No. SJC-13820

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

COMMISSIONER OF CORRECTION, *Plaintiff-Appellee*,

v.

M.B.,

Defendant-Appellant.

On Direct Appellate Review from two Orders of the Superior Court for Suffolk County

BRIEF FOR AMICI CURIAE PRISONERS' LEGAL SERVICES OF MASSACHUSETTS, DISABILITY LAW CENTER, AND HARVARD PRISON LEGAL ASSISTANCE PROJECT IN SUPPORT OF DEFENDANT-APPELLANT

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STATEMENT OF INTERST OF AMICUS CURIAE[1]

Prisoners' Legal Services of Massachusetts (PLS) was established in 1972 to protect and promote the civil and constitutional rights of Massachusetts prisoners. PLS provides legal assistance through litigation, informal advocacy, and advice to prisoners on a wide variety of issues, including medical care, conditions of confinement, guard brutality, solitary confinement, access to rehabilitation programs, and parole. PLS receives over 2,000 requests for assistance each year. PLS has a strong interest in ensuring that legal standards governing the Department of Correction's authority properly safeguard prisoners' right to bodily autonomy.

The Disability Law Center (DLC) is a private non-profit organization designated as the Protection and Advocacy agency for Massachusetts. DLC is mandated and authorized by federal law to represent people with disabilities in private and public facilities who are experiencing rights violations, conduct onsite monitoring of places where people with disabilities live or receive services, and investigate abuse and neglect. *See, e.g.,* 29 U.S.C. § 794e (persons with physical, sensorial, and other disabilities); 42 U.S.C. § 300d-53(k) (persons with traumatic brain injury); 42 U.S.C. §

[1] Pursuant to Mass. R. App. P. 17(c)(5), Amici declare that no party or counsel for a party authored this brief in whole or in part and that no person or entity other than amici, its members, or its counsel has made any monetary contributions intended to fund the preparation or submission of this brief. Amici further declare that they have not represented one of the parties to the present appeal in any proceeding involving similar issues, nor have they been a party or represented a party in a proceeding that is at issue in the present appeal.

10805 (persons with mental illness); 42 U.S.C. § 15043(a) (persons with developmental disabilities). This mandate encompasses work to protect and advance the rights of incarcerated people with disabilities, and include DLC's long-term monitoring and investigative activities at Bridgewater State Hospital. DLC's core mission includes advocacy on civil rights issues impacting the disability community—the rights of bodily integrity and to refuse treatment are key among them. DLC has served as amicus in many cases concerning the rights and interests of individuals subject to involuntary evaluation and treatment. *See, e.g., Commonwealth v. A.Z.*, 493 Mass. 427 (2024); *Matter of J.P.*, 486 Mass. 117 (2020); *Pembroke v. D.L.*, 482 Mass. 346 (2019); *Matter of M.C.*, 481 Mass. 336 (2019).

Harvard Prison Legal Assistance Project (Harvard PLAP) is a student practice organization at Harvard Law School, founded by students in 1970. Participating students represent incarcerated individuals in prison disciplinary hearings within the Massachusetts Department of Correction. Harvard PLAP also represents prisoners in prison classification hearings, certain types of parole hearings, and commutation petitions, responds to research questions from county and state prisoners, and engages in other efforts to promote prisoner rights. Over its history, Harvard PLAP has represented many incarcerated clients whose safety concerns, medical or mental health care concerns, or petitioning activity have led to disciplinary measures taken by correctional staff.

SUMMARY OF ARGUMENT

The Court should apply the clear and convincing standard of proof when the DOC seeks an order authorizing the use of involuntary medical treatment, including force-feeding. Nearly 50 years after this Court's ruling in *Myers*, the case stands out as an exception to the expansive body of authority protecting the right of a competent person to reject unwanted treatment. The standard of proof in *Myers* cases, and in particular to the DOC's burden of establishing its interest in prison order, should reflect the decisive shift in the law since *Myers* against involuntary medical treatment of competent individuals. Pages 8-11.

The standard of proof requires the DOC to establish with case-specific evidence that its interests outweigh the prisoner's interest in refusing treatment. This standard applies to the *Myers* balancing test as a whole, not merely to the question of whether the prisoner's death is imminent. Pages 11-14.

