COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. **SUPERIOR COURT**

CLAIRE FITZMAURICE, JAY TARANTINO, GILANA ROSENTHOL, 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,

v.

CITY OF QUINCY and THOMAS P. KOCH, *in his official capacity as Mayor of Quincy*,

Defendants.

C.A. No. 2582CV00576

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants' motion to dismiss and their opposition to Plaintiffs' motion for preliminary injunction both suffer from the same flaw: Rather than focus on the sufficiency and merits of Plaintiffs' claim under Article 3 of the Massachusetts Declaration of Rights, Defendants argue this Court must adopt a new legal standard for analyzing such a claim—effectively asking the Court to overrule a decision of the Supreme Judicial Court ("SJC"). But there is no case law to support Defendants' bold assertion. In adopting the framework in *Colo v. Treasurer & Receiver General* for Article 3 claims, the SJC exercised its independent judgment to interpret State constitutional law. *See Mendoza v. Licensing Bd. of Fall River*, 444 Mass. 188, 201 (2005). This Court is bound to apply *Colo*.

In addition to focusing on the wrong legal framework for Article 3 claims, Defendants' combined memorandum completely ignores that motions to dismiss and for preliminary injunction are governed by distinct standards and therefore improperly seeks dismissal of the case based on evidence extrinsic to Plaintiffs' Complaint. But Plaintiffs have met and exceeded the standard for motion to dismiss, which requires only that they allege sufficient facts that plausibly entitle them to relief. And for the purpose of obtaining preliminary injunctive relief, they have further proven that they are likely to succeed on the merits of their claim by providing evidence that Defendants' plan to install overtly religious statues on the City's public-safety building violates all four *Colo* criteria. Accordingly, Defendants' exhibits pertaining to other instances of public displays in Massachusetts and elsewhere in the U.S. are legally and factually irrelevant.

Defendants assert that Plaintiffs should not have sued but instead engaged with the political process to oppose the statues, but Plaintiffs need not rely on the political process when an impending violation of their constitutional rights is at stake. And, in any event, by hiding their plan from the public until February 2025, years after the statues were commissioned, Defendants

ensured that neither Plaintiffs nor other Quincy residents had any opportunity to make their objections known. Indeed, but for the investigative reporting that alerted the community to the scheme, Defendants' plan would have continued in secret. And when community members finally learned of the statues and vigorously protested, Defendants wrongly dismissed those concerns out of hand, just as they seek to dismiss this lawsuit.

Defendants' attempts to downplay the scope and importance of Article 3, the religious nature of the statues, and Plaintiffs' own deeply held beliefs are unpersuasive. In the combined response, below, Plaintiffs first explain the proper framework for evaluating an Article 3 claim and then apply that framework to show why Defendants' arguments in support of their motion to dismiss and in opposition to Plaintiffs' motion for preliminary injunction all fail.

ARGUMENT

I. THIS COURT IS BOUND BY THE ARTICLE 3 LEGAL STANDARD SET FORTH IN *COLO*.

Plaintiffs bring their claim under Article 3 of the Massachusetts Declaration of Rights, which prohibits religious favoritism by the government. *See* Pls.' Mem. at 10-17. As an initial matter, Defendants claim that Article 3 itself cannot be used to challenge the statues because it applies only to government financial support for religious institutions. *See* Defs.' Mem. at 4, 6-7. But Article 3 sweeps more broadly, prohibiting all forms of governmental favoritism, elevation, or endorsement of one religious sect over others. *See* art. 3 (". . . no subordination of any one sect or denomination to another shall ever be established by law"). Nothing in either the text of Article 3 or the SJC's interpretation of the provision limits its application to government financial support for religious institutions, and Defendants offer no citation to the contrary.

Article 3 claims are analyzed under the framework laid out by the SJC in *Colo v. Treasurer & Receiver General*, 378 Mass. 550 (1979). That framework requires courts to consider (1)

whether the challenged government practice has a "secular . . . purpose"; (2) whether the "primary effect of the challenged practice neither advances nor inhibits religion"; (3) whether the challenged practice causes "excessive government entanglement with religion"; and (4) "whether the challenged practice has a divisive political potential." *Id.* at 558 (internal quotation marks and citations omitted). These criteria are to be applied "not as mechanistic 'tests' but as guidelines to analysis," *id.*, and the challenged government practice need not run afoul of each criterion to be unconstitutional.

Defendants wrongly assert that *Colo* "can no longer be good law in Massachusetts." Defs.' Mem. at 8. Specifically, they argue that because the SJC in *Colo* relied, in part, on the U.S. Supreme Court's decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which the Supreme Court has now abandoned, this Court must instead look to the "historical practices and understandings" framework for federal Establishment Clause claims set forth in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022),[1] to analyze Plaintiffs' Article 3 claim. *See* Defs.' Opp. at 7-8. But that is plainly not the case for several reasons.

First, this Court is bound by the SJC and must follow that Court's decision in *Colo*. As the SJC has explained, "[the SJC] is the highest appellate authority in the Commonwealth, and [its] decisions on all questions of law are conclusive on all Massachusetts trial courts and the Appeals Court." *Commonwealth v. Vasquez*, 456 Mass. 350, 356 (2010). Thus, "[p]rinciples of stare decisis

[1] Defendants argue that, under *Kennedy*, Article 3's protections prohibit only "hallmarks of religious establishment" apparent at the time of this country's founding. *See* Defs.' Mem. at 8-9. Defendants' description of this standard and the relevant analysis is inaccurate. But, in any event, the Supreme Court recently reaffirmed the importance of denominational neutrality when it comes to government conduct. "That is because the fullest realization of true religious liberty requires that government refrain from favoritism among sects. 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." *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 145 S.Ct. 1583, 1591 (2025) (internal quotation marks and citations omitted).

require[] the trial judge . . . take [precedent] at face value until formally altered." *Id.* (internal quotation marks and citations omitted). Here, the SJC has not overturned the framework established in *Colo*, and as a result, it remains binding on this Court. *See id.* at 357 (noting that lower courts have "no power to alter, overrule or decline to follow the holding of cases the Supreme Judicial Court has decided") (internal quotation marks and citation omitted). Defendants make much of the fact that no case has applied *Colo* since *Kennedy*, but no case has overruled *Colo* during that three-year period either. This speaks to the relative dearth of cases in this area over the past three years and is not a silent revocation of binding SJC precedent.

