

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. 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 AMICI CURIAE QUINCY FIREFIGHTER AND
POLICE UNIONS IN SUPPORT OF DEFENDANTS-
APPELLANTS AND REVERSAL OF THE DECISION BELOW**

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CORPORATE DISCLOSURE STATEMENT

The Amici Curiae here are: (1) the Quincy Firefighters, Local 92, of the International Association of Fire Fighters consisting of 280 members; (2) the Quincy Police Superior Officers Association consisting of 52 members; and (3) the Quincy Police Patrol Officers Association consisting of 184 members. These three unions represent the entire number of firefighters and police of the City of Quincy and are referred to here collectively as the Firefighters and Police. All three are unincorporated associations that act as labor organizations under their own constitutions and by-laws. They have no parent corporations and no stockholders.

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IDENTITY AND INTEREST OF *AMICI CURIAE*¹

The Firefighters and Police are the City of Quincy's first responders. As first responders they are called upon to rush to danger, sometimes life-threatening, and extinguish burning buildings, rescue trapped householders, stop crimes with firearms in progress, and brave natural disasters to save victims. The daily work of most citizens is nothing like this. Instead, the daily work of the Firefighters and Police calls for resolve to risk their own lives for the larger public whom they do not know personally. The Firefighters and Police are special callings, not just careers.

They file this brief to advance the proposition that there should be no return to the rule of *Lemon v. Kurtzman*, which would undermine the ability of our society to embody meaningfully and honor profoundly by statues or other memorials, bearing religious and timeless significance, the common spirit of the Firefighters and Police.

¹ Counsel for the Firefighters and Police, the undersigned, authored in whole this brief. No counsel for a party authored this brief in whole or in part. No one other than counsel made any monetary contribution to fund the preparation or submission of this brief. And neither *amici curiae* nor their counsel represents or has represented one of the parties in this or any other proceeding involving similar issues.

ARGUMENT

I. The Quincy Firefighters And Police, While Occupying A Special Role In Our Society, Rely On The Figures of Florian And Michael The Archangel As Models and Inspirations.

The common spirit of the Firefighters and Police is based on self-sacrifice in the face of danger, even death. The Statues embody historically and still today this spirit of self-sacrifice and therefore profoundly honor the common spirit, the *esprit de corps*, on which the devotion to duty of the Firefighters and Police depend.

The Firefighters and Police, because of their special callings, support the yet-to-be-installed statues of Florian and Michael the Archangel (the “Proposed Statues”), and have done so with the evidence below (where the Superior Court permitted the Firefighters and Police to act as amici by submitting briefs as well as evidence, and offering argument at hearings):

1. Florian Is The Model Of The Firefighters’ Professional Virtues and Values. “My name is Tomas Bowes. I am President of Quincy Firefighters, Local 792, IAFF (‘Quincy Fire’). I have been a firefighter for twenty-six years.... There are 282 firefighters in Quincy and Quincy

Fire represents every one of them Our Board and I have seen the images of the Proposed Statue of Florian to be placed on the new Quincy Public Safety Building The 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. We try to represent these values when we are out on the street every day fighting fires and serving the Quincy public. The Proposed Statue is our model of what we want to be. We all try to be, strive to be, in our way, Florian. Florian Hall which is located in Dorchester, MA is recognized as the main meeting place for firefighters in Massachusetts and hosts memorial services, 911 events and line of duty funerals. Florian and the fireman's prayer provide us with the emotional support to carry out our duty to protect lives and property while putting our own lives at risk." RAI/306-307, ¶¶ 1, 4-8.

2. Michael the Archangel Is The Symbol And Model of the Police Profession. "My name is Gregg Hartnett. I am President of the Quincy Police Patrol Officers Association ("QPPOA"). I have been a police officer since 2003 There are about 182 police patrolmen in Quincy Our Board and I have seen the images of the Proposed Statue of Michael the

Archangel to be placed on the new Quincy Public Safety Building The Proposed Statue of Michael the Archangel is important to me and Quincy Police because he is both the symbol and the model of our profession. Michael the Archangel represents what we do and how we do it. I am a member of the Quincy Police Honor Guard. At all our ceremonies, whether a funeral honoring a fallen policeman, or even something less somber, we evoke the protection for the fallen and all of us of Michael the Archangel.” RAI/310-311, ¶¶ 1, 3-6.

II. A Return To The Modified Heckler’s Veto Of *Lemon v. Kurtzman*, Or Its Restoration Under Any Other Proposed Test, Would Serve To Undermine The Special Role Of The Firefighters And Police In Our Society.

This Court asked in part in its amicus solicitation of January 21, 2026, Docket Entry #2, “(2) whether the court should evaluate that question [‘whether ... the installation of Catholic saints ... violate art. 3’] pursuant to the framework set forth in *Lemon v. Kurtzman*, 402 U.S. 602 (1971), or whether a different framework should apply.” The Firefighters and Police answer that question “no” as to the framework of *Lemon v. Kurtzman* or anything like it.

First, Plaintiffs' and the Superior Court's approach would require abandoning in Massachusetts the historical American practice of honoring the military, fire, and police through the use of symbols that have religious and timeless meaning for some citizens. As the U.S. Supreme Court has stated, “the founding generation, ... would have found commonplace ... displaying a religious symbol on government property.” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 76 (2019) (Thomas, J., concurring). See also *Lynch v. Donnelly*, 465 U.S. 669, 674 (1984) (“There is an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789.”).