The weight given to the state's interests must reflect the shift in legal and ethical norms in half-century since *Myers*, as well as the facts and circumstances of each case. The state's interest in preserving life now rarely predominates over an individual's right to refuse treatment, and its interest in the ethical integrity of the medical profession now requires respecting this right. The DOC's interest in orderly prison administration cannot be established by hypothetical or conclusory assertions unconnected to the facts of the particular case. Pages 14-23.

ARGUMENT

I. The clear and convincing standard of proof applies when the Department of Correction seeks a *Myers* order.

The Superior Court properly concluded that the applicable standard of proof required to overcome an incarcerated person's right to refuse medical treatment, including force-feeding, should be clear and convincing evidence. Order at 2.[2]

This Court has long recognized that individuals have a protected right to refuse medical treatment. *See Kligler v. Att'y Gen.*, 491 Mass. 38, 66–67 (2022); *Com. v. Pugh*, 462 Mass. 482, 503 (2012); *Shine v. Vega*, 429 Mass. 456, 463 (1999); *Guardianship of Doe*, 411 Mass. 512, 517 (1992); *Norwood Hosp. v. Munoz*, 409 Mass. 116, 122 (1991); *Brophy v. New England Sinai Hosp., Inc.*, 398 Mass. 417, 430-32 (1986); *Rogers v. Comm'r of Dep't of Mental Health*, 390 Mass. 489, 499–500 (1983); *Harnish v. Children's Hosp. Med. Ctr.*, 387 Mass. 152, 154 (1982); *Comm'r of Correction v. Myers*, 379 Mass. 255, 261 (1979); *Belchertown State School v. Saikewicz*, 373 Mass. 728, 738-40 (1977). An individual's right to be free from unwanted medical treatment is "deeply personal" and "strongly rooted in our constitutional and common law." *Pugh*, 462 Mass. at 503, 504 (citations and quotation marks omitted). The right to decide whether to accept or reject treatment "is not undermined because the treatment involves life-saving

[2] The "Order" is the Superior Court's "Memorandum of Decision on Petition for Order Authorizing Involuntary Medical Treatment," and the page number refers to the page number in that Order. Amici are unable to cite to the pages containing the Order in the record appendices, which are impounded.

procedures," *Shine,* 429 Mass. at 464 (citations and quotation marks omitted); *accord, e.g., Pugh*, 462 Mass. at 504, *Norwood Hosp.,* 409 Mass. at 130-31; *Brophy,* 398 Mass. at 438, or because the decision may be "unwise," *Brophy*, 398 Mass. 430. Although this right is not absolute, "State interests may override a competent individual's privacy rights" only "[i]n certain very limited circumstances." *Pugh*, 462 Mass. at 504. "Any attempt by the State to override a competent adult's decision about her medical care, however, is carefully scrutinized." *Id.*

Nearly fifty years after this Court's ruling in *Myers*, the case stands out as an exception to the expansive body of authority protecting the right of a competent person to reject unwanted treatment. *See Pugh*, 462 Mass. at 504 (citations omitted) ("In virtually every instance where we have considered the issue, we have upheld the right of a competent individual to refuse medical treatment.") (citation and internal quotation marks omitted).

The Commonwealth's constitutional provisions "are, and must be, adaptable to changing circumstances and new societal phenomena." *Kligler,* 491 Mass. at 60 (quoting *Goodridge v. Department of Pub. Health*, 440 Mass. 309, 350 n.6 (2003) (Greaney, J., concurring)). This Court has adopted a "comprehensive approach to substantive due process" that "allow[s] our State Constitution to respond effectively to our changing world" *Id.* at 62. Since *Myers*, not only has the individual right to bodily integrity become more robust, but the weight given to the four countervailing state interests recognized in cases concerning the right to refuse life-saving treatment has

diminished, as discussed below. None of these cases involved a competent prisoner, so the Court has not addressed the state interest specific to *Myers*—maintaining orderly prison administration. *Myers*, 379 Mass. at 264. However, the standard of proof applicable to *Myers* cases, and in particular to the DOC's burden of establishing its interest in prison order, should reflect the decisive shift in the law since *Myers* against involuntary medical treatment of competent individuals.

