ELECTRONICALLY FILED FEB 03, 2023 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff, v. ROBERT CLARK GEDDES, Defendant-Appellant.	S.CT. NO. 22-1009

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
HONORABLE STEPHEN A. OWENS

APPELLANT'S BRIEF AND ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

ASHLEY STEWART
Assistant Appellate Defender
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX
ATTORNEYS FOR DEFENDANT-APPELLANT FINAL

CERTIFICATE OF SERVICE

On the 3rd day of February, 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Robert Clark Geddes, 107 Strawberry Cir, Ames, IA 50010.

APPELLATE DEFENDER'S OFFICE

ASHLEY STEWART
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us

AS/ls/10/22
AS/ls/01/23

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether under Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.2(4), the State presented insufficient evidence to establish that Geddes: (1) had the required intent to commit a hate-crime after committing a simple trespass and (2) targeted a person associated with a person of a certain sexual orientation?

Authorities

State v. Neades, 972 N.W.2d 229 (Iowa Ct. App. 2021)

State v. Crawford, 972 N.W.2d 189 (Iowa 2022)

State v. Heuser, 661 N.W.2d 157, 165 (Iowa 2003)

State v. Thomas, 561 N.W.2d 37, 39 (Iowa 1997)

Rhoades v. State, 848 N.W.2d 22, 26 (Iowa 2014)

State v. Sanford, 814 N.W.2d 611, 615 (Iowa 2012)

State v. Keopasaeuth, 645 N.W.2d 637, 639-640 (Iowa 2002)

State v. Webb, 648 N.W.2d 72, 76 (Iowa 2002)

State v. Gibbs, 239 N.W.2d 866, 867 (Iowa 1976)

State v. Kemp, 688 N.W.2d 785 (Iowa 2004)

State v. Petithory, 702 N.W.2d 854, 856-857 (Iowa 2005)

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State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)

State v. Gonzalez, 718 N.W.2d 307, 307 (Iowa 2006)

Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004)

State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)

State v. Iowa District Court for Jones County, 902 N.W.2d 811, 815 (Iowa 2017)

McGill v. Fish, 790 N.W.2d 113, 11 (Iowa 2010)

State v. Schultz, 604 N.W.2d 60, 62 (Iowa 1999)

Wesley Ret. Servs. Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22, 25 (Iowa 1999)

A. The plain language of Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.(4), read as a whole, require a defendant to have two separate criminal intents for two separate criminal acts.

Iowa Code § 716.7(2)(a)(1)(2019)

Iowa Code § 716.8(3)(2019)

Iowa Code § 729A.2(4) (2019)

B. If this court believes that the plain language of the statute does not clearly provide an understanding of the legislative intent, Iowa case law and Iowa's other hate-crime statutes support Geddes' interpretation.

Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996)

State v. Nall, 894 N.W.2d 514, 518 (Iowa 2017)

State v. Richardson, 890 N.W.2d 609, 618 (Iowa 2017)

State v. Hennings, 791 N.W.2d 828, 835 (Iowa 2010)

State v. Hill, 878 N.W.2d 269 (Iowa 2016)

Iowa Code § 708.2C (2005)

Iowa Code § 729A.2 (2005)

State v. Tribble, 790 N.W.2d 121, 126-127 (Iowa 2010)

Iowa Code § 712.5

Iowa Code § 712.6

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Iowa Code § 729A.2(2) (2019)

Iowa Code § 712.9 (2019)

Iowa Code § 716.6A (2019)

Iowa Code § 716.5

Iowa Code § 716.6

Iowa Code § 716.8(3)

State v. Redmon, 244 N.W.2d 792, 797 (Iowa 1976)

C. The State failed to establish that Geddes had the requisite specific intent to commit a hate crime.

Iowa Code §716.7(2)(a)(1)

State v. Hanes, 790 N.W.2d 545, 554 (Iowa 2010)

State v. Fountain, 786 N.W.2d 260, 263 (Iowa 2010

Iowa Code § 716.8(3)

State v. Redmon, 244 N.W.2d 792, 797 (Iowa 1976)

State v. Adams, 554 N.W.2d 686, 692 (Iowa 1996)

D. Under either the district court's interpretation or Geddes' interpretation of trespass as a hate-crime, the State failed to present sufficient evidence that Geddes targeted a person associated with a person of a certain sexual orientation.

University of California, Davis, LGBTQIA Resource Center Glossary https://lgbtqia.ucdavis.edu/educated/glossary (last visited September 15, 2022)

State v. McIver, 858 N.W.2d 699, 703 (Iowa 2015)

State v. Richardson, 890 N.W.2d 609, 618 (Iowa 2017)

State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006)

Iowa Code § 729A.2 (2019)

American Heritage Dictionary (5th Ed. 2022)

Black's Law Dictionary (11th Ed. 2019)

Roberts v. U.S. Jaycees, 468 U.S. 609, 622 (1984)

Gilmore v. City of Montgomery, 417 U.S. 556, 575 (1974)

NAACP v. Alabama ex. Re. Patterson, 357 U.S. 449, 462 (1958)

NAACP v. Button, 371 U.S. 415, 431 (1963)

II. Whether Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.2(4) violated Geddes' right to free speech under the First Amendment to the United States constitution and Article I, section 7 of the Iowa constitution because: (1) Geddes did not use fighting words; (2) Geddes' speech did not accompany assaultive conduct; and (3) the State did not use the least restrictive means to achieve its purported compelling interest?

Authorities

State v. Allen, 304 N.W.2d 203, 206 (Iowa 1981)

State v. Fox, 491 N.W.2d 527 (Iowa 1992)

State v. Ryan, 501 N.W.2d 516, 517 (Iowa 1993)

State v. Meaner, 480 N.W.2d 872, 878 (Iowa 1992)

U.S. Const. amend. I.

U.S. Const. amend XIV

Gitlow v. People of State of New York, 268 U.S. 652 (1925)

IA. Const. Art. I, §7

State v. Milner, 571 N.W.2d 7, 12 (Iowa 1997)

Des Moines Register & Tribune Co. v. Osmundson, 248 N.W.2d 493, 498 (Iowa 1976)

City of Des Moines v. Engler, 641 N.W.2d 803, 805 (Iowa 2002)

Ashcroft v. American Civil Liberties Union, 535 U.S. 564, 573 (2002)

R.A.V. v. City of St. Paul, Minn., 505 U.S.377, 382 (1992)

Ashcroft v. American Civil Liberties Union, 542 U.S. 656, 660 (2004)

Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015)

Rosenberg v. Rector and Visitors of University of Virginia, 515 U.S. 819, 829 (1995)

U.S. v. Alvarez, 567 U.S. 709, 717 (2012)

United States v. Stevens, 559 U.S. 460, 470 (2010)

United State v. Playboy Entertainment Group, Inc. 529 U.S. 803, 817 (2000)

Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd, 502 U.S. 105, 127 (1991)