Second, Defendants cite no support for their central argument that a federal court changing federal law automatically forces a state court to change state law, and for good reason. The SJC—not the Supreme Court—is the final arbiter of Massachusetts constitutional law. And the SJC "adhere[s] to the principle that [it] will exercise its independent judgment to uphold the cherished protections of the Declaration of Rights as a matter of State constitutional law." *Mendoza*, 444 Mass. at 201; *see also, e.g.*, *Planned Parenthood League of Mass., Inc. v. Att'y Gen.*, 424 Mass. 586, 590 (1997) ("While we owe respect to conclusions reached by the Supreme Court interpreting language similar to that in our Declaration of Rights, ultimately we must accept responsibility for interpreting our own Constitution as text, precedent, and principle seem to us to require"). It is therefore for the SJC alone to decide whether changes to federal law should override its prior interpretations of Massachusetts constitutional law.

The SJC made an independent judgment when it first adopted and adapted *Lemon* as part of the *Colo* framework. The SJC did not mechanically implement *Lemon*; rather, it made clear that while it was "aided by" the Supreme Court's decision in *Lemon*, it had reached the independent conclusion that the *Lemon* criteria were "equally appropriate to claims brought under cognate

provisions of the Massachusetts Constitution." *Colo*, 378 Mass. at 558. Notably, while the SJC adopted the three considerations of the *Lemon* test—secular purpose, primary effect, and excessive entanglement—it also added a fourth: "whether the challenged practice has a divisive political potential." *Id.* Where federal law has sometimes weighed divisiveness as part of the entanglement analysis, *see Lemon*, 403 U.S. at 622, the SJC elevated divisiveness to an independent constitutional concern, underscoring the importance of avoiding the community fractures that led to Article 3's amendment in 1833, *cf. Caplan v. Town of Acton*, 479 Mass. 69, 76–77 (2018) (explaining that Art. 3 was amended in 1833 to guarantee equal protection for "all religious sects and denominations" "[a]fter decades of 'lawsuits, bad feelings, and petty persecution'") (internal citations omitted). In short, the *Colo* framework reflects the considered judgment of the SJC and, unless the SJC revisits that decision—which it has not—this Court must take *Colo* "at face value." *Vasquez*, 456 Mass. at 356 (internal quotation marks and citation omitted).

Third, there is no support in the SJC's practice and precedent for Defendants' assumption that the SJC would rule differently now that the Supreme Court has abandoned *Lemon*. "State courts are absolutely free to interpret state constitutional provisions to accord greater protection of individual rights from government interference and imposition than do similar provisions of the United States Constitution." *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 328 (2003) (quoting *Arizona v. Evans*, 514 U.S. 1, 8 (1995)). And the SJC has repeatedly demonstrated its willingness to interpret the Declarations of Rights differently—and often more expansively—than federal courts have interpreted the Federal Constitution. *See, e.g.*, *Kligler v. Att'y Gen.*, 491 Mass. 38, 60 (2022) ("We also have recognized . . . that the Massachusetts Declaration of Rights may demand broader protection for fundamental rights than the Federal Constitution") (internal quotation marks and citation omitted); *Mass. Coal. for the Homeless v. City of Fall River*, 486

Mass. 437, 440 (2020) ("Article 16 of our Declaration of Rights provides analogous protections and, in some instances, provides more protection for expressive activity than the First Amendment"); *Goodridge*, 440 Mass. at 328.

The SJC has also previously rejected interpreting constitutional rights through a narrower, history-bound approach. Under Defendants' preferred legal standard, they suggest this Court must "reference [] historical practices and understandings," to determine whether the challenged government action has the "hallmarks of religious establishments the framers sought to prohibit." *See* Defs.' Mem. at 8-9. But the SJC has previously refused to adopt such a narrow, history-bound approach when interpreting state constitutional rights. *See, e.g.*, *Kligler*, 491 Mass. at 60-61 (holding that the proper analysis for identifying fundamental rights under the Massachusetts Declaration of Rights is the comprehensive approach, instead of the narrow historical approach applied under federal law). Indeed, limiting this Court to only consider violations of Article 3 as they would have been understood in the late 1700s (or even at the time of the Article's amendment in 1833) would improperly "'freeze for all time the original view of what [constitutional] rights guarantee, [and] how they apply.'" *Id.* at 60 (quoting *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 375 (2022) (Breyer, Sotomayor, & Kagan, JJ., dissenting)). Defendants' proposed version of a "historical practices" test, Defs.' Mem. at 8, suggests that courts should calcify the rights of individuals based on what was "commonplace," *id.* at 9, and understood over two hundred years ago, ignoring "changing community values," *John Donnelly & Sons, Inc. v. Outdoor Advert. Bd.*, 369 Mass. 206, 218 (1975); *see also Merit Oil Co. v. Director of the Div. on the Necessaries of Life*, 319 Mass. 301, 305 (1946) (State's constitutionally conferred regulatory authority adjusts "with the changing needs of society"). For example, while official

denominational preferences were anathema to the framers of the federal First Amendment,[2] such religious favoritism is even more constitutionally problematic today given Massachusetts's multicultural and religiously pluralistic communities, and there is no indication that the SJC would limit Article 3's scope in this way.

