

Docketed 9/15/2025

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. 2582-CV-0576

CLAIRE FITZMAURICE, ET AL,

Plaintiffs,

vs.

THE CITY OF QUINCY, ET AL,

Defendants.

**SUPPLEMENTAL FACTS AND
ARGUMENT OF THE QUINCY FIRE AND POLICE**

Amicus Curiae consisting of the Quincy Firefighters, Local 792, IAFF (the “Quincy Fire”), and the Quincy Police Patrol Officers Association (the “Quincy Police”) hereby, pursuant to a court order delivered in Open Court on August 19, 2025, provide their pre-hearing additional facts and legal briefing prior to the scheduled September 19, 2025 hearing of all pending motions in this matter.

Additional Facts

See Affidavit of Thomas Bowes, President of Quincy Fire, dated September 10, 2025, attached hereto as Exhibit “1.”

¶ 8 – **Florian Is Emotional Support.** “Florian and the fireman’s prayer provide us with emotional support to carry out our duty to protect lives and property while putting our own lives at risk.”

¶¶ 4-6 – **Model For Firefighters Professional Virtues/Values.** “The Proposed Statue of Florian is important to me and Quincy Fire because it depicts what we do every day, the virtues that are most important to our work: honor, courage, bravery.”

¶ 7 – “Florian Hall” Is The Name of The Main Meeting Place of Firefighters In Massachusetts – This is located in Dorchester, Mass. It is where we hold memorial services and line of duty funerals for fallen firefighters.

See Affidavit of Gregg Hartnett, President of Quincy Police, dated September 9, 2025 attached hereto as Exhibit “2.”

¶¶ 4-5 – Michael The Archangel Is The Symbol And Model Of The Police Profession.

¶ 6 – The Quincy Police Honor Guard Evokes The Protection of Michael The Archangel For Fallen Policemen And All of Quincy Police.

Argument

I. The SJC In Interpreting Provisions of The Massachusetts Constitution Has Followed Cognate Provisions Of The U.S. Constitution And Is Very Likely To Do So Again; The Policy Based Test of *Lemon v. Kurtzman* Has Been Abandoned.

A. The SJC in interpreting the Massachusetts Constitution generally follows the cognate provision of the U.S. Constitution.

In *Colo v. Treasurer and Receiver General*, 378 Mass. 550, 558 (1979) the SJC held that the ‘criteria ... established by the United States Supreme Court for judging claims arising under the First Amendment ... are equally appropriate to claims brought under the cognate provisions of the Massachusetts Constitution,”

B. The test of *Lenon v. Kurzman* has been abandoned by the U.S. Supreme Court and would also likely – even necessarily - be abandoned by the SJC.

The test of *Lenon v. Kurzman* for showing a violation of the No Establishment and Free Exercise Clauses has been abandoned by the U.S. Supreme Court because its complex policy test had nothing to with the actual text or history of No Establishment and Free Exercise clauses in the U.S. Constitution. *Kennedy v. Bremerton School Dist.*, 597 U.S. 307, 535-536, 142 S. Ct. 2407, 2427–28, 213 L.Ed.2d 755 (2022) (“In place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices

and understandings [T]he line that courts and governments ‘must draw between the permissible and the impermissible’ has to accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.” (Citations and internal quotes omitted). An additional reason given by the U.S. Supreme Court in *Kennedy v. Bremerton* for abandonment of the policy test of *Lemon v. Kurtzman* was that the No Establishment Clause “does not include anything like a ‘modified heckler’s veto, in which ... religious activity can be proscribed’ based on ‘perceptions’ or ‘discomfort.’” *Id.* at 534.

And as noted just above in the prior point, because the SJC ruled in *Colo v. Treasurer*, at 558, that the “criteria ... established by the United States Supreme Court for judging claims arising under the First Amendment ... are equally appropriate to claims brought under the cognate provisions of the Massachusetts Constitution,” so now it is equally likely, the U.S. Supreme Court having abandoned the *Lemon v. Kurtzman* policy-based test, that Massachusetts courts would do the same. *See Raftery v. State Board of Retirement*, 496 Mass. 402, 415-416, 425 (Aug. 7, 2025) (the SJC regarded U.S. Supreme court decisions as to the Eight Amendment “as persuasive authority and as the proper analysis” under related provisions of the Massachusetts Constitution; the Massachusetts Constitution’s “excessive fines provision, like its federal cognate, is properly analyzed using the factors articulated in *Bajakian* [524 U.S. 321 (1998)].”)

