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SJC-13877

CLAIRE FITZMAURICE & others¹ vs. CITY OF QUINCY & another.²

Norfolk. May 6, 2026. - August 20, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Constitutional Law, Establishment of religion. Religion.
Municipal Corporations, Fire department, Police, Mayor.
Fire Fighter. Police. Injunction. Practice, Civil,
Preliminary injunction, Standing, Taxable inhabitants'
action, Motion to dismiss.

Civil action commenced in the Superior Court Department on
May 28, 2025.

Motions for a preliminary injunction and to dismiss were
heard by William F. Sullivan, J.

The Supreme Judicial Court granted an application for
direct appellate review.

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

² Mayor of Quincy.

Joseph C. Davis, of the District of Columbia (Eric C. Rassbach & Andrea R. Butler, of the District of Columbia, & James S. Timmins, City Solicitor, also present) for the defendants.

Jessie J. Rossman (Suzanne Schlossberg & Rachel E. Davidson also present) for the plaintiffs.

The following submitted briefs for amici curiae:

Samuel J. Whiting for Massachusetts Family Institute.

Michael A. Heidler, John Heo, & David S. Carter, of Texas, Justin W. Aimonetti, of the District of Columbia, & Ryan Patrick McLane for National Fraternal Order of Police & another.

Gabriela Forero, Paul R. Johnson, & Frank J. Bailey for Pioneer New England Legal Foundation.

Dwight G. Duncan for Islam and Religious Freedom Action Team & another.

Richard P. Driscoll for National Association of Police Organizations.

Michael C. Gilleran for Quincy Firefighters, Local 92, International Association of Fire Fighters, & others.

Gene C. Schaerr & Joshua J. Prince, of the District of Columbia, & Daniel B. Winslow for Protect the First Foundation.

Robert Kingsley Smith & Therese J. Brown for Synod of Bishops of the Russian Orthodox Church Outside of Russia.

Joshua M. Daniels for American Humanist Association & others.

Isabel M. Marin, of the District of Columbia, Kevin P. Martin, Christopher J.C. Herbert, & Ryan H. Brown for Knights of Columbus.

John A. Meiser & Meredith H. Kessler, of Indiana, & Matthew D. Watts for International Association of Fire Fighters & another.

Brinton Lucas & Elise Kostial, of the District of Columbia, & Andrew E. Lelling for American Legion.

Russell B. Balikian & Abby H. Walters, of the District of Columbia, & Joseph V. Cavanagh, III, for Michael McConnell & another.

Mitchell Kosht for Caitlin Borgmann & others.

KAFKER, J. The mayor of the city of Quincy (city) seeks to install two ten-foot-tall statues on the façade of the city's new public safety building at taxpayer expense. One statue depicts Saint Michael, an archangel with wings, stepping on the

head and neck of a demon.³ The other depicts Saint Florian, a larger-than-life Roman soldier towering above a burning building and extinguishing the fire with water from a single vessel. Saint Michael and Saint Florian are recognized as religious saints by the Catholic Church. They are also important symbolic figures for police officers and firefighters, respected for the values of bravery and honor they represent.

The plaintiffs, fifteen residents and taxpayers of the city, sued the city and the mayor in his official capacity to prevent the installation of the statues, arguing that the expenditure of public funds on, and the display of, the statues violate art. 3 of the Massachusetts Declaration of Rights, as amended by art. 11 of the Amendments to the Massachusetts Constitution, which provides: "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." A Superior Court judge granted the plaintiffs' motion for a preliminary injunction and denied the city's motion to dismiss. The city appealed, arguing the plaintiffs lack standing and the statues are permissible under art. 3.

³ The city's brief refers to "Michael" while the plaintiffs' brief refers to "Saint Michael." The same is true for "Florian." As the city used the term "Saint" before each name in the contract commissioning the statues, we do the same.

We conclude that the plaintiffs have standing as taxpayers under G. L. c. 40, § 53. We further conclude that the constitutionality of the statutes must be evaluated according to the framework we set out in Colo v. Treasurer & Receiver Gen., 378 Mass. 550 (1979), a decision that explored and applied the evolving text, constitutional history, and purposes of art. 3. That decision further considered, as helpful guidance, additional factors recognized in Federal and State case law, particularly the United States Supreme Court's decision in Lemon v. Kurtzman, 403 U.S. 602 (1971), which reflected the Supreme Court's establishment clause analysis at the time, to identify improper intermingling of State and religion. Applying the comprehensive reasoning of Colo, we conclude that the motion judge did not abuse his discretion in granting the preliminary injunction. We therefore affirm.⁴

⁴ We acknowledge the amicus briefs submitted by Quincy Firefighters, Local 792, International Association of Fire Fighters, Quincy Police Patrol Officers Association, and Quincy Police Superior Officers Association; National Fraternal Order of Police and Massachusetts Fraternal Order of Police; Islam and Religious Freedom Action Team and Jewish Coalition for Religious Liberty; Massachusetts Family Institute; Knights of Columbus; Pioneer New England Legal Foundation; National Association of Police Organizations; International Association of Fire Fighters and Professional Fire Fighters of Massachusetts; Protect the First Foundation; Synod of Bishops of the Russian Orthodox Church Outside of Russia; American Legion; American Humanist Association, Bend the Arc: A Jewish Partnership for Justice, Council on American-Islamic Relations-Massachusetts, DignityUSA, Dignity Boston, Global Justice Institute of the Metropolitan Community Church, Hindu American Foundation, Jewish Alliance for

