

MS

Commonwealth of Massachusetts  
Superior Court

Suffolk,ss.

Winthrop Says No to 3A Committee and Diana Viens and  
Carol Facella and Frederick Bagley and Paula Bagley and  
Winthrop Town Councilor Rob DeMarco, Member at  
Large, Winthrop Town Councilor Patrick Costigan,  
Precinct 1, Gus Martucci, Peter Gill, Joseph Lawrence  
Powers, Paul Varone, and Margaret A. Riley,  
Plaintiffs,

v.

Executive Office of Housing & Livable Communities  
Defendant.

Docket No. 2484CVO2351A

**PLAINTIFFS' EMERGENCY MOTION TO STAY ENFORCEMENT OF G. L. c. 40A, §  
3A AS TO THE TOWN OF WINTHROP AND TO STAY THE ATTORNEY  
GENERAL'S ENFORCEMENT ACTION AS TO WINTHROP PENDING  
RESOLUTION OF THIS ACTION**

Plaintiffs, the Winthrop Says No to 3A Committee and the individual Winthrop residents named above (collectively, the "Plaintiffs"), hereby move this Court, in this first-filed action, to stay enforcement of G. L. c. 40A, § 3A ("§ 3A") against the Town of Winthrop and to enjoin prosecution of the later-filed enforcement action, Attorney General v. Town of Dracut, et al., Suffolk Superior Court, Civil Action No. 2684CV00269, as to the Town of Winthrop, pending final judgment in this case.

On January 29, 2026, the Attorney General filed Attorney General v. Town of Dracut, et al., Suffolk Superior Court, Civil Action No. 2684CV00269, naming the Town of Winthrop among nine municipalities alleged to be non-compliant with G. L. c. 40A, § 3A and the implementing regulations. That enforcement action places at issue Winthrop's obligations under § 3A while this earlier-filed action, which challenges the applicability and lawfulness of § 3A

and its administration as to Winthrop, remains pending.

### **Relief Requested**

Plaintiffs seek a stay of enforcement of § 3A and of the Attorney General's enforcement action as to Winthrop, pending final judgement in this first-filed action, and appropriate security terms under Mass. R. Civ. P. 65(c).

### **Introduction and Summary of Argument**

In this first-filed Exemption Action, Plaintiffs move this Court to stay and enjoin enforcement of G. L. c. 40A, § 3A ("Section 3A") against the Town of Winthrop, including prosecution of the Attorney General's later-filed enforcement suit, Attorney General v. Town of Dracut, et al., Suffolk Superior Court, Civil Action No. 2684CV00269, as to Winthrop, under the first-filed doctrine and general equitable principles. This action was commenced on September 4, 2024, by a committee of Winthrop residents challenging the legality and applicability of Section 3A to the Town of Winthrop (the "Exemption Action"). It raises fundamental questions about the authority of the Executive Office of Housing and Livable Communities ("EOHLC"), the lawfulness of its administrative process (or lack thereof), and whether Winthrop's unique geographic and demographic circumstances warrant an exemption from, or a materially different application of, Section 3A's mandates.

A stay of enforcement is warranted because Plaintiffs have a substantial likelihood of success on the merits in this Exemption Action, which properly invokes this Court's jurisdiction to provide declaratory, certiorari, mandamus, and other equitable relief. The judiciary, not the executive, is the ultimate arbiter of statutory interpretation and the lawfulness of agency action. See, e.g., *Tri-Nel Mgt., Inc. v. Bd. of Health of Barnstable*, 433 Mass. 217, 219–20 (2001); *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89–90 (1984). Allowing enforcement of Section

3A against Winthrop—including continued prosecution of the Attorney General’s 2026 enforcement suit as to Winthrop—while this Exemption Action is pending would inflict irreparable harm on Winthrop and its residents by forcing the Town toward a costly and potentially irreversible zoning compliance process before its fundamental rights and obligations under the statutory scheme have been adjudicated. The balance of harms and the public interest strongly favor staying and enjoining such enforcement pending final judgment in this case, which will ensure an orderly and just resolution, prevent duplicative litigation, and avoid the risk of inconsistent judicial outcomes concerning Winthrop’s obligations under Section 3A.

### **Statement of Relevant Facts and Procedural History**

This first-filed Exemption Action presents the same underlying legal controversy that the Attorney General has since placed at issue in a separate, later-filed enforcement action in this Court.

