SJC-13877

Commonwealth of Massachusetts
Supreme Judicial Court

CLAIRE FITZMAURICE, JAY TARANTINO, 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,

Plaintiffs-Appellees,

v.

CITY OF QUINCY AND THOMAS P. KOCH,
IN HIS OFFICIAL CAPACITY AS MAYOR OF QUINCY,

Defendants-Appellants.

ON APPEAL FROM A DECISION
OF THE SUPERIOR COURT IN NORFOLK COUNTY

BRIEF OF PLAINTIFFS-APPELLEES

Jessie J. Rossman (BBO #670685)
Rachel E. Davidson (BBO #707084)
Suzanne Schlossberg (BBO #703914)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
rdavidson@aclum.org
sschlossberg@aclum.org

Alexandra Arnold (BBO #706208)
CLOHERTY & STEINBERG LLP
One Financial Center, Suite 1120
Boston, MA 02111
(617) 481-0160
aarnold@clohertysteinberg.com

[*signatures continue on following page*]

Jenny Samuels (*pro hac vice*)
Rebecca S. Markert*
AMERICANS UNITED FOR SEPARATION OF CHURCH & STATE
1310 L Street NW, Suite 200
Washington, DC 20005
(202) 466-7308
samuels@au.org
markert@au.org

* *Pro hac vice* motion pending

Daniel Mach (*pro hac vice*)
Heather L. Weaver (*pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW, Suite 600
Washington, DC 20005
(202) 675-2330
dmach@aclu.org
hweaver@aclu.org

Patrick C. Elliott (*pro hac vice*)
Kyle J. Steinberg (*pro hac vice*)
FREEDOM FROM RELIGION FOUNDATION
PO Box 750
Madison, WI 53701
(608) 256-8900
patrick@ffrf.org
steinbergk@ffrf.org

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INTRODUCTION

The Massachusetts Declaration of Rights protects every resident in the Commonwealth, whose diverse population follows a broad array of religious and nonreligious beliefs.[1] On the one hand, that protection prevents government interference with personal religious practice, including prayer, participation in private communal organizations, and the wearing of religious jewelry. *See* Am. Art. 18, as amended by Am. Art. 46, § 1 ("No law shall be passed prohibiting the free exercise of religion"). On the other, it prohibits government subordination of religious and non-religious beliefs through the elevation of one faith over others. *See* Art. 3, as amended by Am. Art. 11 ("[A]ll religious sects and denominations . . . 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 enforcement of this second provision is as critical to the defense of religious freedom as the first, because it "promotes a respect for religion by refusing to single out one or two creeds for official favor at the expense of others." *Amancio v. Somerset*, 28 F. Supp. 2d 677, 681-82 (D. Mass 1998).

This case presents a straightforward question under art. 3: whether Quincy may, consistent with this constitutional commitment, install two brand-new ten-foot-tall

[1] *See* Pew Research Center. 2025. "2023-23 U.S. Religious Landscape Study Interactive Database," Massachusetts, https://www.pewresearch.org/religious-landscape-study/state/massachusetts ("Pew Study") (Massachusetts is 29% Catholic, 23% other Christian denominations, 11% Jewish, Muslim, Buddhist, Hindu, Unitarian, or other religions, 8% atheist, 5% agnostic and 25% otherwise religiously unaffiliated).

statues of Catholic saints—Saint Michael the Archangel and Saint Florian—as the sole adornments on their new public safety building. As the Superior Court rightly recognized, the clear answer under Massachusetts law is "no."

Arguing otherwise, Defendants approach this case as though it raises inquiries this Court has yet to examine. But this Court's precedent demonstrates that these questions are not new and Defendants' proffered answers are not correct.

First, Plaintiffs easily meet this Court's requirements for both constitutional and taxpayer standing as people directly impacted by the potential display of the statues, and as twelve tax-paying Quincy residents challenging their local government's use of public funds in violation of their art. 3 rights. In support of their preliminary injunction motion, Plaintiffs—who adhere to a wide range of religious and nonreligious beliefs—each detail the individualized harm caused by Quincy's plan to install the statues. This includes Plaintiffs who recognize the significance of saints in their personal religious practice but, in part for that reason, do not believe the government should commission or install them on a public building. As one practicing Episcopalian Plaintiff who teaches at a Jesuit university and participates in Roman Catholic services explains, "Christian faith is at the core of my life," but these "statues are an inappropriate symbol of religion in a space that is not meant to be religious." RAI/306-07.[2] She goes on to emphasize, "I go to church because it is my choice to freely practice my religion, and

[2] Citations to the Record Appendix are cited as "RAI/[page]" and "RAII/[page]".

having to walk beneath religious statues to enter a public space removes that choice." *Id.* at 307. Other Plaintiffs attest that the religious statues will convey a profound message of exclusion from their own community. *See* RAI/295-344. This harm is particularly acute given Quincy's stated purpose for the new building to provide *increased* community access to public safety services. *See* Quincy City Council - Feb. 24, 2025, Quincy Access Television (hereinafter "City Council Video")[3] at 22:10 (statement of Police Chief Mark Kennedy).

Second, this Court already squarely, and correctly, interpreted art. 3's protections in *Colo v. Treasurer and Receiver General*, 378 Mass. 550, 558 (1979), to require an analysis of the challenged government action's purpose, effect, potential for entanglement and divisiveness. This test incorporates contextual limiting factors that restrict its use to eradicate longstanding monuments. The Supreme Court's change in analysis under the Establishment Clause presents no basis for this Court to reconsider its own independently reasoned and well-established Massachusetts precedent. Indeed, this Court previously retained the balancing test it independently adopted for free exercise claims under art. 46, § 1, even though the Supreme Court had abandoned the same test. *See Atty Gen. v. Desilets*, 418 Mass. 316, 321 (1994). Here, too, this Court should uphold art. 3's robust protections for the Commonwealth's residents by affirming *Colo*. Applied

[3] Available at https://youtu.be/OtvL1EeiWTY?si=WI7KI-ZPXrdJh7tH.

to this set of circumstances, *Colo*'s framework demonstrates that Quincy's actions likely violate art. 3.

Third, even if this Court chooses to reinterpret art. 3—though it should not—the outcome should be the same. Defendants again turn away from the well-trod path, urging this Court to analyze art. 3's text, history, and purpose without any consideration of contemporary context. That approach ignores decades of this Court's caselaw interpreting numerous constitutional provisions through a lens that is informed by the present day. There is no reason that art. 3's protections alone should be frozen in the early nineteenth century. An analysis of art. 3's text, history, and purpose that is correctly viewed alongside contemporary context once more demonstrates that Quincy's actions likely violate art. 3.

The Superior Court properly held the above before enjoining the installation of the statues based on its conclusion that Plaintiffs satisfied the remainder of the equitable factors. Plaintiffs respectfully request that this Court do the same. This case is not about tearing down historic statues or fomenting religious hostility. Quite the contrary. Consistent with art. 3's commitment to non-subordination, this case is about preserving government neutrality where it already exists to ensure that private individuals retain the right to express and practice both their secular and religious beliefs, free from the pressure and exclusion that occurs when the government signals preference for one faith.

STATEMENT OF THE ISSUES

1. Whether, as people subject to government sectarian subordination and as taxpayers, Plaintiffs have standing to vindicate their art. 3 rights.

2. Whether Plaintiffs are likely to succeed in demonstrating that art. 3 prohibits the government from commissioning, funding and installing two new ten-foot-tall statues of saints associated with one religious denomination as the sole, permanent adornments on the main entrance of a public safety building intended to be used by all residents.

STATEMENT OF THE FACTS

A. Quincy's new public safety headquarters.

Since 2017, Quincy has been planning and constructing a new public safety headquarters, which will house the City's emergency operations center as well as its police, fire, and information technology departments. RAI/87, 102. Quincy officials have touted the many ways the building will serve the public. City Council Video at 22:10. The building will be the primary location for Quincy residents to complete numerous essential tasks, such as obtaining fire permits and filing police reports, and it will include private spaces for residents to speak with police and mental health counselors. *Id.* at 22:12-22:42, 23:25. It will also house meeting rooms for classes. *Id.* at 22:45.

B. Mayor Koch's plan to commission and install statues of Saint Michael and Saint Florian.

Mayor Thomas P. Koch decided to install two ten-foot-tall statues of Catholic saints as the sole adornments on the façade of this building. RAI/36-37 ¶¶29-30. A July 2023 contract commissioned statues of "Saint Michael the Archangel the patron saint of Law Enforcement" and "Saint Florian as a protector of fire fighters and a protector against fire and burning." RAI/162. At no point during the many City Council meetings about the building prior to February 2025 was the Council or the public notified about the statues. RAII/313-315. Instead, newspaper reporting first publicly revealed the Mayor's plan to install the statues in February 2025. RAII/116, 314-315.

