COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13877

CLAIRE FITZMAURICE & OTHERS,

Plaintiffs-Appellees,

v.

CITY OF QUINCY & ANOTHER,

Defendants-Appellants.

On Appeal from a Decision of the
Superior Court in Norfolk County

BRIEF OF DEFENDANTS-APPELLANTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

INTRODUCTION

This appeal asks whether symbolism on government property becomes illegal simply because some citizens perceive it to have religious meaning. The answer is no.

The City of Quincy recently constructed a new public-safety building to house its police and fire departments. Consistent with its longstanding public-art initiative, Quincy intends to adorn that building with statues of two figures: Florian, an ancient Roman soldier who pioneered brigades dedicated to firefighting; and the Archangel Michael, a literary figure associated with defense against evil. Florian and Michael are identified the world over with firefighters and police, respectively, and Quincy chose them to beautify the building and to honor and inspire the city's first responders as they perform their dangerous and lifesaving work.

Florian and Michael are also called saints by some faith traditions, including the Catholic Church. On that basis, Plaintiffs—ignoring Florian's work as a Roman firefighter and Michael's recognition across multiple faiths and beyond as a guardian against evil—sued, offering a novel theory that because the Catholic Church views the figures as saints, displaying their statues would violate art. 3 of the Massachusetts Declaration of Rights and must be enjoined.

At the outset, however, Plaintiffs lack standing to seek any such relief, since merely observing public symbols one finds disagreeable is not a

cognizable injury. Likewise, on the merits, Plaintiffs' claim defies the text, history, and purpose of art. 3.

As this Court has repeatedly explained, the purpose of art. 3 as amended was to end the direct public financial support that had previously been provided to ministers of a particular religion. *Colo v. Treasurer and Receiver General,* 378 Mass. 550, 556 (1979); *Caplan v. Town of Acton*, 479 Mass. 69, 76-77 (2018). The placement of inanimate statues as public art on a public building does not implicate direct support of religion in any manner, let alone the subordination by law of some faiths to others that triggers art. 3.

Indeed, public symbols with indisputable religious significance have long been commonplace in this Commonwealth. Few know that as well as this Court—which sits in a courthouse adorned with statues of Moses and "Religion," II.App.33-34; steps away from a State House featuring statues of two religious figures martyred for their faith, II.App.30-31; and in a city whose seal and flag proclaim in Latin, "God be with us as He was with our fathers."

As the plain language of art. 3 provides no support for their claim, Plaintiffs insist (and the Superior Court agreed) that "the *Lemon* Test" formerly applied by *federal* courts under the *federal* Establishment Clause should apply here. But art. 3's own text, history, and purpose provide the proper basis to resolve this case—making recourse to overruled federal precedent, interpreting a different constitution, superfluous.

Even if this Court were to apply *Lemon*, however, Plaintiffs' claims remain meritless. Indeed, *Colo*—the leading case Plaintiffs rely on—invoked *Lemon* as a guide to *uphold* government-funded prayer by Catholic priests in the State House, making the passive statues here an *a fortiori* case.

To be sure, the question of what public art best represents a community and embodies its aspirations often may generate fruitful discussion in the political process. But Plaintiffs have cited no case in which a Massachusetts court has vetoed an elected official's choice of public art based on its perceived religiosity. For good reason. Even if courts could reliably conduct such an inquiry, it would seek to enforce the sort of "'hermetic separation' of church and State" that is "an impossibility which the Constitution has never required." *Colo*, 378 Mass. at 560. And it would risk invalidating the "many permissible, secular 'references to the Almighty that run through our laws, our public rituals, and our ceremonies.'" *Commonwealth v. Callahan*, 401 Mass. 627, 638 (1988). This Court should reverse.

STATEMENT OF THE ISSUES

1. Whether Plaintiffs have standing.
2. Whether art. 3 of the Massachusetts Declaration of Rights prohibits the display of statues of internationally recognized symbols of first responders on a public building because the symbols have religious significance for some citizens.

3. Whether the U.S. Constitution permits artwork to be excluded from public display based on religious hostility.

STATEMENT OF THE CASE

Plaintiffs—a group of Quincy residents—sued the City of Quincy and Quincy Mayor Thomas P. Koch, in his official capacity, in Norfolk County Superior Court. They assert a single claim, alleging that Quincy's planned installation of statues of Florian and Michael on its new public-safety building violates art. 3 of the Massachusetts Declaration of Rights. I.App.45.

Plaintiffs sought a preliminary injunction prohibiting Defendants from installing the statues. I.App.48. Unions representing Quincy's fire-fighters and police moved to intervene as defendants. II.App.291. The Superior Court denied intervention but permitted participation as *amici*. II.App.296-298. Defendants opposed the preliminary injunction and moved to dismiss the complaint. II.App.5.

After a hearing, the Superior Court determined that Plaintiffs had standing, granted a preliminary injunction, and denied the motion to dismiss. Add.92. Defendants timely appealed pursuant to G.L. c.223, § 118. II.App.338-341. This Court allowed Defendants' application for direct review.

STATEMENT OF FACTS

A. Quincy's public-safety building

First settled in 1625, Quincy is a historic city full of public art. *See Public Art*, Historic Quincy, https://perma.cc/U7AJ-XAZ4. By City ordinance, certain construction projects must participate in a "Public Art & Place-Making Program," which requires owners either to contribute funding or provide on-site "artwork"—including "sculptures"—by "artists exhibiting the highest quality of skill and aesthetic principles." II.App.218.

Quincy recently constructed a new public-safety building to serve as headquarters for its fire and police departments. Consistent with the public-art ordinance, Quincy intends to include on the building's façade two statues—one of Florian, a third-century Roman soldier known for extinguishing fires, *see* II.App.210-216, and one of the Archangel Michael, a literary figure associated with protection against wrongdoers, *see* II.App.146.

Mayor Koch "made the decision" to commission these statues "while working with a local architect on the final design features." II.App.226. The statues were designed and created in Europe by the same sculptor who also created the statues of John Adams and John Hancock in Quincy's Hancock-Adams Common, *see id.*, and who has completed other

high-profile public-art commissions, including for the Dwight D. Eisenhower Memorial in Washington, D.C.[1]

B. Florian and Michael's secular significance

Mayor Koch chose Florian and Michael after "learn[ing] while serving as Mayor how much these symbols mean to" the "Police, Fire and public safety officials … who will occupy the building." II.App.225. As Mayor Koch explained, these figures are important not only to Quincy's first responders, but to "police and fire communities worldwide." *Id.*

As for Florian, municipalities across Massachusetts (including Quincy, *see* Fig. 1) and nationwide use the "Florian cross" to signify their fire departments. II.App.122-127. The "main meeting place for firefighters in Massachusetts," located in Dorchester, is called "Florian Hall." II.App.307. In Europe, "Austrian and German fire stations use 'Florian' as their official radio call sign for fire stations and engines." II.App.212. Firefighters around the world celebrate International Firefighters Day on May 4—the same day celebrated in some Christian traditions as "the feast day of St. Florian." II.App.131. And when firefighters are asked to

[1] *See* Dwight D. Eisenhower Memorial, Statues of the Memorial, Nat'l Park Service, https://perma.cc/2W4K-VKVK.

make the ultimate sacrifice, an oft-invoked poem invites them to "[r]est with St. Florian." II.App.153.

Fig. 1, II.App.124

As for Michael, many police officers have a "portrait of St. Michael" tattooed on their skin. II.App.138-142. Organizations in major cities acknowledge Michael's importance to police officers—for example, the Toronto Police Service's award for exemplary officers is "the St. Michael Award," II.App.160, and the Chicago substance-abuse treatment center for police officers is "Saint Michael's House," II.App.165. And Michael's importance extends to other professions whose members are called to risk their lives defending others—for example, Michael is "ubiquit[ous] in military circles," rendering public references to him "unremarkable to soldiers of all religions."[2]

[2] Maggie Phillips, *The Army's Favorite Saint*, Tablet Magazine (Aug. 30, 2021), https://perma.cc/L6PJ-LLXN.

Depictions of Florian and Michael have appeared at fire and police stations and on other government property throughout the country. Since 2020, a fire station in Venice, California, has featured a large mural of an armored Florian dowsing a fire, before a Florian cross (Fig. 2). II.App.81. And since 2010, the front lawn of the police department in Odessa, Texas, has featured a statue of "Saint Michael the Archangel" supporting "a fallen officer" (Fig. 3). II.App.116.

Fig. 2, II.App.81

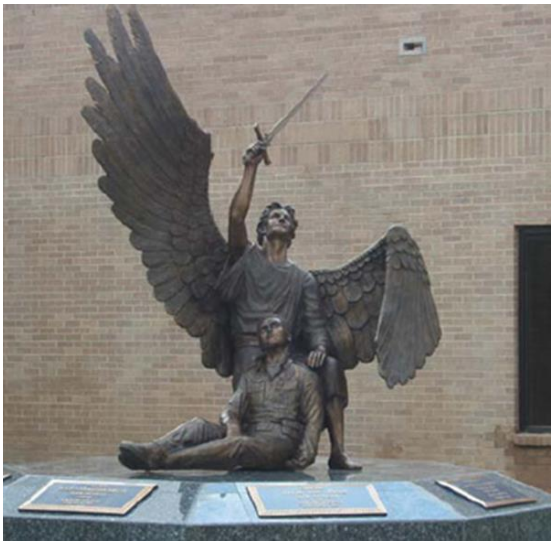

Fig. 3, II.App.116

A similar statue of Michael has been displayed in front of police stations in New York City and Bristol, Connecticut, after officers were killed in the line of duty. *See* II.App.195. The Pennsylvania Railroad War Memorial is a statue (Fig. 4) of "the Archangel Michael, angel of the Resurrection, lifting a lifeless soldier in his arms." II.App.110. And the crest of the *USS Michael Monsoor*—a Navy destroyer—is a "winged arm" holding

a sword, which the Navy describes as "a heraldic representation of St. Michael the Archangel." II.App.77; s*ee* Fig. 5 (depicted on the destroyer holding trident).

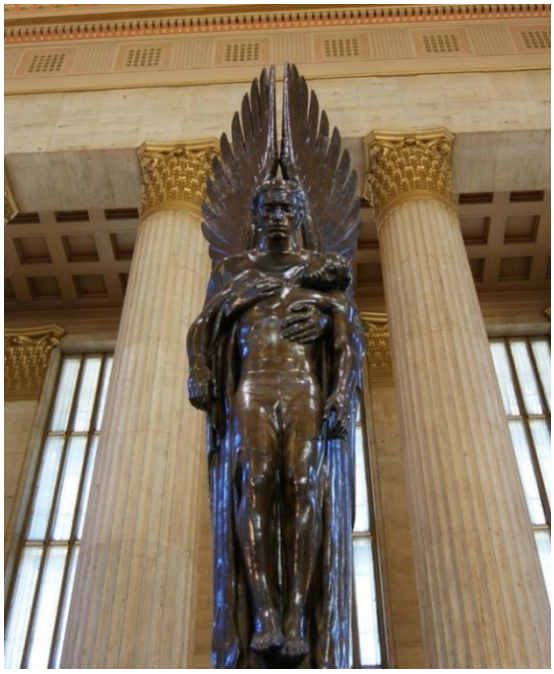

Fig. 4, II.App.110

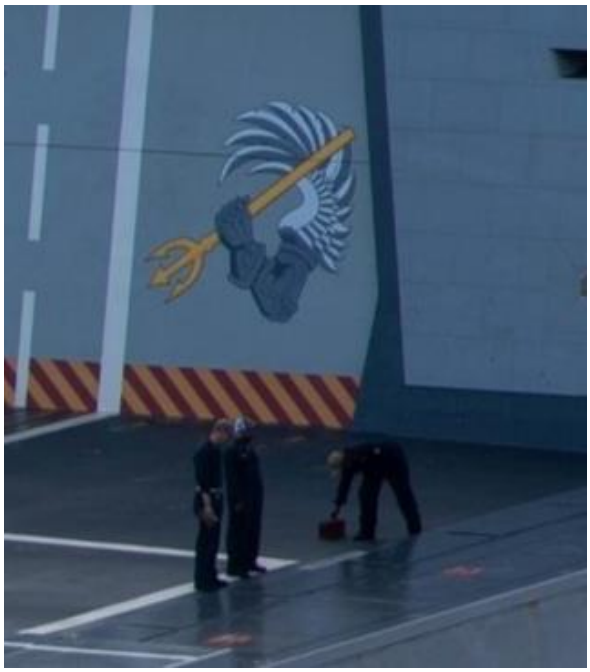

Fig. 5, **II.App.77**

Although Florian and Michael are considered saints by the Roman Catholic Church, Mayor Koch has testified that their "selection" "had nothing to do with Catholic sainthood." II.App.225. Rather, if these figures "did not have significance in the police and fire service, respectively," he "would not have selected them for installation." *Id.* The figures' "impact reaches way beyond the reach and influence of religious boundaries." II.App.210; *see also supra* n.2 ("nonbelievers share an affinity for the winged warrior [Michael] as a symbol of virtue and bravery"). And secular importance aside, these figures are revered across an array of faith

traditions, with Michael in particular represented in sacred scriptures of Jewish,[3] Muslim,[4] and various Christian[5] traditions alike.

Mayor Koch testified that he selected these statues to "honor, inspire, and encourage our First Responders," "boost morale," and "ensure [first responders'] lifesaving work would remain maximally effective." II.App.225-226. Leaders of Quincy's firefighters and police agree. The President of the Quincy Firefighters, Local 792, testified that "[t]he Proposed Statue of Florian is important to me and Quincy Fire because it depicts what we do every day, the virtues that are most important in our work: honor, courage, bravery." II.App.306. And the President of the Quincy Police Patrol Officers Association explained that "Michael the Archangel represents what we do and how we do it." II.App.310.

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[3] *E.g., Daniel* 12:1 ("מִיכָאֵל"). Michael, which means "who is like God?" in Hebrew, is also the subject of a long midrashic tradition, in which he is described as, among other things, a protector and advocate of the Jewish people. Joseph Jacobs, M. Seligsohn, & Mary W. Montgomery, "Michael," in The Jewish Encyclopedia 535-538 (1906).

[4] *Qur'an* 2:98 ("ميكائيل"). In Islamic tradition, "Michael is believed to be among those who 'opened Muhammad's breast' before his Night Journey (i.e., assisted in preparing Muhammad spiritually to receive revelation), and with [the angel] Gabriel will weigh the record of human deeds on the Day of Judgment." John L. Esposito, "Michael," in The Oxford Dictionary of Islam 200 (2003).

[5] *E.g., Revelation* 12:7-9 ("Μιχαήλ"). Michael is celebrated with a feast day across various Christian traditions, including Anglicanism, Eastern Orthodoxy, Lutheranism, and Roman Catholicism. *Michaelmas (September 29th): History, Meaning, and Relevance Today*, Christianity.com, https://perma.cc/Y85R-EFZV.

