Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

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

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AMICUS BRIEF OF
THE ISLAM AND RELIGIOUS FREEDOM ACTION TEAM
AND
THE JEWISH COALITION FOR RELIGIOUS LIBERTY
SUPPORTING APPELLANTS AND REVERSAL

Dated: April 14, 2026

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Judicial Court Rule 1:21, neither the Islam and Religious Freedom Action Team, nor the Jewish Coalition for Religious Liberty has a parent corporation and no publicly held corporation owns any stake in any of these organizations.

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This brief is submitted pursuant to Mass. R. A. P. 17(a), 489 Mass. 1601 (2022) (allowing the filing of amicus briefs when solicited by an appellate court) and this Court's January 26, 2026 amicus announcement. No party or party's counsel authored any part of this brief, and no party, person, or entity other than amici, their members, or their counsel made any monetary contribution intended to fund preparation or submission of this brief. *See* Mass. R. A. P. 17(c)(5), 489 Mass. 1601 (2022). Neither amici nor their counsel represents or represented any of the parties in the present appeal in another proceeding involving similar issues, and neither amici nor their counsel was a party or represented a party in a proceeding or legal transaction at issue in the present appeal. *See id*.

INTEREST OF AMICUS CURAE

The **Islam and Religious Freedom Action Team**, a part of the Religious Freedom Institute, amplifies Muslim voices on religious freedom, seeks a deeper understanding of the support for religious freedom inside the teachings of Islam, and protects the religious freedom of Muslims and people of all faiths. RFI more broadly engages in research, education, and advocacy on core issues like religious freedom and the freedom to live out one's faith.

The **Jewish Coalition for Religious Liberty** is an incorporated group of rabbis, lawyers, and professionals who practice Judaism and are committed to

defending religious liberty. JCRL aims to foster cooperation between Jewish and other faith communities in the public square. Representing members of the legal profession and as adherents of a minority religion, JCRL has a unique interest in ensuring that the First Amendment protects the diversity of religious viewpoints and practices in the United States.

INTRODUCTION AND SUMMARY OF ARGUMENT

Article 3 of the Massachusetts Constitution demands that "all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law." Art. 3, as amended by Am. Art. 11. Yet, the lower court did not evaluate whether defendants' actions constituted religious "establish[ment]" and "subordination." Instead, it applied the *Lemon* test which the Supreme Court has repudiated at the federal level, and which is not derived from the text, history, or tradition of Article 3. That test was so vague and unworkable that, at its zenith, was understood to inappropriately demand public officials purge all religious symbolism, practice, or support from the public square. In many instances, government entities enforced the *Lemon* test in the strictest possible manner because its actual requirements were ambiguous and they did not want to face the risk of litigation. That is not required by, and is not compatible with, Article 3. This Court should

reject the decision below to clarify that *Lemon* is not the appropriate framework to apply in Article 3 cases.

As the Supreme Court has repeatedly observed, the *Lemon* test is arbitrary, unworkable, and unmoored from the First Amendment. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022). Factor by factor, it pushes courts and public officials toward governmental avoidance of religion. *See County of Allegheny v. ACLU*, 492 U.S. 573, 655 (1989) (Kennedy, J., concurring in judgment in part and dissenting in part). That was precisely the distortion produced here. Instead of asking whether the City of Quincy established a religion, or subjugated its citizens to one, the lower court treated the statues' religious symbolism and public officials' religiously favorable remarks as constitutional violations. If that is enough to invalidate these passive displays, then the same logic threatens any visible Jewish or Muslim displays as well. But a provision designed to prevent establishment should not be converted into a rule requiring governmental avoidance of religion. *See Colo v. Treasurer & Receiver Gen.*, 378 Mass. 550, 561 (1979).

