

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 CHARGES OF OFFICIAL OPPRESSION  
AND CRIMINAL SOLICITATION OF OFFICIAL OPPRESSION

The defense replies to the State’s Objection to the defense Motion to Dismiss Charges of Official Oppression and Criminal Solicitation of Official Oppression.

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 State’s Objection to the Defense Motion to Dismiss Charge of Attempt to Commit Improper Influence and adopts those arguments here by reference. As far as the defense can determine, the State’s objection repeats material from its other motions and includes only two paragraphs of “new” material. *See St. Obj.* at ¶¶ 14<sup>1</sup>, 24. The accused responds to those arguments here.

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<sup>1</sup> The defense notes that ¶ 14 of the State’s motion is simply copied from ¶ 22 of its *Obj. to Mot. to Dismiss All Indictments (1A and Judicial Immunity)*.

The Out-of-State Precedent the State Cites Is Recycled from a Prior Pleading and the Cases Involve Different Challenges to Different Language of the Official Oppression Statute.

2. The State claims that because five other courts have held that similar statutes are not unconstitutionally vague, therefore the official oppression statute is not vague here. *Id.* at ¶ 14. Each of the cases cited by the State, however, is easily distinguishable and involves circumstances which have no application to the case before this Court. The first case the State cites, *State v. Heaton*, 125 Wash. App. 1035 (2005), which the State fails to note is an unpublished opinion, concerned a police officer stealing from a citizen during a traffic stop. *State v. Heaton*, No. 30123-7-II, 2005 Wash. App. LEXIS 236, at \*1 (Ct. App. Feb. 8, 2005). In finding no unconstitutional vagueness, the appellate court explained that “[a]lthough the question of what constitutes an unauthorized act is fact specific, it is not vague” because a “person of common intelligence can discern that a police officer taking money from a citizen during a traffic stop is conducting an unauthorized act.” *Id.* at \*6. Nor did it invite arbitrary enforcement because the “unauthorized act here was Heaton’s taking money from a citizen during a traffic stop without legal justification, a clear violation of both these standards and the law.” *Id.* at \*7. A police officer stealing from a citizen in a traffic stop is a far cry from the circumstances here where the defendant is charged as an individual with attempting, via a benign conversation with soliciting then-Governor Sununu, allegedly to engage in official oppression and is also charged as a judge with committing an unauthorized act in that same conversation to interfere with an investigation.

3. *Campbell v. State*, 139 S.W.3d 676 (Ct. App. Tex. 2003) concerned a government official ordering a subordinate to perform work at his home during working hours. *Id.* at 680. The appellate court rejected the vagueness challenge simply because the appellant failed to distinguish the court’s prior holding in *Margraves v. State*, 34 S.W.3d 912 (Tex. Crim. App.

2000). *Campbell*, 139 S.W.3d at 687. *Margraves*, in turn, explained that the “statute requires that a public servant use government property only in ways that are authorized” and this “determination must be made on a case-by-case basis, for it would be impossible for the Legislature to specifically describe in the statute every possible act that would amount to criminal misuse of government property.” *Margraves*, 34 S.W.3d at 921. These decisions have nothing to do with the accused’s vagueness argument here, which is based on the lack of guidance as to which conversations are innocent and which are criminal.

4. *State v. Wood*, 67 Ore. App. 218 (1984) is irrelevant because the charge in that case was not about knowingly committing an unauthorized act, as alleged here, but for knowingly refraining from performing a duty imposed by law. *Id.* at 222-23. Specifically, the defendant, a county commissioner engaged in corrupt land deals in violation of duties imposed on him by Oregon law, “including the duties of good faith, the duty of honesty, [and] the duty of loyalty to the public and his employer.” *Id.* at 223. In response to the defendant’s vagueness challenge, the court of appeals found the statute not vague, relying on a Delaware court decision, *State v. Green*, 376 A.2d 424 (Del. Supr. Ct. 1977)<sup>2</sup> because of “the statutory requirement of a *knowing* violation of duty.” *Wood*, 67 Ore. App. At 223-24. Like the other cases cited by the State, this decision sheds no light on the constitutionality of the statutory provisions at issue here, which cannot be read so broadly as to capture benign conversations and cannot rely on provisions of the Code of Judicial Conduct.

