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THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ANNA BARBARA HANTZ MARCONI

217-2024-CR-01167

STATE'S OBJECTION TO MOTION TO DISMISS CHARGE OF ATTEMPT TO COMMIT IMPROPER INFLUENCE

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and objects to Defendant's Motion to Dismiss Charge of Attempt to Commit Improper Influence ("the Motion"). In support, the State represents as follows:

Motion Precluded by *Res Judicata*, Collateral Estoppel, Waiver

1. The Motion argues that the criminal statutes (RSA 629:1; 640:3, I(b)) "are, facially and as applied, unconstitutionally overbroad because it punishes the exercise of First Amendment rights" and, "facially and as applied, unconstitutionally overbroad because they punish the exercise of First Amendment rights" and "are, facially and as applied, unconstitutionally vague because they fail to put an ordinary reasonable person on notice of what conduct is prohibited and because they invite discriminatory enforcement by the State." Motion at *1. Defendant acknowledges that she has raised these arguments before in her Motion to Dismiss All Indictments on First Amendment, Right of Redress, and Judicial Immunity Grounds ("the 1A Motion"), but claims that because discovery has been exchanged in the interim, the instant Motion is somehow appropriate for this Court to reconsider. Motion at *1, n.1.

2. When considering (and denying) the 1A Motion, this Court properly limited its factual analysis to those facts as alleged in the indictments, such that this Court's reasoning in previously denying these same arguments would be unaffected by the continuing discovery process. Order Denying 1A Motion at *4, n.1. This Court further noted that the Court "must defer to the grand jury's determinations" about sufficiency of the evidence at this stage, which would also be unaffected by the continuing discovery process. Order on 1A Motion at *14.

3. Defendant cites no authority and offers no reasoning for how the ongoing discovery process can affect a facial challenge to indictments or statutes. Any such reasoning would lead to the absurd result that every new discovery disclosure would allow a party to relitigate facial challenges to indictments already ruled on by the Court. The fact that the defense "noted" in its prior Motion that it was reserving the right to raise additional grounds to seek dismissal does not give Defendant a legal basis to file this Motion. If Defendant wished to have this Court reconsider its ruling on Defendant's vagueness and overbreadth challenges (or to raise new arguments regarding this issue), she and her counsel should have availed themselves of their legal means of doing so: by filing a motion to reconsider within the timeframe allowed. *State v. Plantamuro*, 171 N.H. 253, 259 (2018) (legal issues regarding a trial court's order "must be presented to the trial court in a motion for reconsideration" in order to be preserved) (citations omitted).

4. "In its most basic formulation, the doctrine of collateral estoppel bars a party to a prior action . . . from relitigating any issue or fact actually litigated and determined in the prior action. Res judicata, or 'claim preclusion,' is a broader remedy and bars the relitigation of any issue that was, or might have been, raised in respect to the subject matter of the prior litigation." *Gray v. Kelly*, 161 N.H. 160, 164 (2010) (quotation omitted).

5. "For collateral estoppel to apply, three basic conditions must be satisfied: (1) the issue subject to estoppel must be identical in each action; (2) the first action must have resolved the issue finally on the merits; and (3) the party to be estopped must have appeared as a party in the first action, or have been in privity with someone who did so." *Stewart v. Bader*, 154 N.H. 75, 80-81 (2006).

6. There are three elements for *res judicata* to apply: "(1) the parties in both actions are the same or in privity with one another; (2) the same cause of action was before the court in both instances; and (3) the first action ended with a final judgment of the merits." *Riverbend Condo Ass'n v. Groundhog Landscaping & Prop. Maint.*, 173 N.H. 372, 375 (2020).

7. In this case, the parties have already litigated, and this Court has already ruled on, the issues of vagueness and overbreadth, both facially and as applied, and this Court has already denied the 1A Motion on these grounds. Order Denying 1A Motion at *9-15, 17. To the extent Defendant seeks to raise new arguments not briefed in the 1A Motion, these arguments were waived by the filing of the 1A Motion. *State v. Mountjoy*, 142 N.H. 648, 652 (1998) (when Defendant proceeds on one line of argument but does not brief another, the argument not briefed is deemed waived). Relitigating the issues of vagueness and overbreadth through collateral attacks on this Court's ruling wastes the resources of the parties and the Court. Accordingly, under the doctrines of collateral estoppel and *res judicata*, the Motion should be denied.