1. Background. a. Facts. "We summarize the facts, which have reasonable support in the record." Lieber v. President & Fellows of Harvard College (No. 2), 488 Mass. 816, 817 (2022), citing Doe v. Worcester Pub. Sch., 484 Mass. 598, 601 (2020).⁵

In 2017, the city began planning and constructing a new public safety headquarters to replace the current police station and to house the city's emergency operations center, and police, fire, and information technology department offices. The building is near the corner of Sea Street and Southern Artery, two main thoroughfares in the city. It is a large, four-story building approximately 120,000 square feet in size, which cost approximately \$175 million to acquire the land for, build, and furnish. Residents go to the now-open building to, among other things, obtain fire permits or records, file and obtain accident or police reports, meet with police officers, speak with mental health counselors, attend community meetings and trainings, or utilize the prescription drug drop box.

Law and Social Action, Methodist Federation for Social Action, Sadhana Coalition, Society for Humanistic Judaism, and Unitarian Universalist Association; Michael McConnell and John Witte, Jr.; and Caitlin Borgmann, Alan Brownstein, Caroline Mala Corbin, Leslie C. Griffin, B. Jessie Hill, Frank S. Ravitch, Laura S. Underkuffler, and Jay D. Wexler.

⁵ The motion judge did not conduct an evidentiary hearing.

At some point in 2023, the mayor decided to commission two statues for the façade of the building.⁶ A July 2023 contract between the mayor's office and a sculptor in Italy commissioned two ten-foot-tall "bronze sculptures representing 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." The statue of Saint Michael depicts him with the wings of an angel, bearing a shield and stepping on the head and neck of a demon. The other statue depicts Saint Florian, a Roman soldier who lived in the Fourth Century. The statue of Saint Florian portrays a larger-than-life Roman soldier pouring water from a pitcher onto a much smaller building. The statues will be placed about halfway up the front of the prominent new building. They are the only two statues and, indeed, the sole adornments or decoration the city seeks to install on the front of the building.

Saint Michael and Saint Florian have both religious and secular significance. They are recognized as saints in the Catholic Church. In Catholicism, Saint Michael is so recognized as a celestial archangel, the leader of God's heavenly army who cast the devil, Satan, out of heaven. The sacred scriptures of

⁶ The parties have agreed that the statues are to be analyzed as a set and not separately.

other faith traditions, including Judaism and Islam, also recognize the archangel Michael as a significant figure.

Saint Florian is canonized and venerated as a saint in the Catholic Church because "he was martyred for his faith and because he saved a town from [burning] by praying for divine intervention." In Catholic doctrine, saints are persons in heaven who lived heroically virtuous lives, offered their lives for others, or were martyred for the faith, and thus are worthy of imitation.

Saint Michael and Saint Florian also have a special significance to police officers and firefighters as symbols of virtue, bravery, and valor. For example, a portrait of Saint Michael is a common tattoo for police officers who have tattoos related to their work, and some police awards and substance abuse treatment centers have been named after him. As for Saint Florian, municipalities across Massachusetts, including Quincy, use the "Florian Cross" on their fire department badges; a union hall for firefighters in Massachusetts is called Florian Hall; International Firefighters' Day is celebrated on May 4, Saint Florian's feast day in the Christian tradition; and an oft-invoked poem for fallen firefighters invites the deceased to "[r]est with Saint Florian." Two Quincy first responders attest in affidavits that the statues represent the values they aspire to emulate in their professions.

By January 2025, the city had spent at least \$761,378.75 in public funds on the statues, which are anticipated to cost \$850,000. Although many aspects of the new building were discussed at length during several city council meetings, most councillors and the public only learned of the plan to install the statues when a local newspaper reported on the commission on February 8, 2025. One councillor reported that he had previously been informed of the mayor's plans and 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."

On February 24, 2025, the city council discussed the statues at a public meeting for the first time. While five to ten residents typically attend city council meetings, over two hundred members of the public attended this meeting. There, the mayor's chief of staff confirmed that the mayor had not previously notified the city council of the plan to install the statues.

Since February 2025, hundreds of city residents and at least one city councillor have publicly opposed the statues. An online petition opposing the statues garnered over 1,600 signatures, and nineteen faith leaders from the Quincy Interfaith Network, belonging to many different faiths, issued a

public statement expressing "grave concerns" about the statues.⁷ Another councillor acknowledged that "the statues [are] clearly contentious for everyone" and that "a bunch of" constituents expressed their concerns about the statues to him.

b. Procedural history. On May 28, 2025, fifteen⁸ city residents filed a complaint in the Superior Court against the city and the mayor, seeking a judgment declaring that the expenditure of public funds and planned installation of the statues violate art. 3, and preliminary and permanent injunctions prohibiting the defendants from expending more public funds on the statues and from installing them. The plaintiffs submitted declarations describing the religious attributes of the statues, particularly their significance in the Catholic religion, and stating that the statues send an exclusionary and subordinating message to non-Catholics and that some plaintiffs feel personally alienated and excluded by the city's proposed installation. The defendants moved to dismiss

⁷ According to the Quincy Interfaith Network, "[e]recting these statues sends a message that there are insiders and outsiders in this community," because saints play an important role "for many of our Roman Catholic neighbors" but "our diverse city is composed of many people of faith and those who do not identify with any religious tradition."