Quincy's proposed statues mirror how these figures have been depicted in Western art for centuries. The Florian statue (Fig. 6) features a figure dressed as a Roman soldier, pouring water from a pitcher onto a burning building. *Compare* I.App.38 *with* II.App.197 (ca. 1460 depiction of Florian in the Metropolitan Museum of Art). And the Michael statue (Fig. 7) features a figure with the wings of an angel, holding a shield and vanquishing a representation of evil in the form of a demon. *Compare* I.App.38 with II.App.204 (Renaissance-era depiction of Michael in the Louvre).

Fig. 6, **I.App.38**

Fig. 7, **I.App.38**

C. Other government displays of figures with religious significance

Quincy's interest in displaying inspirational statues of figures with religious significance to some-but-not-all citizens is not unique. Indeed, depictions of individuals revered as saints by the Catholic Church (and other traditions) are displayed in public spaces across Massachusetts, including a statue of Moses (ca. 1894) at the John Adams Courthouse (Fig. 8), of David (19th-century) at the Massachusetts State House, and of Pope John Paul II (ca. 1981) on Boston Common (Fig. 9). II.App.32-49.

Fig. 8, **II.App.33**

Fig. 9, **II.App.42**

Other examples abound throughout the state. II.App.30-51. In addition to Moses, the John Adams Courthouse also features a statue of "Religion" (ca. 1894), a woman holding "a large Bible and … large cross" and wearing "the coif of a nun." II.App.34. Above the Boston Public Library's "central door" sits the "head of Minerva, the Goddess of Wisdom" (ca. 1895). II.App.36. Plymouth features a statue "built to honor the passengers of the Mayflower," which features "the heroic figure of 'Faith' with her … left hand clutching the Bible" (ca. 1889). II.App.44. And other statues on public land in Massachusetts, dating as far back as 1868, depict Puritans (e.g., Fig. 10), Pilgrims, a Catholic archbishop, the Biblical parable of the Good Samaritan, and the Unitarian clergyman (Fig. 11) "[k]nown as the 'apostle of Unitarianism.'" II.App.39-51.

Fig. 10, **II.App.51**

Fig. 11, **II.App.40**

Nor is Massachusetts alone in displaying such imagery. Like the John Adams Courthouse, the U.S. Supreme Court features numerous statues of religious figures—including the Muslim prophet Muhammad, the Biblical king Solomon, the Roman goddess Juno, and Moses. II.App.53-58. And the U.S. Capitol's Statuary Hall, which displays statues chosen by each state to represent its history and culture, is full of symbols of religious significance. These include full-size statues of the Native American religious leader Po'Pay; the second president of the Church of Jesus Christ of Latter-day Saints, Brigham Young; and the Protestant evangelical preacher, Billy Graham, holding a Bible. II.App.63-64, 68. It also includes several Catholic saints, including statues of Father Junipero Serra (Fig. 12) and Father Damien of Molokai. II.App.61-62. Similarly, a relief portrait of King Louis IX of France ("Saint Louis") is displayed in the House Chamber of the U.S. Capitol and a statue of Saul of Tarsus ("Saint Paul"; Fig. 13) is displayed in the Library of Congress. II.App.69, 73.

Fig. 12, II.App.61

Fig. 13, II.App.69

Other prominent statues of historical figures who are also Catholic saints exist across the country. A "bronze statue of St. Clare" looks over Santa Clara, California. II.App.82. Statues of Joan of Arc stand on public land in New Orleans, Philadelphia, and Washington, D.C. (Fig. 14). II.App.79, 91, 109. The Mother Cabrini Memorial (Fig. 15), erected in 2020, sits in Battery Park in New York City. II.App.103. Francis of Assisi is depicted in St. Louis, St. Paul, and San Francisco. II.App.83, 94, 97. A monument to Mother Teresa stands in Garfield, New Jersey. II.App.100. The record discloses numerous other examples. *See* II.App.29-121.

Fig. 14, II.App.79

Fig. 15, II.App.103

D. Plaintiffs' objections and the decision below

Plaintiffs—a group of individual Quincy residents—filed this lawsuit in May 2025. I.App.23. Plaintiffs assert they anticipate seeing the statues while driving by the public-safety building or if they someday decide to enter it. I.App.24-32. No Plaintiff works in the public-safety building or otherwise has regular cause to visit it, and Plaintiffs do not allege that Quincy has treated them (or anyone) differently based on religion. Their claim is that the statues "go against [their] beliefs," I.App.26, "send[] an exclusionary message to non-Catholics," I.App.25, and "make[them] feel excluded." *id.*

In granting Plaintiffs' motion for preliminary injunction and denying Defendants' motion to dismiss, the Superior Court first found that Plaintiffs had standing under the ten-taxpayer statute, G.L. c.40, § 53, and the declaratory-judgment statute, G.L. c.231A, § 1. Add.73-77. On the merits, the court determined that this Court's 1979 decision in *Colo* required it to evaluate an art. 3 claim under the "*Lemon* Test"—a test "articulated by the Supreme Court" in 1971 to decide federal Establishment Clause challenges, which the Supreme Court itself "explicitly rejected" in 2022. Add.78-79.

The court did not contest Defendants' showing that "historically, displaying religious symbols on government property was commonplace … throughout the Commonwealth." Add.84. Nonetheless, applying *Lemon*, the court held that "Plaintiffs are likely to succeed on the merits" because "the religious significance of the statues depicting two Catholic patron saints is essentially undisputed." Add.87. The court construed Plaintiffs' motion as "seeking an order enjoining Defendants from installing the statues until the Court issues a final ruling on the merits," and allowed it. Add.67.[6]

[6] Since the Superior Court's order, two of the original fifteen Plaintiffs have moved from Quincy and have either voluntarily dismissed their claim or indicated that they will do so once the Superior Court's stay pending this appeal has been lifted. I.App.21; II.App.420.

STANDARD OF REVIEW

This Court reviews a denial of a motion to dismiss de novo. *A.L. Prime Energy Consultant v. MBTA*, 479 Mass. 419, 424 (2018). A motion to dismiss should be granted for "failure to state a claim" where claimants fail to "plausibly allege an entitlement to relief above the speculative level" or "lack standing." *Cubberley v. Com. Ins. Co.*, 495 Mass. 289, 293-294 (2025).

This Court reviews allowance of a preliminary-injunction motion for errors of law or abuses of discretion. *Mass. Port Auth. v. Turo Inc.*, 487 Mass. 235, 239 (2021). A preliminary injunction is appropriate only if the claimant (1) "is likely to succeed on the merits;" (2) "irreparable harm will result from a denial of the injunction;" and (3) "the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party." *Id.*

SUMMARY OF ARGUMENT

Plaintiffs' claim should be dismissed. At minimum, the preliminary injunction must be vacated.

I. First, Plaintiffs lack standing to seek the injunction they obtained below. The ten-taxpayer statute allows plaintiffs to stop expenditures that violate spending laws—but art. 3 is not a spending law, and installation of the statues is not itself an expenditure. And Plaintiffs cannot seek a declaratory judgment because their only injury—concern they may

someday glimpse public art they find objectionable—is fatally indirect, speculative, and generalized.

II. Plaintiffs' claim also fails on the merits. This case involves a provision of the Massachusetts Declaration of Rights, which this Court interprets according to its own text, history, and purpose. Those considerations show that art. 3 prohibits unequal legal treatment of religious sects and denominations—not mere government expression claimed to have religious meaning.

Plaintiffs' request that their claim be evaluated under the federal "*Lemon* Test" should be rejected. That test does not even properly interpret the federal Establishment Clause, much less art. 3—which is why the U.S. Supreme Court, which originally articulated the *Lemon* test, has now formally abrogated it.

III. In any event, even under *Lemon*, the statues would still stand, since they serve the secular purpose and effect of honoring and inspiring first responders, do not excessively entangle the government with religion, and are not unlawfully divisive. Indeed, Plaintiffs' own principal case—*Colo*—requires this result.

IV. Not only does federal law not support excluding the statues; it forbids applications of state law that require hostility to religion, like the application of art. 3 Plaintiffs urge here. At minimum, the Court should interpret art. 3 to avoid these serious federal constitutional questions and permit the statues.

ARGUMENT

I. Plaintiffs lack standing.

At the outset, Plaintiffs' claim fails because they lack standing to enjoin installation of the statues. The Court "must take note of lack of jurisdiction whenever it appears," and "cannot proceed if jurisdiction is lacking." *Litton Bus. Sys., Inc. v. Comm'r of Revenue*, 383 Mass. 619, 622 (1981).

To have individual standing, "a litigant must show that the challenged action has caused the litigant injury." *Sullivan v. Chief Just. for Admin. & Mgmt. of Trial Ct.*, 448 Mass. 15, 21 (2006). Further, "injury alone is not enough; a plaintiff must allege a breach of duty owed to [him] by the public defendant," and "[i]njuries that are speculative, remote, and indirect are insufficient to confer standing." *Id.* "Not every person whose interests might conceivably be adversely affected is entitled to [judicial] review"; "[t]he complained-of injury must be a direct and ascertainable consequence of the challenged action." *Id.* Additionally, when suing under the Massachusetts Constitution, plaintiffs must show "an injury within the area of concern of the … constitutional guarantee under which the injurious action has occurred." *Doe v. Sec'y of Educ.*, 479 Mass. 375, 386 (2018). And "there is no general equity jurisdiction to entertain a suit by individual taxpayers to restrain cities and towns" from performing allegedly wrongful acts, so Plaintiffs "must show a statutory foundation for standing." *Pratt v. City of Bos.*, 396 Mass. 37, 42 (1985).

A. The ten-taxpayer statute does not provide standing.

Plaintiffs claim the ten-taxpayer statute, G.L. c.40, § 53, provides standing. *See* II.App.317. But that statute only provides a basis "to enforce laws relating to the expenditure of tax money by the local government." *Caplan*, 479 Mass. at 75 (quoting *LeClair v. Norwell,* 430 Mass. 328, 332 (1999)). That is, the ten-taxpayer statute allows a private party to "bring[] suit to enforce *a spending statute*." *Edwards v. City of Bos.*, 408 Mass. 643, 646-647 (1990) (emphasis added). Article 3—unlike, for example, a statute requiring competitive bidding before a city hires a contractor—is not a "spending statute" "designed to prevent the abuse of public funds" enforceable under G.L. c.40, § 53. *Id.* at 644-646.

Further, Plaintiffs have not shown that the ten-taxpayer statute supports the relief they obtained below—an injunction against "installing the statues." II.App.336. A suit to "prevent the expenditure of municipal funds" is invalid "if the tax upon the petitioners is not thereby increased." *Richards v. Treasurer & Receiver Gen.*, 319 Mass. 672, 675 (1946). Plaintiffs here have not alleged or submitted any evidence that their tax burden will be increased simply by installing the statutes. And the Court could not infer it, since there are numerous ways a city could install statues without having that effect. *See, e.g.*, *Howard v. City of Chicopee*, 299 Mass. 115, 120 (1938) (no taxpayer standing where city "suffered no loss" because challenged expenditures were reimbursed). Because "[t]here is no concrete allegation" that the challenged "expenditures, if any, will

have a negative impact on the pecuniary interests of the taxpayers," Plaintiffs lack standing. *Quigley v. City of Newton*, 90 Mass. App. Ct. 1121 (2016) (App. Ct. R. 1:28 Order) (Add.95).

B. Plaintiffs lack individual standing.

Plaintiffs also cannot point to any basis for individual standing. The declaratory-judgment statute, G.L. c.231A, § 2, is not "an independent statutory basis for standing." *Pratt*, 396 Mass. at 43. And Plaintiffs' alleged injuries are in any event fatally "speculative, remote, and indirect"—foreclosing any individual-standing theory. *Marchese v. Bos. Redevelopment Auth.*, 483 Mass. 149, 162 (2019). Moreover, since Plaintiffs lack injury, they certainly cannot show irreparable harm or that the balance of harms favors them.

Plaintiffs complain only of disagreement with Quincy's decision to display the statues and the way that decision makes them feel. Plaintiff Fitzmaurice, for example, alleges that she finds the Michael imagery "deeply offensive," and that the statues "violate" her "principle[s]." I.App.297. Plaintiff Matthew Valencius states that if the statutes were erected, they would "cause [him] negative concern." I.App.311. Every other Plaintiffs' allegations of harm are similarly non-concrete. *See, e.g.*, I.App.307 (statues "will signal" that "girls from several different faiths" are "not fully part of the community"); I.App.314 (statues "violate my spiritual commitment to being a peacemaker"); I.App.317 ("The statues make me feel like I don't count … ."); I.App.323 ("I believe [the statues]

will alienate Quincy residents … ."); I.App.336 (statues "do not reflect what Catholicism means to me"); I.App.340 ("statues make me feel like the building" is "not for" "non-Catholic[s]"). But such feelings of offense and perceived exclusion are not legal injuries, regardless of their "intensity" or "fervor." *Pratt*, 396 Mass. at 42 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State*, 454 U.S. 464, 486 (1982)).

Indeed, other courts have rejected precisely this type of offended-observer standing, determining that the "psychological consequence presumably produced by observation of conduct with which one disagrees" is not an injury-in-fact. *Valley Forge*, 454 U.S. at 485. This is because "[i]f individuals and groups could invoke the authority of a federal court to forbid what they dislike for no more reason than they dislike it," courts risk "infringing on powers committed to other branches of government." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 80 (2019) (Gorsuch, J., concurring).

Plaintiffs' alleged injuries are likewise too speculative and remote. "Mere generalizations and fears are not sufficient to establish aggrievement." *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 324 (1998). Were Quincy to deny services based on religion, or otherwise *treat* them as "second-class," I.App.340, Plaintiffs might have a cognizable injury. But merely "feel[ing] uncomfortable" with the displays and "fear[ing]" such (unlikely) results is too far removed from any actual harm to support a lawsuit.

I.App.27, 31. Strikingly, Plaintiffs themselves cannot articulate how the statues will lead to any concrete harm—asserting, for example, a "fear" that the statues will "*somehow* … exacerbate the trend in rising antisemitism." I.App.326 (emphasis added).