According to reporting, the statues are anticipated to cost $850,000. RAI/109. It is unclear whether this figure accounts for all expenses associated with the statues, such as transportation and installation. By January 2025, Quincy had spent at least $761,378.75 in public funds on the statues. RAI/116.

C. Saint Michael the Archangel and Saint Florian.

Saints are figures "specific to certain types of Christianity, especially Catholicism." RAII/233 ¶10. In the Catholic Church, "[s]aints are persons in heaven (officially canonized or not), who lived heroically virtuous lives, offered their life for others, or were martyred for the faith, and who are worthy of imitation." RAI/252. Patron saints are recognized by the Catholic Church for various causes so that the faithful can seek their divine intercession through prayer. *See* RAI/262-63.

Saint Michael holds a "special place" in Catholicism. RAI/280. Many Catholics consider Saint Michael, one of the archangels mentioned in scripture, to be the leader of God's heavenly army, the protector of the Church, and an adversary of Satan. RAI/279-80. Unlike humans, who must be canonized to become saints, Michael the Archangel is regarded as a saint because he "is revered as a celestial being with immense significance." RAI/280. Saint Florian was a Roman solider who lived in the fourth century C.E. RAI/111. He is recognized as a Catholic saint because "he was martyred for his faith and because he is said to have saved a town from [burning] by praying for divine intervention." RAII/234 ¶19.

Catholic tradition considers Saint Michael and Saint Florian as the patron saints of police and firefighters, respectively. RAII/233-34. They are "important spiritual figure[s]" to many police officers and firefighters, who pray to the saints for protection and seek comfort from the Saints when grieving losses of their colleagues. RAII/215-216, 153-54, 195.

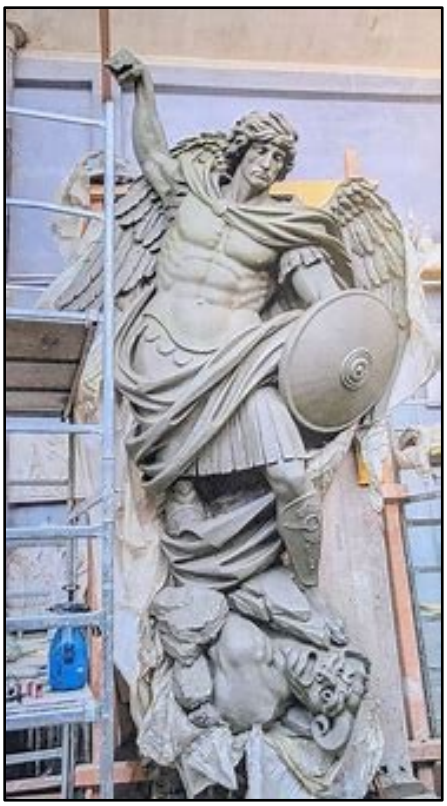

Fig. 1, I.App.38

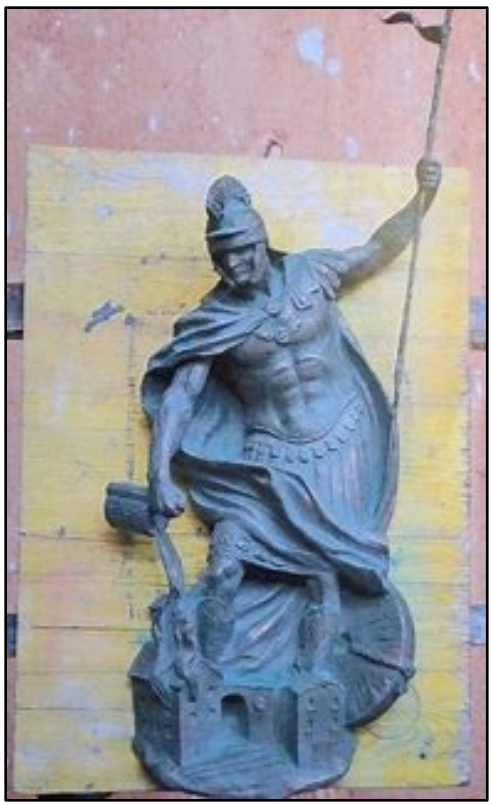

Fig. 2, I.App.38

The commissioned statues depict Saints Michael and Florian consistent with their portrayals in the Catholic faith. *See* Fig. 1 (proposed Saint Michael statue); Fig. 2 (proposed Saint Florian statue). Catholic saints are traditionally represented by specific symbols to identify them. RAII/235 ¶24. The statue of Saint Michael includes wings because he is an archangel in the Catholic faith. RAII/235 ¶25; RAI/37-38 ¶31. He is brandishing a sword while standing on the head and neck of a demon, representing his role in the Catholic tradition as a warrior for God's army who cast Lucifer out of heaven. RAII/235 ¶25. The statue of Saint Florian portrays him performing one of the miracles for which he is venerated in the Catholic tradition: extinguishing a burning building with water from a single vessel. RAII/145, 210-12, 235 ¶27.

D. The statues have already caused substantial divisiveness in the Quincy community.

Quincy's plan to install these statues has already generated political, civic, and religious division within the community. The first City Council meeting after the plan for the statues was publicly revealed took place on February 24, 2025. While typically only five to ten residents attend Quincy City Council meetings, more than two hundred people attended on that date. RAI/43 ¶48. There, the Mayor's Chief of Staff confirmed that the City Council had "no role in the procurement process for these statues," City Council Video at 33:59, and the decision to commission the statues "was ultimately and only the Mayor's decision," *Id.* at 57:32.[4] City Councilor James Devine acknowledged "the statues [are] clearly contentious for everyone" and that "a bunch of" constituents expressed their concerns about the statues to him. City Council Video at 1:24:46.

To date, hundreds of Quincy residents and at least one City Councilor have publicly expressed opposition to the statues. *See* RAI/119. An online petition opposing the statues garnered over 1,600 signatures. RAI/23, 44 n.31. And nineteen faith leaders from the Quincy Interfaith Network issued a public statement expressing "grave concerns" about the religious statues. RAI/137. The signatories to the statement included members of the Roman Catholic, Jewish, Unitarian Universalism,

[4] Notwithstanding Defendants' references to Quincy's Public Art Ordinance (RAII/218-221), Mayor Koch did not select the statues pursuant to that ordinance. That ordinance establishes a Public Art Commission, which *inter alia* may make recommendations to the Mayor. There is no evidence Mayor Koch sought input from the Commission for these statues.

Presbyterian, Lutheran, Methodist, and Nazarene faiths. RAI/137-38. They explained that, because Quincy is a "diverse city . . . composed of many people of faith and those who do not identify with any religious tradition[,] [n]o single religious tradition should be elevated in a publicly funded facility. Erecting these statues sends a message that there are insiders and outsiders in this community." RAI/137.

E. Plaintiffs' objections to the statues.

Plaintiffs are fourteen residents of Quincy,[5] twelve of whom pay property taxes to Quincy. Plaintiffs are diverse in their religious beliefs and practices. Some Plaintiffs are Catholic, Jewish, Unitarian Universalist, or Episcopalian. *See, e.g.*, RAI/343 ¶4, 325 ¶4, 296 ¶4, 306 ¶4. Other Plaintiffs are atheist, Humanist, or spiritual, or they do not adhere to a particular religious tradition. *See, e.g.*, RAI/319 ¶5, 300 ¶4. Plaintiffs oppose the statues based on their religious beliefs or non-faith beliefs.

Plaintiffs will all have significant interactions with the new public safety building. *See* RAI/295-344. Most drive by the location of the building on a regular basis, and one Plaintiff can see the building from her apartment. *See, e.g.*, RAI/311 ¶10, 314 ¶8, 317 ¶11, 323 ¶11. Most Plaintiffs visited the police department in the past and—consistent with Quincy's stated goals—they all anticipate they will likely need to visit the building once it is open for a multitude of reasons. *See, e.g.*, RAI/298 ¶11, 307 ¶9, 344 ¶10.

[5] Two Plaintiffs have now moved out of Quincy, one of whom was voluntarily dismissed from the matter, the other of whom will move for voluntarily dismissal when the Superior Court lifts the stay of proceedings. RAI/21; RAII/420.

STATEMENT OF THE CASE

The Superior Court granted Plaintiffs' motion for a preliminary injunction, and denied Defendants' motion to dismiss. Finding that Plaintiffs had demonstrated both constitutional and taxpayer standing, RAII/317-22, the court held that the *Colo* framework applied, RAII 322-25, and that Plaintiffs were likely to succeed under that analysis, RAII/325-28, 332-35. The court concluded in the alternative that Plaintiffs were also likely to succeed under a context-informed analysis of art. 3's text, history and purpose. RAII/328-35. The court held that the remainder of the equitable factors favored Plaintiffs. RAII/335-37.