⁸ One plaintiff voluntarily dismissed her claim; another has moved out of Quincy and intends to move to dismiss his claim once the Superior Court's stay of the proceedings is lifted. Of the other thirteen plaintiffs, twelve pay property taxes in Quincy.

the complaint pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), arguing that the plaintiffs lack standing and have failed to state a claim.

After a nonevidentiary hearing, the motion judge granted the plaintiffs' motion for a preliminary injunction and denied the defendants' motion to dismiss. The judge concluded that the plaintiffs had standing, both as a group of more than ten taxpayers under G. L. c. 40, § 53, and as individuals having alleged cognizable constitutional injuries. He also concluded that the plaintiffs had demonstrated a likelihood of success on the merits under the test articulated in this court's decision in Colo, 378 Mass. at 558, for art. 3 claims. Since the time of the motion judge's order, the statues have been in a storage facility in Randolph.

We allowed the city's application for direct appellate review to address the merits of the order granting the preliminary injunction, including whether the city's expenditure of funds and display of these statues violates art. 3.

2. Discussion. a. Standing. As an initial matter, the city argues that the plaintiffs lack standing to bring this action.

We conclude that the plaintiffs have standing under G. L. c. 40, § 53, known as the "ten-taxpayer statute." The ten-taxpayer statute provides that "not less than ten taxable

inhabitants" may petition a court to restrain a city from "expend[ing] money . . . for any purpose or object or in any manner other than that for" which such city "has the legal and constitutional right and power to . . . expend money." G. L. c. 40, § 53. See G. L. c. 40, § 1 ("all laws relative to towns shall apply to cities"). Taxpayer plaintiffs who are so qualified are empowered to "act as private attorneys general, enforcing laws designed to protect the public interest." Edwards v. Boston, 408 Mass. 643, 646 (1990).

The plaintiffs here satisfy these statutory criteria: they include twelve Quincy taxpayers who allege that the city has expended public money to commission, and will expend further public monies to transport and install, statues depicting Catholic saints on a government building in violation of art. 3.⁹ The city's arguments to the contrary are unpersuasive.

Citing Edwards, 408 Mass. at 646, the city first urges that the ten-taxpayer statute only provides a mechanism for enforcing so-called "spending statutes" -- that is, statutes enacted with the purpose of preventing the abuse of public funds. But this

⁹ Because we conclude that the plaintiffs have standing under G. L. c. 40, § 53, we need not decide whether they also have constitutional standing. See Doe No. 1 v. Secretary of Educ., 479 Mass. 375, 386 (2018) ("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").

limitation is belied by both the text and purpose of the provision and the relevant case law. The ten-taxpayer statute speaks of restraining the expenditure of funds for "any purpose or object or in any manner" except where the municipality "has the legal and constitutional right" to so act (emphases added). G. L. c. 40, § 53. By the statute's plain terms, then, it confers standing to challenge not only violations of specific spending statutes, but also unlawful expenditures such as those alleged in the instant case. See Hollum v. Contributory Retirement Appeal Bd., 53 Mass. App. Ct. 220, 224 (2001) ("The word 'any' is generally used in the sense of 'all' or every' and its meaning is most comprehensive" [citation omitted]). See also Colo, 378 Mass. at 554 n.7 (interpreting G. L. c. 29, § 63; analogous statute applicable to Commonwealth taxpayers "provides the necessary standing" where plaintiffs challenged constitutionality of expenditure of public funds to clergy for legislative prayer). Nor would implying such a limitation further the statute's purpose of allowing "this court to determine the legality of an appropriation." Richards v. Treasurer & Receiver Gen., 319 Mass. 672, 676 (1946). Other cases construing the ten-taxpayer statute, including Edwards, have said nothing to the contrary. See, e.g., Edwards, supra at 645-647 (discussing enforcement of "spending statute" under G. L. c. 40, § 53, where plaintiffs argued city's exercise of

option in contract with city service provider violated statute requiring that certain municipal contracts be awarded by advertised competitive bidding).

The city also asserts that the plaintiffs lack standing because they have not shown that their tax burden will increase if the statues are installed. The statues have already cost \$761,378.75 in public funds. Additional moneys will be required to transport the statues from storage and affix them to the public safety building's façade.¹⁰ For these reasons, the ten-taxpayer statute confers standing on the plaintiffs to enjoin further expenditure and installation of the statues. See G. L. c. 40, § 53.¹¹

¹⁰ We also note that this is not a case where such costs will be reimbursed. See, e.g., Howard v. Chicopee, 299 Mass. 115, 120 (1938) ("the entire cost of labor and materials furnished by Chicopee in connection with such installation has been paid to Chicopee by the Holyoke company," and therefore, "the petitions have no ground for relief under [G. L. c. 40, § 53]").