On July 20, 2024, the Winthrop Says No to 3A Committee (“the Committee”), a group of residents of the Town of Winthrop, filed a Petition for Administrative Rulemaking with EOHLC, seeking an exemption for Winthrop from the requirements of G. L. c. 40A, § 3A (“Section 3A”), based on the Town’s extreme population density, environmental justice status, and other unique circumstances, along with an official interpretation of §3A in line with G. L. c. 40B §§21-23. On August 10, 2024, the Committee notified the State Housing Department in writing that it had had the petition for almost 30 days and not acted on it, and that the Committee would seek judicial relief in the absence of an answer. After EOHLC failed to respond within the 30-day statutory period and thereafter issued only a late, single-page rejection letter, the Committee and the other named plaintiffs commenced this Exemption Action on September 4, 2024, in Suffolk Superior Court. This Exemption Action seeks, among other remedies, declaratory and injunctive relief, a

writ of mandamus, and judicial review of EOHLC's actions and its interpretation of Section 3A as applied to Winthrop - seeking judicial relief on substantively the same grounds as were presented to the Housing Department.

In the intervening time, the SJC issued their decision in *Attorney General v. Milton*, 495 Mass. 183 (2025). They rejected delegation and separation of powers arguments, ruled in favor of the Attorney General's power to enforce the law, and struck down the State Housing Department's regulations as improperly adopted. The Housing Department thereafter pushed back their arbitrary deadline and promulgated new regulations.

While the Committee's legal challenge was being formulated and filed, Winthrop's Town Council considered and voted against adopting a Section 3A-compliant zoning by-law on November 19, 2024, and again on June 17, 2025. The deadline for Winthrop to submit a district compliance application to EOHLC was July 14, 2025, and Winthrop did not submit an application by that date.

On January 29, 2026—more than fourteen months after this Exemption Action was filed and became pending in this Court—the Attorney General initiated a separate enforcement lawsuit, *Attorney General v. Town of Dracut, et al.*, in Suffolk Superior Court. That enforcement suit names Winthrop and eight other municipalities as defendants, alleges non-compliance with Section 3A and its associated regulations, and seeks declaratory and injunctive relief to compel compliance. This Exemption Action, which raises dispositive threshold questions regarding Winthrop's legal obligations under Section 3A, remains pending as the first-filed proceeding, and Plaintiffs seek to hold in abeyance enforcement of Section 3A against Winthrop—including prosecution of the Attorney General's enforcement action as to Winthrop—until those threshold issues are adjudicated.

### **Jurisdiction and Standing**

This Court possesses subject-matter jurisdiction over this Exemption Action and personal jurisdiction over the parties, and has the equitable authority to grant the requested injunctive relief staying and enjoining enforcement of G. L. c. 40A, § 3A as to Winthrop and prosecution of the Attorney General's later-filed enforcement action against Winthrop. The Court's power to issue such relief is an inherent aspect of its equitable authority to manage its docket, preserve the status quo, and ensure that its judgments are effective, and is further authorized by the Massachusetts Rules of Civil Procedure, including Mass. R. Civ. P. 65.

This Exemption Action, pending in this Court under Docket No. 2484CV02351, seeks declaratory relief pursuant to G. L. c. 231A, review of agency inaction and action under the Administrative Procedure Act, G. L. c. 30A, § 14, relief in the nature of certiorari under G. L. c. 249, and equitable and mandamus relief under G. L. c. 214 and G. L. c. 249, all of which lie within the jurisdiction of the Superior Court. The Attorney General's separate enforcement complaint likewise invokes this Court's jurisdiction over claims for declaratory and equitable relief, underscoring that this Court is the proper forum to determine the parties' rights and obligations under Section 3A and to issue ancillary injunctive relief necessary to protect that jurisdiction.

As alleged in the Second Amended Complaint, the Winthrop Says No to 3A Committee and the individual plaintiffs are residents, property owners, and local officials of Winthrop who are directly and uniquely affected by enforcement of Section 3A and by the Attorney General's later-filed enforcement case against Winthrop. They therefore have standing to seek to stay and enjoin such enforcement pending adjudication of their claims in this action. The parties to this Exemption Action are properly before this Court, and venue in Suffolk County is proper.

