

SUPREME JUDICIAL COURT  
for the Commonwealth  
Case Docket

STEPHEN FOSTER & others vs. COMMISSIONER OF CORRECTION & others  
SJC-13125

CASE HEADER

Case Status	Decided, Rescript issued
Status Date	12/16/2021
Nature	Equity
Entry Date	05/20/2021
Appellant	Plaintiff
Case Type	Civil
Brief Status	Awaiting red brief
Brief Due	07/12/2021
Quorum	Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, Georges, Jr., JJ.
Argued Date	09/10/2021
Decision Date	11/18/2021
AC/SJ Number	<a href="#">2021-P-0293</a>
Citation	488 Mass. 643
DAR/FAR Number	<a href="#">DAR-28216</a>
Lower Ct Number	2084CV00855
Lower Court	Suffolk Superior Court
Lower Ct Judge	William J. Meade, J.
Route to SJC	Direct Appellate Review

INVOLVED PARTY

**Stephen Foster**  
Plaintiff/Appellant  
Blue br, app & reply br filed

**Steven Palladino**  
Plaintiff

**Mark Santos**  
Plaintiff

**David Sibinich**  
Plaintiff

**Michelle Tourigny**  
Plaintiff

**Michael White**  
Plaintiff

**Frederick Yeomans**  
Plaintiff

**Hendrick Davis**  
Plaintiff

ATTORNEY APPEARANCE

[David Milton, Esquire](#)  
[Elizabeth D. Matos, Esquire](#)  
[James R. Pingeon, Esquire](#)  
[Bonita Tenneriello, Esquire](#)  
[Michael Horrell, Esquire](#)

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[Michael Horrell, Esquire](#)

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**Richard O'Rourke**  
Plaintiff

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[Michael Horrell, Esquire](#)

[David Milton, Esquire](#)  
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[James R. Pingeon, Esquire](#)  
[Bonita Tenneriello, Esquire](#)  
[Michael Horrell, Esquire](#)

**Peter Kyriakides**  
Plaintiff

[David Milton, Esquire](#)  
[Elizabeth D. Matos, Esquire](#)  
[James R. Pingeon, Esquire](#)  
[Bonita Tenneriello, Esquire](#)  
[Michael Horrell, Esquire](#)

**Michael Gomes**  
Plaintiff

[David Milton, Esquire](#)  
[Elizabeth D. Matos, Esquire](#)  
[James R. Pingeon, Esquire](#)  
[Bonita Tenneriello, Esquire](#)  
[Michael Horrell, Esquire](#)

**Carol Mici**  
Defendant/Appellee  
Red brief filed

[Stephen G. Dietrick, Esquire](#)

**Gloriann Moroney**  
Defendant/Appellee  
No brief expected  
Due 07/12/2021

[Pamela Murphy, Esquire](#)

**Thomas Turco**  
Defendant/Appellee  
Red brief filed

[Stephen G. Dietrick, Esquire](#)

**Charles Baker**  
Defendant/Appellee  
Awaiting red brief  
Due 07/12/2021

[Vanessa Azniv Arslanian, Esquire](#)  
[Ryan P. McManus, Esquire](#)  
[M. Patrick Moore Jr., Esquire](#)

**Ryan Duntin**  
Other interested party

**Dana Durfee**  
Other interested party

**Ariel Pena**  
Other interested party

**John E. Dutcher**  
Other interested party

**Anthony Barry**  
Other interested party

## DOCUMENTS

[Appellant Foster Brief](#)   
[Appellee Mici Brief](#)   
[Appellant Foster Reply Brief](#) 

## DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/20/2021	#1	Entered.
05/24/2021	#2	ANNOUNCEMENT: The Justices are soliciting amicus briefs. Whether the plaintiff's second motion for a preliminary injunction was properly denied on the ground that the plaintiffs were unlikely to succeed on their claim that the Department of Correction was deliberately indifferent to the risk posed by COVID-19 in prisons; whether the commissioner is obligated to combat the spread of COVID-19 in prisons by decreasing the inmate population.
05/28/2021	#3	LETTER from Attorney Pamela Murphy that the Massachusetts Parole Board does not intend to file a brief and will not be presenting an oral argument in the case.
06/10/2021	#4	Appellant brief filed for Stephen Foster, Steven Palladino, Mark Santos, David Sibirich, Michelle Tourigny, Michael White, Frederick Yeomans, Hendrick Davis, Richard O'Rourke, Peter Kyriakides and Michael Gomes by Attorney Bonita Tenneriello, Attorney Elizabeth D. Matos, Attorney James R. Pingeon, Attorney David Milton, Attorney Michael J. Horrell.
06/10/2021	#5	Appendix filed for Stephen Foster, Steven Palladino, Mark Santos, David Sibirich, Michelle Tourigny, Michael White, Frederick Yeomans, Hendrick Davis, Richard O'Rourke, Peter Kyriakides and Michael Gomes by Attorney Bonita Tenneriello, Attorney Elizabeth D. Matos, Attorney James R. Pingeon, Attorney David Milton, Attorney Michael J. Horrell.

06/10/2021		The clerk's office has received the appellants' brief and appendix through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellants shall file with the clerk 4 copies of the brief and 3 copies of the appendix within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellant's brief shall be blue and appendix shall be white.)
06/14/2021	#6	Additional 4 copies of appellants' brief and 3 copies of appendix filed by Stephen Foster & others.
07/08/2021	#7	NOTICE of September argument sent.
07/12/2021	#8	Appellee brief filed for Carol Mici and Thomas Turco by Attorney Stephen Dietrick.
07/13/2021		The clerk's office has received the appellee's brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellee shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of appellee's brief shall be red. See M.R.A.P. Rule 20(a)(6)(A).)
07/14/2021	#9	Additional 4 copies of appellees' brief filed by Carol Mici & another.
07/15/2021	#10	ORDERED for argument on September 10.
07/29/2021	#11	Reply brief filed for Stephen Foster, Steven Palladino, Mark Santos, David Sabinich, Michelle Tourigny, Michael White, Frederick Yeomans, Hendrick Davis, Richard O'Rourke, Peter Kyriakides and Michael Gomes by Attorney David Milton.
07/29/2021		The clerk's office has received the appellant's reply brief through e-fileMA. The brief has been accepted for filing and entered on the docket. The appellant shall file with the clerk 4 copies of the brief within 5 days. The clerk's office may require additional copies if necessary. (Note: Cover of reply brief shall be gray. See M.R.A.P. Rule 20(a)(6)(A).)
08/03/2021	#12	Additional 4 copies of appellants' reply brief filed by Stephen Foster & others.
09/10/2021		Oral argument held. (Budd, C.J., Gaziano, J., Lowy, J., Cypher, J., Kafker, J., Wendlandt, J., Georges, Jr., J.). <a href="#">View Webcast</a>
11/18/2021	#13	RESCRIPT (Full Opinion): Because the plaintiffs are unlikely to prevail on their Eighth Amendment claim, we affirm the Superior Court's denial of their second motion for preliminary relief. The matter is remanded to the Superior Court, where the case shall continue to proceed as an emergency matter. (By the Court)
12/16/2021		RESCRIPT ISSUED to trial court.