Motion Should be Denied on Merits

8. Because Defendant raises identical challenges to those that have already been objected to by the State and denied by the Court, the State incorporates by reference all arguments as contained in its objection to the 1A Motion captioned "State's Objection to Motion

to Dismiss All Indictments," and all findings and reasoning in this Court's Order denying the 1A Motion.

9. "An indictment . . . is sufficient if it sets forth the offense fully, plainly, substantially, and formally . . . ." RSA 601:4. "To be constitutional, the indictment must contain the elements of the offense and enough facts to notify the defendant of the specific charges. An indictment generally is sufficient if it recites the language of the relevant statute; it need not specify the means by which the crime was accomplished or other facts that are not essential to the elements of the crime." *State v. Ortiz*, 162 N.H. 585, 588 (2011) (quotation and citations omitted). *See also State v. Brewer*, 127 N.H. 799, 800 (1986) (An indictment "is sufficient, if the offence be set forth with substantial accuracy and certainty to a reasonable intendment.") (quotation omitted); *State v. Bussiere*, 118 N.H. 659, 661 (1978) ("An indictment is sufficient only if it clearly sets out all of the necessary elements constituting the offense.") (quotation and citations omitted).

10. The issue of whether a law is void for vagueness or overbreadth because it infringes upon a constitutional right is a question of law. *See State v. Hynes*, 159 N.H. 187, 199 (2009) (such challenges are "questions of constitutional law"). "[T]he overbreadth doctrine is applicable primarily in the First Amendment area . . . and may render void legislation which is lacking neither in clarity nor precision, whereas the vagueness doctrine is rested on the due process clauses of the Fifth and Fourteenth Amendments and is applicable solely to legislation which is lacking in clarity and precision." *Id.* (quotation omitted). That is, vagueness relates only to the adequacy of the language of the statute itself, whereas overbreadth relates to infringements on constitutional rights (regardless of the language the statute).

Statute Not Void for Vagueness

11. As stated in ¶ 10, *supra*, vagueness "is applicable solely" to issues regarding a statute's "clarity and precision." *Id.* (quotation omitted). Accordingly, despite Defendant's asserted challenge of vagueness as applied to her (*see* Motion at ¶¶ 56-59), the test for vagueness is an objective test (*i.e.*, vagueness is a facial challenge, not as applied to particular facts and circumstances). Defendant cites no authority for the proposition that she can challenge the language of a statute for being vague as applied to her.

12. "A statute can be impermissibly vague for either of two independent reasons: (1) it fails to provide people of ordinary intelligence a reasonable opportunity to understand the conduct it prohibits; or (2) it authorizes or even encourages arbitrary and discriminatory enforcement." *Wilson*, 169 N.H. at 770 (quoting *Hynes*, 159 N.H. at 200). "It is well established that the specificity required to uphold a statute need not be contained in the statute itself, but rather, in the context of related statutes, prior decisions, or generally accepted usage." *Hynes*, 159 N.H. at 200 (quotation omitted). Further, "a scienter requirement in a statute ameliorates the concern that the statute does not provide adequate notice to citizens regarding the conduct that is proscribed," as does the use of "plain and easily understandable words." *State v. MacElman*, 154 N.H. 304, 308 (2006) (citations omitted). "In reviewing a legislative act, [the Court] presume[s] it to be constitutional and will not declare it invalid except upon inescapable grounds." *Hynes*, 159 N.H. at 199-200. "A party challenging a statute as void for vagueness bears a heavy burden of proof in view of the strong presumption favoring a statute's constitutionality." *Wilson*, 169 N.H. at 767 (quoting *State v. White*, 164 N.H. 418, 423 (2012)).

13. RSA 629:1 is based upon Model Penal Code § 5.01. The New Hampshire Supreme Court has already ruled New Hampshire's criminal statute prohibiting attempted crimes

is "not . . . unconstitutionally vague for it gives reasonable notice of the prohibited conduct, sets up an ascertainable standard of guilt, and there is no showing that it encourages erratic and arbitrary police action." *State v. Blake*, 113 N.H. 115, 120 (1973) (upholding constitutionality of previous attempt statute) (citations omitted). *See also State v. Davis*, 108 N.H. 158, 160 (1967) (discussing attempted statutory rape), *overruled on other grounds by State v. Ayer*, 136 N.H. 191 (1992). Further, the plain and ordinary language of RSA 629:1 provides a requirement that the person must do or omit to do something that is a substantial step toward the commission of a crime "under the circumstances as he believes them to be." RSA 629:1, I. *See also*, RSA 629:1, II (defining "substantial step"). Accordingly, RSA 629:1 is not facially void for vagueness.