## Argument

### I. Standard of Review for a Preliminary Injunction

A court's decision to grant a stay or a preliminary injunction is guided by a well-established balancing test. To obtain a preliminary injunction, the moving party must demonstrate: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; and (3) that its risk of irreparable harm outweighs any potential harm to the nonmoving party if the injunction is granted. *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). Where the merits are not entirely clear but the applicant faces great irreparable harm, an injunction may be granted upon a showing of a "substantial possibility" of success, rather than a definitive likelihood. *Id.* at 617 n.12; *Wilson v. Commissioner of Transitional Assistance*, 441 Mass. 846, 859 (2004). When a party seeks to enjoin government action, as is the case here, the court must also weigh the public interest. *Tri-Nel Mgt., Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001); *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

Here, Plaintiffs seek to restrain governmental enforcement of a state statute and a related Attorney General enforcement action as to Winthrop, and thus must satisfy the traditional Packaging Industries factors, while the Court also considers the strong public interests on both sides—both in enforcing duly enacted laws and in ensuring that such enforcement complies with statutory and constitutional requirements. This Court's review of a decision to grant or deny an injunction is for an abuse of discretion, assessing whether the judge applied the proper legal standards and whether there was reasonable support for the evaluation of the factual questions. *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 642 (1987).

In addition to these equitable factors, courts are guided by principles of judicial administration and comity. Central among these is the “first-filed” doctrine, which provides that where two lawsuits involving substantially the same parties and issues are pending, the court in which the first action was filed generally has priority. This principle promotes judicial economy, avoids duplicative litigation, and prevents the risk of inconsistent judgments. It reflects the court’s inherent power to control its own docket, a principle expressly articulated in various statutory settings, such as G. L. c. 190B, § 1-303 (requiring deference to the proceeding first commenced concerning the same estate). This is consonant with the broader concept of comity, which encourages judicial abstention in favor of a prior pending action capable of adjudicating the rights of the parties—in this context, this first-filed Exemption Action—while the later-filed Attorney General enforcement case against Winthrop is held in abeyance as to Winthrop pending this Court’s resolution of the claims presented here.

### **Argument — First-Filed/Equitable Considerations Favoring a Stay**

Principles of judicial economy, equity, and respect for prior pending actions all compel this Court, in this first filed Exemption Action, to stay enforcement of G. L. c. 40A, § 3A against Winthrop and to stay prosecution of the Attorney General’s later filed enforcement action as to Winthrop. The Exemption Action, filed 1.5 years before the Attorney General’s enforcement complaint, raises threshold legal questions that are dispositive of whether and how Section 3A may lawfully be enforced against Winthrop. Forcing Winthrop and its residents to defend the Attorney General’s enforcement suit while their foundational legal challenges to the statute’s applicability and to EOHLA’s conduct are being adjudicated in this prior filed action would be inefficient, unjust, and risks inflicting irreparable harm upon the Town and its residents.

#### **1. The First-Filed Doctrine Mandates a Stay**

Under the first filed doctrine, when two actions concerning substantially the same parties and issues are commenced in courts of concurrent jurisdiction, the court where the first action was filed should be the one to proceed. This principle is rooted in judicial comity and the inherent power of the court to manage its docket efficiently, prevent duplicative litigation, and avoid the risk of inconsistent judgments. See, e.g., G. L. c. 190B, § 1 303(b) (requiring courts to defer to the court where a proceeding was first commenced concerning the same estate). Where there are two competing lawsuits, the first suit should have priority, absent the showing of “balance of convenience” ... or ... “special circumstances” ... giving priority to the second. *First City Nat'l Bank and Trust Co. v. Simmons*, 878 F.2d 76, 79 (2d Cir.1989) (citations omitted).

Here, this Exemption Action was filed in Suffolk Superior Court on September 4, 2024. The Attorney General’s enforcement action was not filed until January 29, 2026, more than fourteen months later. On January 29, 2026, in a very official looking and splashy political announcement, the Attorney General announced that she had filed a suit against 9 towns, Winthrop among them, that are not compliant with the State Housing Department regulations (760 CMR §72.00 et seq.) based on G. L. c. 40A §3A (MBTA Zoning Law). In doing so, the Attorney General has shown a breath-taking disregard for judicial process and a stunning institutional disrespect to the Judiciary, including the Supreme Judicial Court. Considering that any outcome or ruling in the Attorney General’s new case, *Attorney General v. Town of Dracut, et al* 2684CV00269, would impact this case, the Plaintiffs respectfully request an order staying any and all proceedings in the subsequent case.

