
**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

DAR-_____
Appeals Court No. 2025-P-1555

CLAIRE FITZMAURICE & OTHERS,

Plaintiffs-Appellees,

v.

CITY OF QUINCY & ANOTHER,

Defendants-Appellants.

On Appeal from a Decision of the
Superior Court in Norfolk County

**DEFENDANTS-APPELLANTS' APPLICATION FOR
DIRECT APPELLATE REVIEW**

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REQUEST FOR DIRECT APPELLATE REVIEW

Across the Commonwealth and the Nation, government buildings use public art to uplift and edify viewers, acknowledge aspects of history and culture, and symbolize the duties performed there in an inspiring way. This appeal asks whether such artwork becomes illegal simply because the chosen symbol has both religious and non-religious meanings, depending on which citizens are looking at them.

The City of Quincy is constructing a new Public Safety Building to house its fire and police departments. Consistent with its longstanding public-art initiative, the City intends to adorn that building with statues of two legendary figures. One is Florian—an ancient Roman who pioneered dedicated firefighting brigades—and the other is the Archangel Michael—a literary figure associated with defense against evil. Florian and Michael are identified the world over with firefighting and police, respectively, and Quincy chose them to honor and inspire the City's first responders as they perform their dangerous and lifesaving work.

Florian and Michael are also counted as saints within (*inter alia*) the Catholic religious tradition—which is why Plaintiffs sued. Plaintiffs claim these figures' depiction on the Public Safety Building would violate Article 3 of the Massachusetts Declaration of Rights. Strikingly, although they sought the extraordinary remedy of a preliminary injunction, Plaintiffs failed to identify a *single* Massachusetts case *ever* holding that

Article 3 prohibited a passive display of public art based on its perceived religious significance. Nonetheless, the Superior Court entered a preliminary injunction, applying the “*Lemon* Test” formerly employed by the U.S. Supreme Court to evaluate challenges under the federal Constitution’s Establishment Clause and reasoning that because “the religious significance of the statues depicting two Catholic patron saints is essentially undisputed,” Plaintiffs had shown a likelihood of success.

The Superior Court’s reasoning would require public spaces across the Commonwealth to be scrubbed of treasured symbols simply because they strike some observers as having religious meaning. Worse, it has no basis in the text, history, or purpose of Article 3, which forbids Quincy from subordinating “by law” one religious sect to another but does not empower judges to suppress public art based on subjective aesthetic perceptions about its religiosity.

This appeal thus presents a novel and important question of Massachusetts constitutional law: whether and how Article 3 applies to passive governmental symbols. It also offers the first opportunity for this Court to determine the appropriate test for resolving Article 3 claims following (a) the U.S. Supreme Court’s abrogation of the *Lemon* test; and (b) this Court’s renewed emphasis on giving due effect to meaningful differences between the Massachusetts and federal Constitutions. In light of these weighty issues, the Court should grant direct appellate review.

STATEMENT OF PRIOR PROCEEDINGS

On May 27, 2025, Plaintiffs—fourteen Quincy residents—filed this lawsuit in Norfolk Superior Court, against the City of Quincy and Quincy’s Mayor Thomas P. Koch, in his official capacity. They assert a single claim, alleging that the installation of statues of Florian and Michael on Quincy’s new Public Safety Building violates Article 3 of the Massachusetts Declaration of Rights.

Plaintiffs moved for a preliminary injunction, “seeking an order enjoining Defendants from installing the statues until the Court issues a final ruling on the merits.” Add.38. To facilitate orderly judicial decision-making, Defendants agreed that the statues would not be installed before the Superior Court’s decision on Plaintiffs’ preliminary-injunction motion.

Defendants then opposed a preliminary injunction and moved to dismiss the complaint. Soon after, unions representing all of Quincy’s firefighters and police patrolmen moved to intervene in defense of the statues. Add.270; Add.273. The Superior Court (W. Sullivan, J.) denied intervention but permitted the unions to file an amicus brief and participate in the upcoming hearing on the other pending motions. Add.65-66. After that hearing, the Superior Court (W. Sullivan, J.) granted a preliminary injunction and denied the motion to dismiss.