Further, Plaintiffs' allegations that they might someday catch a glimpse of the statues when visiting the public-safety building or driving past it in their cars, *see* I.App.24-32, do not amount to "a breach of duty owed to [Plaintiffs] by the public defendant." *Sullivan*, 448 Mass. at 21. Indeed, no Plaintiff alleges that he or she will regularly visit the public-safety building; they say only that they "*may* need to enter [it] in the future," for various speculative reasons. I.App.317 (emphasis added). Eight Plaintiffs claim they may visit the public-safety building to "dispose of prescription medications." I.App.307; *see also* I.App.298, 317, 320, 323, 333, 336, 344. Speculation aside, there are multiple prescription drop-off locations in Quincy, including one immediately around the corner from the public-safety building. Mass.gov, *Find a Waste Medication Kiosk*, https://perma.cc/F88N-Q3ZM. Some Plaintiffs describe prior visits to Quincy's police department to, *e.g.*, "turn in a pair of lost keys … found at the beach" or return "Christmas shopping" "accidentally put … in [Plaintiff's] car." I.App.344, 336; *see* I.App.333. But the remote possibility that a Plaintiff may need to enter the building sometime in the future, or that such sporadic contacts will recur, is far too speculative to support

standing, even if (counterfactually) entering the building were a cognizable harm.

Plaintiffs likewise fall outside art. 3's "area of concern," *Enos v. Sec'y of Env't Affs.*, 432 Mass. 132, 135 (2000), because, as explained *infra*, the provision has nothing to say about passive government displays. Plaintiffs' offense doesn't implicate the "values that the [provision] was designed to protect"; rather, their alleged harm is in no way "distinct from that suffered by the public at large." *Kelley v. Cambridge Hist. Comm'n*, 84 Mass. App. Ct. 166, 180-181 (2013).

II. Applying art. 3 according to its own terms, Plaintiffs' claim fails as a matter of law.

Even if Plaintiffs had standing, their claim also fails on the merits. This Court interprets Massachusetts constitutional provisions according to their own "text, history, and purpose." *Barron v. Kolenda*, 491 Mass. 408, 416 (2023). Applying that methodology to art. 3, Plaintiffs' claim fails as a matter of law—so they have no likelihood of success on the merits, and their claim should be dismissed.

A. Plaintiffs' claim turns on the meaning of art. 3 itself.

Plaintiffs frame their challenge around "the *Lemon* Test"—a test articulated by the Supreme Court in 1971 for interpreting the federal Establishment Clause. *See* I.App.58 (discussing *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). But Plaintiffs did not sue under the Establishment Clause; they sued solely under art. 3. "The Constitution of the

Commonwealth … is independent of the Constitution of the United States." *Commonwealth v. Upton*, 394 Mass. 363, 372 (1985). Thus, when this Court faces a state constitutional claim, it is "not bound by Federal decisions," *Corning Glass Works v. Ann & Hope, Inc. of Danvers*, 363 Mass. 409, 416 (1973); rather, it has a "responsibility" to interpret the Massachusetts Constitution as "text, precedent, and principle seem to us to require." *Planned Parenthood League of Mass., Inc. v. Att'y Gen.*, 424 Mass. 586, 590 (1997).

This would be true even if art. 3 "replicate[d] the words used in" the federal constitution. *Commonwealth v. Gonsalves*, 429 Mass. 658, 667-668 (1999). So this Court's duty to independently assess art. 3 is all the more compelling here, where reflexively importing federal precedent would "force a parallelism with the Federal Constitution" far beyond what art. 3's "terms" suggest. *Batchelder v. Allied Stores Int'l, Inc.*, 388 Mass. 83, 88-89 (1983); *Commonwealth v. Depina*, 456 Mass. 238, 252 n.12 (2010) (disagreeing that U.S. Supreme Court's Second Amendment interpretation influences interpretation of art. 17).

Indeed, nothing in art. 3 suggests its application must track the federal Establishment Clause, which was adopted eleven years later. While the Establishment Clause prohibits "an establishment of religion," art. 3 originally "*mandated*" an at least "quasi-religious establishment" of the Congregational Church.[7] *Caplan*, 479 Mass. at 76 (emphasis added). And

[7] Before incorporation in 1868, the federal Establishment Clause

when art. 3 was amended in 1833—after decades of familiarity with the Establishment Clause—its drafters and ratifiers nonetheless continued using a *different* term to describe what shall not be "established by law" in Massachusetts: the "subordination of any one sect or denomination to another." Art. 3, as amended by art. 11.

Other provisions of art. 3—like its recognition that "the public worship of God and instructions in piety, religion, and morality, promote the happiness of a people and the security of a republican government," *id.*—have no textual analogue in the Establishment Clause. In short, art. 3 has its own text and "rich, distinct history to draw on," which demonstrate that it addressed concerns particular to Massachusetts. Scott L. Kafker, *A Most Interesting Time for State Constitutional Law*, 64 No. 2 Judges' J. 16, 18 (Spring 2025); *see also infra* Part II.B.2.

B. Under art. 3's text, history, and purpose, Quincy's statues are permissible.

Giving art. 3 the meaning indicated by its own text, history, and purpose, this case is straightforward: art. 3 does not prohibit Quincy from honoring its first responders in the way challenged here.

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applied only to the federal government and was understood to prohibit "any federal interference with state establishments." Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 75-76 (2023). About half the states still had established churches when the First Amendment was ratified. *Id.*

1. Article 3's text

Article 3 provides that "all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law." Art. 3, as amended by Am. Art. 11. "[B]egin[ning] our analysis with the text," *Raftery v. State Bd. of Retirement*, 496 Mass. 402, 409 (2025), Quincy's statues plainly do not violate it.

The statues do not render any sect or denomination unequally protected by the law. And they do not "establish[] by law" the "subordination" of anyone or anything. Indeed, they do not change any citizen's legal rights or duties in any way or otherwise affect the degree to which "the law" "protect[s]" anyone; they are simply passive statues adorning a building.

This Court's longstanding reading of art. 3 confirms this result. In *Commonwealth v. Has*, 122 Mass. 40 (1877), for example, this Court upheld a Sunday closing law against a claim by a Saturday-sabbath observer that the law was a "subordination" of his religion under art. 3. *Id.* at 41-42. This Court rejected that argument because the law "imposes upon no one any religious ceremony or attendance upon any form of worship, and any one, who deems another day more suitable for rest or worship, may devote that day to the religious observance which he deems appropriate." *Id.* at 42.

The Superior Court offered no plausible alternative reading of art. 3's text. Instead, the court emphasized that Plaintiffs have alleged "*feelings* of concern or alienation" and that they may "*question* whether they will be treated equally." Add.85 (emphases added). But such feelings and apprehensions—aside from being unjustified—do not amount to a denial of equal "protection of the law" or subordination "as established by law." This Court already reached a virtually identical conclusion in *Doe v. Acton-Boxborough Reg'l Sch. Dist.*, 468 Mass. 64 (2014), unanimously rejecting the notion that a plaintiff's "feeling stigmatized and excluded" because of governmental use of religious words, and fearing "potential" mistreatment in the future, was "cognizable" as a denial of "equal protection." *Id.* at 79-81 (rejecting challenge to "under God" in the Pledge of Allegiance).[8]

If Quincy first responders were to someday *in fact* provide unequal protection to Plaintiffs based on religion, then art. 3 might well be triggered. But Plaintiffs allege nothing of the sort, and Quincy would not tolerate it. More importantly, the vast gulf between that speculative hypothetical and the facts here only confirms the point: art. 3's plain text is not implicated by the statues alone.

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[8] *Doe* involved a claim under the Massachusetts equal-rights amendment, but its holding that "[c]lassification, and differing treatment based on a classification, are essential components of any equal protection claim," 468 Mass. at 75, applies by its terms here, given the equal-protection language of art. 3.

2. Article 3's history

History points the same way. Article 3 has a "distinct, identifiable history" that is "uniquely informative in this case." *Barron*, 491 Mass. at 416. This history shows that the current version of art. 3 was enacted to solve specific problems created by the Constitution's original system of official support for the Congregational Church. Indeed, far from prohibiting statues like those here, history shows that art. 3 has long coexisted with public displays across Massachusetts featuring imagery with religious roots.

First, art. 3's history demonstrates that the language at issue here was enacted to address specific problems—and those problems did not include religious imagery in public displays.

As originally enacted in 1780, art. 3 imposed a system of involuntary tax support for "'public Protestant teachers,'" which "essentially meant support of the Congregational Church." *Caplan*, 479 Mass. at 76. This gave rise to what this Court has called "decades of 'lawsuits, bad feeling, and petty persecution,'" *id.* at 76-77, as members of dissenting groups sought exemptions and litigated over the details of administering the tax system. *See generally* John D. Cushing, *Notes on Disestablishment in Massachusetts*, *1780-1833*, 26 Wm. & Mary Q. 169, 173-190 (1969). The 1833 amendment to art. 3 was enacted to "end[]" this regime of "religious assessments." *Caplan*, 479 Mass. at 76-77; *see also Colo*, 378 Mass. at 556.

The provision creating this tax system—deleted in the 1833 amendment—provides a clear example of what it means for the "subordination of … one sect or denomination to another" to be "established by law." Under the 1780 version, municipalities were required to "make suitable provision, at their own expense, … for the support and maintenance of Protestant teachers of piety, religion and morality," whose "instructions" citizens could be "enjoin[ed]" to attend. A "subject" could avoid these taxes only by directing his "moneys" to "teachers of his own religious sect or denomination," if there were such teachers "on whose instructions he attends." In other words, "by law," other denominations were subordinated to the "Protestant" denomination of the municipality's choice, since ministers of that denomination were entitled to receive public tax money by default.

Other issues litigated prior to 1833 provide additional examples of subordination and denials of equal protection. These include challenges by religious groups seeking to legally ordain ministers according to their own customs instead of the Congregational Church's, Cushing, *supra* p.39, at 180-183; to allow congregations to control church property instead of the parish political body constituting the officially supported church, *see Baker v. Fales*, 16 Mass. 488 (1820); and to allow greater voluntary religious attendance and association outside the officially supported church, *see Holbrook v. Holbrook*, 1 Pick. 248 (1822).

The legislature addressed these issues, often by explicitly referring to art. 3's non-subordination and equal-protection clauses. *See* Cushing, *supra* p.39, at 185-186 (Act of 1811 expanded religious societies that could receive assessments and allowed ministers to receive support without adhering to Congregational Church's platform); *see also An Act respecting Public Worship and Religious Freedom*, 1824 Mass. Acts 347-348, c.106 (Feb. 16, 1824) (allowing greater voluntary attendance). And the people ratified a constitutional amendment abolishing religious tests for state public office in 1821. Mass. Const. Am. Arts. 6 and 7. These actions confirm what was understood to constitute legal subordination and denial of equal protection when the 1833 Amendment was ratified—and they corroborate those terms' ordinary meaning.

Meanwhile, there is no evidence that anyone who ratified art. 3 or its 1833 amendment understood it to forbid governmental use of symbolism with religious associations on public property. To the contrary, the same Constitution that includes art. 3 is replete with ceremonial religious language, which was "passed without controversy" in 1780 and retained in 1833. John Witte, Jr., *A Most Mild and Equitable Establishment of Religion: John Adams and the Massachusetts Experiment*, 41 J. Church & St. 213, 238-241 (1999).

For example, the preamble, drafted by John Adams, acknowledges the "goodness of the great Legislator of the universe," "His providence," and "His direction" in allowing the people to "form[] a new constitution of civil

government, for ourselves and posterity." Mass. Const. preamble. And art. 2 of the Declaration of Rights, also drafted by Adams, explains that "[i]t is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe." Likewise, art. 3 itself commends "the public worship of God and instructions in piety, religion, and morality" for "promot[ing] the happiness and prosperity of a people and the security of a republican government." All these provisions would seem to trigger Plaintiffs' theory of subordination-by-symbolism—but all, of course, remain part of the Constitution today.

Second, even setting other provisions of the Constitution aside, Plaintiffs' claims are at odds with the robust history of public display of other symbols with religious significance. Such symbols have long stood on public property throughout Massachusetts, without any indication their constitutionality has been questioned under art. 3.

As explained, *supra* pp.21-22, this Court does not have to look far for examples, given the statues of Moses and "Religion" in its own courthouse. Other statues of religious figures (including other Catholic saints) enrich some of the most prominent public spaces in this Commonwealth, like the State House (Quaker martyr Mary Dyer, II.App.31), Boston Public Library (Minerva; *The Triumph of Religion*, II.App.36, 38), and Boston Common (Pope John Paul II, II.App.42); and constitute some of the most well-known symbols of state history (*The Puritan*; the National

Monument to the Forefathers, II.App.44, 51). Indeed, for more than two centuries, Boston's motto—which appears on its flag and seal and flies above government property—has proclaimed in Latin, "God be with us as He was with our fathers." *Symbols of the City of Boston*, Boston.gov, https://perma.cc/8SDD-56YH.

Given this wide array of religiously resonant symbolism, Plaintiffs' and the Superior Court's approach would require an iconoclastic stripping-down of public spaces across the Commonwealth. Nor did the Superior Court disavow that result, instead chalking up this robust history to simply "the forebearers … fail[ing] to uphold … the promise of Article 3." Add.84-85. No textual or historical evidence supports the notion that every prior generation has so thoroughly misunderstood art. 3.

3. Article 3's purpose

Nor does art. 3's purpose require outlawing Quincy's statues. The Superior Court claimed art. 3 was meant to "dr[aw] a clear line of separation between the state and religion." Add.84. But this Court has squarely rejected that notion, describing "the 'hermetic separation' of church and State" as "an impossibility which the Constitution has never required." *Colo*, 378 Mass. at 560.

Rather, the purpose of art. 3 as amended was "ending direct public support of religion," *id.* at 556—like the 1780 Constitution's targeted assessment regime. Public art on a public building is not that.

Moreover, this Court has already explained that "[t]he complete obliteration of all vestiges of religious tradition from our public life is unnecessary to carry out the goals of nonestablishment and religious freedom." *Id.* at 561. Quite the contrary. Given that governments are free to display all sorts of imagery in public spaces, to uniquely disable them from displaying symbols simply because the symbols have religious meaning to some would "exhibit a hostility toward religion that has no place in our Establishment Clause traditions." *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring). It would also undercut "a trait of character essential to 'a tolerant citizenry'"—"learning how to tolerate speech or prayer of all kinds." *Kennedy v. Bremerton Sch. Dist.,* 597 U.S. 507, 538 (2022).

This is why, while the merits (or lack thereof) of establishing religion were hotly disputed in the Nation's early days, "[n]o one at the time of the founding is recorded as arguing that the use of religious symbols in public contexts was a form of religious establishment." *Shurtleff v. City of Boston*, 596 U.S. 243, 287 (2022) (Gorsuch, J., concurring). Such symbols were "commonplace" for both "the founding generation" and "the generation that ratified the Fourteenth Amendment." *Am. Legion*, 588 U.S. at 76 (Thomas, J., concurring). And they were never thought to be among the "hallmarks of religious establishments the framers sought to prohibit." *Kennedy*, 597 U.S. at 537 & n. 5; *see also Lynch v. Donnelly*, 465 U.S. 668, 674-675 (1984) ("There is an unbroken history of official

acknowledgment by all three branches of government of the role of religion in American life from at least 1789.").

