

STATE OF NEW HAMPSHIRE

Superior Court

Merrimack, ss.

April Term, 2025

State of New Hampshire

No. 217-2024-CR-1167

v.

Anna Barbara Hantz Marconi

MOTION TO DISMISS INDICTMENTS ALLEGING ATTEMPT OR CRIMINAL
SOLICITATION OF IMPROPER INFLUENCE

The Accused, Justice Anna Barbara Hantz Marconi, moves to dismiss the charges of Attempt to Commit Improper Influence (CID 2259290C) and Criminal Solicitation of Improper Influence (CID 2259291C) because they fail to allege the necessary *mens rea*. Specifically, neither indictment alleges that Justice Hantz Marconi had the mental state of purposefully attempting to “privately address” Governor Sununu or purposefully soliciting anyone to “privately address” the Governor. Nor could the prosecutors have alleged an effort to privately address the Governor since, by all accounts, the meeting with the Governor was scheduled using state email addresses through the state employee who was the Governor’s official scheduler, placed on the Governor’s public calendar, held in his public office, and witnessed by his official Legal Counsel. The meeting was the opposite of a private meeting. Since a purpose to “privately address” a public official is required for an attempt or solicitation to violate the Improper Influence statutes, the indictments are defective and must be dismissed.

1. Justice Anna Barbara Hantz Marconi is charged with Attempt to Commit Improper Influence and Criminal Solicitation (Improper Influence). *Indictments*, CIDs 2259290C, 2259291C.

2. The relevant portion of the Improper Influence statute reads

A person is guilty of a class B felony if he...[p]rivately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the purpose of influencing that discretion on the basis of considerations other than those authorized by law[.]

RSA 640:3, I(b) (underline added). This “prong” of the improper influence statute forms the basis for the attempt and criminal solicitation of the improper influence charges. *Indictments*, CIDs 2259290C, 2259291C.¹

3. The plain text of the relevant portion of the Improper Influence statute, RSA 640:3, requires that the person “[p]rivately address to any public servant...any representation, argument or other communication...”. RSA 640:3, I(b) (underline added).

4. The court “must give effect to all words in a statute and presume that the legislature did not enact superfluous or redundant words.” *State v. Parr*, 175 N.H. 52, 56 (2022) (quoting *State v. Thiel*, 160 N.H. 462, 465 (2010)).

5. The State must prove every element of an offense beyond a reasonable doubt. *See* RSA 625:10.

6. The inchoate crime of attempt “does not require the State to plead and prove the elements of the intended offense.” *State v. Johnson*, 144 N.H. 175, 178 (1999). The attempt statute, RSA 629:1, I, requires the State to prove a purposeful *mens rea*—“a purpose that a crime be committed”—and an *actus reus*—an act or omission “which, under the circumstances as he believes them to be” constitutes “a substantial step toward the commission of the crime.” In the context of attempt to commit Improper Influence, RSA 640:3, I(b), therefore, that means the

¹ The Criminal Solicitation (Improper Influence) charge, CID 2257291C, does not clearly identify which form of improper influence Justice Hantz Marconi is alleged to have solicited. However, because the other “prongs” of the statute require either threats of harm, RSA 640:3, I(a), or failure to report conduct to law enforcement, RSA 640:3, I(c), neither of which is alleged, the Accused assumes the State is alleging a criminal solicitation of RSA 640:3, I(b).

State must prove that it was Justice Hantz Marconi’s purpose to “privately address” then-Governor Sununu, “who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the purpose of influencing that discretion on the basis of considerations other than those authorized by law.” Thus, since the State has not alleged the necessary mental state—that Justice Hantz Marconi had a purpose to privately address then-Governor Sununu—the State has not alleged the crime it purports to charge.

7. Likewise, the inchoate crime of criminal solicitation “requires no overt act other than the offer itself” and the “statute does not require the State to plead and prove the elements of the solicited crime[.]” *State v. Carr*, 167 N.H. 264, 270 (2015). Nevertheless, the State must still prove the purposeful *mens rea*—“a purpose that another engage in conduct constituting a crime”—and an *actus reus*—“an attempt to persuade another to commit a specific offense,” RSA 629:2, I; *Carr*, 167 N.H. at 269-70. In the context of the solicited crime of Improper Influence, RSA 640:3, I(b), that means the State must prove that it was Justice Hantz Marconi’s purpose to “privately address” then-Governor Sununu “who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the purpose of influencing that discretion on the basis of considerations other than those authorized by law.” Thus, since the State has not alleged the necessary mental state—that Justice Hantz Marconi had a purpose to privately address then-Governor Sununu—the State has not alleged the crime it purports to charge.