DOC's argument that the preponderance of the evidence should apply relies on a flawed analogy to substituted judgment cases. The preponderance of the evidence standard used to determine whether an incompetent person in a persistent vegetative state "would choose, if she were competent," to terminate life-sustaining treatment, *Doe*, 411 Mass. at 513, has no applicability here. A substituted judgement decision, after "a distinct adjudication of incapacity," focuses on determining not "what is medically in the 'best interests' of the patient," but "the wants and needs of the individual involved," because "it is the patient's true desire that the court must ascertain." *Rogers,* 390 Mass. at 498, 500, 505 (citations and quotation marks omitted). In substituted judgment cases, "[t]he judge, after hearing, must try to identify the choice 'which would be made by the incompetent person, if that person were competent.'" *Doe,* 411 Mass. at 518 (citing *Saikewicz,* 373 Mass. at 752–53). The preponderance of the evidence standard applies only to the determination of what the patient's "subjective judgment would be" with respect to the decision to refuse treatment, not to the determination of whether the patient has the right to refuse

treatment. *Id.* at 525; *see also Norwood Hosp.*, 409 Mass. at 121-22 (substituted judgment determination is distinct from determination of whether the government's interests outweigh the right to refuse treatment) (citing *Brophy,* 398 Mass. at 429–32; *Saikewicz,* 373 Mass. at 736–39). Indeed, *Doe* distinguished cases applying the clear and convincing standard because in those cases "the government sought to infringe on a citizen's liberty interests," 411 Mass. at 525, as is the case when the DOC seeks to override a competent incarcerated person's right to refuse medical treatment. The Superior Court properly recognized this distinction in finding the clear and convincing standard should apply in this situation.

II. The standard of proof must apply to the DOC's burden of showing with case-specific evidence that its interests override the prisoner's right to refuse treatment, not merely that death is imminent.

The Court should emphasize that the DOC cannot meet its burden without an evidentiary showing based on the circumstances of each case.[3] *Myers* recognized this, stating that its conclusion that the DOC had authority to compel a prisoner to submit to medical treatment against their will was "founded on a careful balancing of the relevant State and individual interests, *the weight of which must be determined by the particular facts of each case.*" *Myers*, 379 Mass. at 265 (emphasis added); *id.* at 266 ("Consequently, *on the facts of this case,* it is clear that the Superior Court judge correctly concluded that State interests override the defendant's refusal of life-saving treatment.") (emphasis

[3] Though this case and *Myers* involve the Commissioner of Correction, the standard would apply no less to a County Sheriff seeking an order authorizing involuntary treatment.

added). The Court affirmed the need for a particularized showing in each case when the state seeks to override an individual's right to refuse treatment in *Matter of Guardianship of Roe*, 383 Mass. 415 (1981):

> The proper balance to be struck in a given situation can only be determined after examining the specifically defined and precisely articulated interests of those who are or will be actually affected by the decision. The weight to be afforded these interests is impossible to predetermine, and the balance will vary according to the circumstances of those asserting the interests.

Id. at 453.

Although the Superior Court correctly identified the need for a stringent standard of proof, the court wrongly applied the standard only to the question of whether the DOC "had sustained its burden of proving that, without [an order authorizing involuntary medical treatment], M.B.'s death was imminent." Order at 1; *see id.* at 8 ("I thus conclude that at an order of compelled nutrition requires the Department to prove by clear and convincing evidence that forced nutrition is necessary to prevent the death of an incarcerated person on a hunger strike."). The standard of proof must also apply to the weight of the "countervailing State interests … potentially implicated by an individual's rejection of life-saving medical treatment." *Myers*, 379 Mass. at 262.[4]

Asking only whether the state has offered sufficient proof of the imminence of death if the individual does not receive treatment bypasses the fundamental question

[4] And the standard must apply to DOC's burden of proving the threshold requirements that (1) the prisoner is competent and (2) the prisoner is refusing care or food. These were uncontested in this case.

of whether involuntary treatment is justified at all. To answer that question, *Myers* requires a balancing test that weighs the individual's right to refuse life-saving treatment against various state interests—specifically, "(1) the preservation of life; (2) the protection of the interests of innocent third parties; (3) the prevention of suicide; and (4) the maintenance of the ethical integrity of the medical profession," as well as "the State's interest in upholding orderly prison administration." *Myers*, 379 Mass. at 262, 264. By definition, this balancing test assumes that in some cases the individual's right to refuse treatment will prevail, and the person will be allowed to die. *Myers* asks *if* involuntary treatment is authorized, not when; it is a given that the refusal of life-saving treatment will, sooner or later, lead to the imminence of death.