The *Lemon* test burdens minority faiths especially. It prohibits the ordinary public accommodations and civic recognition that minority religious communities need to maintain a place in the public square. Minority religious symbols and icons are more likely to stand out and are therefore more likely to draw challenges as an endorsement of religion. If Quincy may not erect the statues at issue in this case

because they carry religious symbolism and officials spoke favorably of them, municipalities will feel equally unable to acknowledge or accommodate Ramadan, Hanukkah, or other minority-faith practices.

Perhaps the greatest irony is that, in attempting to prevent the establishment of religion, the *Lemon* test forces lower courts to make religious pronouncements. By treating the Quincy statues as sectarian because Saint Michael and Saint Florian are allegedly expressly Catholic figures, the analysis turns on a court's doctrinal judgment about religious theology. No religious sect wants the government to make pronouncements about their religious belief. Nor should this Court do so. Massachusetts law rejects constitutional inquiries that require courts to resolve disputes "on the basis of religious doctrine." *Antioch Temple, Inc. v. Parekh*, 383 Mass. 854, 859–60 (1981) (cabining that limitation to church property disputes). Such inquiries encroach dangerously close to the "substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs." *Id*. (quoting *Wheeler v. Roman Cath. Archdiocese of Bos.*, 378 Mass. 58, 63 (1979)). The Supreme Court has described determining the correctness of a religious adherents' professed belief as a question that "the federal courts have no business addressing." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014); *Id.* (*citing Emp. Div., Dep't of Hum. Res. of Oregon v. Smith,* 494 U.S. 872, 887 (1990) ("Repeatedly and in many

different contexts, we have warned that courts must not presume to determine . . . the plausibility of a religious claim").

ARGUMENT

I. This Court should abandon the *Lemon* test because it demands governmental avoidance of religion

The Supreme Court has recently described *Lemon* as "ambitious, abstract, and ahistorical." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022) (cleaned up) (quoting *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 48 (2019)). It warned that *Lemon* and its progeny "invited chaos in lower courts, led to differing results in materially identical cases, and created a minefield for legislators." *Id.* (cleaned up) (quoting *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 768 n.3 (1995)). In cases involving monuments and symbols the Court has found the test particularly unhelpful. *See Am. Legion*, 588 U.S. at 49, 51 (plurality); *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) (plurality) ("[w]hatever may be the fate of the *Lemon* test in the larger scheme of Establishment Clause jurisprudence, we think it not useful in dealing with the sort of passive monument that Texas has erected on its Capitol grounds").

But the most serious defect in *Lemon* was the secularism it demanded from state officials. Properly understood, the Establishment Clause never required governments to purge religious expression from the public square. *See Kennedy*, 597 U.S. at 541. But *Lemon* pushed courts and public officials to do just that. *See County*

of Allegheny, 492 U.S. at 655 (Kennedy, J., concurring in the judgment in part and dissenting in part) ("This view of the Establishment Clause reflects an unjustified hostility toward religion, a hostility inconsistent with our history and our precedents"). As the Supreme Court described in *Kennedy*, "[i]n the name of protecting religious liberty" application of the *Lemon* test "would have [courts] suppress it." *Kennedy*, 597 U.S. at 540. And the fear of newfound Establishment Clause violations "pressure[d] towns to forswear altogether" any religious affiliation. *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 597 (2014) (Alito, J., concurring). That test created a scheme whereby courts must prohibit religious demonstration in order to conform to the Constitution. *Kennedy*, 597 U.S. at 540. That scheme is unmoored from the purpose of the First Amendment. *Id*. at 540. ("Such a rule would be a sure sign that our Establishment Clause jurisprudence had gone off the rails."). "[N]o historically sound understanding of the Establishment Clause . . . begins to 'mak[e] it necessary for government to be hostile to religion.'" *Id*. at 541 (quoting *Zorach v. Clauson*, 343 U.S. 306, 314 (1952)).