Brandenburg v. Ohio, 395 U.S. 444 (1969)

Miller v. California, 413 U.S.15 (1973)

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

Chaplinsky, v. New Hampshire, 315 U.S. 568 (1942)

New York v. Ferber, 458 U.S. 747 (1982)

Watts v. United States, 394 U.S. 705 (1969)

Near v. State of Minnesota ex rel Olson, 283 U.S. 697 (1931)

A. Speech containing fighting words receive the same analysis under the Iowa constitution as the federal constitution.

Chaplinsky, v. New Hampshire, 315 U.S. 568 (1942)

Brandenburg v. Ohio, 395 U.S. 444 (1969)

R.A.V. v. City of St. Paul, Minn., 505 U.S.377, 382 (1992)

Lewis v. New Orleans, 415 U.S. 130, 132 (1974)

Gooding v. Wilson, 405 U.S. 518, 522 (1972)

State v. Milner, 571 N.W.2d 7,14 (Iowa 1997)

Texas v. Johnson, 491 U.S. 397, 406 (1989)

State v. Fritzie, 446 N.W.2d 781, 784 (Iowa 1989)

Wurtz v. Risley, 719 F. 2d 1438, 1442 (9th Cir. 1983)

State v. Fratzke, 446 N.W.2d 781, 784 (Iowa 1989)

a. Geddes' speech is protected because it did not contain fighting words.

State v. Kool, 212 N.W.2d 518, 521 (Iowa 1973)

B. Under the First Amendment, the Iowa Supreme Court has protected speech that is not coupled with assaultive behavior.

State v. McKnight, 511 N.W.2d 389, 390-391 (Iowa 1994)

Iowa Code § 729A.2 (2019)

Iowa Code § 729.5(3) (1992)

Wisconsin v. Mitchell (Mitchell I), 178 Wis.2d 597 (Wisconsin 1993)

Wisconsin v. Mitchell (Mitchell II) 508 U.S. 476, 480 (1993)

Cohen v. California, 403 U.S. 15 (1971)

Brandenburg v. Ohio, 395 U.S.444 (1969)

R.A.V v. City of St. Paul, 505 U.S. 377 (1992)

> **a. Geddes' speech is protected because it was not coupled with assaultive behavior.**

C. Geddes' speech was protected under the First Amendment but the State still attempted to restrict it based on what was expressed in the notes.

D. The hate-crime statute, as-applied to Geddes, does not pass the strict scrutiny test.

United States v. Grace, 461 U.S. 171, 176 (1983)

United States v. O'Brien, 391 U.S. 367, 377 (1968)

Texas v. Johnson, 491 U.S. 397, 398 (1989)

Animal Legal Defense Fund v. Reynolds, 353 F. Supp. 3d 812, 825 (2019)

Animal Legal Defense Fund v. Reynolds, 8 F.4th 781 (2021)

United States v. Alvarez, 567 U.S. 709, 762 (2012)

United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 818 (2000)

Reed v. Town of Gilbert, 576 U.S. 155, 163-165 (2015)

Turner Broadcasting System, Inc. v. F.C.C, 512 U.S. 622, 680 (1994)

McCullen v. Coakley, 573 U.S. 464, 467 (2014)

Whitton v. City of Gladstone, 54 F. 3d 1400, 1406 (8th Cir. 1995)

Iowa Code § 708.7 (1)(a)(1)

Iowa Code § 708.1(a)(5)(b)

III. Whether Iowa Code section 716.7(2)(a)(1) makes it a public offense for a defendant to knowingly enter a property, without the express permission of the owner, and specifically intend to place an inanimate object on or in the property. This statute is unconstitutionally vague as-applied, overbroad as-applied and facially vague under the United States and Iowa constitutions?

Authorities

State v. Allen, 304 N.W.2d 203, 206 (Iowa 1981)

State v. Fox, 491 N.W.2d 527 (Iowa 1992)

State v. Wiederien, 709 N.W.2d 538, 542 (Iowa 2006)

State v. Reed, 618 N.W.2d 538, 542 (Iowa 2000)

State v. Formaro, 773 N.W.2d 834, 840 (Iowa 2009)

State v. Nail, 743 N.W.2d 535, 539 (Iowa 2007)

In re Guardianship of Hedin, 528 N.W.2d 567, 575 (Iowa 1995)

Bruns v. State, 503 N.W.2d 607, 611 (Iowa 1993)

Formaro v. Polk County, 773 N.W.2d 834, 840 (Iowa 2009)

State v. Ryan, 501 N.W.2d 516, 517 (Iowa 1993)

State v. Mehner, 480 N.W.2d 872, 878 (Iowa 1992)

A. Iowa Code section 716.7(2)(a)(1) is vague-as-applied to Geddes.

State v. Hunter, 550 N.W.2d 460, 463 (Iowa 1996)

State v. Robinson, 618 N.W.2d 306 (Iowa 2000)

State v. Musser, 721 N.W.2d 734, 745 (Iowa 2006)

a. Geddes was not put be on notice that his specific conduct was prohibited.

State v. Speck. 242 N.W.2d 287, 290 (Iowa 1976)

State v. Krieger, No. 18-0377, 2019 WL2374393 at *5
(Iowa Ct. App. June 5, 2019)

Florida v. Jardines, 569 U.S. 1, 8 (2013)

Kentucky v. King, 563 U.S. 452, 467 (2011)

b. Iowa Code section 716.7(2)(a)(1) Geddes allowed arbitrary enforcement based on whether the police approve of Geddes' note.

City of Chicago v. Morales, 527 U.S. 41, 64 (1999)

Iowa Code § 716.7(2)(a)(1) (2019)

Akron v. Rowland, 6178 N.E. 2d 138, 145 (Ohio 1993)

B. Iowa code section 716.7(2)(a)(1) is facially vague.

City of Chicago v. Morales, 527 U.S. 41, 56 (1999)

Kolender v. Lawson, 61 U.S. 352, 358 (1983)

a. Iowa Code section 716.7(2)(a)(1) does not provide fair notice that leaving a note on a front door would be a crime.

State v. Musser, 721 N.W.2d734, 745 (Iowa 2006)

Hill v. Colorado, 530 U.S. 703, 732, 120 S. Ct. 2480 (2000)

b. Iowa Code section 716.7(2)(a)(1) is facially vague because it allows arbitrary enforcement.

C. Iowa Code section 716.7(2)(a)(1) is overbroad, as-applied to Geddes, because it sweeps too broadly and invades his federal and state constitutionally protected right to free speech.