STANDARD OF REVIEW

This Court reviews preliminary injunctions for abuse of discretion or errors of law. *See Garcia v. Dep't of Hous. & Cmty. Dev.*, 480 Mass. 736, 746–47 (2018). The Court typically considers the (1) plaintiff's reasonable likelihood of success on the merits; (2) potential for irreparable harm to the plaintiff if the injunction is denied; (3) balance of relevant harms; and (4) public interest. *Id.* at 747. In actions brought under G.L. c. 40, § 53, plaintiffs "need not demonstrate irreparable harm." *Caplan v. Town of Acton*, 479 Mass. 69, 75 (2018).

Motions to dismiss are interlocutory rulings that "generally are not appealable until the ultimate disposition of the case because they are not 'final orders.'" *Brum v. Town of Dartmouth*, 428 Mass. 684, 687 (1999). Defendants have not invoked any exception to this rule—nor could they—and their arguments extensively reference

evidence extrinsic to the complaint, which may not be considered in reviewing a motion to dismiss for failure to state a claim. *See e.g., Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton LLP*, 89 Mass. App. Ct. 718, 727 (Mass. App. Ct. 2016). Accordingly, this Court should not revisit the Superior Court's ruling on the motion to dismiss.

SUMMARY OF ARGUMENT

I. Plaintiffs have standing to bring this action. They have constitutional standing because each Plaintiff has alleged individualized injuries squarely within art. 3's area of concern. Plaintiffs also have taxpayer standing under G.L. c. 40, § 53 as twelve taxpayers challenging Quincy's unconstitutional expenditure of public funds. (pp. 21-26).

II. This Court should reaffirm its interpretation of art. 3's protections articulated in *Colo*. There, this Court exercised its independent judgment to conclude that the test from *Lemon v. Kurtzman*, 403 US 602 (1971), of purpose, effect, and entanglement were equally appropriate for claims brought under art. 3, while also identifying a fourth factor, divisiveness. That the Supreme Court has now abandoned *Lemon* does not compel this Court to do the same. Plaintiffs are likely to succeed under *Colo*. The statues, whose imagery is drawn directly from Catholic iconography, lack a predominantly secular purpose. The primary effect of permanently installing two new, oversized, overtly religious statues as the sole adornments on the City's public safety building is to advance religion. The City's funding and installation of religious iconography on a government building constitutes excessive entanglement with religion. And the statues have already caused substantial divisiveness. (pp. 26-42).

III. Even if this Court revisits its interpretation of art. 3, a context-informed analysis of art. 3's text, history, and purpose compels the same result. Defendants' cramped reading of art. 3's text, history, and purpose conflicts with this Court's consistent method of constitutional interpretation, which takes into account present-day conditions. (pp. 42-49).

IV. The remaining equitable factors favor Plaintiffs. Constitutional violations constitute irreparable harm as a matter of law; the balance of equities tips decisively in Plaintiffs' favor; and the public interest is served by upholding art. 3's non-subordination commitment. (pp. 49-51).

V. Finally, Defendants' counterarguments under the Free Exercise and Equal Protection Clauses are meritless. No private religious expression is at issue where the government itself commissioned, funded, and seeks to install the statues on a government building. (pp. 51-52).

ARGUMENT

I. Plaintiffs have standing.

The Superior Court correctly held that Plaintiffs have constitutional and taxpayer standing. RAII/317-322.

A. Plaintiffs have constitutional standing.

This Court has a long history of maintaining broad access to judicial review to prevent constitutional guarantees from degenerating into rights without remedies and to ensure "just and expeditious determinations on the ultimate merits." *Cf. Carpenter v.*

Suffolk Franklin Sav. Bank, 370 Mass. 314, 318 (1976). Thus, "[a] party has standing when it can allege an injury within the area of concern of the . . . constitutional guarantee under which the injurious action has occurred." *Doe v. Sec'y of Educ.*, 479 Mass. 375, 386 (2018).

At its core, art. 3 holds the government to principles of denominational neutrality and non-subordination. Here, each of the Plaintiffs describes their past usage of the police headquarters and their anticipated future use of the new public safety building. *See* RAI/295-344. One 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. RAI/314 ¶8. As to impact, the Plaintiffs detail the effect and feelings of subordination caused by the statues given their own religious beliefs or nonbelief. *See, e.g.*, RAI/303-04 ¶6 ("The planned installation of these statues makes me feel excluded from the 'in group' of the government's preferred religion."), 317 ¶8 ("The statues make me feel like I don't count because I am not a Catholic."), 340 ¶7 ("The fact that these statues are going to be on a public building makes me feel like a second-class citizen. . . . The statues send the message that the police, fire, and other services located in the building are not here to serve me and other non-Catholic Quincy residents."). The Superior Court therefore rightly concluded that "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." RAII/319.[6]

Defendants' characterization of these injuries as unlikely to occur and insufficient to confer standing belies their own positions in this matter. Their briefing suggests that there is only a "remote possibility" that Plaintiffs will use the new building, Defs.Br.33, but Quincy officials' public statements have emphasized the wide-ranging services offered at, and public uses of, the new building, proclaiming that "community access to police and fire service is going to be like nothing we've ever had in this City before." City Council Video at 22:10. Similarly, Defendants' attempt to downplay the profound ramifications of the statues as "passive" makes little sense placed alongside their alleged purpose for installing the statues in the first place. Defs.Br.34. As the Superior Court rightly noted, "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." RAII/321.

Courts have routinely recognized standing for these types of injuries, and this Court should do the same. *See, e.g., Freedom from Religion Found. Inc. v. New Kensington*

[6] Defendants argue Plaintiffs have not demonstrated a breach of duty. Defs.Br.29, 33. But the breach of duty requirement simply embodies the general rule that plaintiffs must vindicate their own rights rather than the rights of others. *See, e.g.*, *Penal Institutions Com'r for Suffolk Cnty. v. Comm'r of Correction*, 382 Mass. 527, 532 (1981). Plaintiffs satisfy this requirement because they assert that Quincy owes them each a duty not to violate their constitutional rights.

Arnold Sch. Dist., 832 F.3d 469, 476 (3d. Cir. 2016) (citing numerous appellate courts that "held that standing in this context requires only direct and unwelcome personal contact with the alleged establishment of religion")(internal quotation marks omitted); *Woodring v. Jackson Cnty., Indiana*, 986 F.3d 979, 984–87 (7th Cir. 2021) (plaintiff who occasionally passed nativity scene had standing to challenge it).[7] The opposite conclusion would wrongly "leav[e] adherents to minorit[y] religions without any meaningful recourse." RAII/321.

B. Plaintiffs have taxpayer standing.

The Superior Court rightly concluded that Plaintiffs also have standing under G.L. c. 40, § 53. RAII/318. That statute enables "not less than ten taxable inhabitants" to petition a court to enjoin municipalities from "expend[ing] money . . . for any purpose or object or in any manner other than that for" which the municipality "has the legal and constitutional right and power to . . . expend money." *Edwards v. City of Boston*, 408 Mass. 643, 645 n.3 (1990). Plaintiffs meet this standard, as they include twelve Quincy taxpayers who allege that Quincy does not have the power to expend taxpayer funds in a manner that violates the Declaration of Rights. Defendants' attempts to evade this conclusion are unsuccessful.

[7] Justice Gorsuch's concurrence in *American Legion v. American Humanist Association*, 588 U.S. 29 (2019), cited by Defendants, Defs.Br.32, is not controlling even for federal Establishment Clause claims. In *American Legion,* plaintiffs had standing by virtue of being "offended by the sight of the memorial on public land." 588 U.S. at 37.

First, Defendants assert that G.L. c. 40, § 53 challenges are limited to "spending statute[s]" "designed to prevent the abuse of public funds." Defs.Br.30 (quotation marks omitted). But nothing so limits taxpayer standing. On the contrary, *Colo* observed that, "[o]n its face, G.L. c. 29, § 63,[8] gives this court power to restrain the expenditure of public funds where there is no 'constitutional right and power' to use them for the intended purpose." 378 Mass. at 553. Noting that "[t]he plaintiffs contend that the[] payments [to clergy] are for a purpose which is not constitutionally permitted," *Colo* held that they had standing. *Id.* at 553, 554 n.7. The same conclusion applies here.