The Superior Court's opinion recites the five state interests recognized in *Myers* but does not analyze them in the context of this case. The only evidence discussed concerns the disputed medical question of whether death is imminent. The opinion does not discuss why force-feeding M.B. is necessary to maintain prison order, nor does DOC appear to have submitted any evidence in this regard.[5] The opinion does not discuss whether other state interests weigh in favor of overriding M.B.'s autonomy, nor, ultimately, whether the combined weight of the state's interests establish by clear and convincing evidence that force-feeding M.B. is justified. This Court should require such a showing before a lower court may authorize force-

[5] Although the appendix and supplemental appendix are impounded, nothing in the parties' submissions or the lower court's opinion refers to any such evidence.

feeding or other involuntary treatment of a competent prisoner.[6]

The DOC partially acknowledges the need for particularized evidence in each case, stating, "Whether one procedure is more intrusive than another is a fact-intensive determination. This is why DOC provides evidence regarding the intrusiveness of a proposed procedure during *Myers* hearings." Appellee Br. at 54. The weight of DOC's asserted security or other interests in compelling a particular prisoner to undergo treatment against her will is an equally fact-intensive determination and likewise requires case-specific evidence.

III. The weight given to the State's interests must take into account contemporary legal and ethical norms, a half-century after *Myers*, as well as case-specific facts and circumstances.

A. The State's interest in the preservation of life is no longer "usually predominant" over the individual's interest in self-determination.

The Court no longer refers to the "the great deference accorded the State's interest in the preservation of life," or describes this interest as "usually predominant," as it did in *Myers*. 379 Mass. at 263, 266. As the Court stated in *Guardianship of Doe*, "[t]he Commonwealth's interest in preserving life is strongest

[6] Even under the lower standard for substituted judgment orders, this Court requires "fact-finding ... in writing and in meticulous detail." *Guardianship of Doe,* 411 Mass. at 524 (citing *Guardianship of Roe,* 383 Mass. 415, 425 (1981)). Judges may enter such orders "only after carefully considering the evidence and entering specific findings on each factor and then balancing the various interests." *Id.* The Court should require the same of *Myers* orders regardless of what standard of proof it applies, not only to ensure that the "seriousness of the decision will be more forcefully impressed on judges," *id. at* 523, but also to facilitate appellate review.

when it is attempting to protect its citizens from abuse or infringement of their rights. Where, however, as here, the [party is] striving to vindicate Doe's right to refuse invasive treatment, Doe's right to self determination must prevail over the State's interest in preserving life for all." 411 Mass. at 521 (citation and internal quotation marks omitted).

Despite the greater weight given to the preservation of life at the time, the *Myers* Court still found the "magnitude of the medical invasion" of Myers strong enough "to counterbalance the State's usually predominant interests in the preservation of life." *Myers*, 379 Mass. at 266. Nearly fifty years later, the balance of the state's interest in preserving life against the individual's interest in avoiding "significant, nonconsensual invasions of [her] bodily integrity"—such as force-feeding—is no longer "very close." *id.* at 263. It has shifted decisively in favor of the individual's rights. *See Guardianship of Doe,* 411 Mass. at 521.