State v. Pilcher, 242 N.W.2d 348, 354, (Iowa 1976)

Zwicker v. Koota, 389 U.S. 241, 249-250 (1967)

Grayned v. City of Rockford, 408 U.S. 104, 109 (1972)

State v. Sylvester, 516 N.W.2d 845, 850 (Iowa 1994)

Formaro v. Polk County, 773 N.W.2d 834, 840 (Iowa 2009)

State v. Duncan, 414 N.W.2d 91, 96 (Iowa 1987)

Hoffman Estates v. Flipside Hoffman Estates, 455 U.S. 489, 496 (1983)

City of Maquoketa v. Russell, 484 N.W.2d 179, 181 (Iowa 1992)

Moose Lodge #107 v. Irvis, 407 U.S. 163, 168 (1972)

Griswold v. Connecticut, 381 U.S. 479, 496 (1965)

Michael S. Degan, “Adding the First Amendment to the Fire”: Cross Burning and Hate-Crime Laws, 26 Creighton L. Rev. 1109 (1993)

Burson v. Freeman, 504 U.S. 191, 196 (1992)

United States v. Stevens, 559 U.S. 460, 468 (Iowa 2010)

United States v. Playboy Entertainment Group, 529 U.S. 803, 813 (2000)

Turner Broadcasting System, Inc. v. F.C.C. 512 U.S. 622, 680 (1994)

Iowa Code § 708.7(1)(a)(1)

Iowa Code § 708.1(a)(5)(b)

D. There is no reasonable construction of the statute that can save its constitutionality.

State v. Nail, 743 N.W.2d 535, 539–40 (Iowa 2007)

State v. Millsap, 704 N.W.2d 426, 436 (Iowa 2005)

State v. Seering, 701 N.W.2d 655, 661 (Iowa 2005)

ROUTING STATEMENT

Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.2(4), taken as a whole, define trespass as a hate-crime. The interplay of these code sections has not been interpreted by Iowa appellate courts and thus this case should be retained by the Iowa Supreme Court as it raises substantial issues of first impression. Iowa R. App. P. 6.903(2)(d), 6.1101(2)(c) and 6.1101(2)(a).

Specifically, the Supreme Court should decide the following questions: First, what are the requisite elements to satisfy trespass as a hate-crime, under Iowa Code sections 716.7(2)(a), 716.8(3), and 729A.2? Second, what establishes when “a person is associated with a person of a certain sexual orientation” as referenced in the hate-crime statute? Third, a person commits a trespass when they: (1) knowingly enter onto the property of another, (2) without the express permission of the owner, (3) with the intent to place an inanimate object thereon. Is this law unconstitutionally

vague and overbroad under the federal and state constitution? Fourth, does trespass as a hate-crime violate the free speech protections guaranteed by the federal and state constitution, when it punishes verbal, non-threatening, non-assaultive behavior that expresses an unpopular viewpoint?

STATEMENT OF THE CASE

NATURE OF THE CASE

Defendant-Appellant Robert Geddes appeals his conviction, sentence and judgment following a bench trial and conviction for five counts of Trespass with Intent to Commit a Hate-Crime, in violation of Iowa Code sections 716.7(2); 716.8(3) and 729A.2(4).

COURSE OF PROCEEDING

On June 30, 2021, the State filed a trial information charging Geddes with five counts of Trespass as a Hate-Crime, under Iowa Code sections 716.7, 716.8(3), and 729A.2. (06/30/21 Trial Information) (App. pp.4-6). Geddes entered a written plea of not guilty. (07/12/21 Written Plea of Not

Guilty) (App. pp.7-8). On September 28, 2021, Geddes filed a motion to dismiss all charges, on federal and state constitutional grounds. (09/28/21 Motion to Adjudicate Law Points and Dismiss) (App. pp. 11-27).

The State resisted Geddes' motion. (10/11/21 Resistance to Defendant's Motion to Dismiss) (App. pp.28-33). The district court denied Geddes' motion. (10/12/21 Rulings and Order Denying Defendant's Motion) (App. pp. 34-42). Geddes waived his right to jury trial and had a bench trial on the minutes. The defendant was found guilty as charged on April 18, 2022. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts) (Conf. App. pp. 81-96).

On May 11, 2022, Geddes was sentenced to probation for a term not to exceed two years. (05/11/22 Order of Disposition) (App. pp. 43-46). Geddes filed a timely notice of appeal on June 10, 2022. (06/10/2022 Notice of Appeal) (App. p. 47).

FACTS

The district court found the following to be the facts of the case:

On June 18, 2021, April Burch and Daniel Ginger-Goodson, reported to police that they found a handwritten note taped to the front door of their residence. The note read: "Warning due to high levels of faggotry an investigation has been launched to control the spread of HIV/AIDS. We are sad to say the bare backed orgy has been canceled. Burn that gay flag." The two also reported that a 'Pride' flag was hanging in the window of the building. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts pp. 2, 4; 06/30/21 Minutes of Testimony) (Conf. App. pp. 82, 84, 4-80).

On June 19, 2021, Krystal Cox, Elijah Stines, Lacey Northrup, and the April Burch, the daughter of a homeowner, all residents and homeowners or renters in Boone, County, Iowa, received notes taped on their front doors. The notes all

read: "burn that gay flag". (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts pp. 2, 3-4) (Conf. App. pp. 82-84)

Geddes was identified by his previous employer as the man seen in the video footage leaving the note, at all the homes. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts p. 1) (Conf. App. p. 81).

During the investigation of the incidents, the police report indicated that all residences receiving a note had gay pride flags on display.[1] Each note was linked together by consistent handwriting, matching paper tear marks. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts p. 2) (Conf. App. p. 82).

Any additional pertinent facts will be discussed below.

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[1] Within the Minutes of Testimony, the police refer to the flags at each residence as Pride Flags. (06/30/21 Minutes of Testimony p.12) (Conf. App. p. 15). The State referred to the flags as rainbow flags. (10/11/21 State's Resistance to Def. Motion to Dismiss p. 1, L3) (App. p. 28. It was not clear of the reason the residents were displaying the flags.

ARGUMENT

I. Under Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.2(4), the State presented insufficient evidence to establish that Geddes: (1) had the specific intent to commit a hate crime after committing a simple trespass, and (2) targeted a person associated with a person of a certain sexual orientation.

Preservation of Error: A defendant may challenge the sufficiency of the evidence following a bench trial on appeal irrespective of whether a motion for judgment of acquittal was previously made. State v. Neades, 972 N.W.2d 229 (Iowa Ct. App. 2021); State v. Crawford, 972 N.W.2d 189 (Iowa 2022).

Standard of Review: Sufficiency-of-evidence challenges are reviewed for corrections of errors of law. State v. Heuser, 661 N.W.2d 157, 165 (Iowa 2003) (citing State v. Thomas, 561 N.W.2d 37, 39 (Iowa 1997)). The Court also reviews issues of statutory-interpretation for corrections of errors at law. Rhoades v. State, 848 N.W.2d 22, 26 (Iowa 2014).