Moreover, no interpretation of a state constitutional provision can stand if it necessarily infringes on the Free Exercise Clause. *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 484-485 (state’s interest separating church and State ‘more fiercely’ than the Federal Constitution” cannot stand “in the face of the infringement of free exercise here.”)

The U.S. Supreme Court has abandoned the policy based test of *Lemon v. Kurtzman*. The SJC, which in *Colo v. Treasurer*, at 558, followed the test *Lemon v. Kurtzman* when it was extant

law, would now likely also abandon *Lemon v. Kurtzman* when it no longer has any precedential gravity in interpreting the U.S. Constitution's No Establishment and Free Exercise Clauses.

II. Alternatively, The Proposed Statues Are Not Unlawful Under SJC's Interpretation In *Colo v. Treasurer Of The No Establishment And Free Exercise Clauses of the Massachusetts Constitution*.

The No Establishment and Free Exercise Clauses of the Massachusetts Constitution have been interpreted by the SJC in *Colo v. Treasurer and Receiver General*, 378 Mass. 550, 552 n. 4 (1979) (the Free Exercise cognates are at Articles 2 and 3 of the Mass Declaration of Rights (worship peacefully provided no obstruction of others) and the No Establishment cognate is at Article 18, § 2 (no public money for the purpose of maintaining, founding, or aiding any church, religious denomination or society)).

In *Colo*, the SJC held, following the then extant *Lemon v. Kurtzman* test, that state-paid opening invocations are legislative sessions: (1) have a "secular purpose" of "a ritual which prompts legislators to reflect on the gravity of their responsibility and of the acts they are about to perform" - *Colo*, at 559; (2) "Although the opening prayers have a religious nature, it cannot be said that their primary effect is to advance religion... mature legislators may reasonably be assumed to have fully informed their own religious beliefs or nonbeliefs [e]ven if it does give recognition to the traditional place that prayer has occupied in such ritual for two centuries." - *Id.* ; and (3) "There is no evidence of excessive entanglement of government with religion ..." *Colo*, *Id.*. The SJC concluded, "The complete obliteration of all vestiges of religious tradition from our public life is unnecessary to carry out the goals of nonestablishment and religious freedom set forth in our State and Federal Constitutions." *Id.* at 561.

A. There is a secular purpose behind the Proposed Statutes.

As noted above an in the attached affidavits the Proposed Statues provide to the Quincy Fire and Police, “Emotional Support” where they are called upon to put their own lives at risk, a “Model” of “Professional Virtues and Values,” and “Symbols” of their Professions. These are all without question secular purposes.

B. Although The Proposed Statues have a religious nature, their primary effect is not to advance religion.

The same is true here. As noted above an in the attached affidavits the Proposed Statues provide to the Quincy Fire and Police, “Emotional Support” where they are called upon to put their own lives at risk, a “Model” of “Professional Virtues and Values,” and “Symbols” of their Professions. Their primary effect is not to advance religion.

C. There is No excessive entanglement; The Statutes are Entirely Passive.

Finally, the Proposed Statues are statues, they are entirely passive.

Accordingly, even under the test in *Colo v. Treasurer*, the Proposed Statues do not violate any concept of No Establishment or Free Exercise and should be held to be lawful in all respects.

Conclusion

As a result, all pending motions of the Plaintiffs should be denied and all pending motions of the Defendant should be allowed.

QUINCY FIREFIGHTERS, LOCAL 792, IAFF,
QUINCY POLICE PATROL OFFICERS
ASSOCIATION,

By their attorneys,

/s/ Michael C. Gilleran
Michael C. Gilleran (BBO No. 192210)
michael.gilleran@fisherbroyles.com
FISHERBROYLES, LLP
75 State Street, Suite 100

PMB 4418
Boston, MA 02109
Mailing Address:
9 Sessions Street
Wellesley, MA 02482
Direct & Mobile: 339.237.1384

Dated: September 10, 2025

Certificate of Service

The undersigned hereby certifies that he today served by email the foregoing and attached papers on counsel for the Plaintiffs as follows:

Jessie J. Rossman
Rachel E. Davidson
Suzanne Schlossberg
American Civil Liberties Union Foundation
of Massachusetts, Inc.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
rdavidson@aclum.org
sschlossberg@aclum.org

Alexandra Arnold
Cloherty & Steinberg LLP
One Financial Center, Suite 1120
Boston, MA 02111
(617) 481-0160
aarnold@clohertysteinberg.com

/s/ Michael C. Gilleran
Michael C. Gilleran

Dated: September 10, 2025

Exhibit “1”

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. 2582-CV-0576

CLAIRE FITZMAURICE, ET AL,

Plaintiffs,

vs.