Indeed, the tradition of governmental openness to religious imagery stretches back to the dawn of American independence. On July 4, 1776, the Continental Congress tasked a committee comprising John Adams, Benjamin Franklin, and Thomas Jefferson with designing the new nation's seal. James H. Hutson, *Religion and the Founding of the American Republic* 50-51 (1998). The committee chose a scene from the Bible—Moses leading the Jewish people across the Red Sea. *Id.*

The national seal ultimately took a different form. But both that seal and many other "State and municipal seals and flags throughout our Republic [now] include religious symbols or mottos"—like Boston's. *Freedom From Religion Found., Inc. v. County of Lehigh*, 933 F.3d 275, 284 (3d Cir. 2019); *see also Shurtleff*, 596 U.S. at 287 n.11 (Gorsuch, J., concurring).

Other actions by John Adams are similarly instructive. For example, as President, he issued a proclamation declaring a "day of Solemn Humiliation, Fasting and Prayer," which stated that "the safety and prosperity of nations ultimately and essentially depend on the protection and the blessing of Almighty God" and sought prayers "beseeching [God], … through the Redeemer of the World, freely to remit all our Offences, and to incline us, by his Holy Spirit, to … sincere Repentance and Reformation." President John Adams, Proclamation Proclaiming a Fast-

Day (Mar. 23, 1798), https://perma.cc/CFT3-NVG2; *see also* President John Adams, Fast Day Proclamation (Mar. 6, 1799), https://perma.cc/ZZ6U-DPBA.

And longstanding tradition includes even more ubiquitous governmental religious symbolism—for example, "In God We Trust" on currency, *Lynch*, 465 U.S. at 676; "in the year of our Lord" and "so help me God" in official documents and legal proceedings, *Callahan*, 401 Mass. at 638; and Massachusetts city names like Salem (*Genesis* 14:18), Goshen (*Genesis* 45:10), Rehoboth (*Genesis* 26:22), and Sharon (*1 Chronicles* 5:16). *See also Am. Legion*, 588 U.S. at 60 (other city names).

Most pertinently here, the tradition of governmental religious expression also includes "graphic manifestations" like statues—including the statues of religious figures that appear on public property not only in Massachusetts but across the Nation. *Supra* pp.21-25; II.App.30-121. As explained above, numerous historical figures who are also Catholic saints appear on government property across the country—like Moses at the U.S. Supreme Court, Father Damien in the U.S. Capitol, and St. Paul in the Library of Congress, II.App.54, 62, 69, or Mother Cabrini in New York and St. Clare in California, II.App.82, 103. And it specifically includes depictions of the figures at issue here—Michael and Florian—from a fire department in California to a Navy destroyer. *See supra* pp.17-18.

Quincy's planned statues—to the extent they have religious content at all—are just another example. Thus, even construing art. 3's purpose as

forbidding any form of religious establishment, it would not foreclose Quincy's statues.

C. The Court should decline to resurrect *Lemon* or otherwise override art. 3's plain meaning.

Rather than engage seriously with art. 3, the Superior Court claimed it was bound by *Colo* to apply "the *Lemon* Test." Add.80. Under that test, government action was held to violate the Establishment Clause if it (1) lacked a "secular legislative purpose"; (2) had a "principal or primary effect" that either "advance[d]" or "inhibit[ed] religion"; or (3) "foster[ed] 'an excessive government entanglement with religion.'" *Lemon*, 403 U.S. at 612-613.

But *Colo* merely "f[ound] support" for its "conclusion" from *Lemon*'s "guidelines" and expressly refused to apply them as "mechanistic 'tests.'" 378 Mass. at 558. *Colo* insisted that "[i]n reaching a conclusion, we must" evaluate the challenged practice "in relation to the purposes and history of the governing constitutional amendments." *Id.* at 554. That reflects the art. 3-focused analysis Quincy urges here.

In any event, even if *Colo* had "adopt[ed] the [Supreme] Court's reasoning," this Court nonetheless can "refine" its State constitutional "jurisprudence in appropriate circumstances." *Raftery*, 496 Mass. at 408. Such circumstances are present here.

For one thing, the Supreme Court itself "long ago abandoned *Lemon*." *Kennedy*, 597 U.S. at 534; *see also Groff v. DeJoy*, 600 U.S. 447, 460 (2023)

(*Lemon* "abrogated"). Moreover, this Court now has before it a vigorous presentation of art. 3's own meaning, allowing it to assess that provision without "survey[ing] … contested Federal case law." *Barron*, 491 Mass. at 420. The Court should do exactly that: apply the provision the Commonwealth actually adopted, not graft in dead-letter federal caselaw lacking any grounding in the Declaration of Rights itself. *Supra* Part II.B.

Further, the reasons the Supreme Court abandoned *Lemon* counsel strongly against resurrecting it in Massachusetts. First, the *Lemon* test was "atextual" and "ahistorical." *Kennedy*, 597 U.S. at 523. Its concepts—"purpose," "effect," "entanglement"—appear nowhere in the First Amendment's text. Meanwhile, the concept that *is* core to the Establishment Clause's text—"an establishment of religion"—plays no role in the *Lemon* test at all.

Yet that term's meaning is hardly a mystery. *See, e.g.*, Chapman & McConnell, *supra* n.7, at 10 ("When [the Establishment Clause] w[as] added to the Constitution, … virtually every American knew from experience what those words meant."). And *Lemon*'s mismatch between test and text is only amplified when comparing *Lemon* with the even more specific language of art. 3.

Second, *Lemon*'s vague standards "invited chaos" in practice, leading "to 'differing results' in materially identical cases, and creat[ing] a 'minefield' for legislators." *Kennedy*, 597 U.S. at 534. That is particularly so in display cases like this one, where courts often attempted to apply *Lemon*

by discerning the display's "message." II.App.327. But "it frequently is not possible to identify a single 'message' that is conveyed by an object or structure." *Pleasant Grove City v. Summum*, 555 U.S. 460, 476 (2009). "[A] monument may be intended to be interpreted, and may in fact be interpreted by different observers, in a variety of ways." *Id.* at 474; *see also Am. Legion*, 588 U.S. at 38, 57 ("the cross has long been a preeminent Christian symbol," but it also is "closely linked to" World War I).

Plaintiffs' contentions below illustrate the problem. For example, when asked why a Catholic priest cloaked in religious garb could be depicted in a statue for losing his life while ministering to first responders on 9/11, but not Florian—who represents similar values to the same community—Plaintiffs answered that the priest "obviously was part of … , you know, [an] absolutely traumatic and transformational event for the Firefighting community." II.App.354. Such *ad hoc* line-drawing offers little guidance to courts or government officials—but is endemic to *Lemon*.

Third, *Lemon* all too often led to religious hostility. Encouraged by *Lemon*'s vague prohibition on religious "advancement," parties who disliked religiously resonant symbols would seek to "compel the government to purge [them] from the public square." *Kennedy*, 597 U.S. at 535. Troublingly, this result was perhaps disproportionately harmful to religious minorities—whose symbols are less familiar and thus may be perceived as more threatening by members of majorities. *See Amicus* Letter of Jewish Coalition for Religious Liberty at 3-4, *Fitzmaurice v. City of Quincy*,

DAR-30701 (Jan. 9, 2026); *see also, e.g.*, *Hilsenrath v. Sch. Dist. of the Chathams*, 136 F.4th 484, 487 (3d Cir. 2025) (*Lemon*-based challenge to videos about Islam, rejected under post-*Lemon* historical approach).

An ahistorical, atextual, and indeterminate test is no more suitable for Massachusetts than for federal law. And to the extent this Court's art. 3 jurisprudence ever found guidance in the *Lemon* criteria, it did so only because they were then "the criteria which have been established by the United States Supreme Court for judging claims arising under the First Amendment," *Colo*, 378 Mass. at 558—which is no longer true. This Court should therefore reject the *Lemon* test as a matter of Massachusetts law. *See, e.g.*, *New England Tel. & Tel. Co. v. Dep't of Pub. Utils.*, 331 Mass. 604, 614 (1954) (even where federal Constitution is analogous, the Supreme Court's interpretation is "of only persuasive value as to our State Constitution").

Aside from *Lemon*, the Superior Court also asserted it "would not interpret Article 3 with only reference to historical practices and understandings," since "[t]o do so would perpetuate the petty bigotries of the past." II.App.328-329 (citing *Kligler v. Attorney General*, 491 Mass. 38, 61 (2022)). Instead, the court said that but for *Lemon*, it would take a "more comprehensive approach" in applying art. 3, using "our modern day understanding to draw a constitutional line of what constitutes impermissible governmental promotion of religion." *Id.*

But *Kligler* does not authorize ignoring what a constitutional provision actually says in favor of what a "modern day understanding" (of unspecified derivation) would prefer. For one thing, *Kligler* involved the methodology for determining *unwritten* substantive-due-process rights—an inherently non-textual enterprise. 491 Mass. at 40, 55-56.

For another, *Kligler itself* relied heavily on history. *Kligler* determined there was no due-process right to physician-assisted suicide based largely on "American society['s]" "historical" and "long-standing opposition to suicide," contemplating departing from history only if doing so was supported by "modern precedent" or necessary to avoid "perpetuat[ing] … invidious discrimination." *Id.* at 58, 62-70. Here, Plaintiffs cite no Massachusetts precedent—modern or otherwise—suggesting that passive displays with religious significance to some citizens are forbidden by art. 3. And such displays have coexisted with a culture of rich religious pluralism in Massachusetts for many years. Indeed, if any "invidious discrimination" were somehow to result from such a display, *id.* at 58, art. 3 by its terms would emphatically forbid it. But nothing like that has even been alleged here.

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Plaintiffs cannot show, as a matter of law, that the installation of two passive statues on a public building will deny any religious sect or denomination equal protection or legally subordinate any sect or

denomination to another. Accordingly, under the text, history, and purpose of art. 3, their claim should be dismissed.

III. Even under the *Lemon* test, Plaintiffs have at minimum failed to show a likelihood of success.

Even if this Court were to apply *Lemon*, however, the bottom line remains: art. 3 does not prohibit Quincy's planned statues. *Colo* invoked the three *Lemon* factors listed above—(1) purpose, (2) effect, and (3) entanglement. 378 Mass. at 558. It then cited another it described as "implicit" in *Lemon*—(4) the action's "divisive political potential." *Id.* Each *Colo* factor favors Quincy.

A. The statues have a secular purpose.

Since Quincy's Mayor chose the statues, *see* II.App.225-226, 314-16, his purposes are the relevant ones. *See, e.g.*, *Lynch*, 465 U.S. at 680 (purpose prong focuses on the "record"). And Mayor Koch has testified to his purposes. His selection of Michael and Florian "had nothing to do with Catholic sainthood" or "religio[n]." II.App.225-226. Rather, they were selected because of "their status as symbols in police and fire communities worldwide," to "boost morale"; "symbolize the values of truth, justice, and the prevalence of good over evil"; and "honor, inspire, and encourage our First Responders and ensure their lifesaving work would remain maximally effective." *Id.*

These are undoubtedly secular purposes. Indeed, they are analogous to the secular purposes present in *Colo*, where this Court upheld prayer

by Catholic priests before legislative sessions on the ground that it was meant to prompt "legislators to reflect on the gravity and solemnity of their responsibilities and of the acts they are about to perform." 378 Mass. at 559. Moreover, under *Lemon*, "[t]he narrow question is whether there is *a* secular purpose for [the] display." *Lynch*, 465 U.S. at 681 & n.6 (emphasis added). That Mayor Koch's motives were exclusively secular makes this an *a fortiori* case.

Despite having *zero* evidence contradicting the Mayor on his state of mind, the Superior Court dismissed his sworn testimony as "self-serving" and "semantics." Add.88. That was legal error. Under *Lemon*, "it is those objecting to a display … who bear the burden of producing evidence sufficient to *prove* that the governmental entity's secular purpose is a sham." *ACLU of Ky. v. Grayson County*, 591 F.3d 837, 856 (6th Cir. 2010). And where a governmental body "expresses a plausible secular purpose … , courts should generally defer to that stated intent." *Wallace v. Jaffree*, 472 U.S. 38, 74-75 (1985) (O'Connor, J., concurring); *accord Mueller v. Allen*, 463 U.S. 388, 394-395 (1983).

Here, it is eminently plausible Mayor Koch would choose to inspire Quincy's first responders by installing statues of figures representing their professions on the public-safety building—a decision precisely analogous to installing Moses, representing law, at a courthouse. II.App.33, 48, 53-54, 57. And that plausible purpose is corroborated by the Mayor's

pre-litigation explanations, which Plaintiffs themselves offered into the record. *See* I.App.110.

The Superior Court's reasoning fails to show otherwise. First, the Superior Court (echoing Plaintiffs) claimed Mayor Koch commissioned "the statues without public knowledge." Add.88. Yet neither Plaintiffs nor the court attempted to identify any applicable disclosure requirement, or explain how this claim (even if true) would show the Mayor's actions were *religious*. In any event, there's good reason why the statues weren't included in initial renderings of the building—because the Mayor didn't choose them until "working with a local architect on the final design features of the front façade," using the "Construction Manager at Risk method" that "provid[es] flexibility" as a project proceeds. II.App.226.

Second, the court invoked the statues' alleged "religious meaning" as itself showing illicit purpose. But under *Lemon*, courts may not infer "from the religious nature" of a challenged symbol that the government has no "secular purpose for" displaying it. *Lynch*, 465 U.S. at 680-681. That some faith traditions revere Michael and Florian does not somehow "transform[]" "a permissible secular purpose … into an impermissible religious one." *Am. Atheists v. Port Auth. of N.Y. & N.J.*, 760 F.3d 227, 239 (2d Cir. 2014). Rather, Quincy can "make [its secular] point" even "with an artifact whose … significance derives, in whole or in part, from its religious symbolism." *Id.*

Finally, Plaintiffs and the Superior Court seized on one City Councilor's statements expressing hopes that the statues "'will bless our first responders'" and that they "'might say a little prayer before they go out on duty.'" I.App.53; Add.81. But that same Councilor further explained that he saw the statues as "a message of support" and "never took [them] as religious." I.App.95. More fundamentally, as Plaintiffs themselves emphasize, the statues were an executive, not legislative, decision, *e.g.*, I.App.39-40—made for secular reasons.

B. The statues' primary effect will not be to advance religion.

The statues' effect will also be secular: to encourage and inspire Quincy's first responders, reminding them of the critical values at stake in their work. That is the effect these figures have for first responders the world over, of many faiths and none. *Supra* pp.15-18. And that is the effect anticipated on the record by Quincy's first responders themselves. II.App.306-307, 310.