Second, Defendants suggest that Plaintiffs "have not alleged or submitted any evidence" that Quincy taxpayers' "tax burden will be increased simply by installing the statues." Defs.Br.30. But Plaintiffs have demonstrated that Quincy has assumed the substantial cost of commissioning the statues. *See, e.g.*, RAI/167, 183-91, 193. And the Superior Court found that "Defendants do not dispute[] that additional funds will be required to transport and install the statues." RAI/318 n.4. Defendants' unsupported insinuation that "there are numerous ways a city *could* install statues" without drawing upon taxpayer funds, Defs.Br.30 (emphasis added), falls flat, as does their citation to

[8] G.L. c. 29, § 63 applies to Commonwealth entities and mirrors G.L. c. 40, § 53 in relevant part. *See Richards v. Treasurer & Receiver Gen.*, 319 Mass. 672, 674 (1946).

inapposite cases where the challenged expenditures were expressly reimbursed by private entities, *see* Defs.Br.30-31 (citing cases).[9]

II. This Court should affirm the Superior Court's proper application of *Colo*.

Defendants repeatedly invite this Court to newly interpret art. 3 in the first instance. Defs.Br.11-12, 28, 34-35. But they ignore that this Court has already interpreted art. 3's protections in *Colo*, and determined that the relevant analysis under the state constitution considers whether the challenged government practice (1) has a secular purpose, (2) has a primary effect that neither advances nor inhibits religion, (3) avoids excessive government entanglement with religion, and (4) does not have divisive political potential. 378 Mass. at 558. That precedent still applies today.

In the rare instance where Defendants do acknowledge *Colo*, they suggest that this Court should deviate from it both because the Supreme Court no longer analyzes Establishment Clause claims under *Lemon*, and because they claim *Colo* will lead to religious hostility, chaos and the "iconoclastic stripping-down of public spaces," Defs.Br.43, 47-50. But the Supreme Court's analysis of *federal* constitutional rights does not control this Court's analysis of *state* constitutional rights. And the *Colo* framework includes inherent limiting principles that protect against Defendants' parade of

[9] While the taxpayer statute is primarily concerned with enjoining prospective spending, this Court has also emphasized that "no surreptitious attempt to outwit the [taxpayer] statute . . . can be tolerated, and under such circumstances relief would be afforded" with respect to payments that have already been made. *Fuller v. Trs. of Deerfield Acad. & Dickinson High Sch.*, 252 Mass. 258, 260 (1925). Here, taxpayer funds were spent several years before the statues were publicly disclosed. RAI/116; RAII/313-315.

horribles. This Court should affirm the Superior Court's proper application of the *Colo* framework to hold that Plaintiffs are likely to succeed in their claim. RAII/332-335.

A. This Court should reaffirm the framework articulated in *Colo*, which already interpreted the scope of state constitutional protections under art 3.

In *Colo*, this Court directly addressed an art. 3 challenge to the practice of paying legislative chaplains' salaries. Assessing the purpose and history of art. 3, this Court interpreted that constitutional provision and made the considered judgment that the Establishment Clause criteria articulated in *Lemon*—purpose, effect, and entanglement—were "equally appropriate" for claims brought under "cognate provisions of the Massachusetts Constitution," including art. 3. *Colo*, 378 Mass. at 554, 556-58. But the Court did not end its independent analysis there. It also identified a "significant fourth factor" for consideration: whether the challenged government practice has a "divisive political potential." *Id.* at 558. Moreover, the Court made clear that—in connection with this four-prong framework—courts may consider the history of the challenged practice and the context in which it occurs today. *See id.* at 557, 559-60. *Colo*'s reasoning was well-grounded, and none of Defendants' arguments to jettison its precedent is convincing.

1. *The Supreme Court's abrogation of* Lemon *does not require this Court to reinterpret art. 3.*

Defendants assert that *Colo* should be disregarded because the Supreme Court abandoned the *Lemon* test. *See* Defs.Br.47-50. But *Colo* was never limited to *Lemon* alone.

While *Colo* referenced *Lemon*, it did not simply adopt its test but also identified a fourth factor not set forth in *Lemon*, and made clear that the particular context of the challenged practice is highly relevant to the art. 3 analysis.

Moreover, even if *Colo* had done nothing more than adopt the *Lemon* test, the Supreme Court's decision to no longer evaluate federal claims under a specific test does not mean that this Court must, or should, change its interpretation of the Massachusetts Declaration of Rights. Indeed, this Court has previously declined to apply the Supreme Court's revised understanding of federal law to its analysis of protections under the state constitution. *See, e.g.*, *Com. v. Amendola*, 406 Mass. 592, 598-600 (1990) (concluding automatic standing rule appropriate for art. 14 claims even after Supreme Court abandoned that rule for Fourth Amendment claims). For good reason. "In state constitutional law [], the U.S. Supreme Court is not final, and thus not infallible. Instead, state supreme courts have the final say on the interpretation of their own state constitutional provisions." Scott L. Kafker, *A Most Interesting Time for State Constitutional Law,* 64 Judges' J. 16, 20 (2025). State constitutions provide a vital "double protection of individual rights"; as a result, it makes sense that "state courts are fully empowered and expected to interpret independently analogous provisions in their state constitutions . . . if presented with . . . retrenchments with which they do not agree." Scott L. Kafker, *State Constitutional Law Declares its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval*, 49 Hastings Const. L.Q. 115, 116 (2022).

2. The Colo *framework is workable.*

Defendants also claim that the *Colo* framework will lead to hostility towards religion, chaos, and the removal of scores of statues throughout the Commonwealth. Defs.Br.21-24, 43, 48-50. Not so.

To begin, following art. 3's directive, *Colo*'s framework supports government neutrality toward religion, which promotes religious freedom—as well as the freedom to follow no religion—rather than religious hostility. As the Supreme Court affirmed just last year, "the fullest realization of true religious liberty requires that government refrain from favoritism among sects," to protect the religious practice of all faiths. *Cath. Charities Bureau, Inc. v. Wis Lab & Indus. Rev. Comm'n*, 605 U.S. 238, 248 (2025) (internal quotation marks and citations omitted). Nor has *Colo* led to an outpouring of litigation, and it has not, and will not, lead to the stripping of longstanding monuments across the Commonwealth. This is due to several limiting factors inherent in the *Colo* framework.

For instance, while "the mere fact that a certain practice has gone unchallenged for a long period of time cannot alone immunize it from constitutional invalidity, even when that span of time covers our entire national existence and indeed predates it," *Colo* made clear that "[t]he 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." *Colo*, 378 Mass. at 557 (internal citation and quotation marks omitted). Thus, this Court upheld the state's employment of a legislative chaplain to deliver an opening invocation, in part, because of its "long tradition." *Id.* at 559.

Applying this framework to religious statues, "retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 57 (2019).

Colo made clear that a court's art. 3 analysis will also be guided by other relevant contextual factors. *Cf. Caplan,* 479 Mass. at 104-106 n.6 (Kafker, J., concurring) (recognizing the need to rely on "subtle" context distinctions to perform analysis under religious clauses). For example, contrasting opening invocations with daily prayers in school, *Colo* examined the audience to whom the prayers were addressed and the message the prayers conveyed to listeners, observing that the "mature legislators" and a "ceremonial moment of meditation" were different than "incorporating religious exercises into the context of a compulsory school day," where they would be understood as "lend[ing] at least implicit support to the notion that children should be indoctrinated to accept religion." *Colo*, 378 Mass. at 559.[10] The Court also examined the nature of the challenged practice and how it was implemented. The invocations were brief, voluntary, and the government was not involved in decisions "about which religions are to be represented or what sorts of invocations are to be offered." *Id.* Finally, the Court emphasized that there was "not the slightest hint that the practice of employing legislative chaplains has ever created any [ ] political divisiveness." *Id.* Under

[10] *See also Caplan*, 479 Mass. at 101 n.3 (Kafker, J., concurring) (contrasting religious purpose of government funding stained-glass windows in Acton church with historical purpose of government funding stained-glass windows in historic, Old North Church).

those specific circumstances, *Colo* determined the practice did not violate art. 3. *Id.* at 558-61.

Contextual considerations serve as important guardrails when a court conducts an art. 3 analysis, ensuring that the framework remains workable and does not become a wrecking ball to longstanding, historically centered artwork and iconography. Courts are well-versed in conducting the kind of "line drawing" that "may be difficult, but necessary in this area." *Caplan*, 479 Mass. at 105 n.6 (Kafker, J., concurring). Defendants' references to eighteenth-and-nineteenth-century displays, such as those in the John Adams Courthouse, RAII/263,[11] as well as other statues commemorating historical events, such as the Mayflower and the Pope's visit to Boston, RAII/42-44,[12] are thus red herrings. *Colo* does not necessitate their automatic erasure

[11] Put in the context of the fifteen other virtue-statues placed throughout the courthouse, including Reason, Equity, Guilt, Punishment, Innocence, and Reward, the statues of "Religion" and "Legislation" (the latter of which contains a depiction of Moses holding a scroll) quickly lose any reasonable interpretation as the government favoring religion generally, or Abrahamic religions specifically, particularly as they have been in place for nearly 130 years. See also RAII/32-33, 36 (Defendants citing 19th century examples of Minerva and David).