¹¹ Although the anticipated transportation and installation costs are sufficient to confer standing under the ten-taxpayer statute in this case, as noted by the motion judge and discussed further infra, undisputed facts in the record demonstrate that public funds were expended to commission the statues several years before the mayor's plans were in any way made public. As we have previously emphasized, "no surreptitious attempt to outwit the [ten-taxpayer] statute . . . can be tolerated, and under such circumstances relief would be afforded" even after an illegal payment has already been made. Fuller v. Trustees of Deerfield Academy, 252 Mass. 258, 260 (1925).

b. Grant of preliminary injunction. "We review the grant or denial of a preliminary injunction to determine whether the [motion] judge abused his discretion, that is, whether the judge applied proper legal standards and whether there was reasonable support for his evaluation of factual questions." Doe v. Superintendent of Sch. of Weston, 461 Mass. 159, 164 (2011), quoting Commonwealth v. Fremont Inv. & Loan, 452 Mass. 733, 741 (2008). Furthermore, "[w]here, as here, no evidentiary hearing was held and the record consists of affidavits and other documents, although 'weight will be accorded to the exercise of discretion by the judge below, . . . we may draw our own conclusions from the record.'" Lieber, 488 Mass. at 821, quoting Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616 (1980). Finally, as this is a ten-taxpayer statute case, "[i]n order to obtain a preliminary injunction, the plaintiffs must show a likelihood of success on the merits and that the requested relief would be in the public interest; they need not demonstrate irreparable harm." Caplan v. Acton, 479 Mass. 69, 75 (2018).

The city argues that the judge erred in granting the plaintiffs' motion for a preliminary injunction because the plaintiffs have not satisfied the first preliminary injunction factor by showing that expenditure of further funds and installing the statues likely violates art. 3. Before turning

to the facts of this case, we begin by describing the text, history, and purpose of art. 3 and the legal standards we have articulated for evaluating claims brought under this constitutional provision.

i. Article 3 and the Colo standards. Article 3, adopted in 1780, originally stated,

"[T]he legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for support and maintenance of public Protestant teachers of piety, religion, and morality"

Colo, 378 Mass. at 556 n.10. As we have previously explained, "[b]ecause Congregationalists were the overwhelming majority of the population in Massachusetts at the time, art. 3 functioned as a de facto general assessment in favor of the Congregational Church." Caplan, 479 Mass. at 76 n.7.

In 1833, "[a]fter decades of 'lawsuits, bad feeling, and petty persecution,'" art. 3 was amended. Caplan, 479 Mass. at 76, quoting S.E. Morison, A History of the Constitution of Massachusetts 24 (1917). As amended, art. 3 now provides, in relevant part, that "all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the [C]ommonwealth, 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."

We established a framework for evaluating claims under art. 3 in Colo, 378 Mass. 550. In that case, taxpayers challenged the use of public money to pay the salaries of the chaplains of the Massachusetts House of Representatives and Senate, as a violation of, inter alia, art. 3 and the First Amendment to the United States Constitution. Id. at 551-552. The chaplains were both Catholic priests who opened the daily legislative sessions of their respective chambers with a voluntary prayer. Id. at 551.¹²

The court emphasized that "[t]here are no simple tests or precise lines by which we can determine the constitutionality of the challenged payments." Id. at 554. Instead, in determining whether art. 3 is violated, the court stated, "we must view the purposes and history of the practice in relation to the purposes and history of the governing constitutional amendments, and in the light of what can be gleaned from decisions on somewhat similar practices by other State and Federal courts" (footnote

¹² The court noted, however,

"The mere fact that two persons of a particular faith have been appointed to these positions for over the past twenty years does not demonstrate that any other person has ever been denied appointment (a necessary element of any equal protection claim), or that such decisions were based on religious discrimination."

Colo, 378 Mass. at 557.

omitted). Id. The court further explained that this is a complex task because a review of the history and purposes of the relevant constitutional clauses, as well as the case law, demonstrates that "[i]t has never been thought either possible or desirable to enforce a regime of total separation [between church and State]," thereby making line drawing between permissible and prohibited intermingling of church and State difficult to discern.¹³ Id., quoting Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 760 (1973).

The court's historical analysis in Colo is also informative and nuanced. The court put the contested practice -- legislative chaplains -- into historical context, explaining that legislative chaplains reflected a long-standing practice and tradition: legislative chaplains performed this role at the time of the passage of the First Amendment, without objection.

¹³ As the Colo court concluded, "the 'hermetic separation' of church and State is an impossibility which the Constitution has never required. . . . The complete obliteration of all vestiges of religious tradition from our public life is unnecessary to carry out the goals of nonestablishment and religious freedom . . ." (citations omitted). Colo, 378 Mass. at 560-561. See Kent v. Commissioner of Educ., 380 Mass. 235, 245 (1980) ("This court has recognized the unwisdom, as well as the futility, of trying to separate Church from State by an impenetrable barrier").

Id. at 555-556.¹⁴ The same was true in Massachusetts at the time of the passage of the Declaration of Rights. Id. at 556.

