What I found interesting was what the case was not about,” zoning expert and consultant Amy Dain said on The Codcast. “The justices and the lawyers in the courtroom were not debating whether there’s a housing crisis. They were not debating whether zoning has been a barrier to needed housing development. They weren’t even debating whether it’s appropriate or good policy for the state to take leadership on zoning policy. They weren’t debating whether the state has authority to lead on zoning policy. It does.”

The Codcast

CommonWealth Beacon’s **JENNIFER SMITH** is joined by state **SEN. BRENDAN CRIGHTON** of Lynn, along with zoning expert and consultant **AMY DAIN**. They discuss the MBTA Communities Act in light of recent arguments before the Massachusetts Supreme Judicial Court on Milton’s failure to comply.

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Instead, Dain noted, the justices were zeroing in on the “nitty gritty” of the law’s wording, in the space of just a few paragraphs tasking the executive branch housing office with “promulgat[ing] guidelines to determine if an MBTA community is in compliance.”

And, critically, justices wondered whether the fact that the law includes some specific grants that can be withheld if municipalities do not comply indicates that lawmakers preferred that approach and never intended the attorney general to be able to force compliance through the courts.

That the act [scooted through](#) as a Senate amendment included after late-night closed-door negotiations on a 2021 economic development bill is “being pointed at as limited evidence that there was a legislative process, when I feel like it was just the opposite,” Crighton said. “We had been talking about this for a long, long time. But certainly, when we pass a law, the intent is for it to be enforced. And, historically, that’s what the attorney general has done.”

House and Senate leaders say the measure was intended to give the executive branch leeway in determining what reasonable zoning obligations looked like, as well as rules for complying. House Ways and Means chair Aaron Michelwitz told reporters there needs to be enforcement through the AG's office "to make it mean anything, for it to have teeth."

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Crighton said that has been the intent of the law since its initial consideration pre-pandemic. He does not recall worry at the time that the way the amendment was written might close off enforcement options.

"When we pass laws, we assume that the attorney general and their branch of government is going to enforce them," he said. "So while we listed certain grants, in my mind at the time and now still, those were examples to highlight that there are consequences, and they certainly weren't meant to be exclusive, by no means."

Dain said the amount of running room left to the Executive Office of Housing and Livable Communities to craft guidelines "was very tailored, a really thoughtful approach."

City and towns all have different proximity to transit, different layouts, and different political inclinations when it comes to rezoning. "It's been pretty compelling that we already have close to 80 communities that have [revised their zoning](#) to meet their performance standards," Dain said, "which is a sign that the state nailed it, that they really came up with standards that were implementable."

At arguments at the Supreme Judicial Court, Justice Scott Kafker appeared skeptical that the state tried to deal with a 200,000-unit housing shortage and cost of living crisis by offering carrots as incentives but a mere "twig" rather than a stick if cities and towns balked – his description of the threat to withhold money from grant programs that many communities don't even apply for.

That intent isn't fully baked into the court record and the justices will still need to parse whether the guidelines were promulgated correctly by the housing office. But the lawmakers who pushed the MBTA Communities Act through are so far in political lockstep – they intended municipalities to comply, with help from the state, or face a day in court.

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More from CommonWealth Beacon

KEYS TO COMPETITIVENESS: Massachusetts' competitiveness as a state doesn't hinge on one thing, it's a "tsunami of little things," including the lack of housing, a high cost of living, and transportation challenges. Colin Young of State House News Service has the story.

OPINION: Peter Brennan of the New England Convenience Store & Energy Marketers Association slams nicotine-free generation proposals as attempts to dress up prohibition and call it compassion.

OPINION: Luz Arevalo and Angela Divaris of Greater Boston Legal Services suggest some tweaks to the Mass. tax amnesty program, which launches November 1.

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In Other News

MUNICIPAL MATTERS

- The Housatonic Water Works Co. files suit to block an order by the Great Barrington Board of Health requiring the company to supply bottled water to each resident. (*Berkshire Eagle*)
- Citing community outcry, Quincy Mayor Tom Koch and city councilors say they won't accept the raises they gave themselves through a vote earlier this year until after their next respective election cycles. (*Patriot Ledger*)
- The city of Salem is using federal pandemic dollars to fund a guaranteed-income program for 100 residents. (GBH News)

ELECTIONS

- Minnesota Gov. Tim Walz, the Democratic nominee for vice president, will be back in Boston this weekend for a fundraiser. (*MassLive*)
- Some think Norfolk District Attorney Michael Morrissey could face a serious challenge if he seeks reelection in two years, because of his office's handling of the high-profile Karen Read and Sandra Birchmore cases. (*Boston Globe*)
- Boston City Councilor Ed Flynn, who is weighing a mayoral challenge next year to Michelle Wu, says he's faced an increase in online and in-person harassment in recent months. (*Boston Herald*)

BUSINESS/ECONOMY

- The number of Boston hotel workers on strike doubled over the weekend, as 685 workers at the Omni Parker House and the Seaport's Omni Boston joined picket lines. (*Boston Business Journal*)

EDUCATION

- A lengthy *Boston Globe* editorial calls high-dosage tutoring a “simple idea” that could “transform Boston’s schools.” The editorial covers much of the same ground as this in-depth *CommonWealth Beacon* piece from January on the potential – and pitfalls – of deploying tutoring efforts at large scale to address pandemic learning loss. Last week, *CommonWealth Beacon* reported that a recent analysis found that the larger the high-dosage tutoring effort, the less effective it is in accelerating learning gains.
- Alicia Munnell, an 82-year-old former Clinton administration official and Boston Fed veteran who has served as director of Boston College’s Center for Retirement Research, is stepping down. (*Wall Street Journal*)

ARTS/CULTURE

- The Massachusetts Museum of Contemporary Art agrees to purchase a closed school in North Adams and turn it into housing and performance space. (*Berkshire Eagle*)

ENERGY/ENVIRONMENT

- Efforts to recover a big chunk of the broken Vineyard Wind 1 turbine blade from the ocean floor began on Sunday, but officials are not giving any progress reports. (New Bedford Light)
- Central Massachusetts cities and towns are working to identify and replace huge amounts of lead piping, after the Environmental Protection Agency issued new regulations tied to federal grant money. (*Worcester Telegram*)

CRIMINAL JUSTICE/COURTS

- Braintree town officials, already facing a budget deficit, may need to borrow up to \$12 million in the wrongful arrest and imprisonment settlement. (*Patriot Ledger*)
- Another January 6 insurrectionist, the former owner of a Fall River food market, was found guilty of participating in a pro-Trump mob that stormed the Capitol in 2021. (*Universal Hub*)

PASSINGS

- With the death of Ethel Kennedy, *Globe* columnist Joan Vennochi says it’s time to retire the gauzy “Camelot” frame used to give the family a mythic status that is far divorced from reality, including the many scandals its members have been at the center of. As if on cue, the *Globe*, which decades ago was very much a part of that myth-making enterprise, does not have a staff-written account of Kennedy’s Cape Cod funeral in today’s paper, publishing instead an Associated Press story on the Catholic funeral Mass held on Monday at “Our Lady of Victory in Centerville, about 70 miles south of Boston” – the kind of generic location description used in a wire story that could run in a paper anywhere in the country.

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