[12] Statues commemorating historical occasions in the Commonwealth do not inherently endorse religion simply because the people memorialized adhere to a particular faith. A statue built at Plymouth to honor Mayflower passengers does not promote Calvinism any more than a statue of George Washington in Boston's Public Garden endorses the Anglican Church. Similarly, a statue commemorating the 1979 Boston visit of Pope John Paul II represents a significant event in Massachusetts history.

and, viewed through the lens of the contextual limitations described above, they are critically distinguishable from the instant case.[13]

B. Under *Colo*, Plaintiffs are likely to succeed in their claim that the statues violate art. 3.

Although Plaintiffs need not prevail on every *Colo* factor to establish an art. 3 violation, the Superior Court correctly held that they are likely to do so. RAII/332.

1. Purpose.

To assess purpose, this Court must ask whether the "government's actual purpose is to endorse or disapprove of religion." *Edwards v. Aguillard*, 482 U.S. 578, 585 (1987) (internal quotation marks omitted). Defendants dilute the relevant analysis, suggesting that it is sufficient for the government to put forward "a plausible secular purpose." Defs.Br.53 (internal quotation marks omitted).[14] But such a standard "would leave the purpose test with no real bite" and erroneously render it "a pushover for any secular claim." *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844, 864-65 n.13 (2005). "[A]n approach that credits any valid purpose, no matter how trivial, has not been the way the Court has approached government action that implicates establishment." *Id.* at 865 n.13. Instead, the government's challenged action is

[13] Defendants also point to statues in federal government buildings. But these are not governed by Massachusetts law and, in all events, cannot be divorced from their broader context. For example, the Supreme Court's frieze depicts both religious and secular lawmakers as recognized across cultures, religions and history. *See, e.g.*, *ACLU of Ohio Found., Inc. v. Ashbrook*, 211 F.Supp.2d 873, 884 n.9 (N.D. Ohio 2002), *aff'd*, 375 F.3d 484 (6th Cir. 2004).

[14] As discussed *infra*, Defendants would not satisfy even this lower standard.

unconstitutional when it acts with the "predominant purpose of advancing religion." *Id.* at 860.

Here, the Superior Court correctly concluded that there is "no discernable secular purpose" for the "larger than-life" statues of Saint Michael and Saint Florian, whose images are "drawn directly from and are wholly consistent with Catholic scripture, teaching, and iconography." RAII/332. The statue of Saint Michael is depicted with wings, showing that he is an angel. He brandishes a sword as he stands on the head and neck of a demon, representing his role as a warrior for God who defeats Satan. RAI/41 ¶43. This imagery is not a neutral metaphor for "public safety" or policing, but a recognizable rendering of traditional Catholic eschatology. RAI/41-42. Similarly, the statue of Saint Florian is portrayed performing one of the miracles for which he is best known in the Catholic tradition: extinguishing a fire with water from a single vessel. RAI/37-38 ¶31, 52, 110. No other artwork will adorn the façade of the public safety building. Plaintiffs are therefore likely to succeed on the purpose prong, because unlike the opening invocations at issue in *Colo*—which were brief, voluntary, and not always conducted by the same religious denomination, 378 Mass. at 557, 559—these statues are permanent, prominent, and consistently representative of one particular religious view.

Defendants contend that the Mayor's decision "had nothing to do with Catholic sainthood," and that he selected the statues because of their "status as symbols in police and fire communities worldwide," "to boost morale and to symbolize the values of

truth, justice, and the prevalence of good over evil" and to inspire first responders to be "maximally effective" in their duties. RAI/225-226 ¶¶2, 3, 6.[15] For several reasons, the Mayor's statements do not diminish Plaintiffs' likelihood of success on this prong.

To begin, the contemporaneous evidence demonstrates the Mayor's facially religious purpose in commissioning the statues. Defendants expressly contracted with the sculptor to create two statues depicting "Saint Michael the Archangel the patron saint of Law Enforcement, and Saint Florian as a protector of fire fighters and a protector against fire and burning." RAI/162.

In addition, the Superior Court correctly found Defendants' "professed secular purpose" of inspiring first responders "[to] offer[] nothing more than semantics," because, "[t]o 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." RAII/333. To the extent that Saints Michael and Florian are meaningful to some police officers and firefighters, this is rooted in—and cannot be divorced from—their religious significance. The notion that physical representations of Saints Michael and Florian provide protection is grounded in Catholic tradition. RAII/234-35 ¶¶22, 23. Many Catholic police officers and firefighters may pray to Saints Michael and Florian for protection, guidance and

[15] Plaintiffs have not yet conducted discovery and the Mayor's affidavit—which the Superior Court found to be "self-serving assertions"—has not yet been subject to cross examination. RAII/333.

emotional support. RAII/141, 145-46, 168, 212, 216.;RAII/307 ¶8. Many police officers and firefighters may also seek spiritual comfort from Saint Michael and Saint Florian when grieving losses of their colleagues, including through Saint Florian's prayer for fallen firefighters "to rest with Saint Florian." RAII/17-18, 153-54, 195.

Of course, in their personal capacities first responders are welcome to seek religious guidance, protection, and comfort from Saint Michael and Saint Florian through private prayer, tattoos, medallions, prayer cards, and participation in nongovernmental organizations that honor these saints. *See* RAII/233-35 ¶¶12, 22; *see, also* RAII/130-34, 141, 144-50, 158-68, 210-16. Art. 3 poses no barrier to these *private* expressions of faith—to the contrary, governmental neutrality serves to protect free exercise of religion for all—but the state constitution embodies a "goal[] of nonestablishment" when it comes to *government* action. *Colo*, 378 Mass. at 561. The Mayor cannot strip away the religious nature of these statues by simply stating that he chose them for a secular purpose. *See, e.g.*, *Prescott v. Okla. Capitol Pres. Comm'n*, 373 P.3d 1032, 1034 (Okla. 2015); *Fox v. City of Los Angeles*, 22 Cal.3d 792, 798 (Cal. 1978).

2. Effect.

Even if Plaintiffs were not likely to succeed on the purpose prong—though they are—they are still likely to demonstrate that the primary effect of the statues advances religion. Consistent with the principle of government neutrality, courts consider whether the government display "convey[s] or attempt[s] to convey a message that religion or a particular religious belief is favored or preferred." *County of Allegheny v.*

ACLU, Greater Pittsburgh Chapter, 492 U.S. 573, 593 (1989) (internal quotation marks omitted). In making this determination, courts often ask whether an objective observer would perceive the practice in question as endorsing or advancing religion. *See id.* at 620. Here, the Superior Court correctly concluded that Plaintiffs "are likely to succeed at proving that the permanent display of the oversized overtly religious-looking statues have a primary effect of advancing religion."[16] RAII/332.

An objective observer would recognize the obvious religious significance of the statues, RAI/41-42, note their size and prominence as the only adornments on the building, and reasonably conclude that "[t]he placement of two statues seemingly befitting a house of worship, on the exterior facade of the public safety building . . . indicates the primary effect is likely to convey a religious message." RAII/334. Defendants describe the statues as merely "a soldier putting out a fire—an obvious

[16] Defendants cite several non-controlling cases to argue that courts have upheld statues "far more facially religious than Quincy's," Defs.Br.60, but each is meaingfully distinguishable. *See Am. Legion*, 588 U.S. at 63-66 (ninety-year-old Blandensburg Cross in WWI memorial placed on pedestal with the names of veterans who died in war); *Van Orden v. Perry*, 545 U.S. 677, 681, 691 (2005) (forty-year-old ten commandment monument donated by civic organization included in set of 17 monuments and 21 historical markers, representing several strands in state's political and legal history, on state capitol grounds); *Freedom From Religion Found. v. Weber*, 628 F. App'x 952, 954 (9th Cir. 2015) (renewal of permit on government land for 60-year-old privately owned, maintained, and funded statue of Jesus that was far from any government building on a mountain with a plaque communicating its private ownership); *Brooks v. City of Oak Ridge*, 222 F.3d 259, 265-67 (6th Cir. 2000) (Japanese Friendship Bell designed by two non-Buddhist residents, paid for with private contributions, with a plaque stating purpose was to celebrate fifty years of city's growing friendship and peace with Japan).

reference to firefighting—and a winged figure defeating a representation of wrongdoing—in context, an obvious reference to the protection against malefactors inherent in police work." Defs.Br.56. But that flies in the face of what an objective observer would actually perceive when faced with these "overtly religious" statues. RAI/327.