The court's historical analysis in Colo further examined the evolution of Massachusetts constitutional provisions, and how the contested practice continued throughout that evolution.¹⁵ The court recounted how Massachusetts moved from public support of the Christian religion to equal protection and nonsubordination of all religious sects and denominations. Id. The court also discussed how the "appropriation of public funds for religious purposes was debated at the Constitutional Convention of 1917-1918, when various amendments were proposed

¹⁴ The court noted James Madison nonetheless had private concerns regarding the practice. Colo, 378 Mass. at 555-557 & nn.9, 12.

¹⁵ The court also discussed societal change more generally:

"[T]he degree of intermingling of religious and secular life was much greater at the time the First Amendment was being debated than it is today. Most of the original States, including Massachusetts, had established churches supported directly by tax dollars, and there was often little tolerance for dissenting religious views. The drafters and ratifiers of the First Amendment designed it to address far more pervasive threats to religious liberty and the separation of church and State than any that exist today."

Colo, 378 Mass. at 555.

[and passed] to prohibit public funding of parochial schools."

Id.¹⁶

The court then explained how the contested practice of legislative chaplains continued, without opposition, even as the constitutional provisions themselves evolved and tightened the restrictions against public support or public preferences for particular religions:

"Throughout this history of often vigorous debate about the proper relationship between church and State, the appointment and payment of legislative chaplains continued without apparent dissension. As one delegate (John W. McAnarney of Quincy) to the 1917-1918 Constitutional Convention remarked, the sentiment which led to the convention's approval of an 'anti-aid amendment' was not that 'the State is opposed to religion, . . . [we] bear testimony to that every morning in this Convention, sir, when we have the divine aid and assistance invoked to guide us in our deliberations.'" (Footnote omitted.)

¹⁶ We have characterized the purposes of art. 18 of the Amendments to the Massachusetts Constitution, as amended by arts. 46 and 103 of the Amendments, known as the "anti-aid amendment," as follows:

"Proponents of [the anti-aid amendment] urged that liberty of conscience was infringed whenever a citizen was taxed to support the religious institutions of others; that the churches would benefit in independence and dignity by not relying on governmental support; and, more generally or colloquially, that to promote civic harmony the irritating question of religion should be removed from politics as far as possible, and with it the unseemly and potentially dangerous scramble of religious institutions for public funds in ever-increasing amounts."

Bloom v. School Comm. of Springfield, 376 Mass. 35, 39 (1978), citing 1 Debates in the Massachusetts Constitutional Convention 1917-1918, at 68, 74-79, 161-164 (1919). See Caplan, 479 Mass. at 80-81.

Id. at 556, quoting 1 Debates in the Massachusetts Constitutional Convention 1917-1918, at 190 (1919).

Although the court considered this history important, its analysis did not conclude there. Instead, the court held that

"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.' Walz v. Tax Comm'n of the City of N.Y., 397 U.S. 664, 678 (1970). The long history of a certain practice, however, 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.

In addition to looking at the relevant constitutional text, purposes, and history, the court was also "aided by" the criteria considered by other State and Federal courts, particularly those articulated by the United States Supreme Court in Lemon, 403 U.S. 602, which, at the time, were used to evaluate anti-establishment claims under the First Amendment: "(1) [I]s there a 'secular legislative purpose,' (2) does the primary effect of the challenged practice 'neither advance nor inhibit religion,' and (3) is there avoidance of 'excessive government entanglement' with religion?" Colo, 378 Mass. at 558, quoting Lemon, supra at 612-613. The court also noted a "significant fourth factor," not expressly identified in Lemon, "that is, whether the challenged practice has a 'divisive

political potential.'" Colo, supra, quoting Meek v. Pittenger, 421 U.S. 349, 374 (1975) (Brennan, J., concurring in part and dissenting in part). The court, however, repeatedly emphasized that these criteria were not to be considered as "mechanistic tests" or "precise limits to the necessary constitutional inquiry," but rather helpful "guidelines to analysis" that were "equally appropriate to claims brought under cognate provisions of the Massachusetts constitution" (quotation omitted). Colo, supra.¹⁷

Applying these guidelines along with the constitutional text and history, the court in Colo ultimately upheld the employment of legislative chaplains based on the long-standing history and acceptance of opening prayers; the secular purposes of the tradition to "prompt[] legislators to reflect on the gravity and solemnity of their responsibilities"; the primary effect, which the court concluded was not to advance religion but to reflect this gravity and solemnity of the occasion of the

¹⁷ As this court cannot provide less protection against the establishment of religion under art. 3 than the Supreme Court allows under the establishment clause of the First Amendment, consideration of the Supreme Court's relevant anti-establishment test at the time was a necessary part of the court's analysis in Colo, where the court was not concluding the conduct in question was protected by art. 3. Cf. Commonwealth v. DeJesus, 489 Mass. 292, 296 (2022) ("the Massachusetts Constitution may not provide less protection to defendants than the Federal Constitution"); Commonwealth v. Robinson, 480 Mass. 146, 147 n.3 (2018), S.C., 493 Mass. 303 (2024) (same).

opening of the legislative session; the brief duration and the voluntary nature of the prayer; and the absence of evidence that the practice caused any divisiveness. Id. at 554, 559-560.