The Superior Court believed that this Court’s decision in *Colo v. Treasurer & Receiver General*, 378 Mass. 550 (1979), required it to

evaluate Plaintiffs’ Article 3 claim under the “*Lemon Test*”—a test “articulated by the Supreme Court” in 1971 to decide federal Establishment Clause challenges, which the Supreme Court itself has now “explicitly rejected.” Add.48-50. Applying that test, the court determined that “Plaintiffs are likely to succeed on the merits of their claim,” because “the religious significance of the statues depicting two Catholic patron saints is essentially undisputed.” Add.58. The Superior Court did not dispute that, “historically, displaying religious symbols on government property was commonplace,” or that there were “numerous examples of religious symbols on public property throughout the Commonwealth.” Add.55. But the court determined that crediting these arguments would “perpetuate the petty bigotries of the past.” Add.55.

At the time the Superior Court entered its order, the statues were in transit from Europe to Boston Harbor. They are now being held in a storage facility in Randolph. Consistent with the City’s understanding of the Superior Court’s order, *compare* Add.62 *with* Mass. R. Civ. P. 65(d) (requiring injunction orders to be “specific in terms” and to “describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained”), the City will take no steps to install the statues until the injunction is vacated.

STATEMENT OF RELEVANT FACTS

First settled in 1625, Quincy is a historic and cultured city full of public art. *See Public Art, Historic Quincy*, <https://perma.cc/U7AJ-XAZ4>.

By City ordinance, certain construction projects must participate in a “Public Art & Place-Making Program,” which requires owners either to contribute funding or provide on-site “artwork”—including, for example, “statues”—by “artists exhibiting the highest quality of skill and aesthetic principles.” Add.260.

Quincy is currently constructing a new Public Safety Building to serve as the headquarters for its Fire and Police Departments. Consistent with the public-art ordinance, the City intends to include on the building’s façade two statues—one of Florian, a third-century Roman soldier known for extinguishing fires, *see* Add.171-76, 251-58; and one of the Archangel Michael, a literary figure associated with protection against wrongdoers, *see* Add.186-89.

The Mayor chose these statues after “learn[ing] while serving as Mayor how much these symbols mean to” the “Police, Fire and public safety officials ... who will occupy the building.” Add.267. As the Mayor also testified, these figures are important not only to Quincy first responders but to “police and fire communities worldwide.” Add.267.

As for Florian, municipalities across Massachusetts (Quincy included) and nationwide use the “Florian cross” to signify their fire departments. Add.165-69. The “main meeting place for firefighters in Massachusetts,” located in Dorchester, is called “Florian Hall.” Add.271. In Europe, “Austrian and German fire stations use ‘Florian’ as their official radio call sign for fire stations and engines.” Add.254. Firefighters around the

world celebrate International Firefighters Day on May 4—the same day celebrated in some Christian traditions as “the feast day of St. Florian.” Add.173. And when firefighters are asked to pay the ultimate sacrifice, an oft-invoked poem invites them to “[r]est with St. Florian.” Add.195.

As for Michael, many police officers have a “portrait of St. Michael” tattooed on their skin. Add.183. Organizations in major North American cities presuppose Michael’s importance to police officers—for example, the Toronto Police Service’s award for exemplary officers is “the St. Michael Award,” Add.202, and the Chicago substance-abuse treatment center for police officers is “Saint Michael’s House,” Add.207. And Michael’s importance extends to other professions whose members are called to put their lives on the line to defend citizens—for example, Michael is “ubiquit[ous] in military circles,” rendering public references to him “unremarkable to soldiers of all religions.”¹

Although Florian and Michael are designated as saints by the Catholic Church, the Mayor has testified that their “selection” for the Public Safety Building “had nothing to do with Catholic sainthood.” Add.267. As the Mayor explained, if these figures “did not have significance in the police and fire service, respectively,” he “would not have selected them for installation.” Add.267. The figures’ “impact reaches way beyond the reach and influence of religious boundaries.” Add.252; *see also supra* n.1

¹ Maggie Phillips, *The Army’s Favorite Saint*, Tablet Magazine (Aug. 30, 2021), <https://perma.cc/L6PJ-LLXN>.

