

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SJC-13877

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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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**BRIEF OF THE AMERICAN LEGION AS *AMICUS CURIAE*  
IN SUPPORT OF APPELLANTS AND REVERSAL**

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## TABLE OF CONTENTS

	<b>Page</b>
INTEREST OF <i>AMICUS CURIAE</i> .....	6
RULE 17(C) DECLARATION.....	7
INTRODUCTION AND SUMMARY OF ARGUMENT .....	8
ARGUMENT .....	11
I. The First Amendment Prohibits State Hostility Toward Religion.....	11
II. The Superior Court’s Framework Displays Impermissible Hostility Towards Religion .....	14
III. Adopting The Superior Court’s Framework Would Be Unmanageable. ....	18
CONCLUSION.....	22
CERTIFICATE OF COMPLIANCE .....	23
CERTIFICATE OF SERVICE .....	24

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>American Legion v. Am. Humanist Ass’n</i> , 588 U.S. 29 (2019).....	<i>passim</i>
<i>Beeler v. Downey</i> , 387 Mass. 609 (1982).....	21
<i>Carson v. Makin</i> , 596 U.S. 767 (2022).....	12
<i>Catholic Charities Bureau, Inc. v. Wisconsin Lab. &amp; Indus. Rev.</i> <i>Comm’n</i> , 605 U.S. 238 (2025).....	19
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993).....	12
<i>Colo v. Treasurer &amp; Receiver Gen.</i> , 378 Mass. 550 (1979).....	9
<i>Espinoza v. Montana Dep’t of Revenue</i> , 591 U.S. 464 (2020).....	12, 19
<i>Everson v. Bd. of Ed. of Ewing Twp.</i> , 330 U.S. 1 (1947).....	11
<i>Fowler v. Rhode Island</i> , 345 U.S. 67 (1953).....	21
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021).....	12
<i>Good News Club v. Milford Cent. Sch.</i> , 533 U.S. 98 (2001).....	13

<i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. EEOC</i> , 565 U.S. 171 (2012).....	21
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022).....	9, 11, 17
<i>Larson v. Valente</i> , 456 U.S. 228 (1982).....	19
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992).....	16, 20
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971).....	9
<i>Locke v. Davey</i> , 540 U.S. 712 (2004).....	12
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978).....	12, 13
<i>New York v. Ferber</i> , 458 U.S. 747 (1982).....	21
<i>Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church</i> , 393 U.S. 440 (1969).....	21
<i>Rosenberger v. Rector &amp; Visitors of Univ. of Virginia</i> , 515 U.S. 819 (1995).....	11, 13
<i>Shurtleff v. City of Boston</i> , 596 U.S. 243 (2022).....	13
<i>Trinity Lutheran Church v. Comer</i> , 582 U.S. 449 (2017).....	12
<i>Walz v. Tax Comm’n of City of New York</i> , 397 U.S. 664 (1970).....	12

*Widmar v. Vincent*,  
454 U.S. 263 (1981).....20, 21

*Zorach v. Clauson*,  
343 U.S. 306 (1952)..... 11

**CONSTITUTIONAL AND STATUTORY AUTHORITIES**

MASS. CONST., pt. 1, art. 3 ..... 9

U.S. CONST. amend. I ..... 11

**OTHER AUTHORITIES**

*Adams War Memorial*, AM. LEGION..... 6

Aishvarya Kavi, *Years After Trump Takeover, Institute Of Peace Is  
Little More Than Scenery*, N.Y. TIMES (Mar. 17, 2026)..... 20

*Preamble to the Constitution*, AM. LEGION ..... 6

Ethel Dilouambaka, *Ancient Gods*, CULTURE TRIP (Nov. 27, 2024) ..... 18

Ian Harvey, *Modern Religion*, VINTAGE NEWS (Feb. 22, 2017)..... 18

*Joan of Arc*, GLOUCESTER HARBORWALK ..... 15

Stacy Parker, *Virginia Beach’s King Neptune Statue Turns 20 This  
Year*, THE VIRGINIAN-PILOT (May 27, 2025) ..... 18