Indeed, the context and history of Article 3 is different from the context and history the Supreme Court considered in *Kennedy*. While Defendants cite to federal case law purporting to describe some potential hallmarks of established religion at the time of the framers' drafting of the First Amendment, *see* Defs.' Mem. at 9, this standard would make no sense under Article 3, which was amended significantly in 1833—something Defendants concede, *see* Defs.' Mem. at 6. Article 3 was amended following "decades of 'lawsuits, bad feeling, and petty persecution." *Caplan*, 479 Mass. at 76. The amendment abolished support for the Congregational Church—and thus abolished the subordination of all other minority religious sects and denominations. So, while Article 3 and the First Amendment are analogous, they are not identical, either in text or adoption. As amended in 1833, Article 3 provides in relevant part that "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," while the First Amendment provides that "Congress shall make no law respecting an establishment of religion." *Kennedy* does not address historical traditions in Massachusetts in 1833, nor what it meant at the time for the government to 'subordinate' any sect or denomination.

[2] *See, e.g.*, *Larson v. Valente*, 456 U.S. 228, 245 (1982) "[James] Madison's vision—freedom for all religion being guaranteed by free competition between religions—naturally assumed that every denomination would be equally at liberty to exercise and propagate its beliefs. But such equality would be impossible in an atmosphere of official denominational preference").

Finally, Defendants' novel, and tortured, Supremacy Clause argument does not lead to a different result. Defendants assert that this Court's application of the framework set forth in *Colo* "would violate the U.S. Constitution's Supremacy Clause," by "trampling on Free Exercise rights." Defs.' Mem. at 7, 8. Defendants appear to be arguing that *Kennedy* overturned *Lemon* because the Supreme Court held that applying *Lemon* itself violated the Free Exercise Clause of the First Amendment, and, given that holding, it would violate the Supremacy Clause for the SJC to continue to apply the *Lemon* framework. *See id.* But of course, *Kennedy* did not hold that application of the *Lemon* framework itself violated the Free Exercise Clause. *See* 597 U.S. at 535-37. And this case presents no conflict with the Free Exercise Clause, because Defendants—as government actors—have no free exercise right to affix these statues.[3]

In sum, this Court is bound by *Colo*, and Defendants cite no case law that would allow this court to defy SJC precedent and apply an entirely different standard for Article 3. This Court must be guided by the framework of *Colo* in analyzing both Defendants' motion to dismiss and Plaintiffs' motion for preliminary injunction.

II. MOTION TO DISMISS

A. Defendants do not address the appropriate legal standard to analyze a motion to dismiss for failure to state a claim.

"A court may grant the radical relief of dismissal only if the plaintiff can set forth *no set of facts* which would entitle her to relief." *Arsenault v. Bhattacharya*, 89 Mass. App. Ct. 804, 809 (Mass. App. Ct. 2016) (quoting *Coraccio v. Lowell Five Cents Sav. Bank*, 415 Mass. 145, 147

[3] The Free Exercise Clause protects the religious liberty of individuals and not the government. *See Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009) ("A political subdivision . . . has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator") (internal quotation and citations omitted). Nevertheless, in making their free-exercise argument, Defendants inherently concede that the statues constitute religious expression.

(1993)) (emphasis added). Thus, a plaintiff's burden to survive a motion to dismiss is not high: Factual allegations are sufficient to survive a motion to dismiss if they plausibly suggest that the plaintiffs are entitled to relief. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008). In reviewing a motion to dismiss, courts must accept as true the well-pleaded allegations of the complaint "as well as any favorable inferences that reasonably can be drawn from them." *Galiastro v. Mortg. Elec. Registration Sys., Inc.*, 467 Mass. 160, 164 (2014). A court cannot consider evidence outside of the four corners of the complaint. *See Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton LLP*, 89 Mass. App. Ct. 718, 727 (Mass. App. Ct. 2016).

Defendants do not mention, let alone apply, these governing standards. Instead, they ignore the plausibility standard, look outside the four corners of the Complaint to rely on extrinsic evidence, and fail to even identify the specific basis for their Rule 12(b)(6) motion. *But see* Mass. R. Civ. P 12(b) ("A motion . . . presenting the defense numbered (6) shall include a short, concise statement of the grounds on which such a defense is based"). Where Plaintiffs have pleaded facts sufficient to support their claim under operative Massachusetts law and Defendants have failed to challenge the sufficiency of Plaintiffs' allegations, the motion to dismiss for failure to state a claim must be denied.[4]

[4] While Defendants allude to facts concerning Plaintiffs' standing to bring this suit, *see* Defs.' Mem. at 3-4, they did not move to dismiss for lack of standing, *see* Defs.' Mot. to Dismiss (on basis of "fail[ing] to state a claim upon which relief may be granted"). Regardless, Plaintiffs have standing to challenge a violation of their constitutional rights based on their impending regular interactions with the proposed statues. *See* Compl. ¶¶ 3-17; *see also Doe v. Sec'y of Educ.*, 479 Mass. 375, 386 (2018) (applying the liberal standing standard that a "party has standing when it can allege an injury within the area of concern of the . . . constitutional guarantee"). In addition, Plaintiffs are Quincy residents and taxpayers who also have standing to challenge the unconstitutional use of public funds. *See* Compl. ¶¶ 3-5, 7-15; *see also Caplan*, 479 Mass. at 74 (G. L. c. 40, § 53 "permits taxpayers to act 'as private attorneys general' to enforce laws designed to prevent abuse of public funds by local governments" (quotation omitted)).

B. Plaintiffs have alleged sufficient facts to plausibly support a claim under Article 3 of the Massachusetts Declaration of Rights.

Under *Colo*, the allegations in the Complaint and any favorable inferences that can be drawn from them are more than sufficient to support a plausible claim that Defendants' actions violate Article 3. Indeed, Plaintiffs' allegations show violations of each of the four criteria set forth in *Colo*, although they need not do so in order to defeat the motion to dismiss (or to prevail on the merits). *Colo*, 378 Mass. at 558 (four *Colo* criteria are not "mechanistic 'tests'" but instead "guidelines to analysis"). This Court should therefore deny the motion to dismiss.

