

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court  
No. 2684CV00269 (Gildea)

ATTORNEY GENERAL

*Plaintiff*

V.

TOWN OF DRACUT

TOWN OF EAST BRIDGEWATER

TOWN OF HALIFAX

TOWN OF HOLDEN

TOWN OF MARBLEHEAD

TOWN OF MIDDLETON

TOWN OF TEWKSBURY

TOWN OF WILMINGTON

TOWN OF WINTHROP

*Defendants*

CASE SPECIALLY ASSIGNED TO JUDGE GILDEA

**ANSWER, DEFENSES, AND COUNTERCLAIMS OF THE  
TOWN OF WINTHROP TO THE COMPLAINT OF THE ATTORNEY GENERAL**

The defendant, Town of Winthrop, by and through its Town Attorney, sets forth its Answers, Defenses, and Counterclaims to the Complaint filed against it by the Attorney General of the Commonwealth of Massachusetts.

**INTRODUCTION**

1. The allegations set out in Paragraph 1 constitute conclusions of law to which no response is required. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every allegation set out in this paragraph, and specifically denies that the Town has failed to meet its obligations under state law.

**PARTIES**

2. The Town of Winthrop admits that the Attorney General is the chief law enforcement officer in the Commonwealth but denies that the Attorney General has the authority in this case to compel the Winthrop Town Council to vote to adopt specific zoning regulations.

3. Admitted upon information and belief.

4. Admitted upon information and belief.

5. Admitted upon information and belief.

6. Admitted upon information and belief.

7. Admitted upon information and belief.

8. Admitted upon information and belief.

9. Admitted upon information and belief.

10. Admitted upon information and belief.

11. Admitted upon information and belief.

**JURISDICTION AND VENUE**

12. The allegations set out in Paragraph 12 constitute conclusions of law to which no response is required. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every one of the factual allegations.

13. The allegations set out in Paragraph 13 constitute conclusions of law to which no response is required. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every one of the factual allegations.

14. The allegations set out in Paragraph 14 constitute conclusions of law to which no response is required. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every one of the factual allegations.

#### FACTS

15. Winthrop admits that Massachusetts is unaffordable for too many residents but denies each and every other allegation set forth in this paragraph of the Complaint.

16. The allegations set out in Paragraph 16 constitute conclusions of law to which no Response is required. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every one of the factual allegations set out in that paragraph, and, in further answering, specifically denies that the Town has a housing "crisis" or that a "housing crisis" exists in Massachusetts.

17. The allegations set out in Paragraph 17 constitute conclusions of law to which no response is required. The statute speaks for itself. To the extent that any factual allegations contained therein refer to the Town of Winthrop, the Town denies each and every one of the factual allegations.

18. The allegations set out in Paragraph 18 constitute conclusions of law to which no response is required. The statute speaks for itself.

19. Admitted upon information and belief.

20. Admitted upon information and belief.

**THE EXECUTIVE OFFICE OF HOUSING AND  
LIVABLE COMMUNITIES PROMULGATES REGULATIONS**

21. Admitted upon information and belief.
22. Admitted upon information and belief.
23. The allegations set out in Paragraph 23 constitute conclusions of law to which no response is required. The regulation speaks for itself.
24. The allegations set out in Paragraph 24 constitute conclusions of law to which no response is required. The statute and regulations speak for themselves.
25. The allegations set out in Paragraph 25 constitute conclusions of law to which no response is required. The CMR speaks for itself.
26. The allegations set out in Paragraph 18 constitute conclusions of law to which no response is required. The CMR speaks for itself.

**THE DEFENDANT TOWNS FAIL TO COMPLY WITH THEIR OBLIGATIONS  
UNDER SECTION 3A AND THE REGULATIONS**

**Town of Dracut**

27-30 The allegations set out in Paragraphs 27 through 30 refer to matters concerning the Town of Dracut of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of East Bridgewater**

31-34 The allegations set out in paragraphs 31 through 34 refer to matters concerning the Town of East Bridgewater of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Halifax**

35-38 The allegations set out in Paragraphs 35 through 38 refer to matters concerning the Town of Halifax of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Holden**

39-42 The allegations set out in Paragraphs 39 through 42 refer to matters concerning the Town of Holden of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Marblehead**

43-46 The allegations set out in paragraphs 43 through 46 refer to matters concerning the Town of Marblehead of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Middleton**

47-50 The allegations set out in paragraphs 51 through 54 refer to matters concerning the Town of Middleton of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Tewkesbury**

51-54 The allegations set out in paragraphs 51 through 54 refer to matters concerning the Town of Tewkesbury of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Wilmington**

55-58 The allegations set out in paragraphs 55 through 58 refer to matters concerning the Town of Wilmington of which Winthrop is without information sufficient to either admit or deny the allegations set out in the above-referenced paragraphs.