We recognize that the Supreme Court has since abandoned Lemon and substituted in its place an analysis by "reference to historical practices and understandings." Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 534-535 (2022), quoting Greece, N.Y. v. Galloway, 572 U.S. 565, 576 (2014). The city urges us, as a result, to reject "the Lemon test" as a matter of Massachusetts constitutional law. But the Colo framework, as explained above, is neither limited to, nor dependent upon, a "mechanistic" application of the Lemon factors. Importantly, our analysis in Colo began with a careful and nuanced examination of the purposes and history of both the challenged practice and the relevant constitutional amendments. It also recognized that the text, purpose, and history of art. 3 have evolved over time, reflecting societal changes as well. See generally Kligler v. Attorney Gen., 491 Mass. 38, 58 (2022), quoting Obergefell v. Hodges, 576 U.S. 644, 664 (2015) ("History and tradition guide and discipline [the] inquiry but do not set its outer boundaries. . . . That method respects our history and learns from it without allowing the past alone to rule the present"). Only then did we in Colo turn to the Lemon factors, as well as an evaluation of the potential for divisiveness resulting from

the contested practice, for additional guidance. The Colo framework therefore properly focuses on constitutional text, history, purpose, and factors the case law has long recognized as helpful in identifying improper intermingling of State and religion. This comprehensive framework, including consideration of the purposes of the contested practice, its primary effects, and its potential for divisiveness, has also been consistently utilized by this court, including in its enforcement of the anti-aid provisions of our State Constitution. See, e.g., Caplan, 479 Mass. at 82-83. For all these reasons, we conclude that Colo remains good law and the proper framework for evaluation of contested practices under art. 3.¹⁸

¹⁸ We further note the importance of stare decisis. Although stare decisis is not "a universal, inexorable command," Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405 (1932) (Brandeis, J., dissenting), "adhering to precedent is our 'preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process,'" Shiel v. Rowell, 480 Mass. 106, 108 (2018), quoting Payne v. Tennessee, 501 U.S. 808, 827 (1991). See Johnson v. Settino, 495 Mass. 42, 51 (2024), quoting Franklin v. Albert, 381 Mass. 611, 617 (1980) ("We depart from precedent where 'the values in so doing outweigh the values underlying stare decisis'").

As for the Lemon factors themselves, we may of course continue to consider critical commentary from the Supreme Court and elsewhere in determining just how helpful those factors actually are in identifying improper intermingling under art. 3. See, e.g., Kennedy, 597 U.S. at 534, quoting Capitol Sq. Review & Advisory Bd. v. Pinette, 515 U.S. 753, 768 n.3 (1995) (plurality opinion) (stating that application of Lemon has "'invited chaos' in lower courts, led to 'differing results' in

ii. Likelihood of success on the merits. Accordingly, we assess the plaintiffs' likelihood of success on the merits under the Colo framework described above. We begin with the text, purposes, and history of art. 3. As the Colo court explained, art. 3 originally gave preference to a particular religious sect and was amended to abolish such a preference and to provide for equal protection and nonsubordination of other sects and denominations.

The contested practice here raises concerns at the core of the text, purposes, and history of the amendment of art. 3: whether the city is singling out a particular religion for special treatment.¹⁹ See Catholic Charities Bur., Inc. v. Wisconsin Labor & Indus. Review Comm'n, 605 U.S. 238, 248 (2025)

materially identical cases, and created a 'minefield' for legislators"). Finally, we recognize that the Supreme Court is no longer employing these factors in its own anti-establishment jurisprudence under the First Amendment, so we must consider the Supreme Court's more recent precedent, and not its previous application of the Lemon test, when we determine whether we are providing at least as much protection against the establishment of religion as the Supreme Court, as we are required to do by the Federal Constitution. See note 17, supra.

¹⁹ The motion judge determined:

"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."

("the 'fullest realization of true religious liberty requires that government' refrain from 'favoritism among sects'" [citation omitted]); Van Orden v. Perry, 545 U.S. 677, 698 (2005) (Breyer, J., concurring), quoting School Dist. of Abington Township, Pa. v. Schempp, 374 U.S. 203, 305 (1963) (Goldberg, J., concurring) ("The Court has made clear, as Justices Goldberg and Harlan noted, . . . that government must . . . 'effect no favoritism among sects or between religion and nonreligion' . . ."). See also County of Allegheny v. American Civ. Liberties Union, Greater Pittsburgh Chapter, 492 U.S. 573, 590 (1989) (County of Allegheny) ("In the course of adjudicating specific cases, this Court has come to understand the [e]stablishment [c]lause to mean that government may not promote or affiliate itself with any religious doctrine or organization . . ."). The two statues are both of Catholic saints. They are each ten feet tall, and they will be prominently placed on the front of the city's public safety building facing a busy street. The plaintiffs' unrebutted expert attested that "patron saints are particular to Catholicism"; the depictions of Saint Michael and Saint Florian in these statues "are consistent with iconography of each religious figure within Catholic tradition"; and the symbols and objects depicted "are all central to the iconographies of each saint, which are not intelligible without reference to Catholic tradition." Indeed, one is an archangel

with wings, and the other is portrayed as performing one of the miracles for which he is venerated by the Catholic Church.