8. A “complaint that fails to allege every fact necessary to constitute the offense charged is defective.” *State v. Mealey*, 100 N.H. 228, 230 (1956) (quoting *State v. Gosselin*, 110 Vt. 361, 365 (1939)). See also *State v. Shannon*, 125 N.H. 663, 664 (1984) (“For an indictment to be constitutionally sufficient...it ‘must include all of the elements which constitute the offense

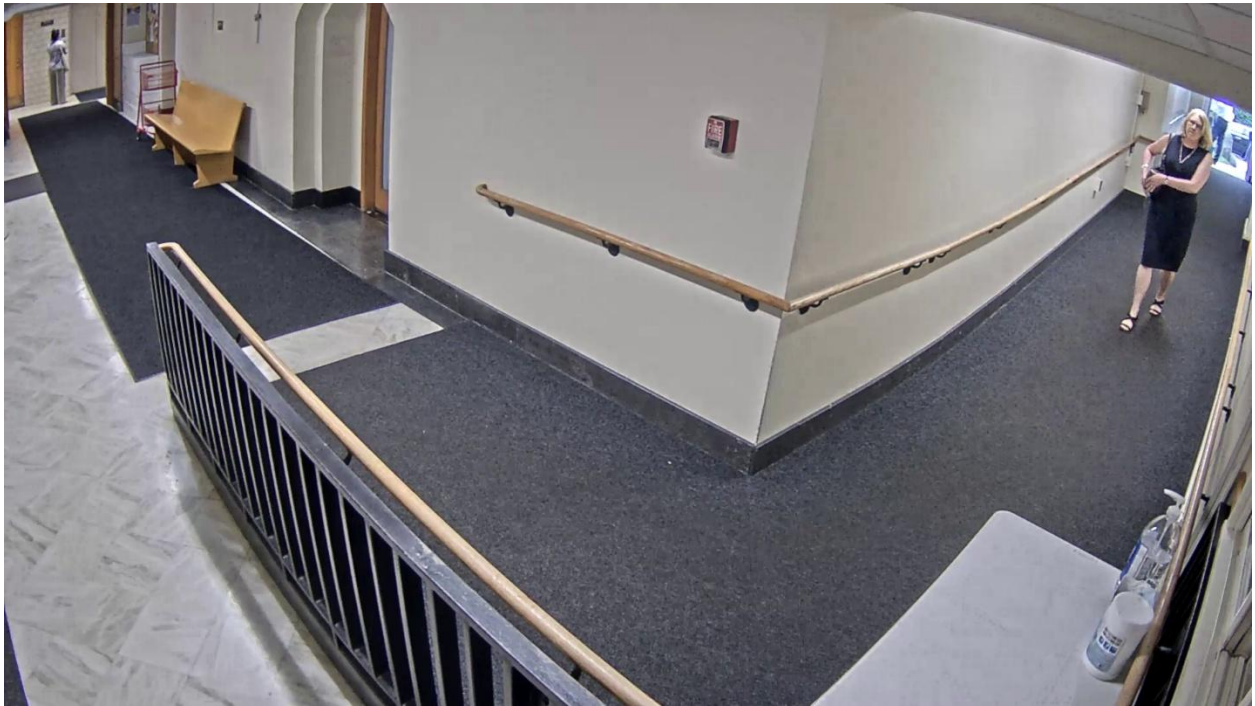
charged[.]’”) (quoting *State v. Stiles*, 123 N.H. 680, 683 (1983)); *State v. Ortiz*, 162 N.H. 585, 588 (2011) (“To be constitutional, the indictment must contain the elements of the offense and enough facts to notify the defendant of the specific charges”) (citing *State v. Ericson*, 159 N.H. 379, 384 (2009)).

9. Thus, in *Shannon*, our court reversed two assault convictions because the indictments failed to “specify the essential element of use of a deadly weapon.” *Shannon*, 125 N.H. at 656. Because the indictments failed to include the necessary elements, the defendant was not provided with sufficient facts that clearly informed him of the alleged acts. *Id.* at 667.

10. Part I, Article 15 of the New Hampshire Constitution guarantees that “No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him[.]” Article 15 guarantees the right to “a lawful accusation by a grand jury.” *State v. Canatella*, 96 N.H. 202, 204 (1950) (internal citation and quotation omitted). *See also State v. Pond*, 132 N.H. 472, 475 (1989) (same).

11. Neither indictment charging improper influence (CID 2257290C; CID 2257291C) makes any mention of a “private address” by Justice Hantz Marconi. Nor could they. As the State is well aware, Justice Hantz Marconi scheduled her meeting with then-Governor Sununu through his Director of Scheduling. D116-117. Justice Hantz Marconi did not request that the meeting be private. *Id.* More importantly, the Governor’s Legal Counsel sat in on the meeting. *See, e.g.*, D123-45 (Sununu discussing including Ogden in the meeting); D184-86 (Ogden discussing Sununu asking him to join the meeting).

12. The screenshots below, pulled from surveillance videos the State provided in discovery, show the same.





13. As seen, the State's own evidence confirms that the meeting was publicly documented in writing and through video evidence.

14. Thus, because the indictments fail to allege a purpose to privately address a public official as required by RSA 640:3, I(b), they fail to state a crime. Moreover, the State cannot amend the indictments to alleged that Justice Hantz Marconi's purpose was to have a private meeting because the State's own evidence proves the opposite. For these reasons, both indictments should be dismissed.

WHEREFORE, the Accused respectfully requests that this court dismiss the attempt and solicitation of improper influence indictments (CIDs 2259290C, 2259290C).

Dated this 4th day of April, 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