14. RSA 640:3 is based upon Model Penal Code § 240.2. By its plain terms, RSA 640:3, I(b) prohibits a person from purposely seeking to privately influence a public servant's official discretion "on the basis of considerations other than those authorized by law." The plain and ordinary meaning of the words in the statute, combined with the "purposely" scienter requirement, provides a person of ordinary intelligence with notice of the prohibited conduct. *MacElman*, 154 N.H. at 308. Accordingly, RSA 640:2 is not void for vagueness.

15. Defendant cites the terms "privately addresses," "official discretion," and "considerations other than those authorized by law" as being unconstitutionally vague. Motion at ¶ 47. In interpreting statutes, "[w]ords and phrases shall be construed according to the common and approved usage of the language . . . ." RSA 21:2.

16. The term "privately addresses," as used in the statute and according to its common and approved usage, distinguishes it from any public discourse. As Defendant notes, the Model Penal Code Commentary states that the statute "is confined to 'private' communications in order to prevent it from being applied to the press and to other forms of

public comment." Motion at ¶ 23 (quoting *Model Penal Code and Commentaries*, pt. II, vol. 3 § 240.2 cmt 3 at 56). Accordingly, the phrase "privately addresses," as used in the statute, is not unconstitutionally vague.

17. The term "official discretion," as used in the statute and according to its common and approved usage, means the process of reaching a decision about whether to take a governmental action (or what governmental action to take), and it has been consistently used as such in New Hampshire jurisprudence for nearly 150 years. *See Everitt v. GE*, 156 N.H. 202, 213 (2007); *Baker v. Cunningham*, 128 N.H. 374, 379 (1986) (quotation omitted); *Fortin v. Morton*, 101 N.H. 477, 478 (1958); *Kearns v. Nute*, 94 N.H. 217, 220 (1946); *Fogg v. Board of Educ.*, 76 N.H. 296, 301-02 (1912); *Attorney-General v. Taggart*, 66 N.H. 362, 370-71 (1890); *Opinion of Court*, 63 N.H. 625, 625 (1885); *Hill v. Goodwin*, 56 N.H. 441, 452 (1876). Such "official discretion" includes the exercise of official discretion by a prosecutor about whether to institute criminal charges in a judicial proceeding (or take other administrative action). *See Williams v. Pennsylvania*, 579 U.S. 1, 11 (2016) (prosecutor's decision whether to pursue death penalty in a criminal prosecution is "a critical choice in the adversary process" and "a most significant exercise of his or her official discretion and professional judgment"); *75 Acres, LLC v. Miami-Dade County*, 338 F.3d 1288, 1297 (11th Cir. 2003) (citing *United States v. Harden*, 37 F.3d 595, 598 (11th Cir. 1994) (prosecutor "is a government official who makes factual determinations and exercises official discretion" when determining whether to charge and individual with a crime); *Peruta v. Town of Rocky Hill*, 640 F.Supp.2d 186, 196 (D.Conn. 2009) (quoting *Bhatia v. Debek*, 287 Conn. 397, 407-12 (Conn. 2008)) (false information to prosecutors and law enforcement "necessarily interferes with the intelligent exercise of official

discretion"). Accordingly, the phrase "official discretion," as used in the statute, is not unconstitutionally vague.

18. The term "considerations other than those authorized by law," in the context of the indictment and according to its common and approved usage, means considerations in the investigation and possible prosecution of crimes other than "upon the facts and the law," such as "a familial or personal relationship to a public official." *Isassi v. State*, 330 S.W.3d 633, 644 (Tx.Ct.Crim.App. 2010). The most thorough exposition of RSA 640:3 (Improper Influence) is in *Isassi* (and the subsequent memorandum opinion on remand of *Isassi v. State*, 2011 Tex.App. LEXIS 1163 (13th Tx.Ct.App. 2011). In *Isassi*, the defendant was a county attorney who intervened in the criminal prosecution of his aunt by, *inter alia*, stating that there would be no merit to the case against the aunt. *Isassi*, 330 S.W.3d at 635-37. The *Isassi* court noted that although a handful of states, including New Hampshire, have Improper Influence statutes, "[v]ery few state cases discuss the offense." *Id.* at 639. The court noted that there is a difference between the Improper Influence Statute and its analogous federal statute, as "[i]n the federal statute, the actor must 'corruptly' endeavor to influence a judicial officer or the due administration of justice," whereas "in the [Improper Influence] statute, the actor must have 'an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law." *Id.* at 641. In reversing the court of appeals decision to overturn the defendant's conviction and discussing this *mens rea* of the statute (and the statute generally), the Court stated as follows:

