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**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT**

SJC-13877

CLAIRE FITZMAURICE & OTHERS,

*Plaintiffs-Appellees,*

v.

CITY OF QUINCY & ANOTHER,

*Defendants-Appellants.*

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

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**REPLY BRIEF OF DEFENDANTS-APPELLANTS**

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March 30, 2026

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## INTRODUCTION

The question in this case isn't whether the Court agrees with Quincy's plan to honor its first responders with statues of Florian and Michael. The question is whether art. 3 proscribes that choice. The answer—under art. 3's own text, history, and purpose—is no, as Plaintiffs all but concede.

Plaintiffs thus try to change the subject, accusing Quincy of using “the *language* of Massachusetts cases” while in fact applying “federal Establishment Clause” standards and of acknowledging this Court's *Colo* decision in only a “rare instance.” Red.Br.26, 49. But this is not only wrong (Quincy's brief invoked *Colo* approvingly more than a dozen times)—it is projection.

*Plaintiffs* are the ones seeking to swap out art. 3 itself for a federal Establishment Clause analysis—indeed, for the oft-criticized *Lemon* analysis the Supreme Court has expressly abandoned. And *Plaintiffs* are the ones who can't reconcile the result they seek here with *Colo*, which *upheld* prayer by paid Catholic priests in the legislative chamber.

There is one thing both sides agree on: Massachusetts is a religiously diverse place. But that only makes it more inappropriate for courts to attempt to screen out public art based on some citizens' objections to its perceived religiosity, rather than allowing the public square to reflect the Commonwealth's diversity. And Plaintiffs offer no tools for courts to engage in their proposed endeavor in an administrable way, or for local

officials to predict the results of such an analysis and order public affairs accordingly.

Better to adhere to the art. 3 the people adopted. Doing so does not “diminish the critical nature” of anyone’s interest in this lawsuit; it simply “recognizes the limits of our Constitution, and the proper role of the judiciary in a functioning democracy.” *Kligler v. Att’y Gen.*, 491 Mass. 38, 73-74 (2022).

## ARGUMENT

### I. Plaintiffs lack standing.

***Statutory standing.*** Plaintiffs lack the statutory foundation to invoke jurisdiction. For G.L. c. 40, § 53 to confer standing, Plaintiffs would need to be enforcing a “pending statute” “designed to prevent abuse of public funds.” *Edwards v. City of Boston*, 408 Mass. 643, 646-647 (1990). Article 3 is not such a statute. Blue.Br.30.

Plaintiffs try to side-step this limitation, relying on *Colo* to claim that Quincy cannot “expend taxpayer funds in a manner that violates the Declaration of Rights.” Red.Br.24. But § 53 is designed to protect against the unauthorized exercise of municipal power to raise or expend funds—not against every allegedly unconstitutional action that happens to cost money. *Edwards*, for example, involved a claim that Boston didn’t follow the statutorily mandated competitive bidding process to prevent corruption in awarding public contracts. 408 Mass. at 644. *Edwards* relied on *East Side Construction Co. v. Town of Adams*, also involving a town’s

alleged failure to follow fair competition requirements. 329 Mass. 347, 349 (1952). And *Bowditch v. Superintendent of Streets*, also cited in *Edwards*, held taxpayers could enforce a statute “protect[ing] the taxpayer ... from fraud and imposition” in public contracts because the taxpayer “has a right to insist” these “provisions intended for his security shall be observed.” 168 Mass. 239, 243-244 (1897).

Article 3, by contrast, has nothing to do with unauthorized public contracts. *See* Blue.Br.30-31. And Plaintiffs don’t claim Quincy violated any procedural requirement in commissioning the statues—meaning they cannot invoke ten-taxpayer standing.