Both cases revolve around the same core legal question: whether the Town of Winthrop is legally obligated to comply with the zoning mandates of G. L. c. 40A, § 3A, and if so, on what terms. This Exemption Action directly challenges the lawfulness of EOHLC’s administrative

actions (and inaction) and seeks a judicial determination on the applicability and fairness of Section 3A as applied to Winthrop given its unique circumstances. A ruling in favor of the Plaintiffs in this Exemption Action—for example, a declaration that Winthrop is exempt, or that EOHLC’s process or interpretation was unlawful—would resolve the predicate issues for any enforcement as to Winthrop and would be dispositive of the Attorney General’s claims against Winthrop in the enforcement suit. Allowing the later filed enforcement action to proceed as to Winthrop while this Exemption Action is pending would create a race to judgment and open the door to conflicting rulings from the same court, a result the first filed doctrine is designed to prevent.

## **2. Plaintiffs Have a Substantial Likelihood of Success on the Merits in This Exemption Action**

To warrant a stay of enforcement, Plaintiffs must show a likelihood of success on the merits in this Exemption Action. *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). At this stage, this requires demonstrating that their claims are meritorious and raise “a substantial possibility” of success. *Id.* at 617 n.12. The Second Amended Complaint in this action presents several strong legal arguments that meet this standard.

First, Plaintiffs allege significant procedural violations by EOHLC under the Administrative Procedure Act (APA), G. L. c. 30A. EOHLC failed to respond to the Committee’s Petition for Administrative Rulemaking within the mandatory 30-day period under G. L. c. 30A, § 4. This failure to act is itself a basis for judicial intervention to “compel any action unlawfully withheld or unreasonably delayed” under G. L. c. 30A, § 14. Plaintiffs in this action properly seek established remedies for such agency failures, including mandamus and certiorari review.

Second, the substantive claims in this Exemption Action are substantial. The Second Amended Complaint details why the application of Section 3A to Winthrop may be arbitrary, capricious, and inequitable. These grounds include Winthrop’s status as one of the most densely populated municipalities in the nation, its designation as an environmental justice community, significant public safety concerns related to traffic congestion and emergency egress, and the asserted conflict between Section 3A’s high-density market-rate housing incentives and G. L. c. 40B’s affordable housing purpose, particularly in light of Winthrop’s 40B “safe harbor” status. These are precisely the types of serious legal and factual questions that warrant judicial review before enforcement proceeds.

### **3. Irreparable Harm Absent a Stay of Enforcement**

If enforcement of Section 3A against Winthrop—including prosecution of the Attorney General’s later-filed enforcement action as to Winthrop—is not stayed pending resolution of this case, Plaintiffs and the Town face immediate and irreparable harm that cannot be remedied by a later judgment. Monetary damages are an inadequate remedy for the harms at stake. See *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643 (1987).

The primary harm is the effective denial of Plaintiffs’ and Winthrop’s right to meaningful judicial review in this first-filed Exemption Action. Forcing Winthrop, under the pressure of ongoing enforcement of G. L. c. 40A, § 3A and the Attorney General’s later-filed enforcement action as to Winthrop, to undertake a complex, expensive, and politically divisive rezoning process while the legality of that requirement is under review here would substantially undermine, and in practical effect risk mooted, the relief sought in this case. The Town and its residents would be compelled to expend significant public funds and staff resources to comply with a law that this Court may ultimately find does not apply to Winthrop or was unlawfully

administered by EOHLC.

Furthermore, allowing enforcement to proceed now would trigger potentially irreversible changes to the Town's character and property rights. As-of-right development could commence under a Section 3A-compliant zoning regime, and, as Plaintiffs allege in this Exemption Action, existing private contractual rights under condominium agreements could be unilaterally undermined, altering the settled expectations of property owners. The public safety and environmental harms alleged by Plaintiffs—exacerbated traffic and congestion, strained emergency services and emergency egress, and further burdening of an environmental justice community already subject to flooding, airport emissions, and the Deer Island Waste Treatment Plant—also constitute irreparable injuries to the public welfare if enforcement is allowed to proceed before this Court adjudicates Plaintiffs' claims.