5. Turning to *Zuniga v. State*, 664 S.W.2d 366 (Ct. App. Tex. 1983), that case involved a police officer who picked a woman up, drove her down a dead-end road, parked the car, turned

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<sup>2</sup> *Green* likewise concerned a public servant knowingly refraining from performing a duty clearly inherent in the nature of his office and not the knowing commission of an unauthorized act. *Green*, 376 A.2d at 426.

off the lights, offered her “a small, white pill, ‘for her nervousness,’ and said he wanted ‘to be with her.’” *Id.* at 368. The officer’s argument about vagueness and overbreadth solely concerned “the inclusion of the term ‘mistreatment’ in the statutory definition of the offense of official misconduct.” *Id.* at 370. For the court, because the “mistreatment” had to be unlawful, “[t]his qualification of the term ‘mistreatment’ places the definition of this offense well within the realm of common understanding and clearly prevents it from encroaching upon the area of constitutionally protected activities.” *Id.* at 371. In short, this case has nothing to do with the language of the official oppression alleged here.

6. Finally, the State renews its reference to *State v. Birge*, 16 Wash. App. 2d 16 (2021) even though the defense has distinguished it elsewhere. *See D. Reply St. Obj. D. Mot. Dismiss Official Oppression Charge* at ¶ 5. To recap, *Birge* involved two police officers who encouraged a grandmother to beat her disabled grandchild with a belt while one of the officers held the child down. *Birge*, 16 Wash. App. 2d at 21-22. In finding that the relevant Washington statute was not unconstitutionally vague, the appellate court explained that a “person of reasonable intelligence could understand, applying a sensible and practical interpretation of the statute, that [its] prohibition against ‘intentionally committing an unauthorized act under color of law’ prohibits an officer from breaking a law while acting in their official capacity.” *Id.* at 40 (cleaned up, underline added). As the defense has explained in its other pleadings, the State has failed to identify any unauthorized act or duty by Justice Hantz Marconi outside alleged violations of the Code of Judicial Conduct, which cannot be the basis for criminal or civil liability. *See D. Mot. Dismiss Official Oppression Charge (CID 2257292C); D. Reply St. Obj. D. Mot. Dismiss Official Oppression Charge.*

The State Mischaracterizes State v. Sargent and its Relevance.

7. The State claims that *State v. Sargent* “is a case about the sufficiency of the evidence.” *St. Obj.* at ¶ 24.<sup>3</sup> It is not. Rather, the holding of that case turns on the interpretation of a particular phrase in RSA 643:1. The defendant in *Sargent* made both statutory and constitutional arguments, *Sargent*, 176 N.H. at 716, but the Court never had to reach the constitutional challenges because the Court “conclude[d] that the trial court interpreted the phrase ‘to benefit himself’ too broadly and that, in applying our narrower definition, the evidence was insufficient to prove, beyond a reasonable doubt, that the defendant sought ‘to benefit himself[.]’” *Id.* at 721. That is to say, there was insufficient evidence only *after* the Court engaged in statutory interpretation and narrowed the definition of “to benefit oneself.”

8. The State goes on to claim that “[a]ffecting a criminal investigation into another is not ‘momentary or fleeting,’ but rather is the type of ‘specific advantage [to herself] or improve[ment] of [Defendant’s] situation or that of another’ that the Court approved (by contrast) as a qualified ‘benefit’ under RSA 643:1.” *St. Obj.* at ¶ 24. The State does not accurately quote *Sargent*; the decision said, “someone who acts ‘with a purpose to benefit himself or another,’ RSA 643:1, acts with a purpose to obtain a specific advantage, or to advance or improve his or her situation or that of another.” *Sargent*, 176 N.H. at 719. *See also id.* (“To conclude otherwise would invite the conclusion that RSA 643:1 criminalizes virtually any empathetic, interpersonal conversation which could be the basis for seeking a momentary personal benefit.”). More importantly, the State advances the wholly unsubstantiated claim that Justice Hantz Marconi “affect[ed] a criminal investigation.” *St. Obj.* at ¶ 14. There is no evidence for such an allegation. Without an unauthorized act, there can be no unlawful interference, nor is there any charge that the investigation was actually affected.

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<sup>3</sup> Counsel for the State was on the *Sargent* brief and argued for the State before the Supreme Court.

9. Nor does the State attempt to address the substance of the defense’s discussion of *Sargent*, namely, that *Sargent* makes clear that in instances where the accused never issues an order or makes a request, and at most, makes statements that could be interpreted as “suggestive,” the conduct does not constitute a “desire for a specific benefit.” *See D. Mot.* at ¶ 6. Nor does the State discuss how *Sargent* defined what constitutes an “unauthorized act” and distinguished it from “empathetic, interpersonal conversation.” *See id.* at ¶ 7. Thus, the State fails to respond to the defense’s arguments that applying *Sargent* to the allegations of this case establishes that no official oppression was committed or solicited. *See id.* at ¶¶ 8-9.

WHEREFORE, the defense respectfully requests that the Court dismiss the indictments for Official Oppression and Criminal Solicitation of Official Oppression.

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

Respectfully submitted,

*/s/ Richard Guerriero*  
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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*