Nonetheless, the Superior Court insisted that "a *reasonable member of the public* utilizing the building" would perceive a "religious message" from "two statues seemingly befitting a house of worship … overshadowing public access points." Add.89. But to start, the statues will not "overshadow[]" any public-access point but occupy the ends of the façade. *See* I.App.37. And *contra* the Superior Court's question-begging, they no more inherently "befit[] a house of worship" than do statues of Moses, David, or Pope John Paul II, *see supra* pp.21-22—particularly from the point of

view of the *Lemon* test's "objective observer." *See, e.g.*, *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 (10th Cir. 2008) ("[T]he 'effect' prong looks through the eyes of an objective observer who is aware of the purpose, context, and history of the symbol.").

The "objective observer" viewing these statues would see a soldier putting out a fire—an obvious reference to firefighting—and a winged figure defeating a representation of wrongdoing—in context, an obvious reference to the protection against malefactors inherent in police work. And to the extent the observer had any understanding of who these figures were, under *Lemon*, he would have to be "fully aware of the relevant circumstances," *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 11 (1st Cir. 2010)—including that other fire and police stations include depictions of these figures, *supra* p.17; that these figures represent the values of firefighting and police work for first responders around the world, whatever their religion, *supra* pp.15-19; that even within religious communities respect for these figures isn't limited to any particular faith, *supra* pp.18-19; and that there's nothing unusual about a relevant figure adorning a public space even if it has religious meaning for some citizens, *supra* pp.21-25.

Such an observer would also note the lack of any signage holding these figures out as religious. *Cf.*, *e.g.*, II.App.41 (Unitarian clergyman described on statue's base as "Preacher of the Gospel"). And the observer would know the statues' purpose, which as Mayor Koch stated publicly,

was to honor and inspire first responders, not to advance religion. I.App.110. "Taken in the[ir] context," then, the statues will convey a message of dedication, justice, and courage—not religious "endorsement." *Hanover Sch. Dist.*, 626 F.3d at 10-12 (primary effect of "under God" in Pledge of Allegiance was "not the advancement of religion, but the advancement of patriotism").

The Superior Court's reasoning is also irreconcilable with *Colo*. If anything could be deemed "befitting [of] a house of worship," Add.89, surely it is prayer by Catholic priests—the issue in *Colo*. Yet *Colo* rejected the claim of a primarily religious effect, explaining that, unlike in schools where the purpose "is to teach impressionable children," legislative prayer is aimed at a "mature" audience that may "reasonably be assumed to have fully formed their own religious beliefs or nonbeliefs," and thus is "unlikely to advance religious belief either among the legislators or their constituency." 378 Mass. at 559. So too here; a passing glimpse of these statues is exceedingly "unlikely to advance religious belief" in users of the public-safety building, who are not asked to view them in "the context of a compulsory school day" among "'lessons' to be learned." *Id.*

C. The statues will not result in excessive entanglement.

"'Where unconstitutional entanglement has been found, it has been in the government's continuing monitoring or potential for regulating the religious activity under scrutiny.'" *Att'y Gen. v. Bailey*, 386 Mass. 367, 378-379 (1982). Applying this factor here is straightforward: Quincy's

challenged action—erecting statues—does not require "monitoring" or "regulating" anything at all.

In holding otherwise, the Superior Court stated "it is hard to see how a continuance of a program spending City funds for … religious art could not result in excessive entanglement." Add.89. But that reasoning is irreconcilable with *Colo*, which upheld "the expenditure of public funds" to provide salaries to clergy for religious prayers in the legislative chamber. 378 Mass. at 552. And it is novel—neither Plaintiffs nor the Superior Court cited any case holding that passive display of symbolism on government property somehow constituted prohibited "entanglement" with private religious activity.

Quincy's display of the statues indisputably does not "decide matters of religion or embroil itself in [a religious body's] internal workings." *Soc'y of Jesus of New England v. Commonwealth*, 441 Mass. 662, 675 (2004). So no entanglement "is occasioned by" them—much less the "great degree" *Lemon* forbade. *Colo*, 378 Mass. at 559.

D. The statues are not unconstitutionally "divisive."

Finally, the Superior Court deemed the statues unlawful because of their supposed "political divisiveness." Add.89. But while that factor may once have been "implicit" in the *Lemon* test, *Colo*, 378 Mass. at 558, the *Lemon*-era Supreme Court later expressly "confined" it to "cases where direct financial subsidies are paid to parochial schools or to teachers in parochial schools." *Mueller*, 463 U.S. at 403 n.11.

Unsurprisingly, then, neither Plaintiffs nor the Superior Court have cited any case applying this consideration to the government's choice of artwork on a public building. Grasping, Plaintiffs tried (I.App.63) to invoke *Caplan*—but that case did not even apply art. 3, and in any event concerned public grants paid to churches, not the government's display of its own artwork on its own property. 479 Mass. at 84-95. "This case," meanwhile, "does not involve a direct subsidy to church-sponsored schools or colleges, or other religious institutions, and hence no inquiry into potential political divisiveness is even called for." *Lynch*, 465 U.S. at 684.

Even if it were, this Court could not adopt Plaintiffs' view of the divisiveness inquiry. Doing what Plaintiffs urge here—*i.e.*, finding the statues unlawful because "over two hundred" people (in a city of over 100,000) attended a City Council meeting[9] and others opposed the statues online, I.App.39—would ensnarl the judiciary in extralegal and subjective questions. This Court has no way of accurately polling Quincy citizens' views. Even if it did, no legal principle dictates how many online signatures are enough to void government action. The process for ascertaining and effectuating the public will is not constitutional litigation but politics.

To the extent a divisiveness inquiry remains salient, it should focus on *Colo*'s inquiry—whether "other courts have approved the practice[]." 378

[9] According to Plaintiffs' own citation for this proposition, this number included "applau[ding] … firefighters and police." I.App.94-95.

Mass. at 560. Courts have frequently done just that for symbols far more facially religious than Quincy's statues. *E.g.*, *Am. Legion*, 588 U.S. at 63-66 (upholding 32-foot-tall Latin cross, "undoubtedly a Christian symbol," beside busy highway); *Van Orden*, 545 U.S. at 681 (upholding 6-foot Ten Commandments monolith on state capitol grounds); *Freedom From Religion Found., Inc. v. Weber*, 628 F. App'x 952, 953-954 (9th Cir. 2015) (upholding 12-foot statute of Jesus Christ, though clearly "a religious figure"); *Brooks v. City of Oak Ridge*, 222 F.3d 259, 264-267 (6th Cir. 2000) (upholding bronze bell carrying "strong Buddhist connotations"). And, as noted, similar statues have existed on public property across Massachusetts for many years—undercutting any showing that this practice is impermissibly divisive.

***

Even granting Plaintiffs' test, *Colo* itself demonstrates the statues are permissible based on the preliminary-injunction record.

IV. Prohibiting Quincy's statues based on religious hostility would violate the federal constitution, at minimum requiring constitutional avoidance.

In fact, federal law prohibits interpreting art. 3 to require hostility to religion. Thus, if art. 3 itself did not plainly require rejecting Plaintiffs' claim, the federal constitution would confirm the correctness of that course.

For one thing, the Supreme Court abandoned *Lemon* in part because it needlessly "generate[d] conflict" with other federal law—like the Free

Exercise Clause—by inviting parties to attempt "'to purge from the public sphere' anything an objective observer could reasonably infer endorses or 'partakes of the religious.'" *Kennedy*, 597 U.S. at 534-535, 542-543. For Massachusetts courts to resurrect *Lemon*, then, would constitute "state experimentation in the suppression of … the free exercise of religion" that the federal constitution does not permit. *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 485 (2020); *see also id.* at 484-485 (state's "interest in separating church and State 'more fiercely' than the Federal Constitution" insufficient).

Likewise, to the extent equal-protection principles are relevant here, *but see supra* p.38 & n.8, under the federal Equal Protection Clause, Quincy's citizens' "mere negative attitudes" toward a class of persons are "not permissible bases for" Quincy's governmental decision-making. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). Thus, Quincy cannot give a Plaintiff's "ideological" "rejection of Catholicism" legal effect by making it the basis for excluding the statues. *See* I.App.300; *see also, e.g.*, I.App.311 (describing Catholic Church as "divid[ing] the world into 'good' and 'bad' people").

At minimum, that Plaintiffs' reading of art. 3 triggers these serious federal constitutional concerns is further reason to reject it. *See, e.g.*, *In re Santos*, 461 Mass. 565, 570 (2012) ("[I]t is, of course, [this Court's] duty to construe statutes so as to avoid such constitutional difficulties, if reasonable principles of interpretation permit it.").

CONCLUSION

The Court should reverse and remand for a judgment of dismissal. At minimum, the Court should vacate the preliminary injunction.

Dated: February 11, 2026

Respectfully submitted,

/s/ Joseph C. Davis

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CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge:

1. This brief complies with the rules of court that pertain to the filing of briefs, including the requirements of Mass. R. App. P. 16(a)(13), 16(e), 18, 20, and 21.

2. This brief has been prepared in a proportional font using Microsoft Word with 14-point, Century Schoolbook-style font, and the portions of the brief subject to length limitation, as provided in Mass. R. App. P. 20(a), contain 10,981 words based upon the word count provided by that software.

Dated: February 11, 2026

/s/ Joseph C. Davis
Joseph C. Davis

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2026, I served Defendants-Appellants' Opening Brief and Appendix Volumes I & II by the Electronic Filing System and by email on counsel for Plaintiffs-Appellees:

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ADDENDUM

TABLE OF CONTENTS

Page

34

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2582-0576

CLAIRE FITZMAURICE & others[1]

vs.

THE CITY OF QUINCY & another[2]

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DEFENDANTS' MOTION TO DISMISS

In 1779, John Adams completed the Massachusetts Constitution. Article 3 of the Declaration of Rights, as amended, provides that "all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law." Nearly 250 years later, less than a half mile away from where John Adams has been laid to rest, the City of Quincy has decided to install two ten-foot bronze statues of Catholic saints on the façade of its newly built public safety building. In this lawsuit, fifteen residents and taxpayers of Quincy, challenge this action of the City of Quincy and its mayor, Thomas P. Koch, asserting it violates Article 3 of the Declaration of Rights.

Before the Court is Plaintiffs' Motion for Preliminary Injunction, seeking an order enjoining Defendants from installing the statues until the Court issues a final ruling on the merits, and Defendants' Motion to Dismiss the complaint pursuant to Mass. R. Civ. P. 12(b)(6). For the following reasons, Defendants' Motion to Dismiss is **DENIED**, and Plaintiffs' Motion for Preliminary Injunction is **ALLOWED**.

[1] Jay Tarantino, Gilana Rosenthol, Dr. Conevery Bolton Valencius, Matthew Valencius, Lucille Digravio, David Reich, Cynthia Roche-Cotter, Michael Cotter, Sheryl LeClair, Cody Hooks, Salvatore Balsamo, Marianne Balsamo, Martha Plotkin, and Kathleen Geraghty

[2] Thomas P. Koch, in his capacity as Mayor of Quincy

BACKGROUND

The following facts are alleged in the Complaint. Evidence submitted in support of the motion for preliminary injunction is reserved for discussion below.

In 2017, Quincy's City Council approved $500,000 for the design of a new public safety building to replace the City's current police station and house the City's information technology department, the police department, emergency operations center, and fire department administrative offices. The resulting design called for a building four stories tall and approximately 120,000 square feet in size, to be located on Sea Street near the intersection with the Southern Artery. Residents of Quincy would access the building to, *inter alia*, obtain fire permits or records, file and obtain accident reports or police reports, meet with police officers, speak with mental health counselors, attend community meetings and trainings, or utilize the prescription drop box. The Chief of Police, Mark Kennedy, has touted the public accessibility and usability of the building, stating that "community access to police and fire service is going to be like nothing we've ever had in this City before." Compl. at par. 21.

In November 2019, the City Council approved $32 million in expenditures to acquire the five parcels of land identified for the project site, and to pay for the architectural fees, environmental studies, and permitting for the public safety building. In April 2021, the City Council approved $120 million for construction of the building, including $90 million for the building itself; $10 million for furniture and equipment; $10 million for nearby infrastructure and utility improvements; and $10 million for contingencies. In November 2022, due to cost overruns, the City Council approved an additional $23 million to complete the construction. The public safety building is slated to open this month and, given the resources devoted to its construction, is expected to be a prominent fixture in Quincy for years to come.

In 2023, Mayor Koch, without public notice and at the cost of $850,000 in taxpayer funds, commissioned the construction of two, ten-foot-tall bronze statues depicting Catholic Saints Michael and Florian to be displayed on the façade of the new public safety building. In Christian scripture, Michael is identified as an archangel who led the forces of the God in a battle against "[t]he huge dragon, the ancient serpent, who is called the Devil and Satan," and his followers, and threw them down from heaven. *Revelation* 12:7-9. In the Catholic teaching, Saint Michael is venerated as the patron saint of the police.[3] The statue of Saint Michael at issue depicts an armored-clad figure with the wings of an angel, with its left hand holding a shield and its right hand held aloft while he presses his sandaled foot on the head and neck of a demon, whose face is contorted in agony. Florian was a historical figure of the late Third and early Fourth Century A.D. – specifically, a Roman military officer whose responsibilities included organizing and commanding firefighting brigades. He was executed in 304 A.D. during the Diocletianic Persecution of Christians. Catholics venerate Saint Florian as a martyr and the patron saint of firefighters. The statue of Saint Florian depicts him as a larger-than-life figure, pouring water from a vessel on a burning building at his feet while holding a lance aloft in his opposite hand. As with the statute of Saint Micheal, Saint Florian is adorned in torso armor, pteruges, and a cloak. However, in his statue, Saint Florian wears the iconic Roman helmet, the galea, and is not winged as an angel. The two statues have been constructed by a sculptor in Italy and are being shipped to Massachusetts.

Although many aspects of the new building including funding were discussed at length during public meetings, at no point during any of the numerous City Council meetings was the public notified of the plan to install the statues. Nor was the potential for public art of any

[3] A "patron saint" is "a saint to whose protection and intercession a person, a society, a church, or a place is dedicated." PATRON SAINT, Merriam-Webster Online Dictionary.

kind—patron saints or otherwise—contemplated by or included in public plans or drawings of the building from the time of initial approval until February 2025. Renderings of the building published in news articles between the project's inception and February 2025 also did not include the statues.