The likelihood that these statues of religious figures closely associated with the Catholic faith could be viewed by the public as endorsement of a particular religion, and thus subordination of others, is enhanced by the fact that the statues are not part of a larger collection of statues and monuments that includes nonreligious ones, or statues of figures of particular importance to other religions. Contrast Van Orden, 545 U.S. at 681, 691 (plurality opinion) (Ten Commandments monument situated among seventeen monuments and twenty-one historical markers commemorating Texan identity did not violate establishment clause); County of Allegheny, 492 U.S. at 620 (Blackmun, J.) ("it is not sufficiently likely that residents of Pittsburgh will perceive the combined display of the [Christmas] tree, the [explanatory] sign [describing the holiday season and winter festivals], and the menorah as an endorsement or disapproval . . . of their individual religious choices" [quotations and citation omitted]); Lynch v. Donnelly, 465 U.S. 668, 679-683 (1984) (crèche in city's annual holiday display had permissible purpose and effect when accompanied by secular symbols and considered "in the context of the Christmas season"); American Atheists, Inc. v. Port Auth. of N.Y. & N.J., 760 F.3d 227, 240, 242-244 (2d Cir. 2014) (Christian cross

displayed in museum at site of September 11 attack had permissible purpose and effect where situated amidst secular artifacts and textual panel explained its historical significance).²⁰ Rather, they stand tall and alone, adorned with Catholic iconography. See County of Allegheny, supra at 598 (single crèche as primary element of display in government building demonstrated government endorsement of religious message).

These statues are also not long-standing historic monuments important to our common history, unlike many of the examples highlighted by the city. They are unlike, for example, a Nineteenth Century statue in Plymouth honoring the Mayflower passengers fleeing religious persecution, featuring a woman clutching a Bible, and cross-shaped grave markers of soldiers

²⁰ The statue of Moses in the Great Hall of the John Adams Courthouse, for example, is one of sixteen allegorical statues representing not only "Religion," but also virtues and concepts such as "Law," "Justice," and "Reason"; such installations are "part of a continuing tradition that started in antiquity." Bresler, *Virtues in the Great Hall: Understanding the Allegorical Statues in the John Adams Courthouse*, 102 Mass. L. Rev. 71, 71, 81 (2021). A marble frieze of Moses in the Supreme Court building is similarly included in a series of great lawgivers of history. See id. at 81-82. See also County of Allegheny, 492 U.S. at 652-653 & n.13 (Stevens, J., concurring in part) ("Placement of secular figures such as Caesar Augustus, William Blackstone, Napoleon Bonaparte, and John Marshall alongside [Moses, Confucius, and Mohammed], however, signals respect not for great proselytizers but for great lawgivers. . . . All these leaders, of course, appear in friezes on the walls of our courtroom").

who died for our country in the World Wars, monuments with obvious religious origins but ones that have also taken on a common, secular meaning and significance over time. See American Legion v. American Humanist Ass'n, 588 U.S. 29, 38 (2019) ("For nearly a century, the Bladensburg Cross has expressed the community's grief at the loss of the young men who perished, its thanks for their sacrifice, and its dedication to the ideals for which they fought"). As the Supreme Court has explained, removal of such historic monuments presents a different set of issues. See id. at 56-57; Colo, 378 Mass. at 557. Here, by contrast, without such secular meaning built through common history, these new statues have a greater potential to be perceived as government endorsement of a particular religion, and subordination of other religions, in violation of art. 3.

In sum, the preliminary injunction record reflects that the statues are large and will stand alone, they are brand new rather than long standing, they are closely affiliated with a particular religion, and they thus may convey to observing members of the public implicit government support for that religion and, as a result, subordination of other religions. All of this supports the motion judge's conclusion that the plaintiffs have a likelihood of success on the merits.

We also discern no abuse of discretion in the motion judge's evaluation of the likelihood of success even if the statues serve secular as well as religious purposes. See Caplan, 479 Mass. at 87 n.22 ("whether an impermissible purpose is the sole motivating purpose behind the [government action], or only one purpose among many, may be considered in determining the weight to accord that factor"); Colo, 378 Mass. at 559 (discussing both secular and religious aspects of opening invocations). We recognize that there is evidence in the record -- for example, the presence of the Florian Cross on fire department badges and the naming of Florian Hall, as well as the naming of certain police awards after Saint Michael -- that these saints are important symbols of courage, virtue, and valor for first responders, including first responders of different faiths and those without religious faith. The affidavits of the Quincy first responders credibly support the secular significance of these symbols.²¹ The record before the motion judge, however, also demonstrates that these symbols have distinctly Catholic roots and references, as explained by the plaintiffs' unrebutted expert. As the motion judge found, the

²¹ If this litigation proceeds, the evidence regarding the secular significance of Saint Michael and Saint Florian, including in particular whether this secular significance would be understood by members of the public, may of course be further developed.