*Standard Plates*, N.M. MOTOR VEHICLES DEP’T ..... 20

*State Flag*, N.M. SEC’Y OF STATE..... 20

## **INTEREST OF *AMICUS CURIAE***

For over a century, the American Legion has served America’s veterans and their families. Representing over 1.6 million members, the Legion seeks to “preserve the memories ... of our associations in all wars” and to “safeguard and transmit to posterity the principles of justice, freedom and democracy.” *Preamble to the Constitution*, AM. LEGION, <https://perma.cc/S92E-XA9G>. In carrying out that mission, the Legion builds and maintains memorials to honor the sacrifices of our nation’s veterans, some of which are erected on public property or maintained with public funds. For example, the Legion post in Adams, Massachusetts installed a memorial on the town hall’s front lawn “dedicated to all who died during periods of armed conflict, from the Revolutionary War to the Vietnam War.” *Adams War Memorial*, AM. LEGION, <https://perma.cc/ES58-XKQX>.

Some of these memorials contain symbolism or imagery with both secular and religious significance. The Legion has previously—and successfully—defended such monuments against constitutional challenges. *E.g.*, *American Legion v. Am. Humanist Ass’n*, 588 U.S. 29 (2019). The Legion therefore has an interest in ensuring that memorials on government property in Massachusetts and elsewhere may continue to display imagery and symbols of religious provenance.

## **RULE 17(C) DECLARATION**

The American Legion declares that: (A) no party or party's counsel authored this brief in whole or in part; (B) no party or party's counsel, or any other person or entity, other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of the brief; and (C) neither *amicus curiae* nor its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Public spaces across Massachusetts—and America more broadly—are adorned with symbols acknowledging important historical and literary figures, including ones with religious significance. Yet according to the decision below, the Massachusetts Constitution mandates the exclusion of such figures from new government buildings if they happen to also be Catholic saints. Under that approach, public spaces could honor brave women like Harriet Tubman and Amelia Earhart, but not Mother Teresa or Joan of Arc. Depictions of Spartacus’s storied uprising against tyranny would be fine, but not depictions of St. George’s legendary defeat of a dragon. Statues of King Louis the XVI (namesake of Louisville) would be unobjectionable, but statues of King Louis the IX (namesake of St. Louis) would be out of bounds. Nothing in the Massachusetts Constitution requires this absurdity, and the U.S. Constitution does not tolerate it.

First, some background: When the City of Quincy constructed a new public-safety building, the mayor commissioned two statues to decorate the building’s façade. One depicted Florian, a Roman soldier who pioneered firefighting brigades. The other depicted Michael the Archangel, a religious and literary figure featured in works from John Milton to Henry Wadsworth Longfellow. Both Florian and Michael are historical and literary icons that have come to represent firefighters and police officers, respectively. They are also Catholic saints.

Troubled by the latter fact, some residents sued, claiming the City’s installation of the statues would violate the Massachusetts Constitution’s command that “no subordination of any one sect or denomination to another shall ever be established by law.” MASS. CONST., pt. 1, art. 3; *see id.* art. 11 (amending Article 3). The Superior Court—principally invoking Massachusetts’s equivalent to the *Lemon* test—agreed. Add.80-83; *see Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Colo v. Treasurer & Receiver Gen.*, 378 Mass. 550 (1979).<sup>1</sup> In its view, including “statues significant only to one religion” on a public building would “subordinate the religions of all other members of the public” who use the facility. Add.85; *see* Add.87-90. Under the decision below, symbols with both secular and religious significance therefore have no place on public property in Massachusetts.

This Court should make clear the law is otherwise. The *Lemon* test is flawed, and this Court should abandon *Colo* just as the Supreme Court abandoned *Lemon*. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534-36 (2022). The statues at issue, which depict figures with both religious and secular significance, do not violate the Massachusetts Constitution, whether viewed under *Colo* or otherwise. Because the City advances these arguments, the Legion will not belabor the point.

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<sup>1</sup> “Add.” refers to the Addendum to Defendants-Appellants’ brief.

Instead, the Legion submits that adopting the Superior Court’s interpretation of “subordination” would put the Massachusetts Constitution on a collision course with the federal one. As interpreted by the Supreme Court and as incorporated against the States, the First Amendment’s Establishment Clause requires States to remain neutral between religion and nonreligion. A State therefore may not favor religion, such as by coercing participation in religious activity. But a State also may not favor *nonreligion* by adopting a posture of hostility towards faith. Singling out religion for unfavorable treatment does just that, whether subsidies or statues are involved.