The public first learned of the proposed statues for the public safety building on February 8, 2025, when the Patriot Ledger published a news article (the "February 8 Article") reporting that Mayor Koch had commissioned two, ten-ten-foot-tall bronze statues of Catholic saints. According to the February 8 Article, of the nine members of the City Council, two had no prior knowledge of plans for statues of religious figures, one "had heard something about it but didn't participate in the plans," one was previously aware of the plan; and the remaining five did not respond to requests for comment. Compl. at par. 34. Ward I Councilor Dave McCarthy, in whose district the new public-safety building is located, admitted during a City Council meeting later that month that he had been informed of the plan "a long time ago." *Id.* at 35. Councilor McCarthy further stated that he believes the statues "will bless our first responders" and that he hopes first responders "might say a little prayer" before they go out on duty. *Id.*

After the February 8 Article, the City Council discussed the matter at its February 24, 2025 meeting. While Quincy City Council meetings are typically attended by five to ten residents, over two hundred members of the public attended this meeting. Mayor Koch was represented by his Chief of Staff, who confirmed during the meeting that the Mayor had not previously notified City Council, as a body, of the plan to commission and install the statues but rather, that the City Council was just now "finding out about [it]with the [rest of] the public." *Id.* at 37. The Mayor's Chief of Staff contended that "the process for these statues begins and ends, and appropriately so, under the Mayor's discretion" and was ultimately the Mayor's sole

decision to make. *Id.*

Hundreds of Quincy residents and at least one City Councilor have publicly expressed opposition to the statues. One resident initiated a petition to stop the installation of the statues which has 1,600 signatures. On April 4, 2025, nineteen faith leaders from the Quincy Interfaith Network issued a public statement expressing "grave concerns" about the religious statues. Signatories included local ministers/leaders of the Roman Catholic, Jewish, Unitarian Universalist, Presbyterian, Lutheran, Methodist, and Nazarene faiths. Compl. at par. 53.

As of April 2025, the City has paid at least $761,378.75 in public funds for the creation of the statues. Additional public funds either have already been diverted or will likely need to be diverted and/or appropriated by Mayor Koch and/or the City to pay for the transportation and installation of the statues.

DISCUSSION

As noted, there are two motions before the Court: Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion to Dismiss. The competing motions overlap in their discussion of the applicable law but are subject to distinct standards and permissible scopes of review. Since the Plaintiffs' motion for injunctive relief inevitably must fail if Defendants are entitled to dismissal, the Court first considers Defendants' Motion to Dismiss.

I. Motion to Dismiss

When considering a motion to dismiss under Mass. R. Civ. P. 12(b)(6), the court must accept as true the factual allegations in the complaint and draw "all reasonable inferences" from those allegations in favor of the plaintiff. *Dunn* v. *Genzyme Corp.*, 486 Mass. 713, 717 (2021). While the factual allegations in a complaint need not be detailed, they must present "more than labels and conclusions," and "'be enough to raise a right to relief above the speculative level[,]' .

. . 'plausibly suggesting (not merely consistent with)' an entitlement to relief." *Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 557 (2007). In addition to the complaint's factual allegations, a court may consider matters of public record, orders, items appearing in the record of the case, exhibits attached to the complaint, and documents of which the plaintiff had notice and on which they relied in framing the complaint. *Golchin* v. *Liberty Mut. Ins. Co.*, 460 Mass. 222, 224 (2011); *Schaer* v. *Brandeis Univ.*, 432 Mass. 474, 477 (2000).

Defendants argue that Plaintiffs have no standing to assert this action and, regardless, the statues do not violate Article 3 of the Declaration of Rights. As such, Defendants contend that they are entitled to dismissal of Plaintiffs' complaint. The Court is not persuaded.

A. Standing

Standing to assert a claim implicates the Court's subject matter jurisdiction. *Doe* v. *The Governor*, 381 Mass. 702, 705 (1980). A party may raise the issue of standing by motion under Rules 12(b)(1) or 12(b)(6). *Id.* In general, when considering standing under Rule 12, the Court must accept the factual allegations of the complaint. *Ginther* v. *Commissioner of Ins.*, 427 Mass. 319, 322 (1998).

Here, Plaintiffs seek declaratory and injunctive relief for an alleged constitutional violation and assert two grounds for their standing. First, Plaintiffs argue that they have taxpayer standing under G. L. c. 40, § 53. This so-called "ten taxpayer statute" "provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by the local government." *LeClair* v. *Norwell*, 430 Mass. 328, 332 (1999). Acting as private attorneys general to "enforc[e] laws designed to protect the public interest," *Edwards* v. *Boston*, 408 Mass. 643, 646 (1990), ten or more taxable inhabitants of a town may invoke the statute when a town is "about to raise or

expend money or incur obligations purporting to bind said town . . . for any purpose or object or in any manner other than that for and in which such town . . . has the legal and constitutional right and power to raise or expend money or incur obligations." G. L. c. 40, § 53.

The Complaint alleges sufficient facts to support Plaintiffs' standing under G. L. c. 40, § 53. Plaintiffs, fifteen Quincy taxpayers, have alleged that unbeknownst to the public, Defendants commissioned two statues to be displayed in the façade of a public building in violation of Article 3; Defendants will likely need to divert and allocate more funds for the transportation and installation of the statues; and neither Defendant "has acted to halt the expenditure or payment of additional public funds in connection with the statues." Compl. at par. 56. See G. L. c. 40, § 53. In short, the Complaint alleges that Defendants are about to expend money for a purpose other than that which the City has the right, and Plaintiffs, comprised of more than ten taxpayers, have a right to bring a suit to enjoin such action.[4]

Defendants contend that Plaintiffs do not have standing under G. L. c. 40, § 53 because they have not alleged that they are acting as private attorney generals seeking to enforce rights on behalf of the public but rather have only alleged individualized harm as a result of Defendants' actions. The Court does not agree. The Complaint alleges that Plaintiffs "bring this suit to protect their rights under the Massachusetts Constitution *and* to ensure that their government respects their community's rich religious pluralism" (emphasis added). Compl., intro. It goes on to explain that Defendants' decision to spend taxpayer funds without notice to the public and to display the Catholic statues on a public building violates Article 3 by conveying a message that

[4] The Court does not view the fact that Defendants have already expended a substantial portion – or indeed, most – of the cost of the statues as undermining Plaintiffs' standing under G.L. c. 40, § 53. The Complaint plausibly alleges, and Defendants do not dispute, that additional funds will be required to transport and install the statues. Moreover, while § 53 may seek to preclude challenges to public projects long since completed, there is no suggestion that it was intended to encourage and reward the covert acts alleged here, where Mayor Koch concealed the plans for the statues from the public and the City Council. To allow this argument as a means to defeat a plaintiff's standing would be to discourage transparency in government budgeting and spending.

"those who do not subscribe to the City's preferred religious beliefs are second-class residents who should not feel safe, welcomed, or equally respected by their government." *Id.* Where the Complaint alleges that Defendants' actions are counter to the public interest, it can be inferred that they are asserting the action, at least in part, as private attorneys general acting on behalf of the public. Defendants have not cited any caselaw holding that Plaintiffs must explicitly invoke G. L. c. 40, § 53 to have statutory standing, and the Court has found none.

Additionally, Plaintiffs contend that they have individual standing under the declaratory judgment statute, G. L. c. 231A, § 1. "A party has standing [to pursue a declaratory judgment action] when it can allege an injury within the area of concern of a constitutional guarantee under which the injurious action has occurred" (citation omitted). *Kligler* v. *Attorney Gen.*, 491 Mass. 38, 45 (2022). See *Spear* v. *Boston*, 345 Mass. 744, 747 (1963) (to proceed under declaratory judgment statute, "[t]he petitioning taxpayers [must have an] interest of their own apart from that of all other taxpayers"). In their Complaint and individual sworn declarations, Plaintiffs have alleged individualized injuries within the area of concern of a constitutional guarantee, namely the subordination of all religions to another, under which the injurious action has occurred. See Compl. pars. 3-17.

Defendants respond that Plaintiffs do not have standing under the declaratory judgment statute because they "are simply offended by the planned statues, and, unwilling to confine themselves to the ordinary means for airing ideological disagreements with the government—the political process—have sought to make a lawsuit of it." Defs.' Memo. at 4. The Court is not persuaded. A long line of cases in the federal courts recognize a plaintiff's standing to assert a constitutional challenge to the display of religious symbols on public property based solely on the plaintiff having to view the symbol. See, e.g., *Salazar* v. *Buono*, 559 U.S. 700 (2010); *Red*

River Freethinkers v. *City of Fargo*, 679 F.3d 1015 (8th Cir. 2012); *American Civil Liberties Union of Kentucky* v. *Grayson Cnty., Ky.*, 591 F.3d 837 (6th Cir. 2010); *Cooper* v. *United States Postal Serv.*, 577 F.3d 479, 490 (2d Cir. 2009); *Saladin* v. *City of Milledgeville*, 812 F.2d 687, 689 (11th Cir. 1987). Given the prominence of the public safety building and the displays at issue, the intended multi-faceted use of the building and promotion of the public accessibility, and Massachusetts' traditional recognition of broader constitutional protections under its constitution than federal courts interpreting the United States Constitution, there is no basis to conclude that Plaintiffs lack standing to assert their claims here. See *Goodridge* v. *Department of Pub. Health*, 440 Mass. 309, 313 (2003) ("The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution").

The Court notes that Defendants' argument echoes Justice Gorsuch's concurrence in *American Legion* v. *American Humanist Ass'n* calling for the end to "offended observer standing" for alleged violations of the Federal Constitution's Establishment Clause. 588 U.S. 29, 87 (2019) ("Abandoning offended observer standing will mean only a return to the usual demands of Article III, requiring a real controversy with real impact on real persons to make a federal case out of it."). The infirmities of this argument, as it applies to the current case are several and readily apparent. First, it is black letter law that the Bill of Rights establishes a floor and States "are absolutely free . . . to accord greater protection to individual rights than do similar provisions of the United States Constitution." *Kligler*, 491 Mass. at 59, quoting *Goodridge*, 440 Mass. at 328, in turn quoting *Arizona* v. *Evans*, 514 U.S. 1, 8 (1995). See William J. Brennan, State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489, 491 (1977) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of [F]ederal law").

Second, Justice Gorsuch's concurrence did not garner a majority of the United States Supreme Court, much less has the Supreme Judicial Court applied his reasoning to the provisions of our state laws. Lastly, this Court is not persuaded that an offended observer lacks standing or a "real controversy" under Massachusetts law. While Defendants maintain that individuals such as Plaintiffs here should seek redress for alleged constitutional violations of this nature through the political process rather than the courts, such an approach would transform the standing threshold into an insurmountable hurdle in most, if not all, disputes of this nature, leaving adherents to minorities religions without any meaningful recourse. The purpose of constitutional rights is to "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 638 (1943). A "fundamental right" that is subject to the vote or the outcome of an election, is fictitious. See *id.* Proponents of abandoning offended observer standing claim it would "reduc[e] 'religiously based divisiveness' and promot[e] religious neutrality[.]" Joseph C. Davis & Nicholas R. Reaves, *Fruit of the Poisonous Lemon Tree: How The Supreme Court Created Offended-Observer Standing, and Why it's Time for It to Go*, 96 Notre Dame L. Rev. 25, 37 (2020). In other words, greater harmony would exist if only minority sects would acquiesce to the majority position and accept subordinate status. To paraphrase Martin Luther King, Jr., this notion confuses the absence of tension with the presence of justice. Massachusetts law cannot countenance such a result.

Moreover, where Defendants argue that the symbolic nature of the statues would serve to inspire the police and firefighters upon viewing, it is contradictory for them to minimize the Plaintiffs' position that viewing the statues would invoke strong feelings of a different nature. In

this Court's view, giving a member of the public standing to challenge the overt presentation of Catholic symbols on the front of a public building does not amount to a "modified heckler's veto." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022).[5]

Accordingly, the Court concludes that Plaintiffs have alleged cognizable injury and have standing to bring their claims.

B. Article 3 Analysis

As noted, in this case, Plaintiffs bring their claim under Article 3. Article 3 appears in the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts in the Massachusetts Constitution. "John Adams considered individual rights so integral to the formation of government that the Massachusetts Declaration of Rights precedes the Frame of Government."[6] The original Declaration of Rights, adopted in 1780, "provided in art. 3 for the direct public support of religion, continuing the Colonial practice of using tax revenues to support the 'public Protestant teachers of piety, religion and morality[,]' . . . which essentially meant support of the Congregational Church" (internal citation omitted). *Caplan* v. *Acton*, 479 Mass. 69, 76 (2018). "After decades of 'lawsuits, bad feeling, and petty persecution,' . . . the Massachusetts Constitution was amended in 1833 with art. 11 of the Amendments enacted to substitute for art. 3." *Id.*, citing S.E. Morison, A History of the Constitution of Massachusetts at 24 (1917). Article 11 modified and amended Article 3's equal protection of "every denomination of Christians" to "all religious sects and denominations." See *Caplan*, 479 Mass. at 76-77 ("Article 11 guarantees the equal protection of 'all religious sects and denominations'—

[5] The Court notes certain inherent contradictions in the Defendants' arguments. First, it is Defendants through their covert actions, and not Plaintiffs, who arguably attempted to circumvent the political process. Second, Defendants demand that the Court sideline dissenting religious views so that they may honor, Florian, a victim of the Roman Empire's drive to stamp out dissenting religious views.

[6] https://www.mass.gov/guides/john-adams-the-massachusetts-constitution

not just the Christian denominations protected under art. 3—and effectively ended religious assessments."). Since 1833, Article 3 states: "all religious sects and denominations demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

The parties here dispute how the Court should evaluate Plaintiffs' claim under this provision of Article 3. Plaintiffs contend that the Court should evaluate the constitutionality of the display under the four-part test articulated in *Colo* v. *Treasurer & Receiver Gen.*, 378 Mass. 550, 558 (1979), relying on test articulated by the Supreme Court in *Lemon* v. *Kurtzman*, 403 U.S. 602, 612-613 (1971) ("*Lemon* Test"). Defendants argue that the *Lemon* test is no longer good law, and the Court should consider only the "historical practices and understandings" of Article 3 when evaluating the viability of the claim.

The parties' dispute as to the applicable test is not without reason. The United States Supreme Court has in recent years rejected the *Lemon* Test as a means to evaluate Establishment Clause challenges to public displays of religious symbols. In *American Legion* v. *American Humanist Ass'n*, the Supreme Court noted that "the *Lemon* test presents particularly daunting problems" in cases where a monument, symbol, or practice that was first established long ago is challenged because identifying the purpose at that time may be difficult and the message conveyed may have changed over time. 588 U.S. at 51-55. In *Kennedy*, 597 U.S. at 534, the Supreme Court went further noting that it had "abandoned *Lemon*" because of the "'shortcomings' associated with this 'ambitiou[s],' abstract, and ahistorical approach to the Establishment Clause" (citation omitted). See also *Groff* v. *DeJoy*, 600 U.S. 447, 460 (2023) (noting the abrogation of *Lemon*). In place of *Lemon*, the Supreme Court now interprets

Establishment Clause cases by "reference to historical practices and understandings" and instructs that the line "between the permissible and the impermissible[,]" should "'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'" *Kennedy*, 597 U.S. at 535-536.