**Town of Winthrop**

59. Winthrop admits that EOHCL has designated Winthrop as an MBTA Community but denies each and every other allegation set forth in this paragraph.

60. Admitted upon information and belief.

61. Admitted upon information and belief.

62. Winthrop denies each and every allegation set forth in this paragraph of the Complaint.

**CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

63. Winthrop admits that in certain instances the Attorney General has authority to invoke court jurisdiction to assert and protect the rights of the government and of the public but denies that the Attorney General has such authority in this case.

**COUNT I: DECLARATORY RELIEF**

64. Winthrop repeats its answers stated in Paragraphs 1 - 63 above as if specifically set forth and rewritten herein.

65. This paragraph contains legal conclusions to which no response is required. To the extent that a admission or denial is required, Winthrop denies each and every allegation contained in this paragraph.

66. This paragraph contains legal conclusions to which no response is required. To the extent that an admission or denial is required, Winthrop denies each and every allegation contained in this paragraph.

**COUNT II: INJUNCTIVE RELIEF**

67. Winthrop repeats its answers stated in paragraphs 1 - 66 above as if specifically set forth and rewritten herein.

68. This paragraph contains legal conclusions to which no response is required. To the extent that a admission or denial is required, Winthrop denies each and every allegation contained in this paragraph.

**TOWN OF WINTHROP'S AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief may be granted and therefore must be dismissed pursuant to Mass. R. Civ. P. 12(b)(6).

**SECOND AFFIRMATIVE DEFENSE**

The Massachusetts Attorney General lacks authority to invoke the jurisdiction of this Court under the facts of this case for purpose of coercing the Town of Winthrop to comply with the provisions of G. L. c. 40A, § 3A.

**THIRD AFFIRMATIVE DEFENSE**

G. L. c. 40A, §3A is unlawful in that it imposes an unfunded mandate upon the Town of Winthrop and therefore the Town may not be compelled to abide by its terms.

**FOURTH AFFIRMATIVE DEFENSE**

Winthrop states that due to, *inter alia*, its diminutive size, extreme density, high traffic count,

parking stress, and lack of available developable land area it is entitled to a **mandatory exemption** from the application of the MBTA 3A as there is no reasonable way to comply without materially affecting the Town's quality of life.

#### **FIFTH AFFIRMATIVE DEFENSE**

The relief sought in the Complaint would unconstitutionally abrogate the Town of Winthrop's municipal primacy in the process of adopting and amending its own zoning ordinances under the Home Rule Amendment, Article 89, § 6 of the Amendments to the Massachusetts Constitution and G. L. c. 40A, §5.

#### **SIXTH AFFIRMATIVE DEFENSE**

G. L. c. 40A, § 3A is unconstitutional in that it contravenes the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

#### **SEVENTH AFFIRMATIVE DEFENSE**

G. L. c. 40A, § 3A is unconstitutional as applied to the Town of Winthrop because the applicable provisions requiring the withholding of grant money and grant eligibility in punitive and violate the Excessive Fines provision of the Eighth Amendment to the United States Constitution as it denies the Town the ability to apply for, compete for, or receive grant funds for critical programs that support education, flood prevention, public safety, and public health efforts which funds are derived in part from taxes paid to the Commonwealth by each individual Winthrop resident who pays state income tax, sales tax, meals tax, and other taxes levied against them.

**EIGHTH AFFIRMATIVE DEFENSE**

G. L. c. 40A, § 3A is unconstitutional as it violates the Takings Clause of the Fifth Amendment to the United States Constitution as it makes no provision for providing compensation to persons injured in their property rights by the obligations and limitations it creates.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs claims seek relief that violates the constitutional provision of separation of powers and therefore may not be granted.

**TENTH AFFIRMATIVE DEFENSE**

The Town of Winthrop may not be compelled to abide by the mandates of MBTA 3A because the mandates imposed on Winthrop are far more onerous, unaffordable, and detrimental to the Town than beneficial to the Commonwealth generally, and operates to substantially degrade the Town's standard of living

**ELEVENTH AFFIRMATIVE DEFENSE**

The application of G. L. C. 40A, §3A to Winthrop contravenes the legislative intent of the statute which is not, as here, to overly densify and overburden the taxpayers and property owners of towns such as Winthrop under the guise of addressing the “extraordinary need” for housing in Massachusetts by making development more accessible, all while destroying the nature, character, property values, and quality of life of the Town.