*Colo* isn’t to the contrary. First, *Colo* challenged legislative chaplain salaries under the “anti-aid amendment,” art. 18, *see Colo v. Treasurer & Receiver Gen.*, 378 Mass. 550, 552 & n.4 (1979), which is a provision “designed to prevent abuse of public funds by local governments.” *Caplan v. Town of Acton*, 479 Mass. 69, 74 (2018). Second, *Colo* challenged the payment of the chaplains’ salaries—unquestionably an expenditure. 378 Mass. at 552. The argument in *Colo* was that the legislature lacked power to expend funds for any chaplaincy position. Here, there’s no dispute Quincy has the “constitutional right and power” to display public art it chooses. *Cf.* Red.Br.25. Plaintiffs just object to the art Quincy chose.

Plaintiffs’ invocation of § 53 further fails as they concede the money for the building has already been appropriated. I.App.34. Even if it hadn’t, Plaintiffs offer no evidence that the statue-related costs they

claim (if incurred) will be passed on to individual taxpayers. *Cf.* Red.Br.25. Since forgoing the statutes may not affect Plaintiffs' tax burden, the ten-taxpayer statute cannot justify this suit. Blue.Br.30-31.

***Individual standing.*** Plaintiffs also lack individual standing because their claimed injuries are too “speculative, remote, and indirect.” *Marchese v. Bos. Redevelopment Auth.*, 483 Mass. 149, 162 (2019); *see* Blue.Br.31-34. Tellingly, Plaintiffs' response focuses on the constitutional “area of concern,” Red.Br.22, skipping over the critical prerequisite: an actual injury. Plaintiffs emphasize their alleged “feelings of subordination” as their injury. Red.Br.22. But Plaintiffs don't cite a single Massachusetts case suggesting such vague assertions suffice, and *Ginther* indicates the opposite. Blue.Br.32 (citing *Ginther v. Comm'r of Ins.*, 427 Mass. 319, 324 (1998)). However “strong” Plaintiffs' feelings, Red.Br.23, “standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy,” *Pratt v. City of Boston*, 396 Mass. 37, 42 (1985).

Plaintiffs likewise fail to identify “some duty owed” them by the public defendants. *Enos v. Sec'y of Env't Affs.*, 432 Mass. 132, 135 (2000). Contrary to their claim that this rule only prohibits them from asserting a third-party's rights, Red.Br.23 n.6, this Court requires a specific duty to avoid “turn[ing] G.L. c. 231A into a roving entitlement” for anyone “to seek judicial review” of any action “that potentially impairs any asserted rights or privileges.” *Enos*, 432 Mass. at 141. Plaintiffs' assertion that

Quincy must avoid “violat[ing] their constitutional rights,” Red.Br.23 n.6, is “too broad” to satisfy this requirement, *Enos*, 432 Mass. at 138.

## **II. Under art. 3’s own terms, Plaintiffs’ claim fails.**

Quincy’s statues are also permissible on the merits, under art. 3’s “text, history, and purpose.” *Barron v. Kolenda*, 491 Mass. 408, 416 (2023); see Blue.Br.37-47. Because Plaintiffs’ claim fails as a matter of law, the preliminary injunction should be vacated and Plaintiffs’ claim dismissed.<sup>1</sup>

### **A. Article 3 permits Quincy’s statues.**

Article 3 prohibits the “subordination” of any sect or denomination from being “established by law,” and requires that all such entities “be equally under the protection of the law.” Art. 3, as amended by art. 11. Not only do Quincy’s statues not legally subordinate or deny equal protection of the law—they don’t affect the legal treatment of *anyone*. Blue.Br.37-38. And nothing in art. 3’s history, this Court’s caselaw, or the provision’s purpose suggests otherwise. See Blue.Br.39-46.

To the contrary, the Commonwealth’s array of similar displays, including in this Court’s own courthouse, and the Constitution itself, which is replete with ceremonial religious language, see Blue.Br.21-22, 41-42;

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<sup>1</sup> Plaintiffs argue this Court may only review the Superior Court’s decision on the preliminary injunction. Red.Br.19-20. But where a preliminary injunction is properly appealed pursuant to G.L. c. 231, § 118, this Court may remand with instructions to dismiss. *Leder v. Superintendent of Schs.*, 465 Mass. 305, 308-313 (2013); see also G.L. c. 211, § 3.