Purpose. As alleged in the Complaint, the new installation of statues of religious figures to adorn the façade of a City building does not serve a "secular . . . purpose." *Id*. The City and Mayor Koch have decided to spend nearly one million dollars of taxpayer funds to commission two ten-foot-tall bronze statues of Saint Michael the Archangel and Saint Florian—icons with unmistakable religious significance—to adorn Quincy's new public safety building.[5] Compl. ¶¶ 25-26, 30-31, 33, 41-45. Saints in general, and patron saints specifically, are prominent among certain sects of Christianity, especially Catholicism. *Id.* ¶ 41. Patron saints are often recognized by the Catholic Church for various causes so that the faithful can seek their intercession through prayer. *Id.* As relevant here, Saint Michael the Archangel is considered as patron saint of police and Saint Florian as the patron saint of firefighters. *Id.* ¶¶ 43-44. And, critically, Catholic tradition considers Saint Michael the Archangel to be the patron saint of police, not because of any secular symbolism but because of his powerful role in Christian tradition as a "defender of faith, protector

[5] Defendants also assert that Plaintiffs failed to allege that the Mayor had discriminatory intent when choosing the statues. *See* Defs.' Mem. at 4-5. Defendants provide no support for their contention that Plaintiffs must plead discriminatory intent by the government. There is no requirement of discriminatory intent either in the plain language of Article 3 or under *Colo*. In addition, this argument relies on an affidavit, which cannot be considered by the Court on a motion to dismiss. *See Fletcher Fixed Income Alpha Fund*, 89 Mass. App. Ct. at 727.

of souls, and a symbol of divine justice." *Id.* ¶ 43. Similarly, Saint Florian is recognized as a saint because he was martyred for his faith and because he saved a town from fire through divine intervention. *Id.* ¶ 44.

To the extent that some police and firefighters regard these Saints as important, their significance cannot be divorced from their theological symbolism. *Id.* ¶¶ 41-45, 59; *see e.g.*, *Prescott v. Okla. Capitol Pres. Comm'n*, 373 P.3d 1032, 1034 (Okla. 2015) (holding that Ten Commandments monument on Oklahoma Capitol grounds "operate[d] for the use, benefit or support of a sect or system of religion" and explaining, "[a]s concerns the 'historic purpose' justification, the Ten Commandments are obviously religious in nature") (per curiam); *Fox v. City of Los Angeles,* 22 Cal.3d 792, 798 (Cal. 1978) (rejecting city's claim that illuminated cross on city hall constituted "no more than 'participation in the secular aspects of the Christmas and Easter holidays" and was merely a "symbol of the spirit of peace and good fellowship toward all mankind on an interfaith basis, particularly toward the eastern nations in Europe").

Effect. The main thrust of Defendants' arguments on effect is premised on facts beyond the four corners of the Complaint. Plaintiffs have alleged adequate facts in their Complaint to support the conclusion that the statues will have the "primary effect" of advancing religion. *Colo*, 378 Mass. at 558. Although Defendants cite an "objective observer" standard as governing the "effects" inquiry, Defs.' Mem. at 14 (citing *Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 11 (1st Cir. 2010)), the SJC has never adopted that test. In any event, as Plaintiffs' declarations illustrate,[6] a Quincy resident, "fully aware of the relevant circumstances," Defs. Mem. at 14, will

[6] Plaintiffs, who come from diverse religious backgrounds, have described how the planned statues have a primarily religious effect, make them feel like second-class citizens, and will deter or burden their access to municipal facilities and services, precisely the tangible effects of religious favoritism that Article 3 is intended to avoid. Compl. ¶¶ 3-17.

undoubtedly perceive the statues as having a primarily religious effect. Residents will not only recognize the statues' religious imagery—such as St. Michael's angel wings and the figure of the demon—but would be imputed with the knowledge that the statues represent St. Michael the Archangel and Saint Florian, prominent Catholic saints. Compl. ¶¶ 30, 31. Moreover, an objective observer would understand that these statues do not merely represent a fleeting "ceremonial moment," *cf. Colo*, 378 Mass. at 559, but are permanent installations that will invoke and convey, on an ongoing basis, the City's preference for Catholic religious doctrine.

Under these circumstances, affixing the statues, as the *sole* adornment on the front of the public safety building, will have the "primary effect" of advancing one religion over others by conveying the message to Quincy residents that the City not only favors religion over non-religion, but Catholicism over all other denominations. Compl. ¶¶ 45, 60. *See Fox*, 22 Cal.3d at 804 (Bird, C.J., concurring) ("Whatever the city's subjective purpose, an impermissible religious preference has objectively resulted," where "the city chose to deliver its 'secular' message through a religious vehicle," namely a Latin cross). Such a benefit to a single religion is not merely "incidental to a secular purpose." *Cf. Taunton E. Little League v. City of Taunton*, 389 Mass. 719, 725 (1983) (city council's granting of a beano-hosting license to a Catholic parish, to the exclusion of a secular organization that sought a beano license for the same night, constituted only an incidental benefit to religion).

Entanglement. Defendants attempt to artificially narrow the type of government action that may constitute excessive entanglement with religion by arguing that, because entanglement has been found in certain kinds of factual circumstances—for example, regulation of religious activities—it cannot be found in the City's installation of religious statues on a public building. For instance, they cite *Attorney General v. Bailey*, 386 Mass. 367 (1982), Defs.' Mem. at 16, to

misleadingly suggest that entanglement can be found only in the case of "the government's continuing monitoring or potential for regulating the religious activity under scrutiny." 386 Mass. at 379 (quoting *United States v. Freedom Church*, 613 F.2d 316, 320 (1st Cir. 1979)). Not so. In *Bailey* and *United States v. Freedom Church*, the courts considered *federal* Establishment Clause claims raised by religious organizations challenging the government's attempt to compel them to disclose certain information. *See* 386 Mass. at 379 (law requiring private schools to disclose name and residence of enrolled students); 613 F.2d at 318 (summons and request for production in IRS investigation). Those courts' statements that entanglement includes government monitoring of religious activity are merely a product of the facts of those cases; they do not establish a rule that limits entanglement *only* to identical or similar factual circumstances under the federal First Amendment, let alone under Article 3.