(“nonbelievers share an affinity for the winged warrior [Michael] as a symbol of virtue and bravery”). And even as religious figures, these figures are revered across an array of faith traditions, with Michael in particular represented in scripture in Jewish,² Muslim,³ and various Christian⁴ traditions alike.

The Mayor therefore believed statues of these figures “would honor, inspire, and encourage our First Responders and ensure their lifesaving work would remain maximally effective.” Add.267-68. And he selected them for inclusion on the building for that reason. Add.268. Leaders of Quincy’s Fire and Police Departments have agreed the statues would serve that purpose. See Add.270 (“The Proposed Statue of Florian is

² E.g., *Daniel* 12:1 (“מִכָּאֵל”). Michael, which means “who is like God?” in Hebrew, is also the subject of a long midrashic tradition, in which he is described as, among other things, a protector of and advocate of the Jewish people. Joseph Jacobs, M. Seligsohn, & Mary W. Montgomery, “Michael,” in *The Jewish Encyclopedia* 535-38 (1906).

³ *Qur’an* 2:98 (“مِكَائِيلَ”). In Islamic tradition, “Michael is believed to be among those who ‘opened Muhammad’s Breast’ before his Night Journey (i.e., assisted in preparing Muhammad spiritually to receive revelation), and with [the angel] Gabriel will weigh the record of human deeds on the Day of Judgment.” John L. Esposito, “Michael,” in *The Oxford Dictionary of Islam* 200 (2003).

⁴ E.g., *Revelation* 12:7-9 (“Μιχαήλ”). Michael is celebrated with a feast day across various Christian traditions, including Anglicanism, Eastern Orthodoxy, Lutheranism, and Roman Catholicism. *Michaelmas (September 29th): History, Meaning, and Relevance Today*, Christianity.com, <https://perma.cc/Y85R-EFZV> (last updated Sept. 20, 2023).

important to me and Quincy Fire because it depicts what we do every day, the virtues that are most important in our work: honor, courage, bravery.”); Add.273 (“Michael the Archangel represents what we do and how we do it.”).

The statues mirror how these figures have been depicted in Western art for centuries. The Florian statue features a figure dressed as a Roman soldier, pouring water from a pitcher onto a burning building. *Compare* Add.239 (ca. 1460 depiction of Florian in the Metropolitan Museum of Art). And the Michael statue features a figure with the wings of an angel, holding a shield and vanquishing a representation of evil in the form of a demon. *Compare* Add.246 (Renaissance-era depiction of Michael in the Louvre). The statues were created in Europe by the sculptor Sergey Eylanbekov, who also created the statues of John Adams and John Hancock in Quincy’s Hancock-Adams Common, *see* Add.268, and who has completed other high-profile public-art commissions, including for the federal government in Washington, DC.⁵

Similar depictions of Florian and Michael have appeared at fire and police stations elsewhere. Since 2020, a fire station in Venice, California, has featured a large mural of Florian putting out a fire, with an informational sign identifying him as “Saint Florian,” “Patron Saint of Firefighters.” Add.123. And since 2010, the front lawn of the police

⁵ See *Dwight D. Eisenhower Memorial, Statues of the Memorial*, Nat’l Park Service, <https://perma.cc/2W4K-VKVK>.

department in Odessa, Texas, has featured a statue of “Saint Michael the Archangel, with a fallen officer.” Add.158. A similar statue of Michael has been displayed in front of police stations in New York City and Bristol, Connecticut, after officers were killed in the line of duty. *See* Add.237.