II.App.29-51, confirm the opposite. Passive displays with religious meaning have always been permissible under art. 3.

Plaintiffs cannot contradict this history. They offer nothing from the time of art. 3's adoption or amendment showing the provision spoke to allegedly religious symbolism on public property. Nor do they offer a single Massachusetts case—in the 250 years of art. 3's history—holding such symbolism violates art. 3.

Plaintiffs' only two gestures toward text and history fall woefully short. First, Plaintiffs invoke a dictionary definition of "Subordinate" to suggest that any government action treating one religion "as of less value or importance" violates art. 3. Red.Br.45-46. But this ignores the rest of the clause—that the subordination must "be established by law." Thus, art. 3 violations require worse *legal treatment* of people or entities based on denomination or sect. *See* Blue.Br.37-38.

This Court's precedent already establishes as much. The *Has* plaintiff, a Saturday Sabbath observer, surely felt like his religion had been subordinated when Massachusetts chose "the Lord's day" as the day for businesses to close. *Commonwealth v. Has*, 122 Mass. 40, 41 (1877). But because the Sunday-closing law did not "impose[] ... any religious ceremony" or compel "any form of worship," art. 3 was not violated. *Id.* at 42.

Likewise, the *Doe* plaintiffs felt that hearing "under God" recited in the Pledge of Allegiance suggested those "who don't believe in God, aren't as good as others who do believe." *Doe v. Acton-Boxborough Reg'l Sch.*

*Dist.*, 468 Mass. 64, 69 (2014). But this Court rejected their constitutional challenge, holding that absent any “evidence” that anyone has “in fact been *treated* ... any differently ... because of their religious beliefs,” plaintiffs’ mere “feeling[s]” that they had been “stigmatized and excluded” failed to state a “cognizable” denial of “equal protection.” *Id.* at 79-81.<sup>2</sup>

To stray from these precedents for Plaintiffs’ feelings-based reading of art. 3 would render ripe for challenge “all ... references to the Almighty that run through our laws, our public rituals, our ceremonies.” *Colo.*, 378 Mass. at 561. That includes those drafted by John Adams, which still appear in the Massachusetts Constitution and would in Plaintiffs’ view “subordinate” non-theistic religions and atheists. Blue.Br.41-42. Plaintiffs offer no response.

Indeed, last month the Boston City Council issued a resolution recognizing the “sacred commencement of Ramadan,” calling it “the month in which the Holy Quran was revealed to the Prophet Muhammad (peace be upon him)” and “invok[ing] blessings upon the Muslim community.”<sup>3</sup> Under Plaintiffs’ standard, non-Muslim Bostonians (by definition not

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<sup>2</sup> Given *Doe*, Plaintiffs effectively concede Quincy’s statues do not violate art. 3’s equal-protection clause. Red.Br.45 & n.24. Their attempted pivot to art. 3’s “non-subordination language,” *id.*, likewise fails, since this Court’s reasoning about what it means to deny “[e]quality under the law,” *Doe*, 468 Mass. at 66 n.5, applies equally to a prohibition on subordination “established by law.”

<sup>3</sup> See City of Boston Resolution 2026-0359 (Feb. 11, 2026), <https://perma.cc/J2YJ-ZVJY>.

designated for the Council’s “blessings”) would “feel subordinated.” Plaintiffs’ theory would thus embroil courts in all manner of disputes over governmental references to religion that have no effect on anyone’s actual legal treatment.

Second, Plaintiffs claim Quincy “limits art. 3 to prohibit only compelled worship or formal establishment of a state religion,” while history reflects a “broader” “struggle.” Red.Br.45-46. But that misstates Quincy’s position. Far from confining art. 3 to compelled worship and formal establishment, Quincy agrees that if it were to make actual *legal* distinctions between citizens based on religion, there may well be an art. 3 claim. *See* Blue.Br.38. Further, Quincy agrees that the historical problems that necessitated the 1833 amendment are examples of legal subordination. *Compare* Red.Br.46-47 *with* Blue.Br.39-41. The trouble for Plaintiffs is that all those involve *legal* subordination. And critically, there’s something missing from these identified historical problems—any reference to passive displays.