Reading the Massachusetts Constitution to exclude secular symbols from public spaces due to their religious provenance and significance therefore would fall short of the neutrality that the First Amendment demands. Symbols that originate from religious roots can take on secular significance over time, such as the Bladensburg Cross in *American Legion*. 588 U.S. at 39. For this Court to affirm a rule excluding those symbols based solely on their religious pedigree would demonstrate an impermissible hostility toward religion. And it would invite an unmanageable—and unconstitutional—inquiry into how important a symbol is to a particular faith or which religious traditions pose a subordination risk. This Court should not start Massachusetts down that path.

## ARGUMENT

### I. The First Amendment Prohibits State Hostility Toward Religion.

The twin Religion Clauses of the First Amendment are two means to the same end—ensuring “religious liberty.” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 13 (1947). One forbids governments from enacting “an establishment of religion.” U.S. CONST. amend. I. The other precludes governments from “prohibiting [its] free exercise.” *Id.*

These two Clauses are not “yin” and “yang,” with the Establishment Clause guarding against the danger of too much religion in public, and the Free Exercise Clause guarding against the danger of too little. If that were so, the First Amendment would be at war with itself.

Instead, the Religion Clauses “have ‘complementary’ purposes.” *Kennedy*, 597 U.S. at 533 (quoting *Everson*, 330 U.S. at 15). The only “conflict” between these “constitutional commands” is a “mere shadow of” one cast by “a misconstruction of the Establishment Clause.” *Id.* at 543 (cleaned up). The Establishment Clause therefore cannot be read to *require* the “government to be hostile to religion.” *Zorach v. Clauson*, 343 U.S. 306, 314 (1952). To the contrary, the Establishment Clause *prohibits* government from displaying “hostility to religion” at odds with “the very neutrality [it] requires.” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 846 (1995).

While “hostility toward religion has taken many shapes and forms” over history, it often surfaces today in state actions singling out religion for disfavored treatment. *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664, 673 (1970). The Supreme Court’s free-exercise jurisprudence is littered with them. Sometimes they involve state laws that provide “exceptions ... for secular reasons” but not “religious” ones. *Fulton v. City of Philadelphia*, 593 U.S. 522, 538 (2021); *see also, e.g., Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993) (addressing law allowing the killing of animals for purposes of food, pest control, or euthanasia but not religious sacrifice). On other occasions, a State has tried to exclude religious entities from generally available public benefits—from playground resurfacing, *Trinity Lutheran Church v. Comer*, 582 U.S. 449 (2017), to tuition assistance, *Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464 (2020). Whether taken individually or together, these cases make clear the Free Exercise Clause leaves the government no room to disfavor “practices because of their religious nature.” *Fulton*, 593 U.S. at 533.

The “Establishment Clause” equally forbids government “hostility toward ... religion.” *McDaniel v. Paty*, 435 U.S. 618, 636 (1978) (Brennan, J., concurring in the judgment). That Clause not only “prohibit[s] the State from disapproving of a particular religion,” but also “of religion in general.” *Locke v. Davey*, 540 U.S. 712, 725 n.10 (2004) (cleaned up); *see Lukumi*, 508 U.S. at 532 (collecting

cases). A State therefore may not disqualify all clergy from public office any more than it could disqualify Catholic priests alone. *See McDaniel*, 435 U.S. at 636 (Brennan, J., concurring in the judgment). Nor may it deny generally available benefits to religious organizations—an approach “far more inconsistent with the Establishment Clause’s dictates” than the “governmental provision” of such “services on a religion-blind basis.” *Rosenberger*, 515 U.S. at 845. Such exclusions would only demonstrate “hostility toward the religious viewpoint,” thereby “threaten[ing]” the very “neutrality” the Establishment Clause commands. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114, 118 (2001).