Likewise, the fact that *Caplan v. Town of Acton*, 479 Mass. 69 (2018), Defs.' Mem. at 6, involved government funding of private religious organizations does not mean that entanglement can only be found under a similar factual scheme. On the contrary, if providing historical preservation funding and exercising *some* control over the religious art and architecture of a religious organization constitutes entanglement (as was the case in *Caplan*), then co-opting Catholic doctrine pertaining to religious saints, determining how to depict those religious figures in statues, and exercising *complete* control over their permanent display on City property constitutes, without a doubt, excessive entanglement. The Complaint sets out the City's—and in particular the Mayor's—direct and extensive involvement in selecting not just any art or ornamentation for the building, but specifically religious icons. Compl. ¶¶ 30, 41-45. In so doing, as alleged in the Complaint, the City made decisions about which religion would be represented and the specific design of the Catholic iconography that will be used. *See id*. And the City took

steps to ensure that the religious statues will be permanently and prominently displayed, forcing all visitors and other passersby, including Plaintiffs, to encounter them on a regular basis. *See id*. ¶¶ 20-23, 30, 60; *Compare Colo*, 378 Mass. at 559 (finding no great degree of entanglement where "[t]he prayers offered are brief, the content unsupervised by the State, and attendance completely voluntary. There is no evidence that the State has become embroiled in any difficult decisions about which religions are to be represented or what sorts of invocations are to be offered"). The Complaint, therefore, more than plausibly alleges the government's excessive entanglement with religion. Compl. ¶¶ 27-40, 61.

Divisiveness. Finally, Defendants assert that divisiveness is not a consideration under *Lemon* as applied to cases of this nature. *See* Defs.' Mem. at 17. But, again, Plaintiffs have brought a claim under Article 3, not the federal Constitution, and the SJC's precedent, not the Supreme Court's, controls. Although Defendants contend that this Court should not consider the political divisiveness of the statues due to Supreme Court precedent, which considers divisiveness only for "cases where direct financial subsidies are paid to parochial schools or to teachers at parochial schools," *see* Defs.' Mem. at 17 (quoting *Mueller v. Allen*, 463 U.S. 388, 403 n.11 (1983)), that is not the law in Massachusetts. *See Colo,* 378 Mass. at 558. As to the merits, Defendants derisively dismiss the existence of an online petition and do not generally engage with Plaintiffs' allegations as to this factor. *See* Defs.' Mem. at 17-18. The Complaint describes in detail the ways in which the City's plan to install the statues has already generated significant public controversy and divisiveness within the community. Compl. ¶¶ 46-53, 62.

In sum, Defendants have failed to properly engage with the allegations of the Complaint, and Plaintiffs have more than met their burden to plausibly allege that the planned display violates Article 3. The motion to dismiss must be denied.

III. MOTION FOR PRELIMINARY INJUNCTION

When addressing a request for preliminary injunctive relief, courts evaluate: (1) the plaintiffs' reasonable likelihood of success on the merits; (2) the potential for irreparable harm to the plaintiffs if the injunction is denied; (3) the balance of relevant harms; and (4) the public interest. *Siemens Bldg. Techs., Inc. v. Div. of Cap. Asset Mgmt*., 439 Mass. 759, 761-62 (2003). As discussed in Plaintiffs' opening memorandum, all four factors weigh heavily in Plaintiffs' favor. *See* Pls.' Mem. at 10-18.

A. Plaintiffs are likely to succeed on the merits.

Plaintiffs are likely to succeed on the merits of their claims, which are supported not only by Plaintiffs' evidence but also by many of Defendants' own exhibits that illustrate the overwhelmingly religious nature of the proposed statues. Defendants' proffered examples of other instances of public religious displays do nothing to diminish Plaintiffs' likelihood of success because they are legally irrelevant and factually inapposite. Finally, Defendants' equal protection argument is entirely baseless and must be rejected.

1. The City's plan to affix the statues violates Article 3 under Colo.

This Court's analysis of Plaintiffs' motion for preliminary injunction is governed by a different burden of proof than the motion to dismiss and can include review of affidavits and exhibits submitted by the parties. But just as with the motion to dismiss, *Colo* is the controlling framework governing Plaintiffs' motion for preliminary injunction. And just as with the motion to dismiss, Plaintiffs should prevail with respect to the motion for preliminary injunction. Specifically, considering the evidence submitted by Plaintiffs and Defendants, when considering the criteria in *Colo* on balance, Plaintiffs are likely to succeed on the merits of their claim that

Defendants have violated Article 3 under *Colo*. And here, as discussed above, Plaintiffs have shown that Defendants' statues runs afoul of *all four Colo* criteria.

Purpose. Defendants argue that the City's installation of the statues is constitutional because Saint Michael the Archangel and Saint Florian "were chosen not for religious reasons" but instead because of "their significance to first responders." Defs.' Mem. at 15. A representative of the Mayor has also explained that the Mayor chose the statues because they offer a "symbolic message of protection."[7] *See also* Koch Aff. ¶¶ 2, 3 (speaking to the symbolic importance of Saints Michael and Florian). But what Defendants' argument completely elides is that, to the extent that Saints Michael and Florian are significant to some number of police officers and firefighters, it is *because of* their religious meaning. Their import as symbols of protection is rooted in Catholic theological tradition. Indeed, Defendants' own exhibits make this clear.