Discussion: In reviewing challenges to the sufficiency of the evidence supporting a guilty verdict, courts consider all the evidence viewed in the light most favorable to the State,

including all reasonable inferences that may be fairly drawn from the evidence. State v. Sanford, 814 N.W.2d 611, 615 (Iowa 2012)(quoting State v. Keopasaeuth, 645 N.W.2d 637, 639-640 (Iowa 2002)). The State has the burden of proving "every fact necessary to constitute the crime with which the defendant is charged." State v. Webb, 648 N.W.2d 72,76 (Iowa 2002) (citing State v. Gibbs, 239 N.W.2d 866, 867 (Iowa 1976)).

The Court should uphold the verdict only if it is supported by substantial evidence in the record as a whole. Sanford, 814 N.W.2d 611, 615 (Iowa 2012). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." State v. Kemp, 688 N.W.2d 785 (Iowa 2004) (citing State v. Webb, 648 N.W.2d 72, 75 (Iowa 2002)). However, consideration must be given to all of the evidence, not just evidence supporting the verdict. State v. Petithory, 702 N.W.2d 854, 856-857 (Iowa 2005). "The evidence must raise a fair inference of guilt and

do more than create speculation, suspicion, or conjecture." Webb, 648 N.W.2d 72, 76 (Iowa 2002) (citing State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981)).

There was insufficient evidence in this case for two reasons. First, based on the plain language of the statutes, the offense of trespass as a hate-crime requires two separate criminal intents; intent to leave an inanimate object and intent to commit a hate-crime. The State failed to prove that Geddes had the specific intent to commit a hate-crime. Second, the State failed to prove that Geddes was targeting a person associated with a person of a certain sexual orientation based on the statutory language of Iowa's hate-crime statute.

In order to determine if the State provided sufficient evidence under either argument, the court must interpret the statutes. "The goal of statutory construction is to determine legislative intent." State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006) (quoting State v. Gonzalez, 718 N.W.2d 307, 307 (Iowa 2006).

> [The Court] determine[s] legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary or common meaning by considering the context within which they are used.

State v. Gonzalez, 718 N.W.2d 307, 308 (Iowa 2006) (quoting Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004).

> [The Court] look[s] at a statute in its entirety and [it] avoids interpreting a statute is such a way that portions become redundant or irrelevant. [The Court] search[es] for an interpretation that is reasonable and best achieves the statute's purpose, and avoids absurd results. [The Court] construe[s] criminal statutes strictly with doubts resolved in favor of the accused. If a standard of conduct can be reasonably ascertained by referring to prior judicial decisions, similar situations, the dictionary, or common generally accepted usage, the statute meets the requirements of due process.

State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006) (citations omitted).

"[Our] starting point in statutory interpretation is to determine if the language has a plain and clear meaning with the context of the circumstances presented by the dispute." State v. Iowa District Court for Jones County, 902 N.W.2d

811, 815 (Iowa 2017) (citing McGill v. Fish, 790 N.W.2d 113, 11 (Iowa 2010)). "When the text of the statute is plain and its meaning clear, the court should not search for meaning beyond the express terms of the statute…". State v. Schultz, 604 N.W.2d 60, 62 (Iowa 1999) (quoting Wesley Ret. Servs. Inc. v. Hansen Lind Meyer, Inc., 594 N.W.2d 22, 25 (Iowa 1999)).

A. The plain language of Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.(4), read as a whole, require a defendant to have two separate criminal intents for two separate criminal acts.

In order to determine the elements needed to prove Geddes committed trespass as a hate-crime, the court must review the pertinent code sections. The Iowa trespass code, hate-crime code, and the trespass hate-crime enhancement code section are all needed to define trespass as a hate-crime.

Trespass is governed by Iowa Code section 716.7 and sub-section 716.7(2)(a)(1), which defines trespass as:

> Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to

use, remove therefrom, alter, damage, harass, or *place thereon or therein anything animate or inanimate*…

Iowa Code §716.7(2)(a)(1)(2019) (emphasis added).

Iowa Code section 716.8(3) (Penalties) further defines trespass as a hate-crime stating:

> A person who knowingly trespasses on the property of another with the intent to commit a hate-crime, as defined in section 729A.2, commits a serious misdemeanor.

Iowa Code §716.8(3)(2019).

The trespass enhancement code must be paired with Iowa's hate-crime statute which reads as follows:

> One of the following public offenses was committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability, or *the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability:*
>
> 1. Assault in violation of individual rights under section 708.2C.
> 2. Violations of individual rights under section 712.9.
> 3. Criminal mischief in violation of individual rights under section 716.6A.
> 4. Trespass in violation of individual rights under

section 716.8 subsection 3 and 4.

Iowa Code §729A.2(4) (2019) (emphasis added).

The district court did not specify what elements it considered to form the offense, but it appears from its final ruling, the court determined that the elements were:

> 1. On or about June 19, 2021, the defendant knowingly entered [upon] [in] the property of another.
>
> 2. The defendant knew he did not have the express permission of the owner, lessee, or person in lawful possession.
>
> 3. When the defendant entered, he had the specific intent to place an inanimate object on or in the property.
>
> 4. The defendant entered onto the property and placed the inanimate object because of the defendant's bias toward the property owner's sexual orientation or the property owner's association with a person of a certain sexual orientation as defined in Iowa Code §729A.2.

(04/18/22 Rule 2.17(2) Findings of Fact, Conclusions of Law & Verdicts) (Conf. App. pp. 81-96). Geddes argues that based on the language of the statute, the district court's determination of the elements and his guilt were erroneous.

Based on the plain language of the combined statutes,

the law requires that a defendant: (1) commit a simple trespass, and (2) have specific intent to commit the hate crime, of arson, criminal mischief, assault, trespass, as defined in Iowa Code section 729A.2.

This means that the defendant must have entered property, without the permission, with the intent to leave an inanimate object, which is a simple trespass. After committing a simple trespass, the defendant must then have the specific intent to commit a hate-crime. This interpretation of the statute means that the two specific intents for two distinct criminal actions is required. If a defendant only has the intent to place an inanimate object, it only proves that the defendant committed trespass. In order for the trespass to enhance to a hate-crime, the defendant must intend to commit a separate and distinct crime, apart from the simple trespass.

Thus, the plain language of the trespass as a hate-crime statute results in the following requisite elements:

1. Defendant knowingly entered the property of another.

2. Defendant entered without the permission of the owner.

3. Defendant had the specific intent to place an inanimate object thereon.

4. Defendant had the specific intent to commit a hate crime as defined by Iowa Code section 729A.2.

B. If this court believes that the plain language of the statute does not clearly provide an understanding of the legislative intent, Iowa case law and Iowa's other hate-crime statutes support Geddes' interpretation.

A statute is not ambiguous unless "reasonable minds could differ or be uncertain as to the meaning of the statute." Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa1996). Ambiguity arises in two ways—either from the meaning of specific words or "from the general scope and meaning of the statute when all of its provisions are examined." Id.

