

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2582-0576

CLAIRE FITZMAURICE & others¹

vs.

THE CITY OF QUINCY & another²

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

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

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

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

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

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BACKGROUND

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

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

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

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

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

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

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

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

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

decision to make. *Id.*

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

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

DISCUSSION

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

I. Motion to Dismiss

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

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

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

A. Standing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Article 3 Analysis

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

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

⁶ <https://www.mass.gov/guides/john-adams-the-massachusetts-constitution>

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

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

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

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

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

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

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

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

i. *Lemon* Test

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. Alternative Approach

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

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

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

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

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

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

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

II. Motion for Preliminary Injunction

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

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

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

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

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

i. Likelihood of Success on the Merits

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

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

3.

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

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

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

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

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

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

ii. Irreparable Harm and Balance of Harms

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

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

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

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

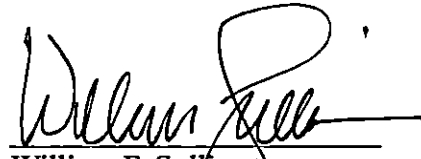
maximum effectiveness, the Court does not conceive that the ability, commitment, and enthusiasm of the members of the Quincy Police and Fire Departments to serve the communities will be appreciably undermined if the two statues are absent for the duration of this litigation. Put another way, there is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

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

ORDER

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

Dated: October 14, 2025



William F. Sullivan
Justice of the Superior Court