**B. Plaintiffs’ alternative approaches are unmoored from art. 3.**

Lacking a serious argument under art. 3, Plaintiffs ask this Court to depart from it—either by replacing it with the discredited federal *Lemon* test, *see Lemon v. Kurtzman*, 403 U.S. 602 (1971), or by updating it to “reflect[] present-day conditions.” Red.Br.27, 48. The Court should decline these alternatives and adhere to art. 3.

*Lemon*. Plaintiffs say “the Establishment Clause criteria articulated in

*Lemon*” ought to govern art. 3 claims. Red.Br.27, 32-42. But as all agree, “the Supreme Court’s analysis of *federal* constitutional rights does not control this Court’s analysis of *state* constitutional rights.” Red.Br.26; see Blue.Br.34-36. Plaintiffs can’t have it both ways; if “federal law” is “inapposite to this Court’s interpretation of art. 3,” Red.Br.49 n.27, surely *de-funct* federal law interpreting a *different* provision with a *different* text and history is maximally inapposite.

Plaintiffs insist *Colo* “made the considered judgment” to adopt *Lemon*. Red.Br.27. But as Defendants already explained, *Colo* at most merely “f[ound] support” from *Lemon* for its “conclusion” that there was no art. 3 violation. 378 Mass. at 558; Blue.Br.47. And while Plaintiffs attempt to bolster their argument by asserting that *Colo* “also identified a fourth factor”—“divisiveness”—“not set forth in *Lemon*,” Red.Br.27-28, 40, that misreads *Colo*, which addressed divisiveness only because it found it “implicit in the [*Lemon*] analysis.” 378 Mass. at 558.

So neither *Lemon* itself nor *Lemon-via-Colo* is binding—and regardless this Court is free to revisit any prior incorporation of it. Blue.Br.47. And this Court shouldn’t adopt it now. As Defendants already explained, *Lemon* bears no relationship to the text or history of art. 3, is chaotic in practice, fosters religious hostility, and disproportionately disfavors religious minorities. Blue.Br.47-50.

Plaintiffs make no effort to ground their test in art. 3’s text or history. And while Plaintiffs claim their test is “workable,” Red.Br.29, they don’t

rehabilitate its fundamental flaw—namely, that its vague standards (*e.g.* “primary effect” of “advanc[ing] ... religion,” *Lemon*, 403 U.S. at 612) leave judges entirely at sea. Adopting it would require courts to second-guess the political process based on little more than aesthetic judgments and intuitive perceptions of propriety.

Plaintiffs’ brief demonstrates the point. Plaintiffs’ analysis hinges on their characterizations of the statues as “larger-than-life,” “overtly religious-looking,” and “prominent.” Red.Br.33-36. But Plaintiffs don’t say what size is constitutional, who determines whether statues are “religious-looking,” what makes a statue legally too “prominent,” or how any of these factors are balanced against each other.

Plaintiffs *also* claim that the dozens of other statues across the Commonwealth and country that Quincy identified wouldn’t “automatic[ally be] eras[ed],” since some “commemorat[e] historical events,” others are from the “eighteenth-and-nineteenth-century,” and others feature “context.” Red.Br.31. But Plaintiffs don’t explain what principle in art. 3 makes it permissible to “commemorat[e] historical events” but not to inspire first responders<sup>4</sup>; how a statue could violate art. 3 when erected but not afterward; what “context” art. 3 makes relevant; or how these factors relate to the others just considered. Moreover, Plaintiffs’ arbitrary lines

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<sup>4</sup> Inspiring men and women who put their lives and personal safety on the line each day they go to work to protect the public is a legitimate public objective, as Plaintiffs don’t dispute.