#### **4. The Balance of Harms and the Public Interest Favor a Stay**

The balance of hardships tips decisively in favor of Plaintiffs and the Town of Winthrop. The harm to Winthrop and its residents from denying the requested stay of enforcement is severe and immediate, as detailed above and in the Second Amended Complaint. In contrast, the harm to the Attorney General and EOHLC from a temporary stay of enforcement of Section 3A as to Winthrop, and from holding in abeyance the Attorney General's later-filed enforcement action as to Winthrop, is minimal. A stay of enforcement pending resolution of this first-filed Exemption Action does not permanently bar enforcement; it merely holds it in abeyance and ensures that related litigation proceeds in a logical and orderly sequence. The status quo is preserved while this Court determines the foundational legal questions presented here.

Moreover, the public interest is best served by granting the requested stay of enforcement. While the public has an undeniable interest in the enforcement of state law, it has

an equal, if not greater, interest in ensuring that administrative agencies act lawfully, that statutes are applied equitably, and that municipalities and their residents are afforded due process. See *Tri-Nel Mgt., Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001). It does not serve the public interest to compel compliance with a statutory scheme before a court has had the opportunity to adjudicate a good-faith, non-frivolous challenge to its legality and application—particularly where, as here, that challenge was filed in this Court more than a year before the Attorney General brought the enforcement action against Winthrop. Granting a stay of enforcement will allow this Court, in this first-filed Exemption Action, to decide in the first instance whether and to what extent Winthrop must comply with Section 3A before any enforcement proceeds, promotes the public interest in judicial economy, prevents waste of public funds, and ensures that the ultimate resolution of this important housing matter rests on a sound and complete legal footing.

**Argument — Jurisdiction to Decide Whether Winthrop Must Comply with §3A**

The Attorney General's enforcement action presupposes a legal conclusion that is the very subject of this first-filed Exemption Action: that Winthrop is unequivocally bound by G. L. c. 40A, § 3A. This Court has clear and unquestionable jurisdiction in this action to adjudicate that foundational issue and, in aid of that jurisdiction, to stay and enjoin enforcement of § 3A against Winthrop—including the prosecution of the later-filed Attorney General enforcement suit as to Winthrop—until this case is finally decided. While executive agencies like EOHLC are charged with implementing statutes, the judiciary serves as the ultimate arbiter of statutory meaning, the lawfulness of agency action, and the protection of legal rights. This Exemption Action properly invokes this Court's authority through multiple, independent statutory gateways.

First, this action seeks a declaratory judgment under G. L. c. 231A to determine the rights

and obligations of the parties under Section 3A. Declaratory relief is designed to resolve precisely this type of legal uncertainty before parties are forced to take irrevocable steps. The Attorney General's complaint in *Attorney General v. Town of Dracut, et al.* likewise recognizes that the Superior Court has jurisdiction over declaratory and equitable claims concerning § 3A, further underscoring that this Court is the appropriate forum to determine, in this case, whether and to what extent Winthrop must comply with Section 3A before enforcement proceeds.

Second, this Exemption Action functions, in part, as a petition for judicial review under the Administrative Procedure Act, G. L. c. 30A. The Second Amended Complaint alleges that EOHLC unlawfully withheld action on a validly filed petition for rulemaking and failed to provide any adjudicatory process for challenging its directives, entitling Plaintiffs to judicial relief under G. L. c. 30A, § 14. An agency's authority to determine compliance under a statute, see G. L. c. 40A, § 3A(c), does not shield it from judicial review for errors of law, arbitrary and capricious conduct, or failure to follow its statutory obligations. Where, as alleged here, an agency fails to provide a path for administrative challenge, the courthouse doors are the only ones left open, and this Court may, in equity, preserve the effectiveness of its eventual judgment by staying and enjoining enforcement of § 3A against Winthrop—including the Attorney General's later-filed enforcement action as to Winthrop—pending final resolution of this Exemption Action.

Third, the Superior Court's broad equity jurisdiction under G.L. c. 214 gives it the power to prevent injustice and fashion appropriate remedies, including the declaratory, injunctive, and other relief sought in this Exemption Action. Various statutes specifically grant the Superior Court jurisdiction to hear challenges and enforce laws related to zoning and agency action, underscoring its central role in this field. See, e.g., G.L. c. 40C, § 12A (appeal of historic

commission determinations to Superior Court); G.L. c. 66, § 10A(c) (civil action in Superior Court to enforce public records law). The Exemption Action’s requests for certiorari and mandamus relief further confirm this Court’s power to review administrative proceedings and compel agencies to perform their duties.