"We first consider the plain meaning of the relevant language, read in the context of the entire statute, to determine whether there is ambiguity." State v. Nall, 894

N.W.2d 514, 518 (Iowa 2017). If there is no ambiguity, we apply that plain meaning. Id.; see also State v. Richardson, 890 N.W.2d 609, 618 (Iowa 2017) ("If the language is unambiguous, our inquiry stops there."). Otherwise, we may resort to other tools of statutory interpretation. State v. Nall, 894 N.W.2d 514, 518 (Iowa 2017); see also State v. Richardson, 890 N.W.2d 609, 618 (Iowa 2017) ("Because [the section at issue] is ambiguous, we must employ additional tools of statutory interpretation to ascertain statutory meaning.").

While the Iowa Supreme Court has not reviewed trespass as a hate-crime, the court has discussed assault as a hate-crime. In State v. Hennings, the Iowa Supreme Court addressed assault to inflict serious injury under Iowa's hate crime statute, Iowa Code sections 708.2(c)(1) and 729A.2. In that case, the defendant appealed his conviction for the hate-crime of assault. 791 N.W.2d 828, 835 (Iowa 2010) (overruled on other grounds by State v. Hill, 878 N.W.2d 269 (Iowa

2016)). The Hennings court analyzed the assault code section in conjunction with the hate-crime statute which read:

> A person who commits an assault, as defined in section 708.2 with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor, which is a hate crime defined in 729A.2.

Iowa Code §708.2C (2005)[3]. The Iowa hate-crime law read:

> One of the following public offenses was committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability, or the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability:
>
> Assault in violation of individual rights under section 708.2C.

Iowa Code §729A.2 (2005).

After reviewing the language of the statute, the Hennings court held that the legislature's use of the words "because of" in section 729A.2 requires evidence of a causal connection

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[3] This is the section that provides penalties for assault offenses, including Iowa Code §§ 712.5, 712.6, 712.7, and 712.8

between the defendant's bias and the alleged actions." State v. Hennings, 791 N.W.2d 828, 835 (Iowa 2010); see also State v. Tribble, 790 N.W.2d 121, 126-127 (Iowa 2010) ("When causation does surface as an issue in a criminal case, our law normally requires us to consider if the criminal act is factual cause of the harm. The conduct of a defendant is the factual cause of the harm when the harm would not have occurred absent the conduct.").

The Court also determined that in order to find a defendant guilty of assault under the hate-crime statute, the jury must determine beyond a reasonable doubt that the defendant would not have acted absent the defendant's prejudice. Hennings, 791 N.W.2d 828, 835 (Iowa 2010). The Hennings court decided that the "because of" standard applied after interpreting the statutory plain language of Iowa hate-crime and assault statutes.

Although the Iowa Supreme Court has reviewed assault as a hate-crime, it has never analyzed the two-remaining

hate-crime offenses: arson, criminal mischief.. However, the plain language of those statutes can assist the court in determining the elements required to prove trespass as a hate-crime because of its similar statutory scheme to assault as a hate crime. Iowa Code defines the hate-crime of arson and criminal mischief in the following way:

> "Hate crime" means one of the following public offenses when committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability, or the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability:
>
> 2. Violations of individual rights under section 712.9.
>
> 3. Criminal mischief in violation of individual rights under section 716.6A.

Iowa Code §729A.2(2) (2019). The companion code for arson, section 712.9, reads:

> A violation of section 712.3 through 712.8, which is also a hate crime as defined in section 729A.2, shall be classified and punished as an offense one degree higher than the underlying offense.

Iowa Code §712.9 (2019)[4].

The companion code from criminal mischief, section 716.6A, reads:

> A violation of section 716.5 and 716.6, which is also a hate crime as defined in section 729A.2, shall be classified and punished as an offense one degree higher than the underlying offense.

Iowa Code §716.6A (2019) [5] [6].

This court can interpret the arson and criminal mischief hate-crime statutes, with the same analysis as Hennings because the statutes are written in the same way. While the Hennings decision provides relevant legal analysis to interpret assault, arson, and criminal mischief as a hate-crime, the statutory language for trespass as a hate-crime is fundamentally different than the other hate-crimes. It is because of this difference that the Hennings conclusion cannot be the same conclusion for trespass as a hate-crime.

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[4] These are the sections that define arson offenses, including. Iowa Code §§ 712.5, 712.6, 712.7, and 712.8

[5] Section 716.5 defines criminal mischief in the third degree

[6] Section 716.6 defines criminal mischief in the fourth and fifth degree.

For trespass as a hate-crime, it is clear that there is an additional statute that creates an intent to commit a hate-crime requirement, Iowa Code section 716.8(3). This additional trespass prerequisite demands more than the "because-of" standard established in Hennings. The hate-crime "because of" standard only requires that a defendant commit an act because of his bias. See State v. Tribble, 790 N.W.2d 121, 126-127 (Iowa 2010). But, a specific intent standard requires that a defendant desire a specific outcome from his actions. State v. Redmon, 244 N.W.2d 792, 797 (Iowa 1976) (the offender must have subjectively desired the prohibited result).

Based on the language of the trespass as a hate-crime statute, and the case law, unlike arson, criminal mischief, and assault, trespass hate-crime requires that the State must prove the defendant had two separate intents, including the specific intent to commit a hate-crime. Thus, the State establish both that Geddes: (1) committed a simple trespass by

his intent to leave an inanimate object[7] and (2) he had the separate intent to commit a hate-crime.

C. The State failed to establish that Geddes had the requisite specific intent to commit a hate crime.

> A crime requires proof of specific intent when the statute's proscribed act refers to the defendant's intent to do some further act or achieve some additional consequence. The specific intent is linked to the proscribed act and therefore must be present at the time of the proscribed act.

State v. Hanes, 790 N.W.2d 545, 554 (Iowa 2010) (citations omitted). Specific intent is present when from the circumstances the offender must have subjectively desired the prohibited result. State v. Fountain, 786 N.W.2d 260, 263 (Iowa 2010 (quoting State v. Redmon, 244 N.W.2d 792, 797 (Iowa 1976)). Intent is especially hard to prove with direct evidence, and therefore "proof of intent usually consists of circumstantial evidence." State v. Adams, 554 N.W.2d 686,

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[7] Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate. See Iowa Code §716.7(2)(a)(1)

692 (Iowa 1996).

The enhancement trespass code clearly requires that a defendant must have the specific intent to commit the hate-crime of either arson, assault, criminal mischief or trespass. However, in this case, the State and the district court completely disregarded the specific intent to commit a hate-crime requirement.