wouldn't even justify many of the statues Quincy cited—like that of Pope John Paul II in Boston (ca. 1981), which Plaintiffs purport to accept, Red.Br.31 n.12. Indeed, while Plaintiffs laud the “context” of the religiously significant statues in this Court’s courthouse, Red.Br.31 n.11, other viewers would likely think the context makes them *worse*—perceiving the fact that (for example) this Court’s statue identifies “Religion” itself with a habited nun holding a Bible as sending an objectionable message about what religion constitutes “Religion,” *see* II.App.34.<sup>5</sup>

Plaintiffs’ proposal is exactly the “jurisprudence of minutiae” based on “exquisite distinctions from fine detail” that made *Lemon* so “difficult[.]” *County of Allegheny v. ACLU*, 492 U.S. 573, 674-675 & n.11 (1989) (Kennedy, J., concurring and dissenting). And if courts struggle to apply it, local officials trying to assess the lawfulness of their public art will be left rudderless. This Court should decline that path.

**“Present-day conditions.”** So too for Plaintiffs’ alternative proposal—that this Court define “non-subordination” using a “context-informed analysis” that “reflects present-day conditions.” Red.Br.43, 48. Plaintiffs don’t bother to explain how they would reduce “present-day conditions” to a rule that can reliably be applied by lower courts and municipal officials. Their proposal appears to simply be a request for a judicial update of art. 3

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<sup>5</sup> Plaintiffs’ principle would likewise require scrubbing the Boston Public Library’s walls of John Singer Sargent’s mural cycle *Triumph of Religion*. II.App.38.

forbidding *these* statues—doubling as a frank acknowledgment that the art. 3 now on the books doesn't do so.

And while Plaintiffs (*see* Red.Br.42-44) cite cases “across numerous constitutional provisions” supposedly supporting this approach, none do. Cases involving legal doctrines that *themselves turn on* current societal practices or scientific understandings—like whether people have a “reasonable expectation of privacy” in a new type of technology, *Commonwealth v. Augustine*, 467 Mass. 230, 254 (2014), or whether a form of punishment violates “contemporary standards of decency,” *Diatchenko v. Dist. Att’y for Suffolk Dist.*, 466 Mass. 655, 669 (2013)—of course depend on what those practices and understandings are. But that has nothing to do with the question presented here—whether statues constitute subordination “established by law.”

That said, Quincy’s position is *not*, as Plaintiffs suggest, that “past practices” dictate the full extent of art. 3. Red.Br.49. Quincy’s position is that “constitutional history” “illuminat[es]” the contours of what the “directly applicable and dispositive” “text” requires, *Barron*, 491 Mass. at 414-415: *legal* subordination. That requirement, not history alone, is determinative. And it governs unless and until art. 3 is amended again.

In any event, Plaintiffs haven’t remotely shown that their approach would be desirable. The only “present-day condition[.]” Plaintiffs identify is that Massachusetts’s population is now more religiously diverse than when art. 3 was adopted and amended. Red.Br.9, 42. But Plaintiffs *also*

suggest religious statues are permissible provided they date from that time—when Massachusetts’s population, and thus its statues with religious meaning, were far “more religiously homogeneous” (that is, overwhelmingly Protestant Christian). Red.Br.31, 48.

So Plaintiffs propose to freeze in place a “religiously homogeneous” public square for a religiously diverse population. Under Quincy’s approach, meanwhile, the Commonwealth’s public art could over time be expected to look like the Commonwealth—including by reflecting its religious (and nonreligious) diversity. Following art. 3 is thus not only legally required—it will address the very policy concern Plaintiffs identify better than Plaintiffs’ unmoored alternatives.

### **III. Even under *Lemon*, Plaintiffs lack a likelihood of success.**

Even if this Court looks to *Lemon* as *Colo* did, every *Colo* factor weighs in Quincy’s favor. Plaintiffs’ contrary arguments defy *Colo* itself.

**Purpose.** As Mayor Koch testified, the statues’ purpose is to “honor, inspire, and encourage our First Responders”—not promote religion. II.App.225-226. That purpose parallels *Colo*. And because it is not a sham and has been corroborated by ample other evidence, purpose favors Quincy. Blue.Br.52-53.