This is not a hypothetical conclusion. Plaintiffs, who come from diverse religious backgrounds, submitted declarations describing their perception of the statues' distinctly religious message. *See, e.g.*, RAI/297 ¶7 ("The patron saints being depicted in the statues are not universal symbols, they are symbols for one specific faith"); RAI/304 ¶7 (describing the statues as "overtly religious"); RAI/326 ¶7 ("These statues send the message to me that I am living in a Christian country and city"). Additionally, nineteen faith leaders from the Quincy Interfaith Network noted in their statement opposing Quincy's plan to install the statues that saints are "meaningful symbols" that "many of our Roman Catholic neighbors" "rely on in times of crisis and when in need of protection," and explained that the statues will "send[] a message that there are insiders and outsiders in this community." RAI/137-38. Finally, government officials within Quincy have perceived the statues as conveying a religious message. For example, Councilor McCarthy stated that the statues "might help" first responders by "bless[ing]

them" and first responders "might say a little prayer before they go out on duty." RAI/112.[17]

Defendants compare the effect of the statues with the prayers upheld in *Colo* to argue that "a passing glimpse of these statues is exceedingly 'unlikely to advance religious belief' in users of the public-safety building." Defs.Br.57. But this argument ignores the distinction in effect between prayers that are not limited to a single denomination, "brief," and "voluntary," *Colo,* 378 Mass. at 559, with permanent statues that display one specific denomination's conception of Saints Michael and Florian to everyone who must enter or go by the building. 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 unconstitutional effect on those who will pass those statues when using the building . *See, e.g.*, *Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290, 309–10 (2000) (holding government "sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community") (internal quotation marks omitted). Where, as here, "the government puts

[17] Although Councilor McCarthy also stated that he "never took" the statues as "religious," his description of prayer has no secular analogue.

its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs." *Lee v. Weisman*, 505 U.S. 577, 606 (1992) (Blackmun, J., concurring).

3. Entanglement.

The government becomes impermissibly entangled with religion when it "decide[s] matters of religion," *Soc'y of Jesus of New England v. Commonwealth*, 441 Mass. 662, 675 (2004), or is "embroiled in [ ] difficult decisions about which religions are to be represented," *Colo*, 378 Mass. at 559, and how those religious beliefs are to be conveyed.

Here, it is undisputed 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" so that the statues can "be placed on the front of the [building, in a] central location where the public will interact with those charged with protecting, serving and safeguarding the community." RAI/334. Given these factors, the Superior Court correctly surmised that it was "hard to see how" this support for "religious art could not result in excessive entanglement." RAI/334. *Cf. Caplan*, 479 Mass. at 93 (noting aesthetic choices regarding religious design on church exterior are "interwoven with religious doctrine"); *compare with Colo*, 378 Mass. at 559 (finding no entanglement where prayers were brief, attendance voluntary, and State was not involved in which religions were represented or which invocation was offered).

Defendants argue that entanglement can only be found in certain scenarios—for example, monitoring or regulating religious activities—and not in the funding or installation of religious statues on a public building. Defs.Br.57-58 (quoting *Attorney General v. Bailey*, 386 Mass. 367, 378-79 (1982)) (citing *United States v. Freedom Church*, 613 F.2d 316, 320 (1st Cir. 1979)). But this attempt to artificially narrow the type of government action that may constitute excessive entanglement is not required by these cases. *Bailey* and *Freedom Church*'s conclusion that entanglement for the purpose of the Establish Clause includes government monitoring of religious activity was merely a by-product of the challenged behavior in those matters. *See Bailey,* 386 Mass. at 379 (law requiring private schools to disclose name and residence of enrolled students); *Freedom Church,* 613 F.2d at 318 (summons and request for production in IRS investigation). These cases do not stand for the proposition that entanglement will *only* be found in similar factual circumstances under the Establishment Clause, let alone under art. 3.[18]

4. Divisiveness.

Finally, the Superior Court correctly concluded that Plaintiffs are likely to succeed in demonstrating divisiveness. RAII/332. As this Court has explained, to promote civic harmony, the "question of religion should be removed from politics as far as possible." *Caplan*, 479 Mass. at 81 (internal quotation marks omitted). Here, the

[18] Although *Colo* held that the opening invocation did not cause entanglement under the facts of that case for the reasons described *supra*, this Court *did not suggest* that such government action—which is neither monitoring nor regulation of religious activity—*could not* cause entanglement. *Cf.* 378 Mass. at 559-560.

record reveals multiple examples of how the statues have created political division even prior to their installation, including a letter by nineteen local religious leaders expressing "grave concerns" about the statues, RAI/44 ¶53, 137-38, a city councilor's statement that "the statues [are] clearly contentious for everyone," City Council Video at 1:24:46, and a petition opposing the statues with over 1,600 signatures, RAI/23, 125-35. *Compare Colo*, 378 Mass. at 559–60 (noting there was "not the slightest hint that the practice has ever created any . . . political divisiveness").

Defendants did "not put forth any evidentiary support to counter Plaintiffs' evidence of the divisiveness in the community which the statues have already caused." RAII/335. Instead, Defendants suggest that this factor should not apply at all based on their assertion that federal courts have limited its application to Establishment Clause claims involving financial subsidies to parochial schools,[19] and because "the process of ascertaining and effectuating the public will is not constitutional litigation but politics." Defs.Br.59. Both arguments are unpersuasive in the face of *Colo*'s clear application of this factor to art. 3 claims, without limitation to the type of challenged government action. 378 Mass. at 558-59. The assertion that Plaintiffs' claims should be confined to the political sphere is particularly inapplicable when the Mayor's plans were not publicly disclosed for years, *see supra*, and given that the very purpose of constitutional rights is

[19] Contrary to Defendants' assertion, federal courts sometimes *do* consider the divisiveness caused by religious displays as part of their Establishment Clause analysis. *See, e.g.*., *Van Orden* 545 U.S. at 704 (Justice Breyer, controlling concurrence).

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).

III. Even if the Court revisits its interpretation of art. 3, it should affirm the Superior Court's preliminary injunction.

This Court should reject Defendants' invitation to abandon *Colo.* But if the Court revisits its interpretation of art. 3 and the scope of its protections, it should do so in the same manner it ordinarily interprets the Declaration of Rights: by conducting a context-informed analysis of the text, history, and purposes of art. 3 to derive an enduring constitutional principle that applies to present-day conditions. That is exactly what the Superior Court did, holding, as this Court should, that Plaintiffs are equally entitled to a preliminary injunction under this alternative analysis. RAII/328-35.

A. Massachusetts courts interpret the scope of constitutional protections with a context-informed analysis of text, history, and purpose.

This Court has recognized that although text, history, and purpose provide analytical starting points, "constitutional interpretation must respond to social change." *Commonwealth v. Horton*, 365 Mass. 164, 177 (1974) (Hennessey, J., concurring). The Declaration of Rights does not "freeze for all time" "the original view of what [constitutional] rights guarantee and [how] they apply." *Kligler v. Att'y Gen.*, 491 Mass. 38, 60 (2022) (alterations in original). "Such a result" would be "incompatible with our

State constitutional provisions, which are and must be adaptable to changing circumstances and new societal phenomena." *Id.* (internal quotation marks omitted). Consequently, this Court routinely interprets the scope of state constitutional protections through a context-informed analysis, often resulting in protections that exceed those provided under the federal constitution.

For example, while the third-party doctrine historically denied people a reasonable expectation of privacy in business records disclosed to third parties, *Commonwealth v. Augustine* held that, in light of modern cellphone use, "our society is prepared to recognize as reasonable" an expectation of privacy under art. 14 in cellphone location data that is provided to cell service providers. 467 Mass. 230, 251–52, 255 (2014).[20] Similarly, although judges had historically retained discretion to impose juvenile life without parole (LWOP) based on individualized circumstances, *Diatchenko v. Dist. Att'y for Suffolk Dist.* held that discretionary juvenile LWOP violates art. 26 based on modern scientific understandings of adolescent brain development. 466 Mass. 655, 667–71 (2013).[21] Likewise, in *Commonwealth v. Long*, new data showing the prevalence and harms of racially discriminatory traffic enforcement led this Court to modify the historically required selective-enforcement test under arts. 1 and 10 in the context of racially biased vehicle stops. 485 Mass. 711, 717–24 (2020). And despite the "long-

[20] *See id.* 243–44 (reaching this conclusion even though majority of federal courts at that time held otherwise).