Second, Plaintiffs' and the Superior Court's approach would enshrine as a matter of Massachusetts constitutional law the test of *Lemon v. Kurtzman*. However, that test was created by judicial fiat and has no historical basis. It also employs a quasi-legislative balancing test and requires a judicial inquiry into the subjective purpose of government action, making it essentially unworkable. These problems became so insurmountable that the U.S. Supreme Court has abandoned *Lemon*. *Kennedy v. City of Bremerton*, 597 U.S. 507, 534 (2022) (“To defend its

approach, the District relied on *Lemon* and its progeny ... to be sure, in *Lemon* this Court attempted a 'grand unified theory' for assessing Establishment Clause claims What the District and the Ninth Circuit overlooked, however, is that the 'shortcomings' associated with this 'ambitiou[s],' abstract, and ahistorical approach to the Establishment Clause became so 'apparent' that this Court long ago abandoned *Lemon* and its endorsement test offshoot The Court has explained that these tests 'invited chaos' in lower courts, led to 'differing results' in materially identical cases, and created a 'minefield' for legislators.").

Third, while all citizens rightly have a voice in the political process, Plaintiffs' and the Superior Court's approach would install a modified heckler's veto as a matter of constitutional law. Under such a veto religious activity can be proscribed based on perceptions and discomfort, essentially preferencing secular activity, where such approach has already and expressly been rejected by the U.S. Supreme Court. *Kennedy v. City of Bremerton*, at 540 ("This Court has made plain ... that the Establishment Clause does not include anything like a 'modified heckler's veto in which religious activity can be proscribed' based on 'perceptions' or 'discomfort'"; "Rather than respect the First

Amendment's double protection for religious expression, it [the District Court] would have us preference secular activity.”).

It is just these perceptions and discomfort, preferencing secular activities, that the Plaintiffs valorize and extol and are now attempting to establish as the rule of law by which art. 3 is to be interpreted. Brief of Appellees, at 22 (“[o]ne plaintiff even notes that she can see the new building from her apartment and will be forced to see the statues whenever she looks out of her windows”), at 37 (“Plaintiffs ... submitted declarations describing their perception of the statues’ distinctly religious message.”).

It is this exact issue which caused much consternation at the hearing in the Superior Court:

Mr. Gilleran (the undersigned, representing the Firefighters and Police in the Superior Court): “Plaintiffs opposed the statutes – statues on the basis of their own religious beliefs or were [their] non-faith beliefs. As a matter of constitutional law, that’s irrelevant

The Court: Can I – can I ask you this? Because that echoes to me of a level of arrogance from a Government that they don’t want to hear – they can’t even be addressed the public’s - -

Mr. Gilleran: Oh that’s –

The Court: -- objection?

Mr. Gilleran: That's a political question. That's not a –

Mr. Gilleran: Your Honor, I am here to address simply the legal issues. I'm – I'm going to follow the words of – of the City Solicitor who said it may be illegal [legal] but politically inappropriate. But the question in this Court –

The Court: Right. You're right. I'm sorry.

Mr. Gilleran: -- is the legality, it maybe that – and I don't suggest this. The redress of the Plaintiffs is political in the City of Quincy. It's not legal in this Court.

The Court: All right. I understand. Go ahead. I'm sorry."

RAII/389-390 (brackets added).

That Appellees seek to make their perceptions and discomfort, preferencing secular activities, the constitutional standard could not be made more clear than by their statement that, "What is more, Defendants' argument is inconsistent with the statues' very stated purpose: if the statues can inspire first responders to be maximally effective in their duties, then so too can those same statues have a real and constitutional effect on those who pass by those statues when using the building." Brief of Appellees, at 38. This is the modified heckler's veto, based on "perceptions" or "discomfort" and proscribed by the Supreme Court in *Kennedy v. City of Bremerton*, that Appellees seek to enshrine as Massachusetts constitutional law.

Accordingly, this Court's response to Appellees' attempt to elevate the "modified heckler's veto" to Massachusetts constitutional status, and thereby shut out the statues that exemplify and inspire our critical first responders, should be, in the words of the poet, "Horseman, pass by!"²

Conclusion

This Court should reverse the order of the Superior Court and remand the case for a judgment of dismissal.

Respectfully submitted,

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² W.B. Yeats, "Under Ben Bulben," *The Collected Poems of W.B. Yeats*, at 459 (MacMillan 1989).

RULE 16(K) CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with all of the rules of court that pertain to the filing of amicus briefs, including, but not limited to, the requirements of Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. This brief complies with Mass. R. App. P. 20(a)(2)(C) because it has been produced in proportionally spaced typeface using Century Schoolbook 14-point font and, excluding the parts of the brief exempt by Mass. R. App. P. 20(a)(2)(D), contains 1,510 words.

Dated: April 15, 2026

/s/ Michael C. Gilleran
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2026, I electronically filed the foregoing amicus brief with the Clerk of the Court for the Massachusetts Supreme Judicial Court, which will accomplish service on counsel for all parties through the Court's electronic filing system. I further certify that I have served copies of the brief by email on the following counsel of record for the parties:

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