During the case the State only presented evidence that Geddes committed a simple trespass. First, the police indicated, and the district court adopted, that there was video surveillance of a man, later identified to be Geddes, on the property of Northup, Stines, Cox, Burch and Ginger-Goodsen,. This evidence could establish that Geddes entered the property of another. (04/18/22 Rule 2.17(2) Findings of Fact, Conclusions of Law & Verdicts p. 1; Minutes of Testimony) (Conf. App. pp. 81, 4-80). Second, the residents all informed the police that they did not provide permission for Geddes to enter the property, which the district court relied on in its

findings. (04/18/22 Rule 2.17(2) Findings of Fact, Conclusions of Law & Verdicts; Minutes of Testimony) (Conf. App. pp. 4-96). These statements could establish that Geddes entered the property without the express permission of the owners. Third, video surveillance showed Geddes leaving the notes, which could satisfy the specific intent to leave an inanimate object. (04/18/22 Rule 2.17(2) Findings of Fact, Conclusions of Law & Verdicts p. 1) (Conf. App. p. 81).

Ostensibly, the State fulfilled the first essential portion of 716.8(3): that the defendant knowingly trespassed. The State relied on the evidence of the simple trespass to prove Geddes' intent to commit a hate-crime. (10/11/21 Resistance to Def. Motion to Dismiss) (App. pp. 28-33). However, this was an erroneous application of the law, because the fact that Geddes left a note only proves his intent to leave an inanimate object. The establishment of this intent shows the simple trespass, but that only satisfies half of the trespass hate-crime offense.

The State's struggle in this case was proving that Geddes

had the specific intent to commit a hate-crime. In the instant case, the State presented no evidence that Geddes intended to commit the hate-crime of either: arson, criminal mischief, assault, or a secondary trespass, separate from the simple trespass he had already committed.

It could be argued that the State relied on the content of the notes to prove the intent to commit a hate-crime, but the content of the notes is not enough, there must be some further action, aside from the simple trespass, present at the time, in order to prove the separate specific intent to commit a hate-crime. See State v. Hanes, 790 N.W.2d 545, 554 (Iowa 2010). Here, aside from the non-threatening words in the note, there was no evidence presented that Geddes took any additional steps to commit any hate-crime (i.e. arson, criminal mischief, assault or another trespass). There was no evidence within the language of the notes that indicated that Geddes planned to commit a hate-crime. Without additional circumstantial evidence, the State cannot use the contents of the note to

satisfy multiple intents. Without this evidence, the State did not meet its burden of proving trespass as a hate-crime.

Conclusion: Because the State failed to present sufficient evidence to prove that Geddes had the required intent to commit a hate-crime on the property, it did not establish the offense of trespass as a hate-crime. Thus, there was insufficient evidence to support a conviction for trespass as a hate-crime. Accordingly, based on the facts of this case, the Court should reverse Geddes' conviction and remand for dismissal.

D. Under either the district court's interpretation or Geddes' interpretation of trespass as a hate-crime, the State failed to present sufficient evidence that Geddes targeted a person associated with a person of a certain sexual orientation.

In this case the State used the portion of the hate-crime statue that dictates a public offense must be committed against a person who is a member of the LGBTQIA[8]

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8 This is often the acronym is used to represent this phrase Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual. University of California, Davis, *LGBTQIA Resource Center Glossary*

community or a person associated with person who is a member of the LGBTQIA community. Here, the State failed to establish either alternative.

First, the State did not present any evidence to establish that any person who received a note identified as a member of the LGBTQIA community. Because this evidence was not presented, the State was limited to proving beyond a reasonable doubt that Geddes intended to commit a hate-crime against a person associated with a person within the LGBTQIA community.

Here, the court must employ tools of statutory interpretation to understand the statute's meaning and determine if Geddes targeted a person associated with a person of a certain sexual orientation. The understanding of the term "association" could be debated and thus it is ambiguous. See State v. McIver, 858 N.W.2d 699, 703 (Iowa 2015) (a statute is ambiguous if reasonable minds can

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https://lgbtqia.ucdavis.edu/educated/glossary (last visited September 15, 2022).

disagree on the meaning of particular words or the statute as a whole.). Because the statute is ambiguous the Court must resort to other tools of interpretation aside from just the plain language. See State v. Richardson, 890 N.W.2d 609, 618 (Iowa 2017) ("Because [the section] is ambiguous, we must employ additional tools of statutory interpretation to ascertain statutory meaning."). Since the legislature has not given any additional statutory definitions for the word "association" and because the court has not established its own definition, the word is given its ordinary and common meaning by considering the context within which it is used. State v. Bower, 725 N.W.2d 435, 442 (Iowa 2006).

Iowa statute defines the violation of individual rights as a hate-crime as follows: a public offense committed against a person or a person's property because of the person's sexual orientation, or the person's *association* with a person of a certain sexual orientation. Iowa Code § 729A.2 (2019) (emphasis added).

Specifically, at issue in this case is whether a home displaying a rainbow flag proves that the resident has an association with a person of a certain sexual orientation as enumerated within the language of the statute.

Association is generally defined by its root word "associate" which is defined as "to connect or involve with a cause, group, or partner; or a person united with another or others in an act, enterprise or business; a partner or a colleague." *American Heritage Dictionary* (5th Ed. 2022). Black's Law Dictionary defines associate "as a colleague or companion." Black's Law Dictionary also supplies a definition for association as "a gathering of people for a common purpose." *Black's Law Dictionary* (11th Ed. 2019). The term association is also enumerated within case law discussing freedom of association.

> Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to *associate* with others in pursuit of a wide variety of political, social, and economic, educational, religious, and cultural ends.

Roberts v. U.S. Jaycees, 468 U.S. 609, 622 (1984)(emphasis added) (a state law which compelled an all-male organization to accept women as regular members did not abridge male members' freedom of intimate association or expressive association). Within case law, associations also receive certain protections to a collective effort on behalf of shared goals, which is especially important in preserving political and cultural diversity and shielding dissident expression from suppression by the majority. See Gilmore v. City of Montgomery, 417 U.S. 556, 575 (1974) (holding that all-white recreation facilities deprived Blacks from equal access to parks and recreational facilities); NAACP v. Alabama ex. Re. Patterson, 357 U.S. 449, 462 (1958) (holding that an order requiring the NAACP to disclose its roster of members violated freedom of association); see also NAACP v. Button, 371 U.S. 415, 431 (1963) (holding that state's attempt to enforce statutes that restricted NAACP Legal Defense fund lawyers from participating in legal actions violated freedom of First

Amendment). The aforementioned cases involving "association" protect a group or person's right to engage with an organization and its activities.

This Court should apply both the American Heritage Dictionary and Black's Law Dictionary definitions within the context of the statute because the definitions establish a link between a person and groups based on vigorous participation or an active relationship. The court can also apply case law that encompasses a person's involvement with an organization that is directly involved with helping members of Iowa's hate-crime protected classes because a person's engagement with an organization or group and its activities could establish that a person is "associated" with a specific organization or group because they have paid dues or actively participated in activities with an organization.

It should be noted that case law pertaining to association also extends to protections of organizations, however, in this case, organizational protections are not relevant because the

hate-crime statute does not protection organizational affiliations but rather individual association.