> . . . As noted by the Model Penal Code commentary, the mens rea of the improper influence statute is both broader and more precisely defined than the equivalent mens rea under the federal statute. Both statutes, however, criminalize conduct that obstructs or influences the due administration of justice if that conduct is undertaken with a corrupt or improper purpose. The conduct itself might be lawful, but if it was performed for an improper purpose, it falls within

the criminal statute. As Justice Holmes once noted, "Intent may make an otherwise innocent act criminal, if it is a step in a plot." Thus, the "proper inquiry is whether a defendant had the requisite corrupt intent to improperly influence the investigation, not on the means the defendant employed in bringing to bear this influence." . . .

. . .

Notwithstanding that the means appellant used might be regarded as lawful when viewed in a vacuum, clear proof of an improper motive would serve to criminalize his conduct. It was the State's theory that, because she was his aunt, appellant attempted to influence [his aunt's criminal prosecution]. If appellant's motive and intent when he made these phone calls was to benefit his aunt by short-circuiting her prosecution . . . , that was "an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law." The law does not authorize the dismissal of criminal charges or the avoidance of standard bond conditions based upon the defendant's familial or personal relationship to another be it a judge, county attorney, or other official.

. . .

Appellant's intent at the time he made these telephone calls was a matter for the jury to decide as a question of fact . . . .

In holding that the evidence of intent was insufficient, the court of appeals first stated that there was "no evidence that [appellant] offered to do anything, either in his private capacity or in his capacity as County Attorney, in exchange for a favorable result in his aunt's case." This is true, but immaterial. The improper influence statute does not require mutual consideration, or a quid pro quo. That conduct is covered by the bribery statute. . . .

Second, the court of appeals stated that there was no evidence that appellant gave any information to [other individuals] that those individuals could not lawfully use in determining how to exercise their official discretion. Even if this were true[,] . . . this would not "immunize Isassi's intent to benefit his relative . . . ." The focus of the statute is on the state of mind of the "influencer," not the propriety of the action or inaction of the "influencee."

Third, the court of appeals held that there was no showing that appellant attempted to exercise influence on the basis of "considerations other than those authorized by law," in part because it [nothing criminalized the speech at issue]. But again, the lawfulness of the underlying conduct is not determinative if appellant's intent was to obtain a dismissal because the defendant was his aunt. That is not a consideration "authorized by law." In our system of justice, we decide if people are guilty of a crime based upon the facts and the law, not upon a familial or personal relationship to a public official.

> The court of appeals concluded that, because appellant did "nothing that a private citizen could not do," holding him "criminally liable for this behavior would be to obscure the line between routine communications with law enforcement officials and illegal attempts to coerce those officials to make decisions based on improper considerations."
>
> The jury could have decided that appellant was simply doing this as a routine official duty as the county attorney . . . , and it was a serendipitous coincidence that the particular defendant involved happened to be his aunt. *Sacre bleu!* The jury was, however, entitled to conclude, based upon all of the evidence and reasonable inferences from that evidence, that appellant's intent in making all of these telephone calls was to influence other public officials to dismiss the criminal case against [the aunt] because she was his aunt. [A public] official may not manipulate and influence the judicial system to help a family member avoid . . . prosecution for a felony. The Legislature, in this rarely invoked law, has forbidden it, and the jury, in this case, reasonably and rationally concluded, beyond a reasonable doubt, that appellant had that intent to improperly influence the outcome of his aunt's criminal case on a basis not authorized by law.

Id. at 641-45. *See also State v. Lopez*, 162 N.H. 153, 158-59 (2011) (quotations and citations omitted) (meaning of words in an interaction forming basis of charge of criminal solicitation may be reinforced by other words or actions by the defendant). Accordingly, the phrase "considerations other than those authorized by law," as used in the statute, is not unconstitutionally vague.