Lemon's ambiguous secular purpose inquiry invites courts to invalidate government action because religious considerations are present. But the Establishment Clause forbids *establishment*, not religiously informed judgment by public officials. Perhaps, in attempting to cabin the purpose prong, the Supreme Court required that the secular purpose be predominant. *See Sch. Dist. of Abington*

Twp., Pa. v. Schempp, 374 U.S. 203, 222 (1963). That formulation only restates the difficulty. It gives courts no administrable way to determine when religious and secular purposes predominate, and leaves legislators and public officials with no reliable line to follow. *See Wallace v. Jaffree*, 472 U.S. 38, 108 (1985) (Rehnquist, J., dissenting) ("The secular purpose prong has proven mercurial in application because it has never been fully defined, and we have never fully stated how the test is to operate."). In practice, the inquiry encourages officials to conceal or disclaim religious considerations altogether. That is not religious neutrality. It is removal of religion from the public square.[1] *Id*. at 108 ("if the purpose prong requires an absence of *any* intent to aid sectarian institutions, whether or not expressed, few state laws in this area could pass the test"). And in cases involving longstanding symbols such as here, "identifying their original purpose or purposes may be especially difficult," as

[1] Justice Rehnquist (later Chief Justice) describes how the test fails on both fronts:

> If the purpose prong is intended to void those aids to sectarian institutions accompanied by a stated legislative purpose to aid religion, the prong will condemn nothing so long as the legislature utters a secular purpose and says nothing about aiding religion. However, if the purpose prong is aimed to void all statutes enacted with the intent to aid sectarian institutions, whether stated or not, then most statutes providing any aid, such as textbooks or bus rides for sectarian school children, will fail because one of the purposes behind every statute, whether stated or not, is to aid the target of its largesse.

Wallace, 472 U.S. at 108—109 (1985) (Rehnquist, J., dissenting).

"the purpose for maintaining a monument, symbol, or practice may evolve." *Am. Legion*, 588 U.S. at 52, 55 (2019).

The primary effect inquiry fares no better. "[W]here the Establishment Clause is at issue" courts must "distinguish between real threat and mere shadow." *Van Orden*, 545 U.S. at 704 (quoting *Schempp*, 374 U.S. at 308 (Goldberg, J., concurring)). But *Lemon* supplies no way to distinguish the two. Take *Van Orden*, where the Court found that *Lemon* is "not useful" in assessing the primary effect "of [a] passive monument [of the Ten Commandments] that Texas ha[d] erected on its Capitol grounds." *Id*. at 686. But in *American Legion*, the Fourth Circuit found it useful to determine the primary effect of a Latin cross monument, "because a reasonable observer would view the Commission's ownership and maintenance of the monument as an endorsement of Christianity." 588 U.S. 29, 47 (2019). When a test is so malleable that it bars passive displays in one case and permits them in the next without articulating a clear difference between the two cases, it does not guide public officials. It wards them away from religion altogether.

The entanglement prong is the worst of the lot. Even before the Supreme Court overturned *Lemon* entirely it, as well as this Court, attempted to cabin the test's entanglement prong to provide more latitude to religious accommodation by limiting its application only to "government's continuing monitoring or potential for regulating" religious activities. *Att'y Gen. v. Bailey*, 386 Mass. 367, 379 (1982)

(quoting *United States v. Freedom Church*, 613 F.2d 316, 320 (1st Cir. 1979)). That logic fails as soon as it begins. It is a "Catch-22 paradox of its own creation, whereby aid must be supervised to ensure no entanglement but the supervision itself is held to cause an entanglement." *Aguilar v. Felton*, 473 U.S. 402, 420–21 (1985) (Rehnquist, J., dissenting) (quoting *Wallace*, 472 U.S. at 109–110 (Rehnquist, J., dissenting)), overruled by *Agostini v. Felton*, 521 U.S. 203 (1997). With this lose-lose test, the only way that state officials can avoid constitutional violations is by avoiding religion entirely.

