

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss. SUPERIOR COURT
CIVIL ACTION
NO. 2680CV00038

KEVIN HALE and others¹

vs.

CITY OF NORTHAMPTON and others²

MEMORANDUM OF DECISION AND ORDER ON MOTIONS TO DISMISS, FOR
PRELIMINARY INJUNCTION, AND TO INTERVENE

In their complaint, the plaintiffs, ten residents and taxpayers of the City of Northampton, seek (1) a declaration that a resolution of the Northampton City Council, R-25.314 - A Resolution Calling for the City of Northampton to Divest from Entities Complicit in Human Rights Violations in Israel and Palestine (the "Resolution"), is invalid, ultra vires, and unenforceable; and (2) a permanent injunction barring implementation or enforcement of the Resolution. Before the Court are the Defendants' Motion to Dismiss (Paper #12), in which the defendants seek dismissal of the action on the grounds that the plaintiffs lack standing and the complaint fails to state a claim upon which relief may be granted; Plaintiffs' Motion for Preliminary Injunction (Paper #9), in which the plaintiffs seek a preliminary injunction enjoining the defendants from implementing or enforcing the Resolution pending final resolution of this action; and the Motion to Intervene as Defendants by Proposed Intervenor Thirty Northampton Residents (Paper #13). After hearing on August 26, 2026, and careful consideration, for the reasons described below, the Motion to Dismiss will be ALLOWED and the Motions for Preliminary Injunction and to Intervene will be DENIED AS MOOT.

The Resolution

In the Resolution, the City Council describes the conclusions of Amnesty International and the International Court of Justice that "Israel has imposed a system of oppression and domination over Palestinians . . . which amounts to the international wrong of apartheid, as a violation of human rights and international law"; and that "Israel is committing racial

¹ Catherine Robinson, Anthony Fishel, Sianna Lieb, Alan Berkenwald, Miryam Kabakov, Tamar Shadur, Hermine Antlman, Lynn Yanis, and Aviva Chill.

² Northampton City Council and Gina-Louise Sciarra, in their official capacities.

segregation and discrimination." In addition, the City Council "urges" the City Treasurer and the City Retirement Board to:

- (1) "divest from and refrain from future investments in, companies with a substantial, ongoing, and intentional complicity in violations of international law and human rights in Israel and Palestine . . .";
- (2) "refrain from making investments in the Israeli military in the form of Israel bonds";
- (3) "divest from any assets [described in the Resolution] within two years"; and
- (4) "contact their respective investment advisors to request that they notify fund managers of the City's desire to remove companies with a substantial, ongoing, and intentional complicity in violations of international law and human rights in Israel and Palestine as set out [in the Resolution], from all investment products."

Finally, the Resolution "resolve[s]" that the Clerk of the City Council will send the Resolution to a number of people, including the Mayor, the City Treasurer, the Chair of the Northampton Retirement Board, and elected representatives of Northampton residents in the state legislature and in Congress.

Standing

The defendants move to dismiss the complaint for lack of standing under Mass. R. Civ. P. 12(b)(1). See Indeck Me. Energy, LLC v. Commissioner of Energy Resources, 454 Mass. 511, 516 (2009). "A court lacks subject matter jurisdiction over an action and is without power to 'decide the merits of a dispute or claim,' if a plaintiff does not have standing to file the lawsuit." Pishey v. Somerville, 95 Mass. App. Ct. 678, 683 (2019), quoting HSBC Bank USA, N.A. v. Matt, 464 Mass. 193, 199 (2013). In analyzing a motion under Mass. R. Civ. P. 12(b)(1), the court "accept[s] the factual allegations in the complaint, as well as any favorable inferences reasonably drawn from them, as true." Ginther v. Commissioner of Ins., 427 Mass. 319, 322 (1988).

The plaintiffs rely, for standing, on G.L c. 40, § 53. General Laws c. 40, § 53 "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). A taxpayer group may invoke the statute when a local

government is "about to raise or expend money or incur obligations purporting to bind said town." G.L. c. 40, § 53.³

The defendants argue that G.L. c. 40, § 53 does not apply to this suit because the Resolution does not involve raising or expending money or incurring obligations.⁴ See Reilly, 102 Mass. App. Ct. at 378 (no standing under G. L. c. 40, § 53, where acts challenged could not "be characterized as the raising or expenditure of funds or as the incurring of obligations by the town"); North v. City Council of Brockton, 341 Mass. 483, 484 (1960) (no standing where plaintiffs' allegations did not show that implementation of ordinance reducing firefighters' workweek from fifty-six to forty-eight hours raised or expended money or incurred obligations).