According to Defendants, Saints Michael and Florian are "important spiritual figure[s]" to police and firefighters, *see* Defs.' Ex. 15 at 7, and they are prominent among police and fire communities because they are the "patron saint[s]" of these communities, *see* Defs.' Ex. 4 at 3; Defs.' Ex. 7 at 2, 3; Defs.' Ex. 9 at 3; Defs.' Ex. 15 at 2. Indeed, as Defendants note, firefighters celebrate International Firefighters Day on "the same day some Christian traditions commemorate the feast day of St. Florian," Defs.' Mem. at 13, further demonstrating that Christian tradition permeates St. Florian's role in the firefighting community. Thus, to the extent Saint Florian is venerated by some firefighters, it is precisely because "[m]any miracles of healing are attributed to his intercession and he is invoked as a powerful protector in danger from fire or water." Defs.' Ex. 4 at 3; *see also* Defs.' Ex. 15 at 3. A saint's miracles of healing and intercession are thoroughly

[7] Quincy City Council Meeting, Feb. 24, 2025 (hereinafter "City Council Video"), at 3:00, https://youtu.be/OtvL1EeiWTY?si=WI7KI-ZPXrdJh7tH (Chief of Staff Chris Walker states that he is "offer[ing] the Mayor's perspective" on the statues); City Council Video at 37:20.

religious doctrine and are not secular beliefs, or even beliefs that are representative of all faiths. *See* Decl. of Julie Byrne ("Byrne Decl.) ¶ 21, attached as Pls.' Ex. 39 to the Second Decl. of Attorney Rachel E. Davidson in Supp. of Pls.' Mot. for Prelim. Inj.[8]

Further, as Defendants concede, many police officers and firefighters pray to Saints Michael and Florian for protection and guidance. *See* Defs.' Ex. 6 at 4; Defs.' Ex. 7 at 2, 3; Defs.' Ex. 10 at 5; Defs.' Ex. 15 at 4, 8. And some seek spiritual comfort from Saints Michael and Florian when grieving losses of their colleagues. Defs' Mem. at 13-14; Defs.' Ex. 12 at 1. As Defendants explain, "'Fallen,' a poem often used to commemorate firefighters who die in the line of duty, invites the deceased to 'rest with St. Florian.'" Defs.' Mem. at 14 n.12. *See also* Defs.' Ex. 8 at 2-3. The belief in "rest[ing] with St. Florian" entails an understanding of the afterlife that is specific to Catholicism. Byrne Decl. ¶¶ 10, 28.[9] Similarly, the notion that the symbols of Saints Florian and Michael provide protection through their physical presence—whether the saints are depicted on prayer cards, medallions, tattoos, or in this case, statues—is rooted in Catholic tradition. Byrne Decl. ¶¶ 22, 23. Adherents of other faiths do not share these religious beliefs and practices. For example, saints are not created or venerated in Judaism or in a number of Protestant churches, including Baptists traditions, Seventh Day Adventist, and Pentecostal churches. Byrne Decl. ¶ 13.

Mayor Koch cannot strip away the religious nature of these statues by offering that he selected the statues for a secular purpose. *See, e.g.*, *Fox*, 22 Cal.3d at 794–95 ("'While some of the

[8] All exhibits are attached to the Second Declaration of Attorney Rachel E. Davidson in Support of Plaintiffs' Motion for Preliminary Injunction.

[9] Of course, first responders are able to seek religious guidance and protection from Saints Michael and Florian in their personal capacities, including through private prayer, medallions, prayer cards, and participation in nongovernmental organizations that honor these saints. *See* Byrne Decl. ¶¶ 12, 22. Defendants' exhibits are replete with examples of the many ways in which Saints Michael and Florian can be honored or venerated by private individuals and organizations. *See, e.g.*, Defs.' Exs. 4, 6, 7, 9, 10, 15. However, the *government* may not impose these religious figures, in permanent and larger-than-life form, on all who pass by or through the public safety headquarters.

resolutions adopted by the City Council contain self-serving recitals . . . that the display of the cross is predicated upon it[s] being a symbol of the spirit of peace and good fellowship toward all mankind on an inter-faith basis, other evidence, including matters of common knowledge of which the Court can and does take judicial notice, makes it clear that the real purpose is a religious one" (quoting trial court opinion)). If the government could sanitize any inherently religious content simply by asserting that it serves a secular purpose, Article 3's prohibition on religious subordination would be rendered meaningless. Under Defendants' theory, the government could display crosses, depictions of religious prophets, or altars to specific deities—as long as it claimed that they were selected due to their "significance" to first responders (or any other groups), or because they represented, for instance, "courage" or "sacrifice." That is not the law in Massachusetts. To hold otherwise would gut Article 3 and allow government officials to constitutionally enshrine religious preference under the thin veil of intent—exactly the kind of state-sanctioned favor that Article 3 has barred for nearly 200 years.

Effect. The primary effect of the statues will be to advance religion over non-religion, and Catholicism over other Christian and non-Christian sects and denominations. For the same reasons set forth above regarding "purpose," Quincy residents, "fully aware of the relevant circumstances" would view the statues as imbued with religious, specifically Catholic, symbolism and meaning. And that observer would know that Saints Florian and Michael are significant to some police and firefighters because they offer spiritual inspiration and protection, rooted in Catholic doctrine.

Defendants argue that the statues do not have a religious effect because Saints Michael and Florian will not be depicted with halos. Defs.' Mem. at 15. However, according to a photo provided by the City, Saint Michael will be depicted with an angel's wings, stepping on a demon. Compl. ¶ 31. Additionally, Catholic saints are traditionally represented by symbols or iconic motifs to

identify them. Byrne Decl. ¶ 24. For Saint Michael, these motifs include wings, showing that he is an angel—namely, a supernatural being of celestial origin—and a sword, which represents his role as a warrior for God against Satan. *Id.* ¶ 25. And the depiction of Saint Michael standing on a demon symbolizes his victory over evil and draws from the biblical story of Lucifer's rebellion and Saint Michael's role in casting him out of heaven. *Id.* Further, the symbolism of Michael the Archangel standing over a demon is not a neutral metaphor for "public safety," but a recognizable rendering of Catholic eschatology and specific Catholic definitions of good and evil. *Id*. ¶ 26. Similarly, Saint Florian's iconography typically portrays him as standing above a burning building with a bucket of water in hand, which represents his miraculous act of extinguishing a fire with a single bucket. *Id.* ¶ 27. *See, e.g.*, Defs.' Ex. 7 at 2; Defs.' Ex. 13 at 1-2; Defs.' Ex. 15 at 2, 3-4 ("Artists have immortalized [Florian's] miracle of [extinguishing a fire with a] single bucket in countless works, showing St. Florian with his signature water pitcher"). These symbols and objects are central to the iconographies and theology of each saint. Thus, contrary to Defendants' assertions, those who encounter the statues will understand them to convey a specifically religious message.