The "divisive political potential" factor referenced in *Lemon* is perhaps the clearest illustration of *Lemon*'s drift from the First Amendment. "[In *Lemon*,] Chief Justice Warren Burger declared that state programs or policies could excessively—and, therefore, unconstitutionally—entangle government and religion . . . through what he called their 'divisive political potential.'" Richard Garnett, *Religion, Division, and the First Amendment*, 94 GEORGETOWN. L. J. 1667, 1668 (2006) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 622 (1971)). "[F]rom this Hobbesian premise' . . . he proceeded on the assumption that the Constitution authorizes courts to protect our 'normal political process' from a *particular kind* of strife and to purge a *particular kind* of disagreement from politics and public conversations[.]" Garnett, *Religion, Division, and the First Amendment*, 94 GEORGETOWN L. J. at 1668 (emphasis in original).

That premise undercuts the very fabric of American democracy. "[P]luralism [is] the native condition of American society." *Id*. at 1670 (quoting JOHN COURTNEY MURRAY, WE HOLD THESE TRUTHS: CATHOLIC REFLECTION ON THE AMERICAN PROPOSITION 38 (Rowman & Littlefield Publishers 2005) (1960)).

> It is both misguided and quixotic . . . to employ the First Amendment to smooth out the bumps and divisions that are an unavoidable part of the political life of a diverse and free people and, perhaps, best regarded as an indication that society is functioning well. It is, after all, not a failure, but–as Justice Brennan observed–a "function of free speech under our system of government to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."

Garnett, *Religion, Division, and the First Amendment*, 94 GEORGETOWN L. J. at 1670–71 (quoting *Texas v. Johnson*, 491 U.S. 397, 408-09 (1989)). Thankfully, the Supreme Court has repudiated this notion, and in fact adopted its antithesis. *See e.g. Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017) (the exclusion of a religious organization "from a public benefit for which it is otherwise qualified, solely because it is [religious], is odious to our Constitution.").

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Eight years after *Lemon* was decided, this Court looked to its three-prong analysis in concluding that the legislature's payment of chaplains did not violate Article 3. *See Colo*, 378 Mass. at 557 (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612–613 (1971)). But *Colo* did not adopt *Lemon* as a rigid test. *Id*. The factors in *Lemon*

were not "precise limits to the necessary constitutional inquiry," but only "guidelines to [the Court's] analysis." *Id.* at 558. That qualification matters here. Article 3 should not be reduced to an academic formula, especially when that formula demands the abolition of religion from the public square.

This Court has never understood Article 3 to require the eradication of religion from the public square. The opposite is true. In *Arno*, this Court rightly observed that "the 'hermetic separation' of church and State is an impossibility which the Constitution has never required." *Arno v. Alcoholic Beverages Control Comm'n*, 377 Mass. 83, 91 (1979). In *Colo*, the Court reiterated that caution, and added that "the complete obliteration of all vestiges of religious tradition from our public life is unnecessary to carry out the goals of nonestablishment and religious freedom set forth in our State and Federal Constitutions." *Colo*, 378 Mass. at 561. Those statements are incompatible with a test that treats religious presence in the public square as constitutionally suspect.

With *Lemon* as the guidelines for Article 3 analysis, it is unsurprising that Justices on this Court have called Establishment Clause jurisprudence "the most confusing and contested areas of State and Federal constitutional law." *Caplan v. Town of Acton*, 479 Mass. 69, 92 N.E.3d 691 (2018) (Kafker, J. concurring, Gaziano, J., joining). But while *Colo* looked to *Lemon* for guidance, *see Colo*, 378 Mass. at 558, this Court does not have to. This Court has long recognized that it is not bound

by federal precedent when interpreting the Massachusetts Declaration of Rights. *See Corning Glass Works v. Ann & Hope, Inc. of Danvers*, 363 Mass. 409, 416 (1973). It would be deeply ironic if this Court, which never fully embraced *Lemon* to start with, continued to apply *Lemon* "[l]ike some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) even after the United States Supreme Court finally managed to kill the creature once and for all.

