

STATE OF NEW HAMPSHIRE

Superior Court

Merrimack, ss.

May Term, 2025

State of New Hampshire

No. 217-2024-CR-1167

v.

Anna Barbara Hantz Marconi

REPLY TO STATE'S OBJECTION TO THE DEFENSE MOTION  
TO DISMISS CHARGE OF CRIMINAL SOLICITATION OF IMPROPER INFLUENCE

The defense replies to the State's Objection to the defense Motion to Dismiss Charge of Criminal Solicitation of Improper Influence.

Points in Reply Which Apply to Multiple Motions

1. With respect to this motion and other currently pending motions, the State repeats many of the same erroneous arguments. To avoid wasting the Court's or anyone else's time, the defense addresses those common errors in the defense Reply to the State's Objection to the Defense Motion to Dismiss Charge of Attempt to Commit Improper Influence and adopts those arguments here by reference.

Points Which Apply to this Motion and the related Motion to Dismiss the Charge of Attempt to Commit Improper Influence

2. The points made in the reply to the State's objection to the other inchoate Improper Influence charge, in the Motion to Dismiss the Charge of Attempt to Commit Improper Influence, are equally applicable here and so are not repeated but are incorporated by reference.

The State Relies on Inapplicable Solicitation Cases in this Objection.

3. The cases the State cites to support its argument about solicitation do not come from precedent interpreting RSA 629:2, but from an entirely different statute, RSA 649-B:4 about the prohibited uses of computer services statute. So, for instance, in *State v. Farrington*, 161 N.H.

440 (2011), an appeal of the sufficiency of the evidence, where the appellant argued “that the State introduced insufficient evidence to prove that he attempted to seduce, solicit, lure or entice [a minor] to engage in sexual penetration,” the Court concluded that because “all of the definitions draw upon the common theme of tempting, attracting or leading someone astray,” therefore “a jury could have found that the defendant intended his communications to attract, tempt or invite” the victim. *Id.* at 446-67. The Court said the same in *State v. Labrie*, 171 N.H. 475 (2018), another sufficiency of the evidence challenge to the use of computer services for a prohibited purpose statute. More troubling, in *State v. Carr*, 167 N.H. 264 (2015), a case which the State cites repeatedly, our Court explained that “the actus reus of a solicitation includes an attempt to persuade another to commit a specific offense” and it “ordinarily implies the solicitant’s rejection of the solicitor’s request.” *Id.* at 269-70. That is to say, there must first be an act of persuasion in order to allow the jury to reach the issue of intent.

4. Here, Justice Hantz Marconi is charged with speaking with the Governor concerning a criminal investigation of her husband which was impacting her ability to fulfill her duties on the Court. As the discovery reflects, there was no ask, request, or inference of either. Accordingly, it would be in error to allow the jury to leap over the requirement of an *actus reus* to reach a verdict based on mental state alone.

5. The State also points to *Petition of State (State v. Laporte)*, 157 N.H. 229 (2008) and *State v. Kilgus*, 128 N.H. 577 (1986) to claim that RSA 629:2 is not unconstitutionally vague. *St. Obj.* at ¶ 13. It further claims that the “scienter requirement that a person act ‘with a purpose that another engage in conduct constituting a crime’... ‘gives reasonable notice of the prohibited conduct [and] sets up an ascertainable standard of guilt.’” *Id.* However, neither *Laporte* nor *Kilgus* were constitutional challenges to the attempt statute. *Laporte* was an appeal by the State about the trial court’s interpretation of the endangering welfare of a child statute, not the criminal

solicitation statute. *Laporte*, 157 N.H. at 231. *Kilgus* was a defendant’s appeal of his conviction, specifically “whether solicitation of another to commit a murder, accompanied by a substantial payment of cash and directions regarding how the murder should be performed, is sufficient to constitute the substantial step needed to prove an attempted murder.” *Kilgus*, 128 N.H. at 582. What is relevant from *Kilgus* is that our Court explained that answering that question “involves the interplay” of both the inchoate offense and the substantive crime. *Id.* Thus, contrary to the State’s claim, criminal solicitation of improper influence (or attempted improper influence) does require the court to look at the substantively charged crime. That, in turn, leads to vagueness (and overbreadth) problems because in combination, the statutes do not give reasonable notice of prohibited conduct or set up an ascertainable standard of guilt.

WHEREFORE, the defense respectfully requests that this Court dismiss the indictment for Criminal Solicitation of Improper Influence.

Dated this 15<sup>th</sup> day of May, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Guerriero, do hereby certify that Senior Assistant Attorney General Dan Jimenez and Assistant Attorney General Joseph Fincham are registered e-filers in the Court's electronic filing system and that when filing this motion, I am electing for them to receive a copy of the document through the electronic filing system's system for electronic service.

*/s/ Richard Guerriero*