In response, Plaintiffs claim deferring to non-sham purposes renders the test a “pushover.” Red.Br.32. But the very case Plaintiffs cite supports precisely such deference—saying “governmental statements of purpose” “will generally get deference,” are “owed” “respect,” and are rejected

only “in those unusual cases where the claim was an apparent sham.” *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 864-865 (2005).

This isn’t an unusual case. As Quincy explained, even *Lemon* doesn’t allow courts to infer a lack of secular purpose from a symbol’s religious nature alone. Blue.Br.54; *cf.* Red.Br.33 (seeking this inference). Otherwise, the prayers offered in *Colo* would certainly have had a religious purpose, not to mention the dozens of other statues Quincy identified. 378 Mass. at 559; Blue.Br.17-25.

And Plaintiffs’ assertion that the statues are “grounded in Catholic tradition” alone is simply untrue. Red.Br.34. As Quincy explained, but Plaintiffs ignored, Michael is a literary figure referenced in a variety of ancient faith traditions. Blue.Br.16-19. Florian is a historical figure whose cultural importance to the firefighting community resounds far beyond Catholicism. *See* Blue.Br.15-16. And police officers and firefighters from diverse backgrounds, religious and otherwise, look to them as symbols of comfort. *See* II.App.137-195. Plaintiffs cannot wipe this away with an *ipse dixit*. And Plaintiffs’ position again cannot be squared with *Colo*, which allowed the legislature to employ Roman Catholic priests—whose prayers are “grounded in Catholic tradition,” Red.Br.34—as the only paid chaplains, for decades. 378 Mass. at 557.

Next, Plaintiffs contend Quincy must be promoting religion because of how the statue contract identified the figures. Red.Br.34. But Quincy freely acknowledges these figures are widely known as “Saint Michael

the Archangel the patron saint of Law Enforcement, and Saint Florian ... a protector of fire fighters.” I.App.162. There is nothing nefarious about using common appellations to identify the figures the artist would depict. Indeed, much like the Superior Court’s rejection of the “Solomonic approach” to assessing the statues, II.App.326 n.8, this at most reflects that language with religious origins can be used for secular ends. *Cf. Goldstein v. Secretary*, 484 Mass. 516, 536 (2020) (Kafker, J., concurring).

In any event, delving into contract recitals (whose provenance is not reflected in the record) is a request for an impermissible “judicial psychoanalysis” of Mayor Koch’s “heart of hearts.” *McCreary*, 545 U.S. at 862. Plaintiffs’ footnoted suggestion that they need “cross examination” to second-guess the Mayor’s statements gives away the game, Red.Br.34 n.15—they have failed to show this *Lemon* prong.

***Effect.*** The statues’ primary effect will likewise be secular: to encourage and inspire the first responders whose professions these figures have come to symbolize. Blue.Br.15-20; II.App.306-310.

Plaintiffs’ contrary insistence—that the statues will advance religion because they are, to Plaintiffs’ minds, “befitting a house of worship,” Red.Br.36—defies *Colo. Colo*. *Colo* held that even *prayer* wouldn’t have a primarily religious effect because listeners “may reasonably be assumed to have fully formed their own religious beliefs or nonbeliefs” and wouldn’t hear it in anything like “a compulsory school day.” 378 Mass. at 559. Just so here. Blue.Br.57.

Plaintiffs try to distinguish *Colo* by saying the prayers were “not limited to a single denomination, ‘brief,’ and ‘voluntary.’” Red.Br.38. But these are no distinctions at all: Michael and Florian likewise aren’t limited to a single denomination, Blue.Br.18-19 & nn.3-5; any incidental glimpses of the statues will be fleeting; and the statues mandate nothing of anyone. Indeed, this case is simpler than *Colo*. While the *Colo* chaplaincy wasn’t statutorily limited by faith, it had been occupied exclusively by Catholic priests “for over the past twenty years.” 378 Mass. at 557. The statues here, meanwhile, are now and always associated with multiple faiths (and with first responders generally).

