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 OBSTRUCTING GOVERNMENT ADMINISTRATION

The defense replies to the State's Objection to the defense Motion to Dismiss Charge of Obstructing Government Administration.

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. The arguments here concern the six paragraphs of new material in the State's objection. *See St. Obj.* at ¶¶ 13, 14, 22-25.

The State Incorrectly Claims that the Defense Did Not Present Detailed Arguments or Legal Authority.

2. The State says the defense "baldly asserts" that the phrase "any other unlawful conduct" is "ambiguous and argues from this unsupported premise." Therefore, says the State, "[s]uch a bald assertion is not entitled to judicial review, and this Court should deny the Motion on the ground that it has not been properly briefed." *St. Obj.* at ¶ 13. A simple review of the defense motion and the cases cited by the State shows that the State is wrong.

3. The defense motion is twenty-four pages long. The defense motion specifically notes that "in terms of what 'unlawful conduct' Justice Hantz Marconi is alleged to have committed, the indictment only describes "unlawfully interfering with, attempting to interfere with, and/or soliciting another to interfere with an investigation into Geno Marconi." *D. Mot.* at ¶ 3. The defense motion goes on to explain that the State's indictment "does not identify the public servant, or the public servant's performance or purported performance of an official duty, that Justice Hantz Marconi is alleged to have interfered with." *Id.* It then cites the statements of the State's own witness who did not observe any unlawful interference. *Id.* at ¶¶ 3-6. It is with that three-paragraph background that the defense explains how "the State has taken the residual clause of the statute, 'engaging in any other unlawful conduct' as a springboard to criminalize Justice Hantz Marconi's exercise of her First Amendment rights to express her opinions and concerns to Duprey and Sununu." *Id.* at ¶ 6 (cleaned up). In short, the defense motion explains in detail how the State's use of the term "any other unlawful conduct" is ambiguous.

4. The State cites inapplicable cases involving situations where a defendant did not make a detailed argument or provide legal authority. In *Keenan v. Fearon*, 130 N.H. 494 (1988), the "off-hand invocations of the State Constitution [were] supported neither by argument nor by authority,…were not seriously presented, and in any case their glancing character warrants no extended consideration." *Id.* at 499. Here, the opposite is the case: the defense arguments are supported by both argument and authority, were seriously presented, and were not glancing in character. Likewise, the Court's language in *State v. Chick*, 141 N.H. 503 (1996) concerned a repeated argument *on appeal* where the defendant "did not further elaborate upon" it. *Id.* at 504. The State's citation to *Douglas v. Douglas*, 143 N.H. 419 (1999) is especially off-point because that case involved appellate review, a context emphasized by the court but which the State left out of its quote from the case, and because that case involved a "laundry-list" of complaints as

opposed to the many pages of argument and analysis in the defense motion. *Id.* at 429. As described at length in an earlier reply, here again the State continues to raise invalid procedural objections to deflect from analysis of the substantive issues raised by the defense.

The State's Reliance on *State v. Albers* Is Misplaced.

5. The State claims RSA 642:1 is not void for vagueness because the "New Hampshire Supreme Court has already held that similar language is not unconstitutionally vague." *St. Obj.* at ¶ 14. This argument is based on *State v. Albers*, 113 N.H. 132 (1973). *Albers* was a vagueness and overbreadth challenge to a different statute, RSA 609-A:1, II. The statute did not derive from the Model Penal Code and has since been repealed. In prohibiting "mob action," the statute defined "mob action" as "the assembly of two or more persons to do an unlawful act." *Albers*, 113 N.H. at 133. The Supreme Court concluded "that only assemblies for the purpose of committing unlawful *criminal* acts were intended to be proscribed by RSA 609-A:1, II" and thus cured any vagueness challenge. *Albers*, 113 N.H. at 136. The *Albers* decision says nothing about RSA 642:1 or the language "any other unlawful conduct." However, the Court's narrow interpretation of "unlawful acts" limited them to *criminal* acts saved the statute from being unconstitutionally vague and was based on the specific legislative history of RSA 609-A:1, II. *See Albers*, 113 N.H. at 135-36. The Court said that statute, "[w]as intended to discourage and punish participants in the type of violent and destructive riots which had occurred at Hampton Beach shortly before the bill was introduced." *Id.* at 135. That legislative history says little about RSA 642:1 or how the words "any other unlawful conduct" in that statute should be interpreted but underscores that an overly broad capture of non-criminal conduct implicates constitutionally protected activities.

6. The State nonetheless argues that *Albers* applies because the words "unlawful acts" are similar to "any other unlawful conduct." However, following that logic, at least in the context of

the indictment in this case, leads to an absurdity. The indictment for this charge alleges that Justice Hantz Marconi, "… with a purpose to hinder or interfere with a public servant … engaged in any unlawful conduct…by unlawfully interfering with, attempting to interfere with, and/or soliciting another to interfere with an investigation into Geno Marconi[.]" *Indictment* (CID 2257294C). Thus, the State's interpretation of the statute is circular – the State says Justice Hantz Marconi committed a criminal offense by committing a criminal offense, without identifying any specific unlawful conduct. This is exactly the kind of statute, certainly as applied in this case, which jeopardizes First Amendment rights.