Although the Supreme Court has explicitly rejected the *Lemon* Test for Establishment Clause challenges, the Massachusetts Supreme Judicial Court ("SJC") has not. The SJC adopted the *Lemon* Test in *Colo*, 378 Mass. 550, when assessing whether a statute violated the First Amendment of the United States Constitution and Articles 2 and 3 of the Massachusetts Declaration of Rights. It has not yet revisited the test, and therefore, despite the federal court's retreat from the *Lemon* Test, *Colo* remains precedent when considering such claims.

Even if the SJC were presented with this issue, there is strong evidence that it would not apply to the "historical practices and understandings" analysis as the Defendants contend. In *Kligler* v. *Attorney Gen.*, the SJC considered whether the Massachusetts Declaration of Rights provides a substantive due process right to physician-assisted suicide. 491 Mass. at 40. In so doing, the Court considered whether to apply the "narrow view of this nation's history and traditions" applied by the Supreme Court when identifying a fundamental right under the Federal Constitution. *Id.* at 56. It rejected the narrow approach concluding that it "does not adequately protect the rights guaranteed by the Massachusetts Declaration of Rights." *Id.* at 60. Instead, the Court adopted the "comprehensive approach" which, "uses 'reasoned judgment' to determine whether a right is fundamental, even if it has not been recognized explicitly in the past, guided by history and precedent." *Id.* at 56, citing *Obergefell* v. *Hodges*, 576 U.S. 644, 664 (2015). The SJC's analysis in *Kligler* leaves little doubt that despite the Supreme Court's recent abandonment of a comprehensive approach, the SJC would not, in this case, return to the "narrow view of this

nation's history and traditions" when considering Plaintiff's claim under Article 3. See *Kligler*, 491 Mass. at 60-61 ("The comprehensive approach, unlike the narrow approach, allows us to interpret constitutional protections 'in the light of our whole experience and not merely in that of what we said a hundred years ago,' and therefore is more consonant with our State Constitution" [citation omitted]).[7]

Accordingly, this Court concludes that *Colo* remains controlling precedent and therefore, it will apply the *Lemon* Test to the facts before it to assess Plaintiffs' claim. The Court will also consider Plaintiffs' claim under a more comprehensive approach similar to *Kligler* which factors in history and precedent but considers the totality of circumstances of the challenged statues. As explained below, under either approach, Defendants' motion to dismiss fails.

i. *Lemon* Test

In *Colo*, the SJC considered whether the challenged government practice (1) has a "secular legislative purpose"; (2) a "primary effect . . . [that] 'neither advance[s] nor inhibit[s] religion,'"; (3) avoids "'excessive government entanglement' with religion"; and (4) has a "divisive political potential." 378 Mass. at 558, quoting *Lemon*, 403 U.S. at 612-613. The SJC noted that the test is not to be applied mechanically but "as guidelines to analysis." *Colo*, 378 Mass. at 558. Applying the *Lemon* Test here, the Complaint sufficiently alleges a constitutional violation.

As to the first prong of the test, the Court considers the statues themselves as well as the stated purpose for their use to determine whether they can only serve a nonsecular purpose. See,

[7] At the hearing on the motion, Defendants directed the Court to another recent decision by the SJC, *Raftery* v. *State Bd. of Ret.*, 496 Mass. 402, 410 (2025), arguing that it suggested that the SJC would apply a "historical practices and understandings" analysis. The Court does not agree. The SJC in Raftery concluded that there was no merit to the plaintiff's argument that based on the "text, history, and purpose of art. 26" of the Declaration of Rights, the forfeiture of his pension was cruel and unusual punishment within the meaning of art. 26's third provision. *Id.* at 407-408. Unlike, *Kligler*, the SJC did not address how the constitutional claim should be evaluated but concluded that evaluating the claim as plaintiff suggested, it had no merit. Thus, *Raftery* does not inform this Court's decision.

e.g., *Glassroth* v. *Moore*, 229 F. Supp. 2d 1290, 1299-1301 (M.D. Ala. 2002) (finding non-secular purpose evident from monument itself and stated purposes). Here, the Complaint describes the statues and their religious significance.[8] Saint Michael, in Catholic teaching, is considered "the leader of God's heavenly army, the protector of the Church, and the chief adversary of Satan." Compl. at par. 43. The statue depicts him with angel's wings, armed for battle, and apparently prepared to strike down a demon (presumably, the Devil) who he holds under heel. Florian, by contrast, was a historical person. But as the Complaint alleges, Catholicism venerates Florian as saint, martyred for faith, and who performed miracles including "sav[ing] a town from fire through divine intervention." Compl. at par. 44. The statue at issue depicts Saint Florian in a manner consistent with Christian iconography – as an oversized, armor-clad soldier pouring water from a bucket onto a building at his feet.

The Complaint further alleges that the Mayor selected Saint Michael and Saint Florian because, in Catholic teaching, they are venerated as the patron saints of the police and firefighters. It notes that City Councilor McCarthy stated that he believes the statues "will bless our first responders" and that he hopes first responders "might say a little prayer" before they go out on duty. *Id.* at par. 35. The Complaint alleges that while saints and patron saints in particular "are often recognized by the Catholic Church for various causes so that the faithful can seek their intercession through prayer," they are rejected by many other Christian denominations and religions. Compl. at pars. 41-42. These allegations are adequate to suggest that the decision to erect these particular statues was "motivated wholly by religious considerations," *Gaylor* v. *Mnuchin*, 919 F.3d 420, 427 (7th Cir. 2019), and that the statues cannot be separated from their

[8] At the hearing on the motions, the Court asked the parties whether it should consider the statues of Saint Michael and Saint Florian separately where the latter arguably has historical in addition to religious significance and displays less overtly religious connotation. Both parties rejected this Solomonic approach and averred that the Court should treat the statues as a set.

religious symbolism. See *Books* v. *City of Elkhart, Indiana*, 235 F.3d 292, 302 (7th Cir. 2000) (concluding that Ten Commandments monument could not be stripped of its religious, sacred significance).

Turning to the second prong of the *Lemon* Test, the Court considers the primary effect of the challenged government activity and whether it advances or inhibits religion. *Colo*, 378 Mass. at 558. That is, whether it conveys or attempts to convey a message that a particular religion or religious belief is "favored or preferred." *County of Allegheny* v. *ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 593 (1989). The test is an objective one considering whether a reasonable observer would perceive the practice in question as endorsing religion. *Id.* at 620.

The Complaint here plausibly alleges that the statues at issue convey a message endorsing one religion over others. As noted, the statues represent two Catholic saints – the patron saint of police officers and the patron saint of firefighters. The statues, particularly when considered together, patently endorse Catholic beliefs. The ten foot statue of Saint Michael specifically is overtly religious, displaying large wings of an archangel and standing on a demon representative of Satan. The Complaint details each Plaintiffs' view of the message conveyed by the statues as well as the concern expressed by nineteen faith leaders from the Quincy Interfaith Network that the statues "elevate" a "single religious tradition" over others. Compl. at par. 53. As such, the facts alleged plausibly suggest that an objective observer would view these statues on the façade of the public safety building as primarily endorsing Catholicism / Christianity and conveying a distinctly religious message.

The third prong of the test considers whether the challenged action causes excessive entanglement between government and religion. Where the Complaint alleges that the Mayor unilaterally decided to adorn the entrance of the City's public safety building with the ten-foot

statues which convey a religious message, serve no secular purpose, and cost nearly one million dollars in public funds to commission, transport and install, Plaintiffs have alleged that the challenged government action creates an excessive entanglement with religion.

Finally, the Complaint clearly alleges that the challenged practice has "divisive political potential." *Colo*, 378 Mass. at 558. Plaintiffs assert that after the public became aware of the City's intention to display the statues, over two hundred members of the public attended the public meeting to discuss the decision in comparison to the typical five to ten attendees; hundreds of Quincy residents and at least one City Councilor have publicly expressed opposition to the statues; and a Quincy resident started a petition to stop the installation of the statues which has 1,600 signatures. Such facts are sufficient at this stage. Cf. *id.* at 559-560 (holding that employing legislative chaplains did not violate the *Lemon* Test where there was "not the slightest hint that the practice has ever created any of the political divisiveness").

Accordingly, the Court concludes that to the extent that the *Lemon* Test applies, Plaintiffs have clearly stated a claim upon which relief can be granted.

ii. Alternative Approach

As noted, even if the *Lemon* Test is inapplicable in this case, the Court would not interpret Article 3 with only reference to historical practices and understandings. See *Kligler*, 491 Mass. at 60, citing *Goodridge*, 440 Mass. at 350 n.6 (Greaney, J., concurring) ("rigid application of the narrow approach would 'freeze for all time the original view of what [constitutional] rights guarantee, [and] how they apply' . . . Such a result is incompatible with our State constitutional provisions, which 'are, and must be, adaptable to changing circumstances and new societal phenomena.'"). Rather, the Court takes a more comprehensive approach recognizing the text of the Article, the history, and the overall context of the display at issue and

considers it with our modern day understanding to draw a constitutional line of what constitutes impermissive governmental promotion of religion. Taking such an approach, Defendants' argument for dismissal fails.

Looking to the text and history of the Article, Defendants argue that by displaying "simply passive statues of figures with secular significance" they are not denying equal "protection of the law" or causing the "subordination of any one sect or denomination to another" to be established by law. Defs.' Memo at 8. They assert that historically, displaying religious symbols on government property was commonplace and cite numerous examples of religious symbols on public property throughout the Commonwealth. They further contend that because Plaintiffs cannot point to any evidence in Massachusetts of religious symbols being seen as a form of establishment at the time Article 3 was adopted, Plaintiffs' claim must fail. The Court is not persuaded. To be sure, the history of religious freedom in Massachusetts is complicated. But this Court does not base its understanding of the Massachusetts Declaration of Rights solely on what its founders envisioned at the time they signed the document. To do so would perpetuate the petty bigotries of the past. See *Kligler*, 491 Mass. at 61, citing *Goodridge*, 440 Mass. at 350 n.6, (Greaney, J., concurring) ("The Massachusetts Constitution was never meant to create dogma that adopts inflexible views of one time to deny lawful rights to those who live in another.").

The obvious import of Article 3's amendment in 1833 is that it abolished government support for one religion and protected all religions from subordination. Article 3, as amended, thereafter drew a clear line of separation between the state and religion. To the extent that the forebearers at times have failed to uphold the ideals espoused in our state's Constitution, it is not a basis for this Court, informed by two centuries of human experience, to shrink from its duty to

ensure that promise of Article 3 is fulfilled. The Complaint here alleges that Defendants' actions in adorning a public building with massive statues significant only to one religion serves to subordinate the religions of all other members of the public utilizing that building. While Defendants may disagree that their actions rise to the level of subordination, the allegations plausibly suggest they do. However, it is not surprising that individuals of a majority view may not appreciate the feelings of concern or alienation held by those in the minority.

Moreover, considering the context of the display at issue, the danger of subordination prohibited by Article 3 is readily apparent. A core function of the new public safety building is to facilitate and promote public access to law enforcement. Many in the public may not be aware of the symbolic significance of Michael and Florian and see them only as religious figures adorning the building's entrance. Victims and witnesses entering such a building often must overcome emotional and psychological hurdles, and intimidation to report crimes and seek police assistance. Central to their concerns is the question of whether the police will treat their claims with the gravity warranted and treat them equally as any other individual, regardless of religious beliefs. Viewed in this context, the Complaint raises plausible claims that the statues are not merely passive or benign but serve as part of a broader message as to who may be favored. Indeed, the Complaint raises colorable concerns that members of the community not adherent to Catholic or Christian teaching who pass beneath the two statues to report a crime may reasonably question whether they will be treated equally. See Compl. at pars. 3-17.

Accordingly, the Court concludes that under either test Plaintiffs' Complaint states a claim for violation of Article 3. Defendants' Motion to Dismiss will, therefore, be denied.

II. Motion for Preliminary Injunction

Plaintiffs move for an order enjoining Defendants from installing the statues until the

Court can issue a final ruling on the merits. To obtain a preliminary injunction, Plaintiffs "must show (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction." *Tri-Nel Management, Inc.* v. *Board of Health of Barnstable*, 433 Mass. 217, 219 (2001), citing *Packaging Indus. Group, Inc.* v. *Cheney*, 380 Mass. 609, 617 (1980). In addition, because Plaintiffs seek to enjoin action by the government, the Court must also "determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public." *Loyal Order of Moose, Inc., Yarmouth Lodge #2270* v. *Board of Health of Yarmouth*, 439 Mass. 597, 601 (2003), quoting *Commonwealth* v. *Mass. CRINC*, 392 Mass. 79, 89 (1984). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). It shall "not be granted unless the plaintiff[] ha[s] made a clear showing of entitlement thereto." *Student No. 9* v. *Board of Educ.*, 440 Mass. 752, 762 (2004), citing *Landry* v. *Attorney Gen.*, 429 Mass. 336, 343 (1999).

In deciding a motion for a preliminary injunction, a judge may consider verified pleadings, sworn affidavits, and documentary evidence supplied by the parties.[9] See Mass. R. Civ. P. 65. See also *Carabetta Enterprises, Inc.* v. *Schena*, 25 Mass. App. Ct. 389, 391 (1988). When considering sworn affidavits, "the weight and credibility to be accorded those affidavits are within the judge's discretion" and "[t]he judge need not believe such affidavits even if they are undisputed." *Commonwealth* v. *Furr*, 454 Mass. 101, 106 (2009). See *Psy-Ed Corp.* v.

[9] Although Plaintiffs have not submitted a verified complaint, their failure to do so does not warrant an outright denial of the motion as Defendants contend. Plaintiffs have submitted an affidavit of their counsel with forty-one attached exhibits, including a sworn declaration from each of the fifteen Plaintiffs, upon which many of the allegations in the Complaint are based. The Court's decision on the motion for preliminary injunction is based on the evidence submitted by Plaintiffs and not on any allegations in the Complaint supported "solely on 'information and belief.'" See *Eaton* v. *Federal Nat. Mortg. Ass'n*, 462 Mass. 569, 590 (2012) ("an allegation that is supported on 'information and belief' does not supply an adequate factual basis for the granting of a preliminary injunction").

Klein, 62 Mass. App. Ct. 110, 114 (2004) (affidavit "is a form of sworn testimony the credibility of which is to be determined by the judge"). Considering the record before the Court, a preliminary injunction is warranted.

i. Likelihood of Success on the Merits

First, under either the *Lemon* Test or an alternative analysis of Article 3, Plaintiffs are likely to succeed on the merits of their claim. The religious significance of the statues depicting two Catholic patron saints is essentially undisputed. Saint Michael with the wings of an archangel, standing on neck of a demon / Satan. Saint Florian is depicted as a larger than-life-figure extinguishing a burning building with water from a single vessel. By all accounts, the statues are drawn directly from and are wholly consistent with Catholic scripture, teaching and iconography, and serve no discernable secular purpose. See Docket No. 14.2, Exhs. 19-23.