In short, “a government does not violate the Establishment Clause merely because it treats religious persons, organizations, and speech equally with secular persons, organizations, and speech in public programs, benefits, facilities, and the like.” *Shurtleff v. City of Boston*, 596 U.S. 243, 261 (2022) (Kavanaugh, J., concurring). Rather, “a government *violates* the Constitution when (as here) it *excludes* religious persons, organizations, or speech because of religion from public programs, benefits, facilities, and the like.” *Id.* (explaining that Boston wrongly concluded it “would violate the Establishment Clause if it allowed a religious flag to briefly fly outside of City Hall as part of the flag-raising program that the City had opened to the public”).

## II. The Superior Court’s Framework Displays Impermissible Hostility Towards Religion.

In reading the Massachusetts Constitution to ban the inclusion of symbols with religious provenance on public buildings, the Superior Court departed from the neutrality required by the Establishment Clause. A state rule excluding religious symbols from public spaces is no more permissible than one excluding religious Americans from public office.

To start, no one contends that the Establishment Clause *requires* a rule outlawing depictions of Michael and Florian in any public building. Wisely so. The Supreme Court has made clear that nothing in the First Amendment forbids governments from using such symbols of “religious origin” that have also taken on a “secular meaning.” *American Legion*, 588 U.S. at 39. In *American Legion*, for instance, it upheld the Bladensburg Cross—a 32-foot tall Latin cross displayed on public land—explaining that while “the cross originated as a Christian symbol and retains that meaning in many contexts,” it “took on an added secular meaning when used in World War I memorials.” *Id.* at 63.

That decision was no outlier. In *Van Orden v. Perry*, the Court similarly let Texas display a monument of the Ten Commandments on its state capitol grounds, observing that the symbol had both “religious significance” and a “historical meaning.” 545 U.S. 677, 690 (2005) (plurality); *see id.* at 701 (Breyer, J., concurring in the judgment) (similar). And in *Lynch v. Donnelly*, the Court upheld

a public display of a “crèche,” as it “depicts the historical origins” of “a significant historical religious event long celebrated in the Western World.” 465 U.S. 668, 680 (1984). After all, a contrary rule would necessitate a wave of judicially-ordered iconoclasm, as this country is riddled with “statues” on public property that are “drawn directly from” a particular religion and retain a “religious significance” today—from Joan of Arc in Gloucester to Moses and Muhammad in the Supreme Court. Add.87.<sup>2</sup>

Indeed, far from supporting the decision below, the Establishment Clause *prohibits* states from adopting a rule of decision that would extirpate such symbols from the public square due to their religious connotations. The plurality in *Van Orden*, for example, warned that “disabling the government from in some ways recognizing our religious heritage”—such as by displaying a monument of the Ten Commandments—would itself “evinced a hostility to religion.” 545 U.S. at 684. Concurring in the judgment, Justice Breyer agreed that proscribing such a display “based primarily on the religious nature of the tablets’ text would ... lead the law to exhibit a hostility toward religion that has no place in our Establishment Clause traditions.” *Id.* at 704.

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<sup>2</sup> See II.App.53-58 (Supreme Court); *Joan of Arc*, GLOUCESTER HARBORWALK, <https://harborwalk.gloucester-ma.gov/locations/37-joan-of-arc>.

The Court in *American Legion* similarly observed “when time’s passage imbues a religiously expressive monument, symbol, or practice with this kind of familiarity and historical significance,” “removing it may no longer appear neutral.” 588 U.S. at 56. After all, a government “that roams the land, tearing down monuments with religious symbolism and scrubbing away any reference to the divine will strike many as aggressively hostile to religion.” *Id.*; see *Lee v. Weisman*, 505 U.S. 577, 598 (1992) (noting an “attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution”).

To be sure, the Court added that “retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones.” *American Legion*, 588 U.S. at 57. But nothing in the decision below suggests that the Superior Court’s interpretation of the Massachusetts Constitution would carve out older statues from its iconoclastic sweep. To the contrary, the Superior Court dismissed the City’s observation that “historically, displaying religious symbols on government property was commonplace”—along with its “numerous examples of religious symbols on public property throughout the Commonwealth” today—as irrelevant, opining that our “forbearers at times have failed to uphold the ideals espoused in our state’s Constitution.” Add.84. Under that reasoning, preserving this Court’s statues of Moses and “Religion” could be classified as merely “perpetuat[ing] the petty bigotries of the past.” *Id.*