[21] *See id.* at 667–68 (reaching this conclusion when federal courts only had held that mandatory imposition of juvenile LWOP violated the Eighth Amendment).

standing statutory understanding" that marriage meant "the lawful union of a woman and man," *Goodridge v. Dep't of Pub. Health* held that "history cannot and does not foreclose the constitutional question," and concluded that the same-sex marriage ban failed rational-basis review under the equal protection and due process provisions of the Massachusetts Constitution. 440 Mass. 309, 320, 330–31 (2003).[22]

The consistency of this approach across numerous constitutional provisions undercuts Defendants' effort to cast *Kligler*'s context-informed analysis as an isolated exception that applies only to substantive due process rights. Defs.Br.51. To the contrary, Defendants' position would mark the real departure from this Court's jurisprudence, treating art. 3 as the sole provision whose scope cannot be informed by present-day context. This Court should reject that unsupported argument as inconsistent with principles of constitutional interpretation that have long guided its decisions.

B. Under a context-informed analysis of the text, history, and purpose of art. 3, Plaintiffs are likely to succeed on the merits of their claim.

Properly applied, the above analysis shows that, if art. 3's guarantee against sectarian subordination is to remain meaningful in contemporary life, it must prohibit the expenditure of $850,000 in taxpayer funds to commission and install two new ten-

[22] *Goodridge* was decided a dozen years before *Obergefell v. Hodges*, 576 U.S. 644 (2015), reached a similar conclusion under the federal constitution.

foot-tall statues of Saint Michael and Saint Florian as the sole adornments on the front of a public safety building.

Beginning with the text, art. 3's command is clear: "*all* religious sects and denominations . . . *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 (emphasis added). The 1833 amendment expressly changed the original text from "every denomination of Christians," to "all religious sects and denominations," and also removed the municipal power to assess taxes for religious institutions. *Compare* Art. 3 *with* Art 3., as amended by Am. Art. 11. Nothing in the plain meaning of this language limits art. 3 to prohibit only compelled worship or formal establishment of a state religion, as Defendants incorrectly propose. See Defs.Br.39–41.[23] To the contrary, and especially given the 1833 amendment, the language of art. 3 is naturally read as a robust prohibition on government conduct that treats one religion unequally or "as of less value or importance" than others.[24] *See* Definition of Subordinate, Merriam-

[23] *Commonwealth v. Has*, 122 Mass. 40 (1877), does not say otherwise; its description of what the challenged law in that case did *not* do in no way establishes a threshold for what a law *must* do to violate art. 3. *Cf.* Defs.Br.37.

[24] Defendants' reliance on *Doe v. Acton-Boxborough Reg'l Sch. Dist.*, 468 Mass. 64, 78-81 (2014) to argue that Plaintiffs' feelings of subordination are not "'cognizable' as a denial of 'equal protection'" under art. 3 is misplaced. Defs.Br.38 & n.8. Their focus on the "equal protection language of art. 3" ignores that provision's non-subordination language. Further, *Doe* emphasized that case was "very limited" to the "sole constitutional claim" under the Massachusetts equal protection clause, before going on

Webster Online Dictionary, https://www.merriam-webster.com/dictionary/subordinate.

The history and purpose of art. 3 reinforce this reading. The 1833 amendment followed "decades of 'lawsuits, bad feelings, and petty persecution,'" under the original text of art. 3. *Caplan,* 479 Mass. at 76. Contrary to Defendants' contention, these changes were not enacted solely to end a targeted assessment regime. *Cf.* Defs.Br.39. The Massachusetts disestablishment struggle was much broader, reflecting a sustained opposition to the Commonwealth's use of civil power to privilege certain denominations, to identify other denominations as dissenters, and to deny those dissenters equal standing. *See, e.g.*, Steven K. Green, *Separating Church and State: A History* 60–65 (2022) (describing Massachusetts assessment debates as disputes over magistrate's authority over religious matters).[25] Those who opposed the system thus attacked not merely religious assessments, but also the state's authority to determine

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to clarify that when plaintiffs do not claim the challenged activity "violates anyone's First Amendment religious rights (or cognate rights under the Massachusetts Constitution), they cannot rely instead on the equal rights amendment," to claim unlawful discrimination "on the basis of religion." 468 Mass. at 74, 81-82. Here, in contrast, Plaintiffs assert a core art. 3 violation.

[25] *See also* Steven K. Green, *The Second Disestablishment: Church and State in Nineteenth-Century America*, 44 (2010) (quoting Isaac Backus's lamentation in his 1773 sermon, *An Appeal to the Public for Religious Liberty*, that the assessment system ""implie[d] an acknowledgment that the civil power has a right to set one religious sect above another.""); *id.*(quoting Isaac Backus's explanation in his 1778 pamphlet, *Government and Liberty Described and Ecclesiastical Tyranny Exposed*, that it was "not the pence, but the power, that alarm[ed]" them).

who had the power to select a congregation's minister, and to place dissenters in a subordinate civic position through a regime of exemption certificates. *See* Green, *Separating Church and State*, 61–65, 95–97). The push for change ultimately succeeded in 1833, when the amendment was passed by a ten to one margin. *See* Green, *Separating Church and State*, 97.[26] Read in this context, art. 3, as amended, reflects not merely the end of the regime of religious assessments, but also a constitutional commitment to non-subordination and religious equality that denies government the power to use civil authority to elevate one faith over others.

The scope of these protections today must be informed by the current context of the Commonwealth's religious pluralism. At the time of art. 3's amendment, religious controversies in Massachusetts centered largely on power dynamics between Protestant Christian denominations. *Id.* Today, our Commonwealth is far more pluralistic. Recent data show that in 2024, only 52% of adults in Massachusetts identified as Christian, while the Commonwealth now includes substantial populations of Jews, Muslims, Hindus, Buddhists, and adherents of other faiths, alongside a quarter of residents who do not belong to any religious tradition. *See* Pew Study, *supra* n.1.

These changes impact this Court's analysis of art. 3. Defendants suggest "there is no evidence that anyone who ratified art. 3 or its 1833 amendment understood it to

[26] The original text of art. 3 received only 58% approval in 1780, which was short of the two-thirds required for ratification. *See* Green, *Separating Church and State*, 63-64.

forbid governmental use of symbolism with religious associations on public property." Defs.Br.41. But that characterization is too broad. And regardless, as the Superior Court recognized, if art. 3's guarantee against religious subordination is to remain meaningful, it should not be limited to those forms of sectarian favoritism most familiar to an earlier, more religiously homogeneous era. *See* RAII/329 ("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"). Rather, the Court must interpret art. 3's principle of governmental non-subordination in a way that reflects present-day conditions, including the ways in which official religious preference is now experienced in a diverse Commonwealth.

The "clear thrust" of this contextualized text, history and purpose "compels the conclusion" that Plaintiffs are likely to succeed in their claim that the challenged statues violate art. 3. *Cf. Barron v. Kolenda*, 491 Mass. 408, 419 n.11 (2023). "[C]onsidering the context of the display at issue," the Superior Court properly found "the danger of subordination prohibited by Article 3 is readily apparent." RAII/330. This Court should do the same because placing two new ten-foot statues of Saints Michael and Florian as the sole adornments on a public safety building can reasonably be understood "as part of a broader message as to who may be favored" by the government. *Id.*

Defendants reach the opposite conclusion only by ignoring current realities and narrowly interpreting precedent, legislation, imagery, and statues that largely stem from

the eighteenth and nineteenth centuries. Defs.Br.40-46. Although they use the *language* of Massachusetts cases, Defendants' *analysis* relies on their erroneous interpretation of the "historical practices and understandings" test *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), articulated for federal Establishment Clause challenges.[27] In effect, Defendants appeal to history not as a tool of constitutional construction but rather in a bid to make history dispositive—to confine art. 3's protections to a narrow catalogue of "hallmarks of religious establishments" from 1833 or even earlier. Defs.Br.40–43.

Nothing in art. 3's text, history or purpose, nor in this Court's precedent, supports that approach. The question is not what past practices can be inventoried and preserved, but what art. 3 means as a rule of non-subordination when applied to present-day facts to ensure that our state constitution "respond[s] effectively to our changing world." *Kligler*, 491 Mass. at 62. In an increasingly multicultural and pluralistic Commonwealth, that rule requires finding in Plaintiffs' favor.

IV. Plaintiffs have satisfied the other preliminary injunction factors.

The remaining preliminary injunction factors also favor the Plaintiffs. Under the taxpayer statute, Plaintiffs need only "show a likelihood of success on the merits and that the requested relief would be in the public interest," *Caplan*, 479 Mass. at 75, but

[27] Not only is federal law inapposite to this Court's interpretation of art. 3, but Defendants also overread *Kennedy*. That case never purported to announce an exclusive list of hallmarks of prohibited religious establishment, and the Supreme Court more recently reaffirmed the Establishment Clause's prohibition on denominational preferences without suggesting that constitutional violations are confined to any fixed checklist of historical hallmarks. *Catholic Charities*, 605 U.S. at 247.

they nevertheless have demonstrated irreparable harm and that the balance of harms tips in their favor. For good reason, Defendants offer no real argument to the contrary. *See* Defs.Br.31 (asserting only that "since Plaintiffs lack injury, they certainly cannot show irreparable harm or that the balance of harms favors them").