Plaintiffs have also demonstrated that they are likely to succeed at proving that the permanent display of the oversized overtly religious-looking statues have a primary effect of advancing religion. The depiction of the statues, their association with one religion, and the various reactions of community members, City Council members, and faith leaders demonstrate Plaintiffs will likely be able to show that the statues convey to the public observing them the implicit government support for the religious doctrine and adherents of Catholic / Christian faith, and as a result, the subordination of other religions. Additionally, Plaintiffs have put forth evidence that Defendants unilaterally decided on the permanent display of the Catholic patron saints on the façade of the public safety building and have continued to allocate further public funds to complete the installation, see *id.* at Exhs. 14, 16 and that the decision to do so has resulted in a divisive public reaction. See *id.* at Exh. 10. The Court finds their factual presentation sufficient to show a likelihood of success on the merits of their claim under Article

3.

Defendants contend that the statues have a secular purpose of inspiring police officers and their display and neither advance nor inhibit religion. Specifically, Mayor Koch avers that the purpose of the statues "has nothing to do with Catholic sainthood, but rather was an effort to boost morale and to symbolize the values of truth, justice, and the prevalence of good over evil" and that they just "happen to be saints venerated in the Catholic Church," see Aff. of Thomas P. Koch at pars. 2, 6. While a court may be "normally deferential to a State's articulation of a secular purpose," the statement of such purpose must be found to be "sincere" as to its predominant purpose. *Edwards* v. *Aguillard*, 482 U.S. 578, 586-587 (1987). See *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 308 (2000) (reiterating that a governmental entity's professed secular purpose for an arguably religious policy is entitled to some deference but that it is the duty of the courts to ensure that the purpose is sincere). The Court is not persuaded by the Mayor's self-serving assertions, particularly in light of his curious actions of commissioning the statues without public knowledge. Regardless, the Mayor's professed secular purpose offers nothing more than semantics. To the extent a statue of Saint Michael provides inspiration or conveys a message of truth, justice, or the triumph of good over evil, it does so in his context as a Biblical figure – namely, the archangel of God. It is impossible to strip the statue of its religious meaning to contrive a secular purpose. To be sure, the statute of Saint Florian, a historical person, is somewhat more nuanced. But given the manner in which the statue portrays Saint Florian (as larger than life and with allusion to his martyrdom) and its juxtaposition with the statue of Saint Michael, Plaintiffs have demonstrated a likelihood of showing that the statues do not serve a predominantly secular purpose. See *American Civil Liberties Union of Georgia* v. *Rabun County Chamber of Commerce, Inc.*, 698 F.2d 1098, 1110-1111 (11th Cir.1983) (finding a

religious purpose in erection of large illuminated cross in a state despite the avowed purpose of promotion of tourism).

Defendants next contend the primary message of the statues will be one of inspiration to the police and fire fighters and provide evidentiary support for Saint Michael and Saint Florian's significance to the first responders. Assuming *arguendo*, that public servants of all denominations will discern such secular message despite the bluntly religious delivery, Defendants neglect to address the effect the statues will likely have on a *reasonable member of the public* utilizing the building for one of its many purposes. The placement of two statues seemingly befitting a house of worship, on the exterior façade of the public safety building, overshadowing public access points, indicates the *primary effect* is likely to convey a religious message.

Defendants' claims that the statues will not result in excessive entanglement with religion, or that the evidence of political divisiveness is inapplicable, are also unavailing. The record shows that Mayor Koch commissioned the statues on his own accord, paid significant public funds to do so, and plans to continue to expend such sums for their installation. There is further evidence that the statues will be placed on the front of the central location where the public will interact with those charged with protecting, serving and safeguarding the community. Although Defendants assert the statues are merely part of the City's municipal art initiative, it is hard to see how a continuance of a program spending City funds for this or further religious art could not result in excessive entanglement. Cf. *Lynch* v. *Donnelly*, 465 U.S. 668, 684 (1984) (absence of entanglement where there was no state involvement with content or design of the exhibit at issue, no expenditures for its maintenance, and the tangible material contributed was *de minimis*).

Next, although federal courts following the *Lemon* Test only consider political divisiveness in cases of where financial subsidies are paid to parochial schools, the SJC has recognized the factor relevant beyond that narrow context. See *Colo*, 378 Mass. at 558. Defendants have not put forth any evidentiary support to counter Plaintiffs' evidence of the divisiveness in the community which the statues have already caused. And, even if the Court disregarded Plaintiffs' evidence of divisiveness, the remaining factors all point to Plaintiffs' likelihood of success on the merits.

Finally, Defendants contend that Plaintiffs are unlikely to succeed on their claim because refusing to install the statues would result in a violation of the Equal Protection Clause of the United States Constitution. Essentially, they argue that to not install the statues would be discriminatory treatment based on Plaintiffs' "negative attitudes" towards Catholicism. Defs.' Memo. at 18. This argument has no merit and would turn constitutional jurisprudence on its head. Plaintiffs are not government actors; Defendants are. Plaintiffs do not seek to exclude, burden, or target Catholic beliefs. They request the religious neutrality Article 3 guarantees. "[T]o insist that government respect the separation of church and state is not to discriminate against religion, indeed it promotes a respect for religion by refusing to single out one or two creeds for official favor at the expense of all others." *Amancio* v. *Somerset*, 28 F. Supp. 2d 677, 681-682 (D. Mass. 1998). See *Catholic Charities Bureau, Inc.* v. *Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025) ("the fullest realization of true religious liberty requires that government refrain from favoritism among sects" [citations ad quotations omitted]).

ii. Irreparable Harm and Balance of Harms

Plaintiffs have also demonstrated a risk of irreparable harm. The implication of Plaintiffs' constitutional rights is sufficient to satisfy the requirement of proof of irreparable

harm. See, e.g., *T & D Video, Inc.* v. *City of Revere*, 423 Mass. 577, 582-583 (1996) (defendant likely infringement of plaintiff's First Amendment right constituted irreparable harm); *Melendres* v. *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), quoting *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' "); *Jolly* v. *Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (irreparable harm requirement satisfied when constitutional rights are implied in the analysis); *Basank* v. *Decker*, 449 F.Sup.3d 205, 213 (S.D.N.Y. 2020) ("Petitioners have also shown irreparable injury because . . . they face a violation of their constitutional rights.").

The balance of the harms to the parties and the public also favors ordering injunctive relief. Enjoining Defendants from installing the statues with prevent Plaintiffs and other members of the public from having to regularly confront the religious displays every time they use or pass by the public building and thus, from experiencing any subordination of religion. See *Catholic Charities Bureau, Inc.*, 605 U.S. at 248, quoting *Santa Fe Independent School Dist.*, 530 U.S. at 309 ("Government actions that favor certain religions, the Court has warned, convey to members of other faiths that 'they are outsiders, not full members of the political community.'"). It will also prevent the further expenditure of public funds on installing the statues, and additional costs from the real prospect of their ultimate removal, neither of which are likely to be recoverable. Conversely, the only identifiable harm to Defendants if they ultimately prevailed in this suit, is delay in installation of the statues. The requested injunction will not forestall the completion of the remaining aspects of the building or its opening to the public.

Lastly, ensuring the requirements of Article 3 are met is in the public interest as is preventing any unnecessary further expenditure of public funds. Although Defendants argue that the public has an interest in inspiring the City's first responders in carrying out their work to

maximum effectiveness, the Court does not conceive that the ability, commitment, and enthusiasm of the members of the Quincy Police and Fire Departments to serve the communities will be appreciably undermined if the two statues are absent for the duration of this litigation. Put another way, there is no showing that the level of performance of the Police or Fire Department is affected by what statues adorn the public entrance to the building.

Accordingly, Plaintiffs meet the requirements for obtaining a preliminary injunction here.

ORDER

For the reasons stated, Defendants' Motion to Dismiss is **DENIED**, and Plaintiffs' Motion for Preliminary Injunction is **ALLOWED**.

Dated: October 14, 2025

William F. Sullivan
Justice of the Superior Court

Article 3 of the Massachusetts Declaration of Rights, as amended by art. 11 of the Articles of Amendment to the Massachusetts Constitution:

As the public worship of God and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a republican government; — therefore, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made, or entered into by such society: — and all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

90 Mass.App.Ct. 1121
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Sarah QUIGLEY & others [1]
v.
CITY OF NEWTON.

No. 16–P–425.
|
December 19, 2016.

By the Court (SULLIVAN, MALDONADO & NEYMAN, JJ. [2]).

MEMORANDUM AND ORDER
PURSUANT TO RULE 1:28

***1** The plaintiffs, twelve residents of Newton, appeal from entry of judgment following the allowance of Newton's motion to dismiss. See Mass.R.Civ.P. 12(b)(1) and (6), 365 Mass. 754 (1974). The plaintiffs contend that the judge erred in determining they have no standing under the ten taxpayer statute. See G.L. c. 40, § 53. We affirm.

Background. The plaintiffs challenged Newton's selection of Austin Street Partners (ASP) for a mixed-use redevelopment of a parking lot in the Newtonville section of the city, claiming that Newton's actions violated the Uniform Procurement Act. See G.L. c. 30B, § 16. In allowing Newton's motion to dismiss, the judge ruled that the plaintiffs did not demonstrate standing under G.L. c. 40, § 53, which permits actions to be brought by at least ten taxpayers when a city is "about to raise or expend money or incur obligations" for an illegal purpose. [3]

Discussion. 1. *Standard of review.* "We review the allowance of a motion to dismiss de novo." *Curtis v. Herb Chambers I–95, Inc.,* 458 Mass. 674, 676 (2011). "Factual allegations [in the complaint] must be enough to raise a right to relief above the speculative level." *Iannacchino v. Ford Motor Co .,* 451 Mass. 623, 636 (2008), quoting from *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007). "[W]e examine the sufficiency of the plaintiff's claims in light of the principles that the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff's favor, are to be taken as true." *Blank v. Chelmsford Ob/Gyn, P.C.,* 420 Mass. 404, 407 (1995). [4]

2. *Standing.* "There is no general jurisdiction in equity in this commonwealth 'to entertain a suit by individual taxpayers to restrain cities and towns from carrying out invalid contracts, and performing other similar wrongful acts.' " *Fuller v. Trustees of Deerfield Academy & Dickinson High Sch.,* 252 Mass. 258, 259 (1925), quoting from *Steele v. Municipal Signal* Co., 160 Mass. 36, 38 (1893). The ten taxpayer statute serves as "a vehicle whereby concerned taxpayers may enforce laws relating to the expenditure of their tax money by local officials." *Edwards v. Boston,* 408 Mass. 643, 646 (1990). "[A] petition by taxpayers may be maintained only when it is brought within the provisions of the statute." *Richards v. Treasurer & Recr.* Gen., 319 Mass. 672, 675 (1946). [5]

The plaintiffs assert that Newton's ninety-nine year lease of the parking lot constitutes raising money, because ASP would pay rent and make contributions toward infrastructure improvements for the purposes of the redevelopment project. "The words 'to raise money' as applied to a municipality commonly means to raise by taxation." *Dowling v. Assessors of Boston,* 268 Mass. 480, 484 (1929). The preliminary term sheet reached between Newton and ASP in May, 2015, attached to plaintiffs' complaint, offers no suggestion that the money to be received by Newton impacts the plaintiffs as taxpayers in any way.

***2** The limited application of the term "raising money" in G.L. c. 40, § 53, was underscored in *Pratt v. Boston,* 396 Mass. 37 (1985). There, the city and a cultural nonprofit entered into contracts over the latter's sponsorship of a concert series on the Boston Common. *Pratt, supra* at 40. The city received $135,000 as a payment under the sponsorship agreement. *Id.* at 41. The court held that this did not constitute raising money because the conduct in question was not a form of taxation. *Id.* at 44. Similarly, Newton is expected to receive over $1 million in rent from ASP, as well as contributions for infrastructure development, but nothing in the pleadings suggests that Newton is "about to raise ... money" by taxation. G.L. c. 40, § 53.

The plaintiffs contend that Newton is "about to ... expend money" within the meaning of G.L. c. 40, § 53, because Newton will incur infrastructure improvement costs related to the redevelopment. These costs include underground wiring,

water and sewer improvements, and contingent liabilities such as environmental clean-up costs and traffic-related mitigation.

In order to warrant relief under G.L. c. 40, § 53, "there must be allegations of actual vote to raise or to pay money or to pledge credit for an illegal purpose." *Fuller,* 252 Mass. at 260. See *Richards,* 319 Mass. at 677 (challengers "must show such a relation between themselves and the proposed expenditure or incurring of obligations that their pecuniary interests will be adversely affected unless the contemplated action is enjoined"). There are no allegations to this effect in the complaint. One of the attachments to the complaint states that the city will meet with the developer to determine infrastructure costs and determine cost sharing as between Newton, the developer, and third parties. Reimbursed expenditures do not provide a basis for standing under § 53. See *Richards, supra.* There is no concrete allegation that unreimbursed contingent expenditures, if any, will have a negative impact on the pecuniary interests of the taxpayers. See *Fuller, supra* ("[T]here must be allegations of actual vote to raise or to pay money or to pledge credit for an illegal purpose. A well grounded expectation of such conduct is not enough to confer jurisdiction under the statute").

The complaint failed to allege facts sufficient to establish standing, and was therefore properly dismissed. See *Iannacchino,* 451 Mass. at 636.

Judgment affirmed.

All Citations

90 Mass.App.Ct. 1121, 65 N.E.3d 670 (Table), 2016 WL 7381735

Footnotes

1 Eleven other taxable inhabitants of Newton.

2 The panelists are listed in order of seniority.

3 The ten taxpayer statute, G.L. c. 40, § 53, as appearing in St.1969, c. 507, states in pertinent part:

> "If a town ... or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town ... for any purpose or object or in any manner other than that for and in which such town ... has the legal and constitutional right and power to raise or expend money or incur obligations, the supreme judicial or superior court may, upon petition of not less than ten taxable inhabitants of the town ... restrain the unlawful exercise or abuse of such corporate power."

4 On a motion to dismiss, we may consider documents which were attached to and made part of the pleadings. *Schaer v. Brandeis Univ.,* 432 Mass. 474, 477 (2000). However, "[w]e cannot base our decision on facts not contained in the record." *Love v. Massachusetts Parole Bd.,* 413 Mass. 766, 768 (1992). The plaintiffs have attempted to include in the record materials which were not appended to the pleadings and were not presented to the motion judge, as well as documents which came into existence after the case was decided in the trial court. None of these documents may be considered on appeal. *Ibid.*

5 For this reason, we reject the plaintiffs' contention that there is an implied cause of action under the Uniform Procurement Act. Not only are taxpayer suits highly circumscribed, but the Uniform Procurement Act contains

no language conferring a private right of action. See generally *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 505 (2013) (a statute must be interpreted in accordance with its plain meaning).

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