The argument that EOHLC has primary or exclusive jurisdiction is misplaced. EOHLC’s role is to determine compliance within the framework of the statute. It is the Court’s role to determine what that framework legally requires and whether the agency has acted within it. The claims in this Exemption Action—that Section 3A is being applied inequitably and unlawfully to Winthrop and that EOHLC has abdicated its procedural duties—are matters of law for this Court to decide. A stay of enforcement is therefore necessary to allow the Court, in this first-filed action, to fulfill this essential function by adjudicating whether and how Section 3A lawfully applies to Winthrop and reviewing EOHLC’s conduct before any further enforcement against Winthrop, including the Attorney General’s later-filed enforcement action as to Winthrop, proceeds.

## **II. Mass. R. Civ. Pro. Rule 12(b)(9) and 12(b)(1) prohibit the Attorney General’s successor case from usurping this one.**

### **1. 12(b)(9)—Prior Pending Action**

Mass. R. Civ. Pro. Rule 12(b)(9) requires dismissal if there is “[p]endency of a prior action in a court of the Commonwealth.” This action is a preexisting action addressing the merits of whether §3A and its regulations apply to Winthrop.

“A court of law will not permit a defendant to be vexed by two actions of law, for the same cause, in the same jurisdiction, by the same plaintiff, and ordinarily will order an abatement of the second action.” *Stahler v. Sevinor*, 324 Mass. 18, 23 (1948). This rule is potent. “[T]he

principle applies that a defendant may not be vexed without reason by successive proceedings upon the same cause of action, and that a court has power to take any course required to do justice.” *Powers v. Heggie*, 268 Mass. 233, 239 (1929).

What stands before the Superior Court now is a craven attempt at judge shopping. Fearing loss in either the Plaintiffs’ existing actions, or in the SJG, the Attorney General has brought an enforcement action for rules which are not clearly enforceable against the Defendants she has chosen. She also fears having to face individual defense by the municipalities, which have their own unique issues and factual circumstances, such that she apparently could not join them together by a class action.

“By reason of the elementary principle that courts of the same jurisdiction will not permit a party to be vexed at the same time by two proceedings arising from the same cause of action unless there is some sound reason having its foundation in justice for an exception to the general rule...Justice requires the court in which the point is first raised to determine...whether the [party] is in truth being doubly vexed by the contemporaneous prosecution of both actions, and make an appropriate order.” *Consolidated Ordnance Co. v. Marsh*, 227 Mass. 15 (1917).

This rule has particular teeth where the Attorney General’s new enforcement suit seeks declaratory relief. *Jacoby v. Babcock Artificial Kidney Center*, 364 Mass. 561 (1974) (“Generally a court cannot declare rights as to matters involved in a pending action...While declaration of rights may be appropriate in exceptional cases even when other proceedings are in progress, there is an ordinary presumption against such relief...The same principle is implied in the Massachusetts cases...denying declaratory relief when other more appropriate proceedings are pending.”).

The General Law governing equity jurisdiction in the Commonwealth, shared between

the SJC and the Superior Court, expressly forbids the result the Attorney General seeks. G. L. c. 214 §15 (“A justice of either court shall not dissolve an injunction issued by the other court, or by a justice thereof, or interpose in any action in which equitable relief is sought pending before the other court, except as provided in sections one hundred and fifteen, one hundred and seventeen, and one hundred and eighteen of chapter two hundred and thirty-one.”).

The rule against this kind of behavior, that the Attorney General now engages in, is an old one. *Spear v. Coggan*, 223 Mass. 156 (1916) (“While the technical stringency of the common law against concurrent pendency of two different proceedings founded on the same cause no longer prevails, manifest justices requires that a defendant ought not to be harassed by useless litigation.”). See Also *Alpert v. Mercury Publishing Co.*, 272 Mass. 39 (1930) (“A plaintiff will not commonly be allowed to prosecute an action when there is a pending action for the same cause between the same parties, especially when the two cases are pending in the same court.

## **2. 12(b)(1)—Subject Matter Jurisdiction**

“[T]he question of subject matter jurisdiction goes to the power of the court to hear and decide the matter. *311 West Broadway LLC v. Bd. of Appeals of Boston*, 90 Mass. App. Ct. 68, 73 (2016). “Subject matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought.” *Ten Persons v. Fellsway Development LLC*, 460 Mass. 366, 375 (2011) (cleaned up).

Only one case may decide a matter at a time. This rule is important to the administration of justice because it avoids unseemly disputes, maintains fairness between the parties, and prevents judge-shopping.