Entanglement. As previously discussed, Article 3's prohibition on government entanglement with religion is directly implicated when a municipality selects and permanently affixes distinctively religious iconography to the main entrance of a City building. Defendants purported to choose imagery that would, in Defendants' words, "connect" building users to ideas of protection, but it did so exclusively through the lens of Catholic devotional art. *See Fox*, 22 Cal. 3d at 804 (Bird, C.J., concurring).

As described, *supra*, the planned statues of Saint Michael and Saint Florian incorporate and are consistent with the iconography associated with each figure within the Catholic tradition.

See Byrne Decl. ¶ 29. Indeed, Defendants have selected and commissioned these religious figures, denoted by their specific iconography. Compl. ¶ 31. And in choosing which religious figures to elevate and how to portray their attributes, Defendants have necessarily "become embroiled in . . . difficult decisions about which religions are to be represented or what sorts of [images] are to be offered." *See Colo*, 378 Mass. at 559.

In addition, Defendants have stated that the public safety building is intended to last 100 years.[10] These statues, intended to remain for the lifetime of the building, will require public maintenance, cleaning, repairs, and potentially restoration for many years.

Divisiveness. Finally, Defendants suggest that Plaintiffs should either ignore these statues or should have engaged with the selection of these statues through the political process. *See* Defs.' Mem. at 18 ("In a diverse polity like the commonwealth, the remedy for disagreeable government expression can only be to look away or engage the political process—not to sue"). But the selection of the statues was made in secret, without public discussion, and was not announced or discussed during any of the City Council meetings between 2017 and 2025 where the construction of the public safety building was discussed. *See* Compl. ¶¶ 36, 38. Indeed, the statues' existence was only disclosed to the public for the first time in February 2025—approximately 2 years after the statues were first commissioned and the City began making payments for their creation—and the reporting caused over 200 people to attend the next City Council meeting, where the public was not permitted to voice any feedback about the statues. *Id.* ¶¶ 36, 33. When asked by a city councilor what members of the public who disagreed with the statues could do to advocate regarding their concerns, the Mayor's representative stated they could "wait for the beautiful public art to appear

[10] Compl. ¶ 22; City Council Video at 13:50.

on these buildings and enjoy it with the rest of the public . . . . The Mayor in his authority makes decisions. He has made this decision . . . ."[11]

Moreover, Defendants' planned statues are not merely "disagreeable" government expression. They represent an official judgment on which religions and beliefs about religion hold value and are preferred by the City and, in turn, which are not. The statues will generally affirm the disfavored political status of those, including many of the Plaintiffs, who do not share the promoted religious beliefs. This message and the government's conduct, which directly violate Article 3, are not the kind of official activity that Plaintiffs can avoid or close their eyes to. Nor does the Massachusetts Declaration of Rights require them to do so.

2. *Defendants' examples of other statues and displays are inapposite to the Article 3 analysis.*

Defendants raise examples of other statues and paintings featuring religious references around Massachusetts and the United States. Defs.' Ex. 1 & 2. They argue that a ruling against the statues on the Quincy public safety building necessarily means that each of their 22 examples of statues and paintings from around Massachusetts would be deemed unconstitutional, and that the existence of such statues and paintings provides constitutional justification for the statues of saints in Quincy. Defs.' Mem. at 9-10. Not so. Defendants' examples are inapposite and irrelevant to Plaintiffs' claims. Under *Colo*, Article 3 of the Massachusetts Constitution requires that courts analyze the purpose, effect, entanglement, and divisiveness of each individual practice to determine whether it constitutes impermissible establishment of religion. 378 Mass. 550 at 558. The examples set forth by Defendants in Exhibits 1 & 2 are entirely distinct from those at issue in Quincy, and the *Colo* analysis for each will be different for several reasons.

[11] City Council Video at 59:10–1:00:52.

First, many of the statues cites by Defendants are longstanding and located in parks and in public gardens, entirely separate from government buildings or signage. *See e.g.*, Defs.' Ex. 1 ¶¶ 10-14. Additionally, most of the proffered examples have stood for many decades and are not part of a contemporary effort to place new religious iconography at government buildings. For instance, the statue of "Religion" located in Boston's John Adams Courthouse has been in place since 1894 and sits among fifteen other life-sized statues depicting virtues. Pls.' Ex. 43. Likewise, the statue of Edward Everett Hale that sits in the Boston Public Garden was unveiled in 1913. Pls.' Ex. 44. In fact, all but two of Defendants' cited Massachusetts examples predate 1960. Defs.' Ex. 1. In reviewing the surrounding context of the placement of a religious display have often recognized that contemporary placement has proven religiously divisive. *See Prescott*, 373 P.3d at 1045 (Gurich, J., concurring in the denial of rehearing). In addition to their age, many of Defendants' examples are situated in a public park, where monuments are often commissioned or requested by private parties, have no government signage adorning them, are in distant proximity to government offices, and are accompanied by other decorative features and structures. By contrast, Quincy's proposed brand-new ten-foot-tall statues of Saint Michael and Saint Florian—the only displays challenged by Plaintiffs here—have been commissioned by Mayor Koch to sit alone and prominently on the façade of the City's new public-safety building, and they will be unavoidable for those who need services there and others.