**JURY DEMAND**

The Town of Winthrop hereby demands a trial by jury on all issues so triable.

**WHEREFORE:** The Town of Winthrop respectfully requests that the Court:

- A. Declare that the Town of Winthrop is not in noncompliance with c. 40A, § 3A and the Regulations;
- B. Declare that the Town of Winthrop need not amend its zoning ordinance nor secure a determination of compliance from EOHLC;
- C. Deny the Commonwealth's request for injunctive relief; and,
- D. Enter such other or further Order the Court deems meet and just.

**VERIFIED COUNTERCLAIMS**

The Defendant/Plaintiff-in-Counterclaim, Town of Winthrop ("the Town" or "Winthrop"), pursuant to Mass. R. Civ. P. 13, submits the following Verified Counterclaims and Demand for Jury Trial. Winthrop states that it cannot be subject to the requirements of G. L. c. 40A, § 3A as that statute which is an unlawful unfunded mandate cannot be applied to the Town of Winthrop.

1. The Town of Winthrop, is a municipal corporation situated in Suffolk County, Massachusetts with a usual place of business at 1 Metcalf Square, Winthrop, MA 02152 .
2. The Attorney General is a Constitutional officer of the Commonwealth of Massachusetts with the authority and powers of its office established in G. L. c.12, § 1, et seq., with its principal place of business at One Ashburton Place, Boston, Massachusetts.
3. This Court has jurisdiction over the parties and the subject matter pursuant to G. L. c. 29,§ 27C, G .L. e. 241, § 1, and G. L. c. 231A, § 1, and G. L. c. 249, § 5

4. Venue is appropriate in this Court as the Plaintiff/Counterclaim Defendant is established in Suffolk County, with its principal place of business in Suffolk County.

#### FACTS

5. Plaintiff repeats and reasserts the allegations set forth in paragraphs 1-4 above, as if set forth in full herein.

6. The terms of G. L. c. 29, § 27C(a) provide that no law “taking effect on or after January 1, 1981 imposing any direct service or cost obligation upon any city or town shall be effective in any city or town ... unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost”.

7. G. L. c. 29, § 27C(c) specifies that no “administrative rule or regulation taking effect on or after January 1, 1981 which shall result in the imposition of additional costs upon any city or town shall [...] be effective until the general court has provided by general law and by appropriation for the assumption by the commonwealth of such cost”.

8. G. L. c. 40A, § 3A was added by § 18 of Chapter 358 of the Acts of 2020, and was thereafter amended by § 10 of Chapter 29 of the Acts of 2021, effective July 29, 2021.

9. G. L. c. 40A, § 3A was further amended by §§ 152-153 of Chapter 7 of the Acts of 2023, effective May 30, 2023.

10. G. L. c. 40A, § 3A was further amended by § 9 of Chapter 150 of the Acts of 2024, effective August 6, 2024.

11. G. L. c. 40A, § 3A was further amended by §§ 2, 2A, 2B, and 20-26 of Chapter 234 of the Acts of 2024, effective November 20, 2024.

12. The General Court at no time, whether contemporaneous with enactment of G.L. c. 40A, § 3A, or subsequent thereto has provided, by general law or by appropriation, funds for the assumption by the Commonwealth of the direct costs to the Town imposed by G.L. c. 40A, § 3A, or the corresponding regulations promulgated by EOHLC.
13. Winthrop is designated as one of the 51 cities and towns pursuant to G.L. c. 161A, § 1 and G. L. c. 40A, § 1A.
14. As one of the "51 cities and towns" affected by the statute the Town is considered an "MBTA Community" subject to the provisions of G.L. c. 40A, § 3A.
15. Pursuant to G. L. c. 40A, § 3A, the Town, if an "MBTA Community", would be required to adopt a zoning by-law providing for at least one (1) district of "reasonable size" in which multi-family housing is permitted by right. Under these requirements, the Town is required to enact zoning bylaws that allow, as a matter of right, 882 multi-family housing units in approved districts. That is a substantial increase in the total number of housing units in the Town.
16. According to regulations promulgated by the Commonwealth's Executive Office of Housing and Livable Communities ("EOHLC") in 760 CMR 72.00, the Town had a deadline of July 14, 2025, to comply with §3A and otherwise submit a "District Compliance Application" to EOHLC setting forth information about current zoning, past planning for Multi-family housing, if any, potential locations for a Multi-family zoning district and establishing a timeline for various actions needed to create a Multi-family zoning district in compliance with Ch. 40A, § 3A, and EOHLC regulations.
17. On November 12, 2024, the Winthrop Planning Board submitted an overlay plan to