First, violations of constitutional rights are intrinsically irreparable. *See, e.g.*, *T & D Video, Inc. v. City of Revere*, 423 Mass. 577, 582 (1996). What is more, absent an injunction, the statues will be prominently placed on a widely used City building located in the heart of Quincy. Forced to confront the statues anytime they use or go by this building, Plaintiffs will constantly receive the message that they are outsiders within their own community. *See supra.* This harm has no remedy in law.

Second, a preliminary injunction will "promote[] the public interest" by ensuring that the objectives "reflected in" art. 3 are met. *Caplan*, 479 Mass. at 95 (internal quotation marks omitted). At a minimum, a preliminary injunction will not adversely affect the public interest but maintain the status quo, where the statues will not be installed during the litigation. A delay in erecting the statues will not harm the public interest.

Finally, the balance of harms tips decidedly in Plaintiffs' favor. Defendants have not asserted that they would suffer *any* harm if the injunction remains in place, let alone one that exceeds the harm Plaintiffs will suffer due to the denial of their constitutionally protected rights. The statues are not essential components of the building, and "the injunction will not forestall the completion of the remaining aspects of the building or

its opening to the public." RAII/336. In the unlikely event the Plaintiffs are ultimately unsuccessful, the statues could always be affixed to the building later. At the same time, maintaining the injunction prevents "the further expenditure of public funds on installing" and ultimately removing the statues—"neither of which is likely to be recoverable"—in the likely event that Plaintiffs prevail. *Id.*

V. Defendants' free exercise and equal protection arguments have no basis in law.

Defendants' last-ditch arguments that enjoining the installation of the statues will somehow violate the First and Fourteenth Amendments to the United States Constitution are meritless.

As to the former, Defendants' declaration that an injunction would constitute "state experimentation in the suppression of the free exercise of religion," Defs.Br.61, or "undercut" the necessary civic trait of "learning how to tolerate speech or prayer of all kinds," Defs.Br.44, elides a dispositive detail: The federal Free Exercise Clause protects *private* religious expression against government interference. *See* Defs.Br.61 (citing *Kennedy,* 597 U.S. at 529 (high school football coach's prayer on his own time "was private speech, not government speech") and *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 487 (2020) (government cannot deny funding to private schools solely because they are religious)). Here, there is no private religious expression at issue. That is the whole point. Plaintiffs' art. 3 claim rests on the very fact that the *government itself* has commissioned, funded, and sought to install two new statues of Saint Michael and

Saint Florian on a government building. There is no Free Exercise Clause concern to avoid, as Quincy has no free exercise rights. *Cf. Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009) (holding government units have "no privileges or immunities under the federal constitution") (internal quotation marks omitted).

Defendants similarly mischaracterize both the facts of this case and the law under the federal Equal Protection Clause to assert that Plaintiffs' "mere negative attitudes toward a class of persons are not permissible bases" to enjoin the installation of the statues. Defs.Br.61 (internal quotation marks omitted). First, Plaintiffs' claim is not rooted in anti-Catholic animus, and they do not seek to exclude, burden, or target the exercise of Catholic beliefs by any private individuals; instead, the record demonstrates that Plaintiffs object to the harms they will suffer if the *government* is permitted to favor one faith over others and religion over non-religion. RAI/295-344. Second, Defendants' twisting of the Equal Protection Clause "would turn constitutional jurisprudence on its head[.]" RAII/335. Courts routinely entertain the claims of people who ask for government neutrality in the face government actions that favor one denomination over others, *see supra*, and this Court should do the same.

CONCLUSION

This Court should affirm the Superior Court's preliminary injunction order.

Respectfully submitted,

CLAIRE FITZMAURICE, JAY TARANTINO, 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,

By their attorneys,

Dated: March 16, 2026

/s/Jessie J. Rossman

Jessie J. Rossman (BBO #670685)
Rachel E. Davidson (BBO #707084)
Suzanne Schlossberg (BBO #703914)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
rdavidson@aclum.org
sschlossberg@aclum.org

Daniel Mach (*pro hac vice*)
Heather L. Weaver (*pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street NW
Washington, DC 20005
(202) 675-2330
dmach@aclu.org
hweaver@aclu.org

Alexandra Arnold (BBO #706208)
CLOHERTY & STEINBERG LLP
One Financial Center, Suite 1120
Boston, MA 02111
(617) 481-0160
aarnold@clohertysteinberg.com

Patrick C. Elliott (*pro hac vice*)
Kyle J. Steinberg (*pro hac vice*)
FREEDOM FROM RELIGION FOUNDATION
PO Box 750
Madison, WI 53701
(608) 256-8900
patrick@ffrf.org
steinbergk@ffrf.org

[*signatures continue on following page*]

Jenny Samuels (*pro hac vice*)
Rebecca Markert
AMERICANS UNITED FOR SEPARATION
OF CHURCH & STATE
1310 L Street NW, Suite 200
Washington, DC 20005
(202) 466-7308
samuels@au.org
markert@au.org

* *Pro hac vice* motion pending

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the rules of court that pertain to the filing of briefs, including Mass. R. App. P. 16, Mass. R. App. P. 20, Mass. R. App. P. 21; and

2. This brief complies with the format and type-volume limitations of Mass. R. App. P. 20 because the brief has been prepared with a proportionately spaced font and does not contain more than 11,000 words, excluding the parts of the application exempted by the rules. It is typewritten in 14-point, Garamond font and contains 10,979 non-excluded words as counted by the word processing system used to prepare it.

March 16, 2026

/s/Jessie J. Rossman
Jessie J. Rossman (BBO #670685)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org

CERTIFICATE OF SERVICE

Pursuant to Massachusetts Appellate Rule of Procedure 13(2), I certify that on March 16, 2026, I served this brief upon the attorneys of record for each party via the Electronic Filing System and via email:

Joseph Davis, jdavis@becketfund.org
Andrea Butler, abutler@becketfund.org
Eric Rassbach, erassbach@becketfund.org
Caleb H. Angell, cangell@becketfund.org
Laura Wolk Slavis, lslavis@becketfund.org
The Becket Fund for Religious Liberty
19119 Pennsylvania Ave. NW
Suite 400
Washington, D.C. 20006

James Timmins, jtimmins@quincyma.gov
Robert Thompson, rthompson@quincyma.gov
City of Quincy
1305 Hancock Street
Quincy, MA 02169

March 16, 2026

/s/Jessie J. Rossman

Jessie J. Rossman (BBO #670685)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, INC.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org

ADDENDUM

Table of Contents

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2582-0576

CLAIRE FITZMAURICE & others[1]

vs.

THE CITY OF QUINCY & another[2]

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

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

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

decision to make. *Id.*

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

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

DISCUSSION

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

I. Motion to Dismiss

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

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

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

A. Standing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Article 3 Analysis

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

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

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

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

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

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

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

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

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

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

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

i. *Lemon* Test

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. Alternative Approach

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

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

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

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

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

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

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

II. Motion for Preliminary Injunction

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

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

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

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

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

i. Likelihood of Success on the Merits

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

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

3.

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

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

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

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

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

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

ii. Irreparable Harm and Balance of Harms

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

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

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

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

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

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

ORDER

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

Dated: October 14, 2025

William F. Sullivan
Justice of the Superior Court

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 3

Art. III. Public worship; religious teachers

Currentness

ART. III. 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.

M.G.L.A. Const. Pt. 1, Art. 3, MA CONST Pt. 1, Art. 3
Current through amendments approved February 1, 2024.

End of Document

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.

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.

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title III. Laws Relating to State Officers(Ch. 29-30b)
Chapter 29. State Finance (Refs & Annos)

M.G.L.A. 29 § 63

§ 63. Unlawful exercise or departments abuse of power; commonwealth, commissions, officers, etc.; court restraint

Effective: January 1, 2013
Currentness

If a department, commission, board, officer, employee or agent of the commonwealth is about to expend money or incur obligations purporting to bind the commonwealth for any purpose or object or in any manner other than that for and in which such department, commission, board, officer, employee or agent has the legal and constitutional right and power to expend money or incur obligations, the supreme judicial or superior court may, upon the petition of not less than 24 taxable inhabitants of the commonwealth, not more than 6 of whom shall be from any 1 county, determine the same in equity, and may, before the final determination of the cause, restrain the unlawful exercise or abuse of such right and power.

Credits
Added by St.2012, c. 165, § 112, eff. Jan. 1, 2013.

M.G.L.A. 29 § 63, MA ST 29 § 63
Current through Chapter 11 of the 2026 2nd Annual Session. Some sections may be more current; see credits for details.

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