Even at the adoption of *Lemon*, this Court looked to history and tradition of religious practices when interpreting Article 3. *See Colo*, at 557 ("The long history of a certain practice . . . and its acceptance as an uncontroversial part of our national and State tradition do suggest that we should reflect carefully before striking it down."). That method is better suited to Article 3 than a test that, prong by prong, pressures courts and state officials to treat any religion in the public square as a constitutional violation.

II. This Court should abandon the *Lemon* test because it disproportionally burdens minority faiths

Article 3 forbids *establishment* of a particular religion and the legal subordination of one sect to another. *See Opinion of the Justices to the Senate & House of Representatives*, 214 Mass. 599, 601 (1913) (Art. 3 (as amended) "prohibit[s] the enactment of any law establishing any particular religion"). A rule

requiring avoidance of religion is contrary to that end. Further, it hampers the public presence of minority faiths that Article 3 was meant to protect.

The Superior Court reasoned that, because Saints Michael and Florian are "often recognized by the Catholic church," and because a Quincy city councilor said he hoped the statues would "bless our first responders" and lead them to "say a little prayer," the displays were "motivated wholly by religious considerations" and cannot be separated from their religious symbolism. *Fitzmaurice v. City of Quincy*, No. 2582CV0576 *15–16 (Mass. Super. Ct., Norfolk County. Oct. 14, 2025) (quoting *Gaylor v. Mnuchin*, 919 F.3d 420, 427 (7th Cir. 2019); *Books v. City of Elkhart*, *Indiana*, 235 F.3d 292, 302 (7th Cir. 2000)).

That logic will not stop with the statues in Quincy. When Boston Mayor Wu invited residents to attend a Ramadan Night Market, hosted on the City Hall Plaza, she described "this month [as] an opportunity for all our Muslim family, friends, and neighbors, to deepen their connection with the Quran, reaffirm their faith, and perform acts of service." Mayor Michelle Wu, *Ramadan Mubarak, Boston. Celebrate with community members and small businesses at our Ramadan Night Market—9 p.m. on Friday*, FACEBOOK (Feb. 17, 2026), https://perma.cc/TJ7Y-ML5D. A Ramadan market cannot be separated from its religious symbolism. Nor can the mayor's statements be understood without the religious significance of Ramadan. The same is true when Springfield welcomes the annual Menorah lighting

in Court Square and Mayor Sarno announces that "[t]he City of Springfield is proud to celebrate Hanukkah with our Jewish community" and expresses that with the rise of "antisemitism in the world . . . . [n]ow more than ever is the time to stand in solidarity with our Jewish community." *City of Springfield holds Annual Lighting of the Menorah in Court Square*, CITY OF SPRINGFIELD (Dec. 27, 2024), https://perma.cc/X3FA-9NU6. A Menorah cannot be separated from its religious symbolism. The Mayor's statements, like those of the Quincy city councilor, openly acknowledge the town's support of the religious event. Under the Superior Court's logic, each of these practices could be recast as an establishment of religion.

The prohibition is only heightened for religious minorities. Majority-faith symbols may sometimes be said to have "evol[ved] . . . through the centuries" and to take on a partly civic character. *McGowan v. Maryland*, 366 U.S. 420, 444 (1961) (discussing Sunday Closing Laws, "it is not difficult to discern that, as presently written and administered, most of them, at least, are of a secular, rather than of a religious, character"). "With sufficient time, religiously expressive monuments, symbols, and practices can become embedded features of a community's landscape and identity." *American Legion*, 588 U.S. at 55. But minority faith practices rarely receive that indulgence. Their symbols remain overtly religious to the public and thus remain vulnerable to constitutional challenges.