While the "magnitude of the medical invasion" will vary from case to case, force-feeding, like the dialysis at issue in *Myers*, is a significant intrusion. Nasogastric feeding, which the lower court authorized, "requires insertion of a tube through an unwilling patient's nose and esophagus into the stomach." Brief of Amicus Curiae Medical Justice Alliance for Massachusetts ("MJA") at 11. "This method can cause significant pain, medical complications, and psychological trauma." *Id.* at 12; *see Dhiab v. Obama*, 952 F. Supp. 2d 154, 156 (D.D.C. 2013) ("[I]t is perfectly clear from the statements of detainees, as well as the statements from the [American Medical

Association, the World Medical Association, the UN High Commissioner for Human Rights, the UN Rapporteur on Human Rights and Counter–Terrorism] that force-feeding is a painful, humiliating, and degrading process."). Though the weight of an individual's interest in not being force-fed derives more fundamentally from her right to refuse any type of unwanted medical treatment, the particular invasiveness of force-feeding further tips the balance against the state's interests.

B. The state's interest in protecting innocent third parties must be compelling.

Although this factor was not implicated in *Myers*, *see id.*, 379 Mass. at 262, the Court has since made clear that only "compelling evidence" supporting the state's interest in protecting innocent third parties will counterbalance an individual's right to autonomy. *Norwood Hosp.,* 409 Mass. at 129 (finding patient's right to refuse life-saving treatment even though she had a minor child outweighed the "state's interest in the well-being of children" in the absence of any "compelling evidence that the child will be abandoned").

C. Refusing life-saving treatment does not implicate the state's interest in preventing suicide.

"It is well settled that withdrawing or refusing life-sustaining medical treatment is not equivalent to attempting suicide." *Guardianship of Doe*, 411 Mass. at 522; *see, e.g., Kligler,* 491 Mass. at 68; *Myers*, 379 Mass. at 262. This interest is thus not implicated where, as here, there is no suggestion that the prisoner refusing treatment is suicidal.

D. Preserving the ethical integrity of medical profession now requires respecting an individual's decision to refuse treatment.

Although *Myers* found the state's interest in maintaining the integrity of the medical profession supported the authorization of compulsory medical treatment in that case, 379 Mass. at 265, medical ethics standards have evolved in the half-century since then. As Amicus MJA explains, medical ethics principles no longer "require trying anything (technically) possible to preserve the defendant's life." MJA Br. at 8 (quoting *Myers*, 379 Mass. at 265) (cleaned up). Nor would medical ethics support a physician's use of involuntary "life-saving procedures … where the traumatic cost to the patient is not inordinate and the prognosis is good." *Myers*, 379 Mass. at 265. Rather, modern medical ethics prohibit physicians from overriding a competent patient's decision to refuse treatment, a prohibition that includes force-feeding. MJA Br. at 8-9; *see also Kligler,* 491 Mass. at 69 ("In medical ethics, the right of competent, informed patients to refuse life-prolonging interventions ... is firmly established.") (citation and quotation marks omitted).

The state's interest in the ethical integrity of the medical profession and the individual's interests in refusing treatment are thus no longer "countervailing," *Myers*, 379 Mass. at 262, but aligned.[7] The Court should update the *Myers* standard

[7] Seemingly unrebutted expert testimony in this case supports this. M.B.'s medical expert, Dr. Friedman, testified that force-feeding is "considered unethical and ineffective, and it's more likely to harm the patient than help the patient. So for all those reasons it's not done. Now, the DOC may have its own interpretation of ethics and effectiveness, but that's not the way it's seen in the general medical community …

accordingly, placing the burden on DOC to establish that its interest in prison security warrants overriding not only the prisoner's rights to self-determination but also the "firmly established" ethical principles of the medical profession. *Kligler,* 491 Mass. at 69.

E. The state's interest in orderly prison administration cannot be established by hypothetical or conclusory assertions unconnected to the facts of the particular case.

Although the DOC's interest in orderly prison administration "tip[ped] the balance in favor of authorizing treatment without consent" in *Myers*, 379 Mass. at 266, *Myers* did not absolve DOC of the need to show, in any future case, that permitting a prisoner to refuse treatment would pose a legitimate threat to prison order or security. This Court should make clear that mere invocation of *Myers* does not satisfy the state's burden, which must be met with particularized evidence in each case showing that a non-speculative threat to prison order would result from honoring the prisoner's right to refuse treatment.