the Winthrop Town Council with the recommendation that the Council approve the plan for submission to EOHLC for along with an application for district compliance. On November 19, 2024, by a vote of 4 to 4 (with one vacant seat) by the Council, the plan did not gain approval, and consequently was not submitted to EOHLC for consideration.

18. According to the most recent United States Census Bureau figures from 2024, the current population of Winthrop is 18,739. The increase in corresponding population related to the addition of 882 additional units would likely result in an increase in population up by 2,320 people, to a total resulting population of 21,058., an increase of 12.38%.

19. The Town of Winthrop is a peninsula comprised of 1.6 square miles of land with only two roads leading out of town, one to the north to Revere and the other to the south to East Boston.

20. Among the likely impacts of an increase of 12.38% in population are the need for water and sewer infrastructure improvements, roadway improvements, signalization, police and fire safety, and the maintenance of the educational system.

21 The direct impact on the Town's annual budget would be in the millions of dollars, with amounts required that would undoubtedly exceed the maximum 2.5% annual levy cap of Proposition 2 ½. For instance, in terms of public safety alone, the police chief estimates that it would be necessary to hire as many as 5 additional police officers (at prevailing union salaries) in accordance with U.S. Department of Justice Standards and to purchase two additional police vehicles to. The fire chief estimates that with the addition of 2320 new residents it would be necessary to hire an additional number of firefighters commensurate with the increase in population and to purchase additional firefighting gear and equipment. The impact on the school

system will be even greater given the necessity of hiring more teaching staff, purchasing the required number of additional books and educational aids, and creating expanded learning space.

22 The Town applied for the **Cooling Corridors Tree Grant** and although the Commonwealth found that the grant set forth more than sufficient reason for an award, the Commonwealth informed the Town, in writing, that the **\$100,000.00** grant money would not be awarded Winthrop and that the funds Winthrop would have been awarded went to the next most qualified town because Winthrop is not 3A compliant.

25. Pursuant to G. L. c. 40A, §3A(b), failure by the Town to submit a "District Compliance Application" to EOHLC by July 14, 2025, resulted in the Town's loss of funding for important infrastructure improvements to support affordable housing

23. As of this date, the Town has not submitted a renewed "District Compliance Application" to EOHLC, and has already lost funding from those programs identified in G. L. c. 40A, § 3A(b) and 760 CMR 72.09 and is disqualified from even submitting applications for certain grants.

24. On January 8, 2025, the Massachusetts Supreme Judicial Court, in *Attorney General Town of Milton, et al.*, 495 Mass. 183 (2025) concluded, *inter alia*, that, in addition to the potential loss of grant funds due to noncompliance, G. L. c. 40A, §3A establishes an affirmative mandate on all applicable communities to adopt complying zoning bylaws.

25. The construction of 882 housing units will result in substantial infrastructure impacts to the Town, including, without limitation, impacts to the Town's water system, public safety services, educational services, buildings, roads, and other general governmental services. Mitigating such impacts will require a substantial appropriation of funds for the expenses and

improvements necessary to service 882 new units of housing.

26. The Towns of Wrentham and Middleborough, and the City of Methuen filed written requests with the Office of the State Auditor, Division of Local Mandates ("DLM"), seeking a determination that G.L. c. 40A, § 3A imposed an unfunded mandate on municipalities within the meaning of G.L. c. 29, § 27C.

27. In response, DLM issued a Determination dated February 21, 2025, that G.L. c. 40A, § 3A constitutes an unfunded mandate.

28. As stated in the DLM determinations, the mandate established under the statute as affirmed by the SJC, will result in material impacts to the Town's financial condition as a result of the necessity to make new, unplanned investments in nearly all town services. As noted in the DLM Determinations, the Commonwealth has acknowledged, in the adoption of G. L. c. 40A, §3A and the regulations promulgated thereunder, that such impacts will occur and add to the obligation of the towns.