The Jewish practice of the eruv illustrates the point. An eruv is a "ceremonial demarcation of an area" created by placing nearly invisible wires on existing municipal utility poles. *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 152 (3d Cir. 2002). The eruv function is purely religious. It permits observant Jews to carry essential items on the Sabbath within the enclosed area. In efforts to accommodate Jewish citizens, numerous municipal governments have approved construction of eruvs. *See* Levin, *Rethinking Religious Minorities' Political Power*, 48 U.C. DAVIS L. REV. 1617, 1630 (2015) (noting that there are more than 130 eruvs in the United States). Unlike the permission for majority faith practices, which may contain a more secular nature, permitting the construction of eruvs is always motivated wholly by religious considerations and the eruvs themselves cannot be separated from their religious symbolism. But to bar the construction of eruv's using that logic is entirely harmful to Jewish people and in many cases motivated by antisemitic attitudes. Denying practicing Jews the ability to build an eruv is akin to prohibiting them from moving into the area entirely.

Consider an example in Islam. The U.S. postal service offers Eid Greetings Stamps featuring gold calligraphy and an olive branch, "commemorating the two most important [Islamic] festivals—or eids—in the Islamic calendar: Eid al-Fitr and Eid al-Adha . . . with a design to invoke centuries of tradition." *Eid Greetings Stamps, Sheet of 20*, USPS (April 4, 2025), https://perma.cc/GU5J-9R4T. The

greeting itself—"Eid Saeed," or "Happy Eid"—marks a profoundly religious holiday tied to the Islamic calendar. Unlike a stamp containing a Latin cross, *American Legion*, 588 U.S. at 42 (equating the Latin cross to a secular "symbol of sacrifice in the war"), or the Ten Commandments, *Van Orden*, 545 U.S. at 690 ("the Ten Commandments have an undeniable historical meaning"), the Eid greeting has not had "sufficient time" to "become embedded features" of American culture or identity. *American Legion*, 588 U.S. at 55. But that logic makes little sense to exclude the stamp on Constitutional grounds.

As this Court reaffirmed in *Colo*, the "'hermetic separation' of church and State is an impossibility which the Constitution has never required." *Colo,* 378 Mass. 550 at 560. Nor should it be the aspiration of Article 3 doctrine. A constitutional rule that pressures government to withdraw from any relation to Ramadan or Hanukkah practices, or to silence officials who speak favorably of them, does not prevent a neutrality towards religions. It creates hostility to them.

III. *Lemon* forces courts to make theological judgments Article 3 never required

Extending *Lemon* to a passive display like the Quincy statues would require courts to engage in religious doctrinal considerations. Those determinations should fall well outside the scope of civil courts' jurisdiction. "Courts are not arbiters of scriptural interpretation." *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 716 (1981); *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 787 (2022)

("scrutinizing whether and how a religious school pursues its educational mission would also raise serious concerns about state entanglement with religion and denominational favoritism."). Massachusetts and federal law alike reject constitutional rules that force civil courts to resolve disputes "on the basis of religious doctrine," *Antioch Temple, Inc. v. Parekh*, 383 Mass. 854, 859–60 (1981), or to "parse the content" of a religious expression. *Marsh v. Chambers*, 463 U.S. 783, 794–95 (1983). But when courts attempt to delve into the religious nature of policies, symbols, or practices they risk the "substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs." *Wheeler v. Roman Cath. Archdiocese of Bos.*, 378 Mass. 58, 63 (1979) (quoting *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976)); *See also Hiles v. Episcopal Diocese of Massachusetts*, 437 Mass. 505, 510 (2002) (citation omitted) ("[T]he First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization."). But that is exactly what occurs when the *Lemon* test is applied.

Take, for example, the Superior Court's application of the test on the archangel Michael statue. It concluded that archangel Michael is an exclusively Catholic figure, and from that premise inferred that the statue was sectarian in nature. *Fitzmaurice v. City of Quincy*, No. 2582CV0576 *15–16 (Mass. Super. Ct., Norfolk