Unable to escape *Colo*, Plaintiffs say the effects prong forbids the statues because “[a]n objective observer” would perceive “a religious message.” Red.Br.36. But to the extent this inquiry is required at all (*Colo* didn’t engage in it), Plaintiffs mistake how it works.<sup>6</sup> Plaintiffs’ primary evidence of how an objective observer would see the statues is Plaintiffs’ “declarations describing *their* perception.” Red.Br.37 (emphasis added). But the “objective observer” isn’t a plaintiff or any other real person; it is a “hypothetical construct”—an imagined observer who “knows *all* of the pertinent facts and circumstances surrounding the symbol and its

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<sup>6</sup> Plaintiffs took the opposite position below—faulting Quincy for “cit[ing] an ‘objective observer’ standard as governing the ‘effects’ inquiry” and saying “the SJC has never adopted that test.” Super. Ct. Dkt. 14.7 at 11.

placement.” *Salazar v. Buono*, 559 U.S. 700, 721 (2010) (plurality) (emphasis added).

Thus, while Plaintiffs emphasize the statues’ alleged “size,” “prominence,” and “obvious religious significance,” Red.Br.36, the objective observer “is aware of information not limited to th[at] gleaned simply from viewing the challenged display.” *Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 (10th Cir. 2008) (cleaned up). Rather, she is “fully aware of the relevant circumstances,” *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 11 (1st Cir. 2010)—including Quincy’s secular purposes in displaying the statues; that numerous other fire and police communities depict or reference these figures; and that these figures represent the values of firefighting and police work for first responders around the world, whatever their religion. Blue.Br.15-19.

Plaintiffs doggedly ignore this context—under which the statues will convey a message of diligence, justice, and courage; not religious “endorsement.” *Hanover Sch. Dist.*, 626 F.3d at 10.

***Entanglement.*** As Quincy explained, this Court has rejected entanglement arguments outside the context of “the government’s continuing monitoring or potential for regulating ... religious activity.” Blue.Br.57-58 (citing *Att’y Gen. v. Bailey*, 386 Mass. 367, 378-379 (1982)). Plaintiffs don’t dispute that nothing like that is taking place here, Red.Br.39-40—which should end the inquiry.

Resisting, Plaintiffs puzzlingly assert that this Court’s holdings are “merely a byproduct of the challenged behavior” and that entanglement should not be “artificially narrow[ed].” Red.Br.40. But Plaintiffs provide no alternative principle to guide the inquiry, if not the authority of this Court. And their apparent theory—that entanglement exists anytime government engages in expression perceived by some as religious, Red.Br.39—would require what *Colo* forswears: “[t]he complete obliteration of all vestiges of religious tradition from our public life.” 378 Mass. at 560-561.

***Divisiveness.*** Finally, Plaintiffs say the statues are “divisive[.]” Red.Br.40-41. But they advance no legal principle whatsoever, let alone a workable one, indicating how courts should determine whether enough online signatories, “local religious leaders,” or politicians oppose a project to make it unconstitutional—an inquiry that on its face confuses politics with law. Red.Br.41-42.

Quincy has elections. And the political process is perfectly capable of determining when a statue has become too “divisive” to be maintained—as the removal of objectionable statues across the country in recent years makes indisputably clear. Of course, none of this conflicts with the fundamental principle that constitutional rights “withdraw certain subjects” from politics. Red.Br.42. The point is that there is no constitutional right to be free from public art one dislikes.

Even if there were a judicially enforceable “divisiveness” line, Quincy hasn’t crossed it. Blue.Br.59-60. Plaintiffs cite a remark from one city councilor (out of nine); an online petition not limited to Quincy residents; and a letter signed by the members of one “Interfaith Network.” Red.Br.37, 40-41; *see* I.App.126-129, 137-138. Meanwhile, those whom the statues are most proximately *for*—Quincy’s firefighters and police officers—are united, with their unions appearing as amici in Quincy’s support. And the statues’ purpose is to inspire those first responders in their critical mission of protecting *all* Quincy’s citizens, whatever their beliefs.