In any event, a legal rule providing that no new symbols of religious origin and meaning can ever find a place on public property—even ones that also have secular significance—*because of* their religious association would convey the same hostility towards faith. For example, a rule forbidding the Commonwealth from erecting a new “Star of David monument ... to commemorate victims of the Holocaust” (as South Carolina did in 2001) or a new “cross” to honor marines “who fell during the War on Terror” (as their California comrades did in 2004) due to those symbols’ religious associations, *American Legion*, 588 U.S. at 86 (Gorsuch, J., concurring in the judgment), would evoke the same problem of “scrubbing away any reference to the divine,” *id.* at 56 (majority). So would one proscribing, say, publicly funded museums from acquiring any new works depicting religious scenes and symbols no matter their historic or artistic value. The same goes for a rule outlawing the display in public buildings of new statues of famous Bay Staters known for their faith—Jonathan Edwards, for instance. In short, one of the vices of the *Lemon* test is that it “begins to make it necessary for government to be hostile to religion” rather “than respect the First Amendment’s double protection for religious expression.” *Kennedy*, 597 U.S. at 540-41 (cleaned up). Yet that is where the decision below threatens to lead.

### III. Adopting The Superior Court’s Framework Would Be Unmanageable.

If this Court were to embrace the Superior Court’s approach, state “hostility toward religion” would not be the only resulting federal constitutional concern. To enforce such a rule, this Court and others would be obligated to engage in difficult and constitutionally treacherous line-drawing exercises.

*First*, Massachusetts courts would need to decide which faiths’ religious symbols must be barred. Those courts might be tempted to restrict public display of symbols with significance only to modern religions with numerous adherents, such as Catholicism, for which the risk of “subordination” seems more salient. They may not see any reason, for example, to apply the rule to symbols of ancient religions, such as Hellenism, which are practiced by only a small number of followers today.<sup>3</sup> After all, the idea that the Massachusetts Constitution bans a coastal town from installing a statue of Poseidon at its port would strike many as quite odd.<sup>4</sup> But it would be odder still if on Valentine’s Day a city could allude to Cupid, the Roman god of love, but not St. Valentine, the Roman priest said to have secretly married lovers for whom the holiday is named.

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<sup>3</sup> See, e.g., Ethel Dilouambaka, *Meet the Greeks who still Worship the Ancient Gods*, CULTURE TRIP (Nov. 27, 2024), <https://perma.cc/E8P3-2YF2>; Ian Harvey, *The Ancient Greek Practice of Hellenism Lives on as a Modern Religion*, VINTAGE NEWS (Feb. 22, 2017), <https://perma.cc/CR5S-Y354>.

<sup>4</sup> See Stacy Parker, *Virginia Beach’s King Neptune Statue Turns 20 This Year*, THE VIRGINIAN-PILOT (May 27, 2025), <https://perma.cc/7AGZ-N94L>.

Even if courts drew such a distinction, it would be nearly impossible to enforce consistently. In between Hellenism and Catholicism lie a host of minority faiths with ancient roots and varying numbers of modern followers, from Buddhism to Zoroastrianism. There is simply no straightforward way to assess which faiths have “enough” adherents today to pose a threat of “subordination.”

Such line drawing would not just be strange and difficult; it would be unconstitutional. “The clearest command of the Establishment Clause is that the government may not officially prefer one religious denomination over another.” *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 247 (2025) (cleaned up). And that dictate “is inextricably connected with the continuing vitality of the Free Exercise Clause,” as “true religious liberty requires that government refrain from favoritism among sects.” *Id.* at 248 (cleaned up). The First Amendment therefore “subjects any state-sponsored denominational preference to strict scrutiny.” *Id.* at 241. And a “State’s interest in achieving greater separation of church and State than is already ensured under the Establishment Clause” is not “compelling” enough to survive that test. *Espinoza*, 591 U.S. at 485 (cleaned up). Massachusetts courts would therefore have to forbid statues of Michael and Mars in equal measure, as they cannot prefer a religion with only a “small” number of followers today. *Larson v. Valente*, 456 U.S. 228, 245 (1982).