In this case, the only "factual" support DOC offers to substantiate its claim that force-feeding M.B. is necessary to maintain prison order is then-Commissioner Frank A. Hall's 47-year-old affidavit in *Myers*. Appellee Br. at 50. DOC otherwise relies solely on citations to *Myers* and lawyer argument to purportedly establish the

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it takes away patient autonomy to refuse care, and that's a bedrock principle." Appellant Br. at 27 n.3 (citing RA2.309). DOC does not cite any testimony or other evidence contradicting Dr. Friedman's testimony. The Superior Court's opinion did not address the issue of medical ethics.

threat to prison order if M.B. is allowed to continue her hunger strike. The Superior Court's opinion also does not cite any evidence of the DOC's security interest in force-feeding M.B. The opinion quotes the passage in *Myers* describing the state's interest in prison order in that case, Order at 7, but it does not address how much weight this interest merits in this case.

The DOC's asserted security interests in *Myers* itself require fresh scrutiny. There the Court accepted the Commissioner's argument that the "State's failure to prevent Myers' death would present a serious threat to prison order and security, not only by generating a possibly 'explosive' reaction among other inmates, but also by encouraging them to attempt similar forms of coercion in order to attain illegitimate ends." *Myers,* 379 Mass. at 264.

There is reason to doubt that prisoners would be more disturbed were the DOC to respect another prisoner's medical wishes than they would be were the DOC to defy those wishes. Indeed, there is reason to expect prisoners to be deeply upset to learn that their medical wishes or living wills could be rendered meaningless by the DOC and that they, too, could be forced to submit to nonconsensual and highly invasive procedures. Because it is not self-evident that force-feeding a prisoner provokes fewer prisoner concerns than allowing her to exercise her constitutionally protected rights, the DOC must provide non-speculative evidence to support its stated concerns.

The Commissioner's claim in *Myers* that failing to prevent a hunger-striking

prisoner's death could lead to copycat hunger strikes is also dubious. *Myers,* 379 Mass. at 267 ("If an explicit right to refuse life-saving treatment in prison for any and all reasons is recognized, it is my opinion that the Department will be faced with many cases of inmates mutilating themselves or otherwise deliberately putting themselves in danger of dying, and then refusing life-saving treatment in order to have demands met."). Logic suggests that prisoners will be less inclined to engage in hunger strikes if they learn that the DOC will not prevent their death. A prisoner engaging in a hunger strike to pressure the DOC to take certain action is less likely to continue this behavior if she knows the only outcome will be her death. More to the point, the prison population is not a monolith, and so the effect of an individual's hunger strike on prisoner behavior, and thus on prison administration, must be supported by evidence reflecting the case-specific circumstances in play, rather than speculation.[8]

The DOC not only failed to submit evidence that permitting M.B. to continue

[8] Amici note that DOC currently petitions for substituted judgment treatment plans, in keeping with *Rogers*, for individuals housed in two medium-security prisons—Bridgewater State Hospital and the Bridgewater Annex Units in Old Colony Correctional Center—without provoking chaos and copycat refusals of antipsychotic medications. In *Rogers*, the Court found that the right of patients to make their own treatment decisions outweighed the Department of Mental Health's asserted interests in institutional order and security, which it claimed would be threatened if it were required to obtain court orders before forcible medication. *Rogers,* 390 Mass., at 501-02. Those interests were similar to those the DOC raises here: "The defendants also argue that the illness of one patient on a ward may be provocative, exacerbating the illness of other patients, and adversely affecting the doctors' ability to treat…. In addition, they claim it is more difficult to conduct group therapy in an environment in which they cannot medicate with antipsychotic drugs." *Id.* at 502.

her hunger strike would disrupt prison order, but it failed to point to any negative consequences that resulted from its ultimate granting of M.B.'s request to be reassigned to a single cell—the basis for her hunger strike.[9] During the litigation, after a Single Justice ordered the Commissioner to provide information on the status of M.B.'s grievance concerning her housing placement, Appellant Br. at 101 (1/17/25 Docket Entry), the DOC transferred M.B. to a single cell at MCI-Norfolk, Appellee Br. at 11. Although this occurred on January 29, 2025, *id.,* while the lower court litigation was still pending, DOC did not point to any kind of disruption occurring as a result of M.B.'s being returned to a single cell. The defendant in *Myers* also obtained "the object of his original refusal of treatment," transfer to a minimum-security facility because he feared for his safety, *Myers*, 379 Mass. at 259, 260, despite the Commissioner's claim in that case that "granting their demands is as unthinkable as letting them die," *id.* at 267.[10]