It is a doctrine of law too long established to require a citation of authorities, that, where a court has jurisdiction, it has a right to decide every question which occurs in the cause...and

that, where the jurisdiction of a court...have once attached, that right cannot be arrested or taken away by proceedings in another court. These rules have their foundation, not merely in comity, but on necessity. For if one may enjoin, the other may retort by injunction, and thus the parties be without remedy; being liable to a process for contempt in one if they dare to proceed in the other. Neither can one take property by replevin or any other process, for this would produce a conflict extremely embarrassing to the administration of justice.

Peck v. Jeness, 48 U.S. 612, 624-625 (1849). See also Plamer v. Texas, 212 U.S. 118, 125 (1909) (exercise of jurisdiction by one court ousts all other courts from jurisdiction). This “principle, applicable to both federal and states courts, is established that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other.” Penn Central Casualty Co. v. Pennsylvania, 294 U.S. 189, 195-196 (1935). Chief Justice Marshall wrote: In all cases of concurrent jurisdiction, the Court which first has possession of the subject must decide it.’ Smith v. McIver, 22 U.S. 9 Wheat. 532, 535, 9 Wheat. 5326 L.Ed. 152 (1824).

Principles of comity come into play when separate courts are presented with the same lawsuit. When faced with such a dilemma, one court must yield its jurisdiction to the other, unless one court has exclusive jurisdiction over a portion of the subject matter in dispute. ... In absence of compelling circumstances, the court initially seized of a controversy should be the one to decide the case. Merrill Lynch v. Haydu, 675 F.2d 1162 (11th Cir. 1982)

The usual practice is for the court that first had jurisdiction to resolve the issues and the other court to defer. Maldonado-Cabrera v. Anglero-Alfaro, 26 F.4th 523 (1st Cir. 2022)

### **III. Judicial Estoppel and Respect for Pending Proceedings Further Support Interim Relief.**

Even though law does not generally favor estopping public officers, in case of brazen and political judge shopping, the judicial process is entitled to self-defense. Judicial estoppel prevents cheating. “The purpose of the doctrine is to prevent the manipulation of the judicial process by litigants.” *Canavan’s Case*, 432 Mass. 304, 308 (2000). | “[Some] courts have applied the doctrine whenever it is determined that a litigant is playing ‘fast and loose’ with the courts.” *Fay v. Federal Nat’l Mortgage Ass’n*, 419 Mas. 782, 787-788 (1995). Court “look to see whether that the party seeking to use the judicial process in an inconsistent way that courts should not tolerate.” *East Cambridge Savings Bank v. Wheeler*, 422 Mass. 621, 623 (1995).

The Attorney General, who is defending the Commonwealth and the State Housing Department, in the Marshfield SJC case, is patently aware that the application of §3A is an open question of law. It is in fact, one currently under adjudication in a higher court. However, for political purposes in an election year, the Attorney General is abandoning respect for the judicial process. Her new filing will not only impact the Plaintiffs in this case, it will undermine the SJC in the Marshfield case. Her entire new case proceeds from the premise that it is an enforcement action—that the rules apply. However the entire question in Marshfield is, is §3A binding? G. L. c. 29 §27C affirmatively states that without funding from the state such rules do not apply.

· “Any law...imposing any direct service or cost obligation upon any city or town shall be effective in any city or town only if such law is accepted by vote...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, exclusive of incidental local administration expenses and unless the general court provides by appropriation in each successive year for such assumption.” G L. c. 29 §27C(a)

· “Any administrative rule or regulation...which shall result in the imposition of additional

costs upon any city or town shall not be effective until the general court has provided by general law and by appropriation for the assumption by the commonwealth of such cost...and unless the general court provides by appropriation in each successive year for such assumption.” G. L. c. 29 §27C(c).

This is not a case where there might be some defenses to an enforcement action—it’s a case where the Attorney General well and truly knows that even the applicability of the rules she seeks to enforce is an open question of law, currently under adjudication in another, higher forum. She seeks for political gain to short circuit the judicial process, hoping that the Towns are inept or unable to defend themselves. Simply announcing your own victory on the field, before the game is played, does not translate into a right the winner’s cup. And that is exactly what the Attorney General’s new enforcement action does.