29. The DLM however was unable to determine the amount of such deficiency, in part because EOHLC has failed to provide a fiscal impact analysis as required under' G.L. c. 30A, §5. DLM concluded that it will complete such analysis when EOHLC completes its statutorily required fiscal impact analysis.

30. In the interim, and as acknowledged by DLM pursuant to G.L. c. 29, § 27C(e), a municipality burdened with a statutory and/or regulatory unfunded mandate may be exempted from compliance pending funding for and/or reimbursement of direct costs imposed by a statute or regulation.

31. Because G. L. c. 40A, § 3A and 760 CMR 72.00 impose direct financial obligations on the Town, for which no contemporaneous appropriation has been made by the General Court at the time of the adoption of such statute, the Town should be exempt from compliance «mess and until the Town is reimbursed for any direct costs that may be imposed on it by G.L. c. 40A, § 3A and 760 CMR 72.00, and until there is a legislative appropriation made for' those costs going forward.

32. Notwithstanding the directives in the DLM determination, the Attorney General maintains that DLM's conclusions are incorrect and that compliance with G. L. c. 40A, §3A will be enforced, notwithstanding the Commonwealth's failure to fund the statute or produce a required fiscal impact statement.

#### **COUNT ONE**

##### **(Declaratory Relief: G. L. c. 29, § 27C(e); G.L. c. 23 IA, § 6)**

1. Winthrop repeats and incorporates the allegations set forth in paragraphs 1-32 above as if set fully set forth herein.
2. G. L. c. 40A, § 3A, and the regulations promulgated pursuant thereto constitute an unfunded mandate.
- 3 G. L. c. 40A, § 3A, and the regulations promulgated thereunder fail to identify any applicable criteria to tender the EOHLIC regulations applicable to the Town.
4. Because no contemporaneous appropriation was made by the Legislature to fund the provisions of G. L. c. 40A, § 3A or the corresponding regulations promulgated by EOHLIC, Winthrop is not obligated to implement a District Compliant Plan or follow the directives set out in the statute and regulations unless or until the Commonwealth funds the costs of

Winthrop's implementing the directives of G. L. C. 40A, § 3 and the regulations.

5 An actual case and controversy exists as to the obligation of the Commonwealth to fund the mandate imposed by the provisions of G.L. c. 40A, § 3A, and the corresponding EOHLC regulations against the Town.

6. Absent a declaration from this Court, there will be continued uncertainty as to the applicability and enforceability of the provisions of G. L.c. 40A, § 3A and the EOHLC regulations against the Town of Winthrop.

WHEREFORE: The Town of Winthrop requests this Court to enter judgement as follows:

1. Declare that G. L. c. 40A, s. 3A constitutes an unfunded mandate and that pursuant to G. L. c. 29, s. 27C(e) the Town of Winthrop is not required to comply with the provisions of G. L. c, 40A, s. 3A and its corresponding regulations.
2. Award Winthrop all reasonable costs of litigation and legal fees.
3. Any and all other relief this Court deems meet and just.

### COUNT TWO

#### **(Declaratory Relief under G. L. c. 231A, § 6: Violation of Equal Protection)**

7. Winthrop realleges and incorporates the allegations set forth in paragraphs 1-6.

8. Article I of the Declaration of Rights of the Massachusetts Constitution and Fourteenth Amendment of the United States Constitution guaranty the right of Equal Protection under law.

9. G.L. c. 40A, § 3A is facially unconstitutional because it violates the provisions of both the United States Constitution and the Constitution of the Commonwealth of

Massachusetts by treating cities and towns unequally based upon arbitrary and pretextual designations assigned to the communities designated as MBTA Communities with no rational relationship between public transportation and the creation of new housing stock.

10 G.L. c. 40A, § 3A similarly violates the United States Constitution and the Constitution of the Commonwealth of Massachusetts as applied to Winthrop because it imposes additional costs and burdens on a small, overly dense community that are not imposed on other larger, less populated, and less dense communities based on the faulty premise that housing in proximity to public transportation solves the state's self-inflicted "housing shortage" or "extraordinary housing need," neither of which Winthrop recognize as established facts with adequate evidentiary support.