THE CITY OF QUINCY, ET AL,

Defendants.

AFFIDAVIT OF THOMAS BOWES

Thomas Bowes, on oath, makes the following affidavit:

1. My name is Tomas Bowes. I am President of Quincy Firefighters, Local 792, IAFF ("Quincy Fire"). I have been a firefighter for twenty-six years. The Board of Quincy Fire has fourteen Executive Members. There are about 282 firefighters of all ranks in Quincy and Quincy Fire represents every one of them. Our Board voted in favor of our involvement in this matter.

2. I make this affidavit on facts of my own personal knowledge and about which I am qualified to testify.

3. Our Board and I have seen the images of the Proposed Statue of Florian to be placed on the new Quincy Public Safety Building, which will be the headquarters of the Quincy Fire Department and out of which many Quincy firefighters will work.

4. The Proposed Statue of Florian is 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.


5. We try to represent these values when we are out on the street every day fighting fires and serving the Quincy public.

6. The Proposed Statute is our model of what we want to be. We all try to be, strive to be, in our way, Florian.

7. Florian Hall which is located in Dorchester, MA is recognized as the main meeting place for firefighters in Massachusetts and hosts memorial services, 911 events and line of duty funerals.

8. Florian and the fireman's prayer provide us with the emotional support to carry out our duty to protect lives and property while putting our own lives at risk.

Signed under the penalties of perjury,



Thomas Bowes.

Dated: September 10, 2025

Certificate of Service

The undersigned hereby certifies that he today served by email the foregoing and attached papers on counsel for the Plaintiffs as follows:

Jessie J. Rossman
Rachel E. Davidson
Suzanne Schlossberg
American Civil Liberties Union Foundation
of Massachusetts, Inc.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
rdavidson@aclum.org
sschlossberg@aclum.org

Alexandra Arnold
Cloherty & Steinberg LLP
One Financial Center, Suite 1120
Boston, MA 02111
(617) 481-0160
aarnold@clohertysteinberg.com

/s/ Michael C. Gilleran
Michael C. Gilleran

Dated: September 10, 2025

Exhibit “2”

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. 2582-CV-0576

CLAIRE FITZMAURICE, ET AL,

Plaintiffs,

vs.

THE CITY OF QUINCY, ET AL,

Defendants.

AFFIDAVIT OF GREGG HARTNETT

Gregg Hartnett, on oath, makes the following affidavit:

1. My name is Gregg Harnett. I am President of Quincy Police Patrol Officers Association ("QPPOA"). I have been a police officer since 2003. The Board of QPPOA has four Executive Members. There are about 182 police patrolmen in Quincy and QPPOA represents every one of them. Our Board voted in favor of our involvement in this litigation.

2. I make this affidavit on facts of my own personal knowledge and about which I am qualified to testify.

3. Our Board and I have seen the images of the Proposed Statue of Michael the Archangel to be placed on the new Quincy Public Safety Building, which will be the headquarters of the Quincy Police Department and out of which many Quincy police patrolmen will work.

4. The Proposed Statue of Michael the Archangel is important to me and Quincy Police because he is both the symbol and the model of our profession.

5. Michael the Archangel represents what we do and how we do it.

6. I am a member of the Quincy Police Honor Guard. At all our ceremonies, whether a funeral honoring a fallen police patrolmen, or even something less somber, we evoke the protection for the fallen and all of us of Michael the Archangel.

Signed under the penalties of perjury,

Gregg Hartnett
Gregg Hartnett

Dated: September 9th, 2025

Certificate of Service

The undersigned hereby certifies that he today served by email the foregoing and attached papers on counsel for the Plaintiffs as follows:

Jessie J. Rossman
Rachel E. Davidson
Suzanne Schlossberg
American Civil Liberties Union Foundation
of Massachusetts, Inc.
One Center Plaza, Suite 850
Boston, MA 02108
(617) 482-3170
jrossman@aclum.org
rdavidson@aclum.org
sschlossberg@aclum.org

Alexandra Arnold
Cloherty & Steinberg LLP
One Financial Center, Suite 1120
Boston, MA 02111
(617) 481-0160
aarnold@clohertysteinberg.com

/s/ Michael C. Gilleran
Michael C. Gilleran

Dated: September 10, 2025