The simple display of a rainbow flag is not enough to invoke Iowa hate-crime protections. The statute requires more than the displaying of a rainbow object on your property to create an association. The mere presence of a possible gay pride demonstrative does not establish that the homeowner has any connection as a companion, colleague, friend, relative, or that the resident has joined together with a person(s), group, or organization of a certain sexual orientation for a common purpose. There are many reasons why someone might display a rainbow flag, including that they simply like the colors and not necessarily the societal meaning behind the flag. But, even if a person is exhibiting a rainbow flag in support of gay pride, that alone does not establish the person is associated with a specific person within the LGBTQIA community beyond passive or inactive support.

Based on the definitions the more on point examples of

"association" would be: (1) a person paying dues to a group supporting LGBTQIA rights; (2) a person's participation in activities with a person or group of people who share a common goal within the LGBTQIA community; or (3) a person who is in a known familial or social relationship with a person in the LGBTQIA community. The State did not provide any evidence that indicated that Burch, Ginger-Goodson, Cox , Stines, or Northrup were associated with any person in the LGBTQIA community or a LGBTQIA group. There were no statements provided from the residents that explained whether their rainbow flags were intended to support gay rights or simply because they were aesthetically pleasing. There was no evidence presented that the residents were members or allied with any organizations that support gay rights. There was no evidence provided that the homeowners had familial or friendly relationships with any member of the LGBTQIA community. There was no evidence that any resident had any affiliation with a person in the LGBTQIA community.

Conclusion: Because the State failed to present sufficient evidence to prove that any resident or owner who received the note, was a member of a certain sexual orientation or a person associated with a person of a certain sexual orientation under Iowa Code section 729A.2, his conviction should be reversed and dismissed.

II. Iowa Code sections 716.7(2)(a)(1), 716.8(3), and 729A.2(4) violated Geddes' right to free speech under the First Amendment to the United States constitution and Article I, section 7 of the Iowa constitution because: (1) Geddes' speech did not contain fighting words; (2) Geddes' speech did not accompany assaultive conduct; and (3) the State did not use the least restrictive means to achieve its purported compelling interest.

Preservation of Error: In the district court, Geddes argued that Iowa's trespass and hate-crime statutes violated his freedom of speech rights under the First Amendment of the United States Constitution and Article one, section seven of the Iowa Constitutions. (09/28/21 Motion to Adjudicate Law Points and Dismiss) (App. pp. 11-27). The State resisted the defendant's motion. (10/11/21 Resistance to Defendant's

Motion to Dismiss) (App. pp. 28-33). The district court denied Geddes' motion. (10/12/21 Rulings and Order Denying Defendant's Motion) (App. pp. 34-42). Therefore, error was preserved. State v. Allen, 304 N.W.2d 203, 206 (Iowa 1981).

Standard of Review: When a defendant raises constitutional challenges, review is de novo. State v. Fox, 491 N.W.2d 527 (Iowa 1992). The court presumes statutes are constitutional. State v. Ryan, 501 N.W.2d 516, 517 (Iowa 1993). The defendant bears the heavy burden to rebut this presumption. State v. Meaner, 480 N.W.2d 872, 878 (Iowa 1992).

Discussion: The First Amendment of the United States Constitution prohibits Congress from making any law "abridging the freedom of speech." U.S. Const. amend. I. The First Amendment is made binding on the states through the Fourteenth Amendment. U.S. Const. amend XIV; see also Gitlow v. People of State of New York, 268 U.S. 652 (1925).

Article one, section seven of the Iowa Constitution

guarantees the right to free speech as follows, in part:

> Every person may speak, write, and publish sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press.

IA. Const. Art. I, §7.

The Iowa Constitution generally imposes the same restrictions on the regulation of free speech as the United States Constitution. State v. Milner, 571 N.W.2d 7, 12 (Iowa 1997); See also Des Moines Register & Tribune Co. v. Osmundson, 248 N.W.2d 493, 498 (Iowa 1976) ("We believe that the federal and state constitutional provisions, which contain almost identical language, impose the same limitation of the abridgement of freedom of the press."); and City of Des Moines v. Engler, 641 N.W.2d 803, 805 (Iowa 2002) (recognizing that many state constitutions use "language nearly identical to the Iowa" constitution and that "[a] substantial majority of the courts in those states have interpreted this free-speech language as being coextensive

with the of the First Amendment to the federal constitution.”).

“[A]s a general matter, the First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” Ashcroft v. American Civil Liberties Union, 535 U.S. 564, 573 (2002) (internal quotation marks omitted).

The First Amendment generally prevents the government from proscribing speech, or expressive conduct because of the disapproval of the ideas expressed. R.A.V. v. City of St. Paul, Minn., 505 U.S.377, 382 (1992). As a result, the Constitution “demands that content-based restrictions on speech be presumed invalid… and that the Government bear the burden of showing their constitutionality.” Ashcroft v. American Civil Liberties Union, 542 U.S. 656, 660 (2004). “Content-based laws are “those that target speech based on its communicative content.” Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015). And even a facially content-neutral law is considered content-based of it cannot be justified without

reference to the content of the regulated speech, or [was] adopted by the government because of a disagreement with the message [the speech] conveys. Id. at 164. Government discrimination among viewpoints—or the regulation of speech based on 'the specific motivating ideology or the opinion or perspective of the speaker'—is a more blatant' and 'egregious form of content discrimination. Id. at 164 (quoting Rosenberg v. Rector and Visitors of University of Virginia, 515 U.S. 819, 829 (1995)) (holding denial of funding to an outside contractor for printing costs for a Christian student publication amounted to viewpoint discrimination).

> "In light of the substantial and expansive threats to free expression posed by content-based restrictions, this Court has rejected as "startling and dangerous" a "free-floating test for First Amendment coverage ... [based on] an ad hoc balancing of relative social costs and benefits."

United States v. Alvarez, 567 U.S. 709, 717 (2012) (quoting United States v. Stevens, 559 U.S. 460, 470 (2010)) (a federal statute criminalizing the commercial creation, sale, or possession of depictions of animal cruelty was facially invalid

under the First Amendment protection of speech.)

> "From 1791 to the present," however, the First Amendment has "permitted restrictions upon the content of speech in a few limited areas," and has never "include[d] a freedom to disregard these traditional limitations."

United States v. Playboy Entertainment Group, Inc. 529 U.S. 803, 817 (2000) (quoting R.A.V. v. City of St. Paul, 505 U.S.377, 382 (1992)).

"Instead content-based restriction on speech had been permitted, as a general matter, only when confined to the few "historic and traditional categories [of expression] long familiar to the bar." United States v. Stevens, 559 U.S. 460, 468 (2010) (quoting Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd, 502 U.S. 105, 127 (1991)) (a New York' statute requiring an accused or convicted criminal's income from works describing the crime to be deposited into an escrow account and making the funds available to victims of the crime and the criminal's creditor, violated the First Amendment.)