To prevent immediate irreparable harm and to promote the orderly administration of justice, Plaintiffs respectfully request that this Court grant expedited consideration of this motion and enter interim relief staying enforcement of G. L. c. 40A, § 3A against the Town of Winthrop, including prosecution of the Attorney General’s later filed enforcement action as to Winthrop, pending resolution of this first filed Exemption Action.

Specifically, Plaintiffs request the following relief:

- 1. Immediate Temporary Stay of Enforcement:** That the Court issue an immediate temporary restraining order and/or preliminary injunction enjoining and restraining the Attorney General and EOHLC, as to the Town of Winthrop, from enforcing G. L. c. 40A, § 3A or prosecuting or otherwise pursuing the claims against Winthrop in Attorney General v. Town of Dracut, et al., Suffolk Superior Court, Civil Action No. 2684CV00269, pending a hearing on this motion, in order to preserve the status quo and prevent any further enforcement steps.

- 2. Expedited Briefing and Hearing:** That the Court set an expedited schedule for the filing of any opposition to this motion by EOHLC and/or the Attorney General and schedule a hearing on the motion at the Court's earliest convenience.
- 3. Stay of Later Filed Enforcement Case as to Winthrop:** That, in the interests of justice and judicial economy, the Court order that the claims against the Town of Winthrop in Attorney General v. Town of Dracut, et al., Suffolk Superior Court, Civil Action No. 2684CV00269, be held in abeyance or otherwise stayed as to Winthrop pending final, non appealable judgment in this action, so that this first filed case may determine Winthrop's obligations under G. L. c. 40A, § 3A and to avoid duplicative litigation and inconsistent rulings.
- 4. Case Management Conference:** That the Court schedule a case management conference in this action, and, if the Court deems appropriate, invite counsel in Attorney General v. Town of Dracut, et al. to appear, to establish a schedule for dispositive motions and to address coordination of proceedings affecting the Town of Winthrop.

#### **Proposed Order**

For the reasons stated in Plaintiffs' Motion to Stay Enforcement of G. L. c. 40A, § 3A and the Attorney General's Enforcement Action as to Winthrop Pending Resolution of This Action, it is hereby ORDERED that:

- 1.** The Attorney General is hereby enjoined and restrained, as to the Town of Winthrop, from (a) enforcing or attempting to enforce G. L. c. 40A, § 3A against the Town of Winthrop, and (b) prosecuting or otherwise pursuing the claims against the Town of Winthrop in Attorney General 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, and Town of Winthrop, Suffolk Superior Court, Civil Action No. 2684CV00269, pending further order of this

Court.

2. This injunction shall remain in effect until a final, non-appealable judgment is entered in the matter of Winthrop Says No to 3A Committee, et al. v. Executive Office of Housing & Livable Communities, Suffolk Superior Court, Docket No. 2484CV02351, or until further order of this Court.

3. Consistent with Mass. R. Civ. P. 65(c), and in light of the public-interest nature of this litigation, no security shall be required of the Plaintiffs.

4. The rights of all parties to seek modification or dissolution of this injunction upon a material change in circumstances are preserved.

So Ordered.

Dated: \_\_\_\_\_

\_\_\_\_\_ Justice of the Superior Court

### **Conclusion and Prayer for Relief**

For all of the foregoing reasons, including the priority of this first-filed Exemption Action, the substantial likelihood of success on the merits, the irreparable harm facing the Town of Winthrop and its residents, and the public interest in orderly and efficient judicial review, Plaintiffs respectfully request that this Court:

A. Grant this Motion for Stay of Enforcement and/or Preliminary Injunction;

B. Enter the attached Proposed Order enjoining and staying, as to the Town of Winthrop, (i) enforcement of G. L. c. 40A, § 3A by the Executive Office of Housing & Livable Communities and the Attorney General, and (ii) prosecution of the claims against Winthrop in Attorney General 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, and Town of

Winthrop, Suffolk Superior Court, Civil Action No. 2684CV00269, pending final resolution of this action;

C. Grant Plaintiffs' request for an expedited hearing on this motion; and

D. Grant such other and further relief as this Court deems just and proper.

### **Conclusion**

Wherefore, the Plaintiffs plead for any and all relief that the Court deems just and proper in this case.

Respectfully Submitted,

Winthrop Says No to 3A Committee  
By its Attorneys

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## CERTIFICATE OF SERVICE

I, Michael Walsh certify that a copy of this filing is provided on this 3rd day of February, 2026, by email, to the following:

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Respectfully Submitted,  
Winthrop Says No to 3A Committee  
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