The Public Safety Building is being constructed using the “Construction Manager at Risk method,” where a municipality works with a single contractor “from start to finish” and thus can finalize the design as needs arise and money permits. Add.268. Here, after determining that the City Council’s approved appropriation for the building left room for public art, the Mayor “made the decision on these statues while working with a local architect on the final design features of the front façade of the building.” Add.268; *see* Quincy Access Television, *Quincy City Council – February 24, 2025*, at 52:08-56:35 (YouTube, Feb. 24, 2025) <https://perma.cc/EZG6-Z4EK>.

In February 2025, counsel for Plaintiffs sent a letter opposing the statues and stating that the centuries-old, traditional imagery of Michael vanquishing a demon was “particularly abhorrent in light of the murder of George Floyd and other acts of police brutality throughout this country.”⁶ This lawsuit followed.

⁶ *See* Peter Blandino, *ACLU sends city admonishing letter: Saint statues at new police station would break law*, The Patriot Ledger (Feb. 24, 2025), <https://archive.ph/5vb21>.

ISSUES OF LAW RAISED BY THE APPEAL

Defendants seek direct appellate review of the following question, which was properly raised and preserved in the Superior Court:

Whether Article 3 of the Massachusetts Declaration of Rights prohibits the display of statues of internationally recognized symbols of first responders on a public building because the symbols have religious significance for some citizens.

ARGUMENT

I. Article 3 allows passive imagery of mixed secular and religious significance in public displays.

This Court interprets Massachusetts constitutional provisions according to their own “text, history, and purpose,” *Barron v. Kolenda*, 491 Mass. 408, 416, 420 (2023)—all of which here indicate the statues are lawful.

Alternatively, even applying the *Lemon* test invoked by the Superior Court, the same result follows. Article 3 does not require the “complete obliteration of all vestiges of religious tradition from our public life,” *Colo*, 378 Mass. at 561—much less of these statues with secular significance.

A. Article 3’s text, history, and purpose render the statues permissible.

Text. Article 3 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.” Art. 3, as amended by art. 11. “[B]egin[ning] our analysis with the text,” *Raftery v. State Bd. of Retirement*, 496 Mass. 402, 409 (2025), Quincy’s statues plainly do not violate it.

The statues do not render any sect or denomination unequally protected by the law. And they do not “establish[] by law” the “subordination” of anyone or anything. Indeed, they do not change any citizen’s legal rights or duties in any way or otherwise affect the degree to which “the law” “protect[s]” anyone; they are simply passive statues adorning a building. *See Doe v. Acton-Boxborough Reg’l Sch. Dist.*, 468 Mass. 64, 75 (2014) (rejecting challenge to “under God” in Pledge of Allegiance; “[c]lassification, and differing treatment based on a classification, are essential components of any equal protection claim, Federal or State”).

History and Purpose. Article 3 also has a “distinct, identifiable history” that is “uniquely informative in this case.” *Barron*, 491 Mass. at 416. This history sheds light on its purpose—which was not, as the Superior Court claimed, to “dr[aw] a clear line of separation between the state and religion,” Add.55, but to solve specific problems created by the Constitution’s original system of official support for the Congregational Church.

Indeed, this Court has recognized that “the ‘hermetic separation’ of church and State is an impossibility which the Constitution has never required.” *Colo*, 378 Mass. at 560-61. And the Superior Court’s decision

only underscores the point—criticizing Quincy for displaying statues with significance to “one religion,” Add.56, while invoking well-known biblical references, like “Solomonic approach,” in its own Order, Add.52. Far from prohibiting statues like Quincy’s, history reflects that Article 3 has long coexisted with governmental displays of imagery with religious significance.

As originally enacted, Article 3 imposed a system of involuntary tax support for “public Protestant teachers,” which “essentially meant support of the Congregational Church.” *Caplan v. Town of Acton*, 479 Mass. 69, 76 (2018). This gave rise to “decades of ‘lawsuits, bad feeling, and petty persecution,’” *id.* at 76-77, as members of dissenting groups sought exemptions and litigated over the details of administering the tax system, *see generally* John D. Cushing, *Notes on Disestablishment in Massachusetts, 1780-1833*, 26 Wm. & Mary Q. 169, 173-190 (1969). The amended version of Article 3 invoked here was enacted in 1833 to “end[] religious assessments.” *Caplan*, 479 Mass. at 76-77.