#### **IV. Ruling for Quincy avoids serious federal constitutional concerns.**

The proper reading of art. 3 is confirmed by the serious federal constitutional questions looming if that provision were interpreted to imbue art. 3 with anti-religious hostility. Blue.Br.60-61. Plaintiffs’ contentions otherwise are unpersuasive. Quincy’s argument does not rest on “private religious expression” or the City mounting its own “free exercise rights.” Red.Br.51-52. Its argument is that government may not go so far in attempting to “separat[e] church and State” that it crosses over into impermissible hostility toward religion. *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 485 (2020). For Quincy not to display the statues because of hostility (whatever the source) towards a religion would violate this constitutional balance.

Plaintiffs contend their claims are “not rooted in anti-Catholic animus,” Red.Br.52, and so do not constitute “mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable,” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). Yet Quincy cited record evidence of these attitudes, Blue.Br.61, which Plaintiffs do not dispute. What would “turn constitutional jurisprudence on its head,” Red.Br.52, would be permitting governments to give legal effect to citizens’ “ideological” “rejection of Catholicism,” I.App.300.

Fortunately, the Court can avoid these significant federal constitutional concerns entirely by interpreting art. 3—consistent with its text, history, and purpose—to foreclose Plaintiffs’ claim. Blue.Br.61.

## CONCLUSION

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

Dated: March 30, 2026

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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(c), 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 4,477 words based upon the word count provided by that software.

Dated: March 30, 2026

/s/ Joseph C. Davis  
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## CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, I served Defendants-Appellants' Reply Brief by the Electronic Filing System and by email on counsel for Plaintiffs-Appellees:

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**ADDENDUM**

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2582-0576

CLAIRE FITZMAURICE & others<sup>1</sup>

vs.

THE CITY OF QUINCY & another<sup>2</sup>

**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**.

<sup>1</sup> 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

<sup>2</sup> Thomas P. Koch, in his capacity as Mayor of Quincy

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## 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.<sup>3</sup> 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

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<sup>3</sup> 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-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 statutes 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.<sup>4</sup>

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

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<sup>4</sup> 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).<sup>5</sup>

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.”<sup>6</sup> 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’—

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<sup>5</sup> 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.

<sup>6</sup> <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]).<sup>7</sup>

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 statutes. 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 statutes themselves as well as the stated purpose for their use to determine whether they can only serve a nonsecular purpose. See,

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<sup>7</sup> 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.<sup>8</sup> 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

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<sup>8</sup> 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 impermissible 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.<sup>9</sup> 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.*

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<sup>9</sup> 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.Supp.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 will 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

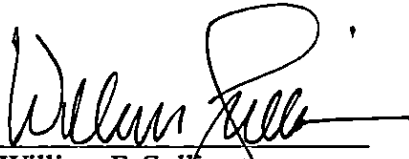
maximum effectiveness, the Court does not conceive that the ability, commitment, and enthusiasm of the members of the Quincy Police and Fire Departments to serve the communities will be appreciably undermined if the two statues are absent for the duration of this litigation. Put another way, there is 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.

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VII. Cities, Towns and Districts (Ch. 39-49a)

Chapter 40. Powers and Duties of Cities and Towns (Refs & Annos)

M.G.L.A. 40 § 53

§ 53. Restraint of illegal appropriations; ten taxpayer actions

[Currentness](#)

If a town, regional school district, or a district as defined in [section one A](#), or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town, regional school district, or district for any purpose or object or in any manner other than that for and in which such town, regional school district, or district 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, or not less than ten taxable inhabitants of any town in the regional school district, or not less than ten taxable inhabitants of that portion of a town which is in the district, determine the same in equity, and may, before the final determination of the cause, restrain the unlawful exercise or abuse of such corporate power.

**Credits**

Amended by St.1969, c. 507.

[Notes of Decisions \(167\)](#)

M.G.L.A. 40 § 53, MA ST 40 § 53

Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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