Statute Not Facially Void for Overbreadth

19. "A statute is void for overbreadth if it attempts to control conduct by means which invade areas of protected freedom." *State v. Briggs*, 147 N.H. 431, 435 (2002). "[T]he overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep. The criterion of 'substantial overbreadth' **precludes a court** from invalidating a statute on its face simply because of the possibility, however slight, that it might be applied in some unconstitutional manner." *Id.* at 310 (quotation

and citations omitted) (emphasis added). "The application of the overbreadth doctrine is strong medicine to be employed only as a last resort," as "[l]egislative enactments are construed to avoid conflict with constitutional rights." *Id.* (quotation and citations omitted).

20. Defendant still has no right to interfere with a criminal investigation. Order Denying 1A Motion at 13-14 (explaining Defendant has no right to interfere with investigation into her husband, as grand jury found). *See Briggs*, 147 N.H. at 535 ("defendants do not have a protected freedom to interfere with an officer performing an official function"). The statute at issue possess an unauthorized action element combined with a scienter requirement that avoids any conflict with constitutional rights. *See* RSA 629:1, I (no constitutional right to take "a substantial step toward the commission of a crime" "with a purpose that a crime be committed"); RSA 640:3 (no constitutional right to privately address a public servant with a purpose to have such public servant exercise their discretion "on the basis of considerations other than those authorized by law").

21. Nothing in the statutes at issue prohibit an individual from lawfully exercising a constitutional right. Order Denying 1A Motion at 14-15 (finding "that the conduct alleged in the indictments is [not] protected conduct"). A person of ordinary intelligence would understand that while he or she petitions his or her government and may speak on matters publicly, he or she cannot solicit another person to commit a crime or seek to have decisions made about a criminal investigation or prosecution based on who the target is married to. *See State v. Hanes*, 171 N.H. 173 (2018) (discussing role of defendant's subjective intent as required by statute in avoiding conflict with First Amendment). Accordingly, on their face, the statute is not overbroad such as to encompass protected First Amendment conduct. Order Denying 1A Motion at 9-15, 17.

Indictments Not Void for Overbreadth As Applied;
There is (Still) No Summary Judgement in Criminal Cases

22. The Indictments charge Defendant with acting with criminal intent in engaging in her actions. *See Briggs*, 147 N.H. at 435 (no "protected freedom to interfere with an officer performing an official function); *Brown*, 45 U.S. at 55 (criminal solicitation "may properly be prohibited"). Accordingly, to the extent Defendant seeks to challenge the indictments as void for overbreadth as applied to her conduct, she must do so based on the facts as alleged in the Indictments. Defendant cannot make such a challenge based on her version of the facts without stipulating to the allegations – including the *mens rea* as charged in each Indictment. Order Denying 1A Motion at 14 (grand jury determination about facts regarding Defendant's *mens rea* must be deferred to by this Court at this stage of proceedings). *See also State v. Grant-Chase*, 01-S-1141, 2002 N.H. Super. LEXIS 10 at *9 (Hillsborough-North Superior Court, Feb. 8, 2002) (*Lynn*, J.) ("Assuming the State is able to prove these facts [alleged in the indictments], there is no possible way that such conduct on the part of the defendant would be protected by the free speech guarantees of the state or federal constitutions") (citations omitted).

23. However, Defendant does not argue that the Indictments, on their face, sweep protected conduct within the scope of criminal statutes. Instead, Defendant (again) seeks to engage in a summary judgment proceeding under the guise of an as-applied overbreadth challenge (which this Court has already denied).

24. As this Court has already noted in its denial of the 1A Motion, it is the role of the jury at the conclusion of trial – not this Court in a pre-trial proceeding – to decide which of these competing versions of the facts are correct, including whether Defendant acted with the requisite *mens rea* as alleged. Order Denying 1A motion at *14. If, as the grand jury found and the State contends, she did act with the requisite *mens rea*, then the issue of whether such conduct would

be protected conduct would also be moot, as Defendant has no constitutional right to engage in criminal conduct. Because these are the only competing outcomes in a criminal trial of contested facts, *Bisbee* acknowledges that there "is no summary judgment procedure in criminal cases," as there is no need for such a procedure (short of a finding of fact by the jury following trial) once a grand jury has returned a facially valid indictment. *Bisbee*, 165 N.H. 61, 65 (2013) (quotation omitted).