Crucially, there is no evidence that anyone who ratified Article 3 understood it to forbid governmental use of religious symbolism. To the contrary, the same Constitution that includes Article 3 is itself replete with ceremonial religious language, which was “passed without controversy” in 1780, retained in 1833, and endures today. John Witte, Jr., *A Most Mild and Equitable Establishment of Religion: John Adams and the Massachusetts Experiment*, 41 J. Church & St. 213, 238-41

(1999).

For example, the preamble, drafted by John Adams, acknowledges the “goodness of the great Legislator of the universe,” “His providence,” and “His direction” in allowing the people to “form[] a new constitution of civil government.” Mass. Const. Preamble. Article 2, also drafted by Adams, explains that “[i]t is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe.” And Article 3 itself states that “the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality,” impressing the importance of “the public worship of God.”

Moreover, even after mandatory tax support for Congregational churches ended, this Court continued approving governmental acknowledgements of religion in civic life well after 1833. *See Spiller v. Inhabitants of Woburn*, 94 Mass. 127, 129-30 (1866) (upholding requirement of “quiet and decorum during” public-school “religious service”); *Commonwealth v. Has*, 122 Mass. 40, 42 (1877) (upholding Sunday closing law as “not ... any subordination of ... religion” over objections of Saturday-sabbath observer). Meanwhile, Plaintiffs have never cited a single Article 3 case in that provision’s long history invalidating a governmental display because of its supposedly religious content.

Rather, Plaintiffs’ claims are directly at odds with history. Statues

featuring imagery with religious significance have long stood on public property and buildings throughout Massachusetts, without any indication their constitutionality was questioned under Article 3.

For example, this Court's own John Adams Courthouse features statues of Moses (ca. 1937) and of "Religion" (ca. 1894), a woman holding "a large Bible and ... large cross" and wearing "the coif of a nun." Add.76-77. Above the Boston Public Library's "central door" sits the "head of Minerva, the Goddess of Wisdom" (ca. 1895). Add.78. Plymouth features a statue "built to honor the passengers of the Mayflower," which features "the heroic figure of 'Faith' with her ... left hand clutching the Bible" (ca. 1889). Add.86. And other statues on public land in Massachusetts, dating as far back as 1868, depict Puritans, a Catholic archbishop, the Biblical parable of the Good Samaritan, and the Unitarian clergyman "[k]nown as the 'apostle of Unitarianism.'" Add.81, 82, 89, 93.

Nor is Massachusetts alone in its openness to such imagery. Rather, the record discloses dozens of similar examples from across the country, including other governmental depictions of figures recognized as Catholic saints, and indeed other depictions of Michael and Florian themselves. *See, e.g.*, Add.95-163. Unsurprisingly so: for "the founding generation," "displaying a religious symbol on government property" was "commonplace." *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 76 (2019) (Gorsuch, J., concurring in judgment).

B. Even under the *Lemon* test, the statutes are permissible.

Rather than engage seriously with Article 3, the Superior Court claimed it was bound by *Colo* to apply the “*Lemon* Test”—a test developed by the U.S. Supreme Court for applying the federal Constitution’s Establishment Clause. Add.49-51. But *Colo* merely stated it was “aided by [*Lemon*’s] criteria” and viewed them as “guidelines to analysis”; it did not import them permanently into Article 3. 378 Mass. at 558.

In any event, the Supreme Court itself has now “abandoned” *Lemon*. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022). And this Court has vigorously insisted on its “absolute[] free[dom] to interpret State constitutional provisions” independently of the federal Constitution. *Kligler v. Att’y Gen.*, 491 Mass. 38, 59-60 (2022) (cleaned up). So the Court need not “survey ... contested Federal case law” to resolve this case, *Barron*, 491 Mass. at 420; it can simply apply Article 3’s text, history, and purpose. *Supra* Part I.A.