This Court has refused to override prisoners' individual rights based on

[9] As described in Appellant's Brief, M.B., a transgender woman who had been living in a single cell in a men's prison for seven years, was abruptly transferred to a double cell with a male and feared for her safety. Appellant Br. at 18-19 (citing RA2.265). She began her hunger strike after the DOC denied her request to remain in a single cell. *Id.*

[10] It bears noting that in both *Myers* and this case, a prisoner's concerns for their personal safety are what led to the refusal of treatment. Given the prison's obligation to ensure the personal safety of those in its custody, a case-specific evaluation of the state's interest in orderly prison administration must include consideration of whether, in filing a *Myers* petition, the prison is seeking to fulfill its obligations to a prisoner or avoid them.

unsubstantiated, conclusory assertions about institutional security. In *Haverty v. Comm'r of Correction*, 437 Mass. 737 (2002), the Court rejected generalized assertions from DOC officials—including affidavits from present and former DOC commissioners and an assistant deputy commissioner, *id.* at 772-73 & nn.12-14 (Cordy, J., dissenting)—that security concerns required placing some of the population at MCI-Cedar Junction in segregation for non-disciplinary reasons. *Id.* at 758-59. Despite claims that "an unprecedented influx of violent gang members" had affected other institutions, *id.* at 758 (citation omitted), the Court found these "generalized conclusions, unsupported by facts as to conditions at Cedar Junction," insufficient to override the due process rights of the prisoners at Cedar Junction. *Id.* at 759. Other courts have likewise refused to accept the DOC's speculative, unsupported claims that respecting prisoners' individual rights would pose a threat to prison order and security. *See, e.g., Soneeya v. Mici,* 717 F. Supp. 3d 132, 149 (D. Mass. 2024) ("[O]the basis of the evidence before me, I find that the security review relied upon essentially a robotic pretext untethered to a practical and reliable assessment of the actual state of security concerns about Ms. Soneeya.").

Amici do not suggest that DOC must accede to prisoners' demands whenever they attempt to obtain their goals by hunger striking or refusing other treatment. Rather, Amici point out that the demands underlying these refusals are not necessarily or commonly for "illegitimate ends," *Myers,* 379 Mass. at 264, but often for basic human needs, such as safe housing. There is no evidence that prisoners go on hunger

strikes over minor matters. There does not appear to be such evidence in the instant case, where the DOC ultimately addressed M.B.'s safety concerns by seemingly following its own obligations with regard to transgender housing placements. Regardless, questions about a hunger strike's impact on prison administration cannot be answered by generalities; they must be answered by evidence in the case at hand, including evidence as to whether and why it is believed that a refusal is made for "illegitimate ends." In setting the standard for *Myers* cases, the Court should require the DOC to show that it has meaningfully engaged with the prisoner's complaint before a lower court considers overriding her fundamental right to refuse treatment.

CONCLUSION

For the foregoing reasons, the Court should apply the clear and convincing standard of proof when the DOC petitions for a *Myers* order authorizing the use of involuntary medical treatment, including force-feeding, because it claims that such treatment is reasonably necessary to save an incarcerated person's life.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, to the best of my knowledge, this brief complies with the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs, including Rule 16(a)(13) (addendum), Rule 16(e) (references to the record), Rule 20, and Rule 21.

1. Exclusive of the exempted portions of the brief, as provided in Mass. R. A. P. 20(a)(2)(D), the brief contains 4,494 words.
2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Garamond font. The undersigned has relied on the word count feature of this word processing system in preparing this certificate.

February 24, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of this brief on counsel for all parties by e-filing on the Court's electronic filing system, and by emailing a copy to Defendant/Appellant's counsel Anne Stevenson, Esq., at astevensonesq@gmail.com, and to Plaintiff/Appellee's counsel Scott McLean, Esq., at Scott.McLean@doc.state.ma.us.

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