The State's Attempt to Distinguish Precedent Raised by the Defense Is Unpersuasive.

7. The State's attempt to distinguish *State v. Diamond*, 146 N.H. 691 (2001), *State v. Briggs*, 147 N.H. 431 (2002), and *State v. Janisczak*, 579 A.2d 736 (Me. 1990) fails.

8. As the defense explained in its motion, *see D. Mot.* at ¶ 14, "the State has not alleged a specific crime that Justice Hantz Marconi committed…and instead offers the conclusory claim that she was 'unlawfully interfering with, attempting to interfere with, and/or soliciting another to interfere with an investigation into Geno Marconi." The State responds that allegedly "unlawful actions" (although not specified in its indictment) are some of the other crimes alleged in different indictments. *See St. Obj.* at ¶ 23. The problem with the State's argument is these allegedly "unlawful actions" are not specified in the indictment and an "indictment may be amended in form, but not in substance." *State v. Erickson*, 129 N.H. 515, 519 (1987). The indictment does not say that Justice Hantz Marconi committed some "other unlawful act" by allegedly committing Attempt to Commit Improper Influence, Official Oppression, Criminal Solicitation of Official Oppression, or Criminal Solicitation of Misuse of Position. *See St. Obj.* at ¶ 23. It only says that she committed unlawful conduct "by unlawfully interfering with,

attempting to interfere with, and/or soliciting another to interfere with an investigation into Geno Marconi." *Indictment* (CID 2257294C).

9. Moreover, the "unlawful act" must be something other than the obstruction of government administration. The crime under 642:1 is engaging in conduct which is unlawful under some other statute, with the intent to obstruct government administration. As explained by the Commentary to the Model Penal Code and the *Diamond* case, "the unlawful act engaged in must be made unlawful for some reason other than the actor's intent to obstruct a governmental function." *Diamond*, 146 N.H. at 695. Yet, the State itself alleges that Justice Hantz Marconi's intent was the same: "with a purpose to interfere with the investigation into her husband[.]" *St. Obj.* at ¶ 23. Here again, the State's reasoning is circular.

10. The State does not respond to the defense's discussion of *State v. Briggs*, 147 N.H. 431 (2002). *Compare D. Mot.* at ¶¶ 16-18 *with St. Obj.* at ¶ 24. Instead, it merely quotes *Briggs* for the uncontested proposition, *see D. Mot.* at ¶ 17, that "the statute requires only a conscious object to interfere with the public servant; the defendant's underlying or ultimate motive for doing so is irrelevant." *Briggs*, 147 N.H. at 434; *St. Obj.* at ¶ 24. That is beside the point. The defense referenced *Briggs* (1) to contrast the demonstrated interference in *Briggs* with the lack thereof here, *D. Mot.* at ¶ 16; (2) to note that "the indictment fails to specify which public official was performing an official function" because the "State has already conceded that the Governor has no authority or discretion over an Attorney General investigation," *D. Mot.* at ¶ 17; and, (3) to explain why an overbreadth challenge would be different here. *D. Mot.* at ¶ 18.

11. Finally, the State appears to have completely misunderstood the *Janisczak* case. The State says *Janisczak* was about a "Disorderly Conduct statute." *St. Obj.* at ¶ 25. The State then says, "While this case may be instructive if Defendant was charged with Disorderly Conduct, it is irrelevant to the charges pending before this Court." *Id.* The State's premise is completely

wrong. The very first sentence of *Janisczak* says, "Stanley W. Janisczak appeals from a judgment of conviction … for obstructing government administration…". *Janisczak*, 579 A.2d at 737 (underline added). Janisczak was accused of wrongly interfering with the police who were trying to arrest another person. The issue of whether Janisczak engaged in disorderly conduct came up in the court's discussion of whether "there was adequate evidence that Janisczak, with the intent to interfere with the arrest … engaged in a criminal act." *Id* at 738. The trial judge had told the jury that it should consider disorderly conduct as a "criminal act" sufficient to provide the predicate required to convict Janisczak for obstruction of government administration. *Id*. However, the Maine Supreme Court concluded that Janisczak's speech directed at police officers was constitutionally protected and therefore, "there was insufficient evidence presented at trial to find that Janisczak engaged in disorderly conduct under section 501(1)(A), and accordingly there was insufficient evidence of a 'criminal act' presented at trial to substantiate the conviction for obstructing government administration…". *Id*. at 741. In short, when read thoroughly, it is plain that *Janisczak* was a case in which the Maine Supreme Court vacated a conviction for obstruction of government administration because the alleged "unlawful act" predicate was not a crime at all but was instead constitutionally protected activity. As such *Janisczak* is a case directly on point and supportive of the defense arguments that the defendant cannot obstruct government administration without an underlying unlawful act.

WHEREFORE, the defense respectfully requests that this Court dismiss the indictment for Obstructing Government Administration.

Dated this 15th 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