*Second*, Massachusetts courts would need to determine if a given symbol had an impermissible religious meaning. For some symbols—such as crosses, Stars of David, and crescents—the religious meaning is obvious. But others could pose closer calls. Is a dove, the bird that returned to Noah on the ark and has come to represent the Holy Spirit in Christian imagery, fair game?<sup>5</sup> What about the Zia sun symbol, representing concepts sacred in certain Native American traditions, depicted on New Mexico’s flag and license plates?<sup>6</sup> One “can hardly imagine a subject less amenable to the competence” of judges—“or more deliberately to be avoided”—than such exercises in “comparative theology.” *Weisman*, 505 U.S. at 616-17 (Souter, J., concurring). Indeed, for courts to begin to answer these questions would necessitate “inquir[ing] into the significance of words and practices to different religious faiths”—which “would tend inevitably to entangle the State with religion.” *Widmar v. Vincent*, 454 U.S. 263, 270 n.6 (1981).

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<sup>5</sup> See, e.g., Aishvarya Kavi, *Years After Trump Takeover, Institute Of Peace Is Little More Than Scenery*, N.Y. TIMES (Mar. 17, 2026), <https://perma.cc/ZH2X-TWEY> (describing Institute of Peace building’s “dove-shaped roof”).

<sup>6</sup> *Standard Plates*, N.M. MOTOR VEHICLES DEP’T, <https://www.mvd.new-mexico.gov/vehicles/license-plates/standard-plates>; *State Flag*, N.M. SEC’Y OF STATE, <https://www.sos.nm.gov/about-new-mexico/state-flag>.

The Supreme Court has therefore made clear that civil courts may not address questions that turn on religious doctrine, whether in resolving church property fights, *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969); deciding “who can act as ... ministers,” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); or determining what constitutes “worship,” *Widmar*, 454 U.S. at 270 n.6. And just as courts have “no business” saying that “what is a religious practice or activity for one group is not religion,” they have no business saying that what is a religious symbol for one faith is not religious. *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953). Thus, far from offering the solution, the judicial “line-drawing” plaintiffs wave about (Br. 31) would only lay a constitutional minefield for this Court to navigate in the future.<sup>7</sup>

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<sup>7</sup> Although the City has invoked (Br. 60-61) the canon of constitutional avoidance for other reasons, this Court should not close its eyes to the *additional* risks the decision below raises with respect to the Establishment Clause. *See, e.g., Beeler v. Downey*, 387 Mass. 609, 613 & n.4 (1982) (construing statute to avoid “serious question of constitutional law” even though “[t]he parties did not raise” the issue because courts “cannot let the actions of private litigants force us to decide unnecessarily a serious question of constitutional law”). Instead, this Court, like other “state courts,” should use “the opportunity to construe a law to avoid constitutional infirmities.” *New York v. Ferber*, 458 U.S. 747, 768 (1982).

\* \* \*

None of this is to say that any public display of religious symbols the Establishment Clause permits it also requires. In general, municipalities throughout the Commonwealth may choose whether to display crèches, menorahs, or nothing at all each December. They may choose whether to commemorate fallen soldiers through plaques, crosses, Stars of David, or anything else. And they may choose whether to honor their firefighters with a statue of Florian or one of a Dalmatian. But what they—and this Court—may not do is exclude symbols from the public square solely because of their religious meaning. The Establishment Clause does not permit such official hostility toward faith.

### CONCLUSION

This Court should vacate the preliminary injunction and reverse and remand for a judgment of dismissal.

Dated: April 15, 2026

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## CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Massachusetts Rule of Appellate Procedure 17(c)(9) that this brief complies with the rules pertaining to the filing of *amicus curiae* briefs. *See* Mass. R. App. P. 17, 20. This brief contains 3,614 words, excluding the parts of the brief exempted by Rule 20(a)(2)(D). The brief has been prepared in a proportionally spaced typeface, 14-point Calisto MT font, using Microsoft Word.

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I hereby certify that on April 15, 2026, I served a copy of the foregoing via the Massachusetts Odyssey File & Serve site and by electronic mail with consent of the counsel being served, pursuant to Massachusetts Rule of Appellate Procedure 13(c):

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Dated: April 15, 2026

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