The plaintiffs' assertion that implementation or enforcement would involve the expenditure of staff time and the incurrence of transaction costs does not show the requisite expenditure of money or incurring of obligations. See, e.g., Tax Equity Alliance for Massachusetts v. Commissioner of Revenue, 423 Mass. 708, 712-713 (1996) (group of taxpayers did not have standing under G.L. c. 29, § 63,⁵ to challenge statute; indirect expenditures of public funds "in order to implement the act's provisions" such as for printing forms and promulgating regulations, would not be expenditures entitling plaintiffs to standing; "Any expenditure of funds to implement the statute is distinct . . . from an express authorization of expenditures within the statute" [emphasis in original]).

The plaintiffs' assertion that actions "urged" in the Resolution will "expos[e] the City's investment portfolio to increased risk, reduced diversification, and foregone returns"

³The plaintiffs do not argue that G.L. c. 231A independently confers standing, nor could they. See Reilly v. Hopedale, 102 Mass. App. Ct. 367, 379 (2023), quoting Pratt v. Boston, 396 Mass. 37, 43 (1985) (Chapter 231A "does not in and of itself provide the plaintiffs with 'standing' required to maintain" a taxpayer suit such as this one").

⁴The court does not reach the defendants' arguments that the Resolution is expressly precatory and that it is non-binding and of no legal effect. Rather, the court assumes, for the sole purpose of evaluating the application of G.L. c. 40, § 53, that the Resolution, as contended by the plaintiffs, is binding and directs officers, employees or agents of Northampton to perform the actions "urge[d]" therein.

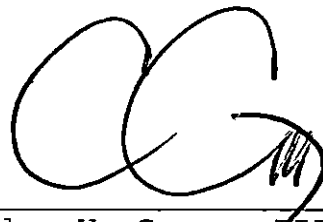
⁵General Laws c. 29, § 63 was "fashioned upon G.L. c. 40, § 53." Goldman v. Secretary of Executive Office of Health and Human Services, 101 Mass. App. Ct. 427, 434 n.13 (2022), quoting Richards v. Treasurer & Receiver Gen., 319 Mass. 672, 674 (1946). "[T]he sole difference in the relevant portions of the two statutes is that § 63, unlike § 40, does not apply to "rais[ing] money. Tax Equity Alliance for Massachusetts v. Commissioner of Revenue, 423 Mass. 708, 713-714 (1996).

does not bring the plaintiffs' challenge within G.L. c. 40, § 53's ambit, either. See North, 341 Mass. at 484 (allegations that ordinance's reduction in firefighter workweek would make the appointment of additional firefighters necessary at cost to city of \$115,000 did not make G.L. c. 40, § 53 applicable); Abdow v. Massachusetts Bay Transp. Authority, 33 Mass. L. Rptr. 126, 2015 WL 7896596,*4 (Super. Ct. October 16, 2015) (Sanders, J.) (allegations that sale of land by MBTA would require future spending because it would require MBTA to relocate repair services did not confer standing under G.L. c. 29, § 63); Stoneham v. Commonwealth, 21 Mass. L. Rptr. 361, 2006 WL 2425311, *1 (Super. Ct. August 4, 2006) (Fremont-Smith, J.) (allegations that Commonwealth would collect insufficient sums in taxes from lease of property to restaurant, even if viewed as costing taxpayers money town would otherwise receive, did not allege expenditure for purposes of G.L. c. 29, § 63).

Because the plaintiffs lack standing to bring this action, it must be dismissed. The court will dismiss the Plaintiffs' Motion for Preliminary Injunction and the Motion to Intervene as moot.

ORDER

For the foregoing reasons, Defendants' Motion to Dismiss (Paper #12) is ALLOWED; Plaintiffs' Motion for Preliminary Injunction (Paper #9) is DENIED; and the Motion to Intervene as Defendants by Proposed Intervenors Thirty Northampton Residents (Paper #13) is DENIED.



Charles W. Groce, III
Justice of the Superior Court

DATED:

9/8/26