Even if *Lemon* remained applicable here, however, Defendants still would prevail. The four factors cited in *Colo* are: (1) whether a “secular ... purpose” is present, (2) whether the challenged action’s “primary effect” advances or inhibits religion, (3) whether the action avoids “‘excessive government entanglement’ with religion,” and (4) the action’s divisive political potential. 378 Mass. at 558. Applying these factors as in *Colo*, each favors Quincy. Indeed, applying Article 3 to require governmental hostility to religion would violate the federal

Constitution, *see Kennedy*, 597 U.S. at 534-35, 542-43, confirming Quincy’s interpretation.

Purpose. As Mayor Koch testified, his selection of Michael and Florian “had nothing to do with Catholic sainthood” or “religio[n].” Add.267, 268. Rather, they were selected in recognition of “their status as symbols in police and fire communities worldwide” and with the intention of “boost[ing] morale”; “symboliz[ing] the values of truth, justice, and the prevalence of good over evil”; and to “honor, inspire, and encourage our First Responders and ensure their lifesaving work would remain maximally effective.” Add.267, 268.

These are undoubtedly secular purposes. Indeed, they are analogous to the secular purposes found in *Colo* itself, where this Court upheld prayer by Catholic priests before legislative sessions on the ground that it was meant to prompt “legislators to reflect on the gravity and solemnity of their responsibilities and of the acts they are about to perform.” 378 Mass. at 559. That the priests had religious purposes when praying did not trump the government’s secular purposes.

Effect. The statues’ effect will (as intended) be secular: to encourage and inspire Quincy’s first responders, reminding them of the critical values at stake when they undertake their work. That is the purpose these figures serve for first responders around the world, of many faiths and none, *supra* pp.10-14.

Resisting this result, the Superior Court insisted that “a *reasonable*

member of the public utilizing the building” would perceive a “religious message” from “two statues seemingly befitting a house of worship.” Add.60. But even granting this description (which Defendants contest), if anything is “befitting [of] a house of worship,” Add.60, surely it is prayer by Catholic priests—the issue in *Colo*. Yet *Colo* rejected the claim of a primarily religious effect, explaining that, unlike in schools where the purpose “is to teach impressionable children,” legislative prayer is aimed at a “mature” audience that may “reasonably be assumed to have fully formed their own religious beliefs or nonbeliefs,” and thus is “unlikely to advance religious belief either among legislators or their constituency.” 378 Mass. at 559. So too here.

Entanglement. “Where unconstitutional entanglement has been found, it has been in the government’s continuing monitoring or potential for regulating the religious activity under scrutiny.” *Att’y Gen. v. Bailey*, 386 Mass. 367, 378-79 (1982). The government action here—erecting statues—does not require “monitoring” or “regulating” anything at all.

The Superior Court’s reasoning to the contrary—that “it is hard to see how a continuance of a program spending City funds for ... religious art could not result in excessive entanglement,” Add.60—is sweeping, prohibiting, for example, government funding for many art museums. It is also irreconcilable with *Colo*, which upheld “the expenditure of public funds” to provide salaries to clergy for religious prayers in the legislative chamber. 378 Mass. at 552.

Divisiveness. Finally, the Superior Court deemed the statues unlawful because of their supposed “political divisiveness.” Add.60. But while that factor may once have been “implicit” in the *Lemon* test, *Colo*, 378 Mass. at 558, the Supreme Court later expressly “confined” it to “cases where direct financial subsidies are paid to parochial schools or to teachers in parochial schools.” *Mueller v. Allen*, 463 U.S. 388, 403 n.11 (1983).

Unsurprisingly, then, neither the Superior Court nor Plaintiffs have cited any case applying this consideration to the government’s choice of artwork on a public building. And to do so as Plaintiffs ask here—*i.e.*, finding the statues unlawful because “over two hundred” people attended a City Council meeting and others opposed the statues online, Add.54—would be to ensnarl the judiciary in political questions.