statue of Saint Michael "is overtly religious, displaying large wings of an archangel and standing on a demon representative of Satan," and would be so understood by an objective observer. The message conveyed by Saint Florian's statue is also difficult to discern without an explanation of its historic and religious origins. On this record, the motion judge's conclusion that the statues' primary effect will be to advance a religious message therefore does not constitute an abuse of discretion. See Society of Jesus of New England v. Commonwealth, 441 Mass. 662, 674, S.C., 442 Mass. 1049 (2004) ("With regard to the test of 'effect' on religion, we must look at the law's 'principal or primary effect' . . ." [citation omitted]). There is reasonable factual support in the record for his conclusion, even if there is evidence of a secular as well as a religious purpose to the statues.²²

²² In so concluding, we discern no abuse of discretion by the motion judge in rejecting the mayor's affidavit. Here, the motion judge was "not persuaded by the Mayor's self-serving assertions [of only a secular purpose], particularly in light of his curious actions of commissioning the statues without public knowledge." As the Supreme Court has explained, "[w]hen a governmental entity professes a secular purpose for an arguably religious policy, the government's characterization is, of course, entitled to some deference. But it is nonetheless the duty of the courts to distinguish a sham secular purpose from a sincere one" (quotation, citation, and alteration omitted). Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 308 (2000). See McCreary County, Ky. v. American Civ. Liberties Union of Ky., 545 U.S. 844, 864 (2005) ("although a legislature's stated reasons will generally get deference, the secular purpose required has to be genuine, not a sham, and not merely secondary

There is also reasonable support in the record for the motion judge's determination that the statues have caused divisiveness. More than two hundred people attended the first city council meeting after the plan for the statues was publicly revealed, as opposed to the usual five to ten attendees. Since then, hundreds of residents have publicly expressed opposition to the statues; one city councillor has described how contentious the statues are for his constituents; an online petition opposing the statues garnered over 1,600 signatures; and faith leaders from the Quincy Interfaith Network issued a public statement expressing "grave concerns" about the statues.²³

Finally, the city, without supporting analysis, also contends that prohibiting the statues under art. 3 would violate

to a religious objective"). Based on the abbreviated record before the motion judge, the judge could reject the affidavit for the reasons stated. See Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 645 (1987) ("a preliminary injunction, by definition, must be granted or denied after an abbreviated presentation of facts and the law"). Of course, if this litigation continues, the mayor, as the person solely responsible for the selection of the statues, will be subject to further inquiry, including the "crucible of cross-examination," to determine whether he selected the statues for secular purposes as he contended in his affidavit, or to impress and impose his own religious beliefs on the city, or for a combination of both purposes. Commonwealth v. DeOliviera, 447 Mass. 56, 57 (2006), quoting Crawford v. Washington, 541 U.S. 36, 61 (2004).

²³ It is less clear, and we need not decide, whether the record reasonably supports the motion judge's determination that installing the statues will foster excessive government entanglement with religion.

the United States Constitution because it amounts to hostility to religion. The Supreme Court has emphasized that "the government, if it is to respect the Constitution's guarantee of free exercise, cannot impose regulations that are hostile to the religious beliefs of affected citizens The [f]ree [e]xercise [c]lause bars even subtle departures from neutrality on matters of religion" (quotation and citation omitted). Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 584 U.S. 617, 638 (2018). The instant case, however, presents no free exercise claim. The city itself has no free exercise rights, under either the State or the Federal Constitution, as the free exercise clauses protect private religious expression -- not the government's -- from government interference. See First Amendment to the United States Constitution; Kennedy, 597 U.S. at 529. We also agree that "hostility toward religion . . . has no place in our [e]stablishment [c]lause traditions." American Legion, 588 U.S. at 38, quoting Van Orden, 545 U.S. at 704 (Breyer, J., concurring). On this record, however, as the motion judge determined, the issue presented is not government hostility to religion but government preferential treatment of a particular religion.

For all these reasons, we conclude that the judge did not abuse his discretion in evaluating the likelihood of success.

iii. The public interest. The other factor in determining whether the plaintiffs are entitled to the preliminary injunction -- the public interest -- weighs strongly in favor of the plaintiffs. As the motion judge determined, the plaintiffs have demonstrated a reasonable likelihood that the city has violated important constitutional rights and has spent, and plans to continue to spend, taxpayer dollars in violation of those rights that will not be recoverable. Furthermore, as the motion judge determined and as the plaintiffs' declarations in the record supported, were the statues to be installed for the duration of this litigation, the plaintiffs and other members of the public would have to confront them regularly, experiencing feelings of subordination given their own religious beliefs or nonbeliefs.

In contrast, as the motion judge also determined, the potential harm to the city is minimal. The building is open and functioning without the statues. Contrast LeClair v. Norwell, 430 Mass. 328, 339 (1999) ("By delaying the design services contract, the town will likely be excluded from the priority list for State funding for school construction. If an injunction were entered, the town would lose or delay receipt of substantial grant funding, thereby potentially delaying school construction and increasing design and construction costs"). The statues are safely in storage pending the outcome of the

litigation. This is therefore not a case where a preliminary injunction interferes with the government's interest in any meaningful way.

In sum, the public interest weighs heavily in favor of the preliminary injunction.

3. Conclusion. Because the plaintiffs have demonstrated a likelihood of success on the merits to show that the statutes violate art. 3, and the public interest weighs in the plaintiffs' favor, the order granting the plaintiffs' motion for a preliminary injunction and denying the defendants' motion to dismiss is affirmed.

So ordered.