25. To the extent Defendant seeks to raise an as-applied challenge without stipulating to the allegations in the Indictment (including allegations regarding her *mens rea*), Defendant again seeks to have this Court usurp the role of the jury and rule on the type of motion for summary judgment disavowed in *Bisbee* (and which Defendant has acknowledged to be improper). Accordingly, the Indictments are not overbroad as applied to Defendant. Order Denying 1A Motion at 9-15, 17. To the extent Defendant contests the allegations in the Indictment with regards to her criminal intent, this is a matter of fact to be decided at trial. Id.

26. Further, Defendant's repeated arguments about the lack of an explicit *quid pro quo* are irrelevant. *See State v. Farrington*, 161 N.H. 440, 446-47 (2011) ("Nowhere in the plain and ordinary meaning [of solicitation] do we discern any requirement that the defendant must explicitly or affirmatively ask the victim to engage in [prohibited conduct] as the defendant suggests. While we agree that the defendant did not explicitly or affirmatively ask [the victim] to engage in [prohibited conduct], a jury could have found that the defendant intended his communications to [solicit Victim]."); *State v. Labrie*, 171 N.H. 475, 484-85 (2018) (citations omitted) (in that reaffirming lack of need for explicit request under *Farrington*, noting that [t]he defendant's actions prior to, during, and after [solicitation] support the jury's finding of the requisite intent at the time [of the solicitation]). *See also United States v. Blagojevich*, 794 F.3d

729, 738 (7th Cir. 2015) ("[T]he statute does not have a magic-words requirement. Few politicians say, on or off the record, 'I will exchange official act X for payment Y.' Similarly persons who conspire to rob banks or distribute drugs do not propose or sign contracts in the statutory language. 'Nudge, nudge, wink, wink, you know what I mean' can amount to [a crime], just as it can furnish the gist of a Monty Python sketch.").

Additional Arguments Raised by Defendant

27. Defendant argues that the indictment charges a "pure legal impossibility" because then-Governor Sununu "did not possess 'an official discretion' in the purported criminal investigation relating to Geno Marconi." Motion at ¶¶ 6-8. However, pure legal impossibility occurs when a person engages in conduct they believe to be a crime, but which is actual legal (*e.g.*, if a person thinks the speed limit is 55mph when the speed limit is actually 65mph, the person has not attempted to commit a crime by traveling 60mph). Versions of hybrid impossibility, however, do not preclude prosecution. For example, if a defendant intends to hire a hitman to commit murder, to engage in sexual activity with a minor, or to but drugs from a drug dealer, but the defendant is actually speaking to an undercover law enforcement officer, a claim of impossibility is irrelevant because it is the defendant's intent – and not the reality of the situation – which is the relevant consideration. *See* RSA 629:1, I (". . . which, **under the circumstances as he believes them to be**, is an act or omission constituting a substantial step toward the commission of the crime.") (emphasis added); RSA 626:3 (Effect of Ignorance or Mistake); *State v. Lacasse*, 153 N.H. 670 (2006) (upholding conviction of defendant who solicited undercover officer because defendant believed the officer to be a fourteen-year-old female). Further, soliciting then-Governor Sununu to commit the crime of Improper Influence could properly be found to be the "substantial step" Defendant committed in attempting to

commit the crime of Improper Influence. *State v. Kilgus*, 128 N.H. 577, 583 (1986) (solicitation to commit a crime becomes an attempt to commit a crime when the requisites of the attempt statute are met). *See also State v. Casanova*, 164 N.H. 563, 565-66 (2013) (jury need only conclude that defendant intended to commit a variant of the crime attempted and need not unanimously on the specific variant).

28. Defendant also argues that RSA 640:3 "was not intended to reach a discussion with executive or legislative officials." Motion at ¶¶ 18-24. However, RSA 640:3 applies to private addresses to a "public servant." "As used in [RSA 640:2] and the other sections of [RSA Chapter 640, including RSA 640:3]," the term "public servant" is defined as "**any** officer or employee of the state or any political subdivision thereof," including "legislators . . . and persons otherwise performing a governmental function." RSA 640:2, II(a). Also, RSA 640:1 makes clear that executive and legislative officials were clearly within the scope of RSA Chapter 640, as the Legislature specifically placed limits on the use of campaign contributions (which judicial officers do not receive) and "gifts" within the meaning of RSA Chapter 15-B (which applies to the Legislative and Executive Branches) in criminal prosecutions – including for prosecutions under RSA 640:3.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

(A) Deny Defendant's Motion; and

(B) Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: May 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via email and the Court's e-filing system to counsel of record.

/s/ Joe M. Fincham II
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