Second, many of the examples that Defendants point to simply depict and document historic figures and events *that are part of Massachusetts history*. Anne Hutchinson and Mary Dyer were Quaker women who were exiled and hanged by the Massachusetts Bay Colony government for practicing a faith that ran contrary to the government's endorsed religion. Pls.' Exs. 40, 41. Their statues outside of the Massachusetts State House recognize the women as

historical figures and symbols of the importance of free exercise of religion; they do not promote Quakerism.[12] It is ironic that Defendants point to these statues, which serve to remind our Commonwealth about the ultimate dangers of government endorsement of religion. Monuments to Pilgrims in Plymouth and Salem Witch Trial victims also commemorate historical events important to the Commonwealth. These statues are not inherently religious simply because the people memorialized adhered to a faith. In contrast, Saints Michael and Florian are depicted *because of* their faith. Michael is an archangel, a divine figure who has no human existence but is venerated for his guardianship. Florian, while himself a historical figure, is used in this context specifically for his religious significance as a patron saint to firefighters. He is not recognized for achievements in Massachusetts or the United States. Instead, the statue reflects a religious connection to some firefighters, such as through intercessory prayer.

Third, Defendants also point to various statues located in federal government buildings, such as the Supreme Court, to justify Quincy's proposed installation. Defs.' Mem. at 10-11. But these displays cannot be divorced from their broader context. For example, the Supreme Court's frieze depicts various lawgivers—including secular individuals—as recognized throughout history and various cultures and religions. *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) (noting that Supreme

[12] Defendants similarly mischaracterize a statue of musician Johnny Cash in the Emancipation Hall of the United States Capitol as a religious figure simply because it depicts him holding a bible. Defs.' Ex. 2 ¶ 8. Notably, the plaque accompanying the statue does not depict Cash as representing any specific religious beliefs, rather he is identified as "Singer - Songwriter" and "Artist - Humanitarian." Cash is among the 100 figures selected by states in the U.S. Capitol and nearby buildings who "was a citizen of the United States and is illustrious for historic renown or for distinguished civic or military services." Pls.' Ex. 42. So, too, statues of Brigham Young, Billy Graham, and Po'Pay are not religious iconography but rather are part of the National Statutory Hall Collection, which is "comprised of statues donated by individual states to honor persons notable in their history." Pls.' Ex. 45.

Court friezes depict Confucius, Solon, Menes, Hammurabi, Solomon, Lycurgus, Solon, Draco, Octavian, Justinian, Muhammad, Charlemagne, King John, Louis IX, Hugo Grotius, Sir William Blackstone, John Marshall, and Napolean). No religious figures or icons stand alone, unlike the statues proposed by Mayor Koch, which will represent one religious denomination: Catholicism.

3. *Defendants' equal protection argument is entirely baseless.*

Finally, Defendants' argument that the Equal Protection Clause requires the City to affix the statues to its public-safety building fundamentally misunderstands the structure and the purpose of the Clause. Defs.' Mem. at 18-19. The Equal Protection Clause ensures that similarly situated, private parties are treated equally by the government. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). It does not shield the State from accountability when it engages in unconstitutional conduct. Second, in an attempt to bolster their position, Defendants seek to recast Plaintiffs' opposition to the statues as anti-Catholic animus. Defs.' Mem. at 18-19. But as Plaintiffs' declarations make clear, they do not petition this Court to exclude, burden, or target Catholic beliefs or adherents. Pls. Exs. 24-38. Rather, Plaintiffs' objections arise from their own sincerely held beliefs and the harms they will suffer if their own government is permitted to favor one faith over others and religion over non-religion. *Id.* Finally, Defendants' suggested equal protection framework would create a perverse regime in which any government action favoring a particular faith tradition, no matter how exclusionary, could be immunized simply by labeling community opposition as impermissible "animus." Defs.' Mem. at 18. Courts routinely entertain the claims of citizens who feel marginalized by government actions that favor one religion over others. Yet Defendants would render Article 3 meaningless: Under the framework they propose, government favoritism could never be judicially addressed without triggering an alleged equal protection violation in the other direction. That is not the law.

B. The balance of equities favors a preliminary injunction to preserve the status quo.

Defendants give only cursory attention to the remaining factors for a preliminary injunction, *see* Defs.' Mem. at 19, and do not allege, let alone demonstrate, any irreparable harm they would suffer if they are enjoined from installing the statues for the pendency of this litigation. Defendants assert, without support, that the "public has an interest in Mayor Koch achieving his goal in erecting the statues" *Id.* But that is equivalent to saying that the public always has an interest in government action, no matter whether unconstitutional or illegal. Such is not the case, especially where the violation of Plaintiffs' constitutional rights is irreparable. *See Temple Emanuel of Newton v. Mass. Comm'n Against Discrimination*, 463 Mass. 472, 481 (2012), (noting that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury") (internal quotation marks and citations omitted). And Defendants provide no evidence to support their assertion that the statues would achieve the purported goal of "inspiring [first responders] to carry out their lifesaving work with maximum effectiveness." Defs.' Mem. at 19. Moreover, Defendants do not even attempt to assert that they would be harmed by any delay in the installation of the statues. *Cf. T&D Video, Inc. v. City of Revere*, 423 Mass. 577, 582 (1996) (upholding preliminary injunction where, "on balance" any harm the government would suffer from being unable to enforce ordinance did not exceed harm plaintiff would "suffer by being denied its constitutional protected rights"). The statues should not be installed because Plaintiffs are likely to succeed on the merits of their claims, and the balance of harms and public interest favors an injunction to preserve the status quo. *See* Pls.' Mem. at 17-18.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be denied and Plaintiffs' motion for preliminary injunction should be granted.

Dated: July 30, 2025

Respectfully submitted,

/s/ *Rachel E. Davidson*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing, pursuant to Massachusetts Superior Court Rule 9A, was served upon counsel for Defendants on July 30, 2025.

/s/ *Rachel E. Davidson*
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