Meanwhile, those whom the statues are principally *for*—Quincy’s police officers and firefighters—have appeared as amici curiae, represented by their unions, in support of the statues. *Supra* p.8. And where this Court has considered divisiveness, it has asked whether “other courts have approved the practice[.]” *Colo*, 378 Mass. at 560. Courts have done just that for symbols far more ostensibly religious than Quincy’s statues. *E.g.*, *Am. Legion*, 588 U.S. at 63-66 (upholding 32-foot-tall Latin cross).

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is independently warranted based on all three of the grounds considered by this Court.

First, this appeal involves “questions of first impression” and “novel questions of law which should be submitted for final determination to the Supreme Judicial Court.” Mass. R. App. P. 11(a)(1). For one thing, neither Plaintiffs nor the Superior Court cited any Massachusetts case applying Article 3 to passive symbols on government property alleged to have religious meaning. The novelty of Plaintiffs’ claim is reason enough to doubt it; at minimum such a novel application of a longstanding constitutional provision warrants this Court’s review.

Moreover, the proper test for applying Article 3 more generally also presents novel questions of first impression in light of recent legal developments. This Court’s prior Article 3 cases have been informed by the U.S. Supreme Court’s “*Lemon* test,” which was developed for implementing the federal Establishment Clause. *See Colo*, 378 Mass. at 558. But the *Lemon* test has now been “abrogated” by the Supreme Court, *Groff v. DeJoy*, 600 U.S. 447, 460 & n.7 (2023), which criticized it as “abstract,” *Kennedy*, 597 U.S. at 534, “ahistorical,” *id.*, and as presenting “particularly daunting problems in cases,” like this one, “that involve the use, for ceremonial, celebratory, or commemorative purposes, of words or symbols with religious associations,” *Am. Legion*, 588 U.S. at 51-52.

This Court has not yet had the opportunity to determine whether its approach to Article 3 should still be guided by the *Lemon* test after *Lemon*'s final abrogation three years ago in *Kennedy*. And renewed consideration of the proper test for applying Article 3 is especially appropriate given this Court's recent admonitions that the Massachusetts Constitution should be interpreted independently of the federal Constitution. *See, e.g., Kligler*, 491 Mass. at 59-60; *Barron*, 491 Mass. at 415.

Second, this appeal involves “questions of law concerning the Constitution of the Commonwealth or ... the Constitution of the United States.” Mass. R. App. P. 11(a)(2). The challenge to Quincy's statues arises under Article 3 of the Massachusetts Declaration of Rights. And as Defendants maintained in the court below—and will maintain on appeal—to interpret Article 3 to require hostility to religion, as Plaintiffs request, would run afoul of the constraints of the federal Constitution. *See* Defs.' Memo. in Opp. to Mot. for Prelim. Inj. at 8, 18-19, *Fitzmaurice v. City of Quincy*, No. 2582-cv-00576, (Norfolk Super. Ct. Aug. 4, 2025).

Third, the questions here are of substantial “public interest.” Mass. R. App. P. 11(a)(3). Governmental statues of figures with religious significance exist across the Commonwealth. *Supra* p.19. The Superior Court's interpretation of Article 3 casts the legality of those symbols—many of which have stood for well over a century—into doubt. This Court should determine the legal test applicable when plaintiffs claim that

imagery must be barred or removed from the culturally and historically rich public squares of this Commonwealth on the ground that it has religious associations for some.

CONCLUSION

The application for direct appellate review should be granted.

Dated: December 23, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge:

1. This brief complies with the rules of court that pertain to the filing of briefs.

2. This brief has been prepared in a proportional font using Microsoft Word with 14-point, Century Schoolbook-style font, and the portions of the brief subject to length limitation, as provided in Mass. R. App. P. 11(b), contain 1,973 words based upon the word count provided by that software.

Dated: December 23, 2025

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CERTIFICATE OF SERVICE

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