County. Oct. 14, 2025). That determination is both incorrect, and inappropriate. For example, the same imagery of the angel Michael appears in the Anglican and Lutheran traditions. *See* William Martin, *St. Michael & All Angels*, ANGLICAN WAY (Sep. 27, 2015), https://perma.cc/WZ8L-YCPY (describing St. Michael in Anglican tradition using imagery consistent with Catholic depictions); *Stained glass window, St. Michael's Church*, GEOGRAPH (April 11, 2026), https://perma.cc/KU5K-PNSQ (depicting St. Michael in Anglican church with iconography similar to Catholic portrayals); *Windows That Witness*, OUR SAVIOUR LUTHERAN CHURCH (June 2022), https://perma.cc/65W6-49U3 (showing Lutheran stained glass depicting "Michael's left hand hold[ing] a spear . . . poised to strike into the mouth of the serpent."). The angel Michael also appears in the Islamic tradition. Michael is expressly named in Quran Chapter 2 verse 98 which states: "whoso is an enemy of God, His angels and messengers, of Gabriel and *Michael*, know that God is the enemy of the unbelievers." Quran 2:98 Khalidi 2008: 13–14. And he is named in hadith *Saḥīḥ Muslim* 770, reported by the Prophet's wife Aisha, which recounts that the Prophet would often begin his prayers invoking "the Lord of Gabriel, *Michael*, and Israfel, Creator of the heavens and the earth[.]" SALIH SAYILGAN, GOD, ANGELS, HUMANS, AND SATAN, IN GOD, EVIL, AND SUFFERING IN ISLAM 49 (Cambridge Univ. Press 2024) (quoting *Ṣaḥīḥ Muslim 770* (Abū al-Ḥusayn Muslim b. al-Ḥajjāj)) (emphasis added). Indeed, "[t]here . . . appear[s] to have been a certain amount of cross-cultural

exchange in ideas and imagery regarding angels amongst Jews, Christians, and Muslims in late antiquity and the Middle Ages with this sharing of ideas occurring in all directions[.]" STEPHEN BURGE, ANGELS (MALĀʾIKA), ST. ANDREWS ENCYCLOPAEDIA OF THEOLOGY (Brendan N. Wolfe et al. eds., 2024).

None of these examples should be used to support the notion that the angel Michael, as recognized in any Christian, Jewish, or Islamic traditions, is the same figure across those faiths. It is not the role of amicus curiae to resolve such theological questions in a civil dispute. Nor is it this Courts. "[T]his court is not qualified to decide and therefore must refuse to consider an issue which is so exclusively one of religious practice and conscience." *United Kosher Butchers Ass'n v. Associated Synagogues of Greater Bos., Inc.*, 349 Mass. 595, 599 (1965). Yet that is exactly what occurred here. In some great irony, the Superior Court incorrectly attributes Michael the archangel exclusively to the Catholic church, while applying the *Lemon* test to claim that government should not establish religious doctrine. Such an oxymoronic conclusion can only be the result of the unworkability of the *Lemon* test.

CONCLUSION

"There is no clear path yet through this difficult intersection of the religion clauses of the State and Federal Constitutions." *Caplan v. Town of Acton*, 479 Mass. 69, 92 N.E.3d 691 (2018) (Kafker, J. concurring, joined by Gaziano). This Court should take this opportunity to make one by abandoning the *Lemon* test.

Respectfully submitted,

ISLAM AND RELIGIOUS FREEDOM ACTION TEAM,
and
JEWISH COALITION FOR RELIGIOUS LIBERTY

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Dated: April 14, 2026

CERTIFICATE PURSUANT TO MASS. R. APP. P. 16(k)

I hereby certify that this brief complies with the Massachusetts Rules of Appellate Court pertaining to the filing of briefs, including Rules 17 and 20. This brief is set in Times New Roman 14-point font and contains 4,677 non-excluded words, as determined through the "Word Count" feature in Microsoft Word.

/s/ Dwight Duncan
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CERTIFICATE OF SERVICE

I, Dwight Duncan, counsel for amici curiae, hereby certifies under the penalties of perjury that on April 14, 2026, I caused a true copy of the foregoing document to be served through the electronic filing service provider and e-mail to:

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