11 The State had no rational basis to compel, mandate or require towns— particularly densely populated municipalities consisting of small geographic areas such as Winthrop — to designate multi-family housing zones based solely on the presence of public transportation in or near the towns where there are numerous towns with comparatively sparse populations located throughout that are not subject to the law which could more readily assimilate the addition of multi-family housing units simply because they are not on a bus or train line. Further, densely populated towns such as Winthrop already suffer disproportionately from high-volume traffic, gnarling congestion, limited parking, excessive noise and noxious pollution associated with the nearby Logan International Airport. These problems would be exponentially magnified and intensified by a law that would require them to bring more people and more vehicles into already overpopulated areas. As such, the law is irrational, arbitrary, and capricious and must be struck down as unconstitutional. Moreover, the law

treats towns as Winthrop differently in this regard from the rest of the similarly situated cities and towns in Massachusetts in contravention of the Equal Protection provisions in both the state and federal constitutions.

WHEREFORE: The Town of Winthrop requests this Court to enter judgement as follows:

1. Declare that G. L. c. 40A, s. 3A and the Regulations violate the equal protection rights of The Town of Winthrop and each resident of the Town of Winthrop, and therefore is unconstitutional.
2. Declare that the Town of Winthrop is not required to comply with the provisions of G. L. c, 40A, s. 3A and its corresponding regulations.
3. Award Winthrop all reasonable costs of litigation and legal fees.
4. Any and all other relief this Court deems meet and just.

### **COUNT THREE**

#### **(Declaratory Relief under G.L. c. 231A, § 6: Violation of the Eighth Amendment)**

12. Winthrop realleges and incorporates the allegations set forth in paragraphs 1-11 above.
13. The Eighth Amendment of the United States Constitution's ban on excessive fines applies to the states through the Fourteenth Amendment.
14. The provisions of G. L. c. 40A, § 3A and its related Regulations require withholding of specified grant money and the eligibility to apply for future grants amounts to an unconstitutional punitive sanction imposed for a regulatory violation, and by its terms is grossly disproportionate to any alleged violation.
15. As applied to the Town of Winthrop, the Commonwealth's action in disqualifying

the Town from both receiving and applying for state funds for municipal aid is a punitive financial sanction intended not only to coerce the Town into compliance against its collective will, but to punish the Town for its noncompliance in violation of both the Eighth Amendment and the Massachusetts Home Rule Amendment.

16. The Commonwealth's punitive measures already taken against Winthrop implicates a violation of each individual taxpayers' constitutional protections.

17. The Commonwealth's withholding of municipal assistance in this case is not a neutral funding decision.

18. Imposing this sanction on Winthrop solely to punish it for its noncompliance is a penalty totally unrelated to the creation of housing, and constitutes an unlawful fine within the meaning of the Eighth Amendment applicable to Massachusetts by the Fourteenth Amendment and therefore cannot be enforced.

WHEREFORE: The Town of Winthrop requests this Court to enter judgement as follows:

1. Declare that G. L. c. 40A, s. 3A and the Regulations violate the Eighth Amendment ban on excessive fines and therefore is unconstitutional.
2. Declare that Commonwealth may not withhold grant money nor disqualify Winthrop from applying for state grants as provided in the 3A statute or its regulations.
3. Award Winthrop all reasonable costs of litigation and legal fees.
4. Any and all other relief this Court deems meet and just.

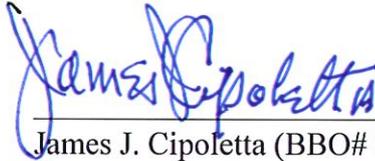
**VERIFICATION**

I, Anthony Marino Town Manager, hereby verify and swear under the pains and penalties of perjury that the facts relating to the Town of Winthrop, as asserted in the foregoing Counterclaims are accurate to the best of my knowledge and belief. I hereby certify that I am duly authorized by the terms of the Charter of the Town of Winthrop to verify and file these Verified Counterclaims.



Anthony Marino

Respectfully submitted,  
Town of Winthrop,  
By its attorney,



James J. Cipoletta (BBO# 084260)

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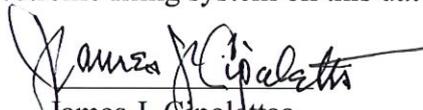
CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the foregoing document upon counsel for the plaintiff as follows:

Margaret Hurley, Asst. Attorney General      [margaret.hurley@mass.gov](mailto:margaret.hurley@mass.gov)  
Esme Caramello, Asst. Attorney General      [esme.caramello@mass.gov](mailto:esme.caramello@mass.gov)  
Lauren Yamaguchi, Asst. Attorney General      [lauren.yamaguchi@mass.gov](mailto:lauren.yamaguchi@mass.gov)

and all other counsel of record who have entered a Notice of Appearance in this action by filing same through the court's eFileMA electronic filing system on this date.

Dated:

  
James J. Cipoletta