Among these historical and traditional categories are: (1) advocacy intended and likely to incite imminent lawless action, (2) obscenity, (3) defamation, (4) speech integral to criminal conduct, also known as fighting words, (5) child pornography, (6) true threats, and (7) speech presenting some grave and imminent threat the government has the power to prevent. United States v. Alavarez, 567 U.S. 709, 717 (2012). See Brandenburg v. Ohio, 395 U.S. 444 (1969) (a Klu Klux Klan member had held a locally broadcasted Klan rally, which included racist threats and the court reversed his conviction holding that the rally did not create a true threat of imminent violence); Miller v. California, 413 U.S.15 (1973) (art work may be subject to state regulation where that work, taken as a whole, appeals to the prurient interest in sex; portrays it in a patently offensive way does not have serious literary, artistic, political or scientific value), New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (Alabama rule was unconstitutional for failure to provide safeguards for freedom of speech and of the

press required by the First and Fourteenth Amendments in a libel action), Chaplinsky, v. New Hampshire, 315 U.S. 568 (1942) (a state statue prohibiting the use of offensive, derisive, or annoying words to any other person who is lawfully in any street or other public place violated the First Amendment protections); New York v. Ferber, 458 U.S. 747 (1982) (child pornography is not entitled to First Amendment protection provided the conduct to be prohibited is adequately defined by applicable state law), Watts v. United States, 394 U.S. 705 (1969) (defendant's alleged statement that he would refuse induction into armed forces and threatening to shoot president Lyndon Baines Johnson did not amount to a threat against the life of the President of the United States), and Near v. State of Minnesota ex rel Olson, 283 U.S. 697 (1931) (a state statute punishing the publishing, distribution of any obscene, lewd, lascivious, malicious, defamatory, and/or scandalous newspaper or magazine infringed on the liberty of the press).

These cases are examples of "well-defined" and narrowly

limited class of speech restrictions, the prevention and punishment of which have never been thought to raise any Constitutional problems." United States v. Stevens, 559 U.S. 460, 469 (2010) (quoting Chaplinsky, v. New Hampshire, 315 U.S. 568, 571-572 (1942)). However, these cases "do not establish the proposition that the First Amendment imposes no obstacle whatsoever to regulation of instances particular of such proscribable [sic] expression, so that the government 'may regulate [them] freely." R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 399 (1992) (White, J. concurring).

> That would mean that a city council could enact an ordinance prohibiting only those legally obscene works that contain criticism of the city government or, indeed, that do not include endorsement of the city government. Such a simplistic, all-or-nothing-at-all approach to First Amendment protection is at odds with common sense and with our jurisprudence as well.

Id. at 385. "[T]he government may not regulate use" of unprotected speech "based on hostility—or favoritism—towards the underlying message expressed.")

A. Speech containing fighting words receive the same analysis under the Iowa constitution as the federal

constitution.

Fighting words are part of the limited class of speech that the government can regulate. See Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) (a state statue prohibiting the use of offensive, derisive, or annoying words to any other person who is lawfully in any street or other public place violated the First Amendment protections). See also Brandenburg v. Ohio, 395 U.S. 444 (1969) (a Klu Klux Klan member's racist threat-filled rally did not create a true threat of imminent violence).

It is not true that fighting words have at most "de minimis" expressive content, or that their content is in all respects "worthless and undeserving" of the constitutional protection. R.A.V. v. City of St. Paul, Minn., 505 U.S.377, 400 (1992) (White, J. concurring).

> Sometimes they are quite expressive indeed. We have not said that they constitute no part of the expression of ideas, but only that they constitute no essential part of any exposition of ideas.

R.A.V. v. City of St. Paul, Minn., 505 U.S.377, 385 (1992)

(quoting Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942)).

States are free to restrict free speech protections for "fighting words" and can prohibit them. Chaplinsky, v. New Hampshire, 315 U.S. 568 (1942). See also Lewis v. New Orleans, 415 U.S. 130, 132 (1974) (holding unconstitutional under the First Amendment, a state ordinance, making it an unlawful breach of the peace for any person "wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duties," because it made no meaningful attempt to limit or properly define "opprobrious" or any of the term in the ordinance); Gooding v. Wilson, 405 U.S. 518, 522 (1972) (holding facially unconstitutional, under the First Amendment, a Georgia statute, providing that any "person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be

guilty of a misdemeanor"' because it had not been narrowed to apply only to fighting word.); State v. Milner, 571 N.W.2d 7,14 (Iowa 1997) (the defendant's statements were not mere expressions of dissatisfaction with government employees, they were…threats to place an explosive device in or near the DES building).

However, the Constitution does not allow states to assume that every expression of a provocative idea will incite violence. Texas v. Johnson, 491 U.S. 397, 406 (1989). Instead the courts are required to carefully consider the actual circumstances surrounding such expression, asking whether the expression "is directed to inciting or producing imminent lawless action." State v. Fritzie, 446 N.W.2d 781, 784 (Iowa 1989) (quoting Texas v. Johnson, 491 U.S. 397, 398 (1989)) (holding: (1) defendant's act of burning an American flag during protest rally was expressive conduct protected by the First Amendment, and (2) the State could not justify prosecution of defendant based on interest in preventing

breach of peace or to preserve flag as symbol of nationhood and national unity.)

Iowa appellate courts have held that "the right to speak one's mind in criticism does not insulate all of one's words from state action. The Iowa Supreme Court has further stated that "threats as an expression on an intention to inflict injury or damage on another…" are fighting words. State v. Milner, 571 N.W.2d 7, 13 (Iowa 1997) (citing Wurtz v. Risley, 719 F. 2d 1438, 1442 (9th Cir. 1983)) (holding that a defendant's statements were not protected under the federal or state constitution because they were not mere expressions of dissatisfaction with government employees but were threats to place an explosive device.) Restraint on free speech is justified in a case where the speaker uses "fighting words". State v. Fratzke, 446 N.W.2d 781, 784 (Iowa 1989). Using "fighting words" subjects one to a narrowly defined exception to the First Amendment guarantees of free speech. Id. In State v. Fratzke, the Iowa Supreme Court held that a

defendant's "nasty letter" to a police officer, which included disparaging and "occasionally profane" remarks, was protected as free speech because the words did not rise to the level of "fighting words". Fratzke, 446 N.W.2d 781 (Iowa 1989).

a. Geddes' speech is protected because it did not contain fighting words.

Geddes notes said "burn that gay flag" and this statement cannot be interpreted as a threat of violence. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts p. 2; 06/30/21 Minutes of Testimony) (Conf. App. pp. 82, 4-80). Geddes' notes, no matter if perceived to be offensive, only told homeowners to burn their own rainbow flags, it did not encourage anyone else to act or state that Geddes would burn the flags. Perhaps, if Geddes had written a different message such as "I will burn your gay flag" or "if you don't burn that gay flag, I will return to burn your flag", such language would no longer be protected because of the inclusion of the implied threat. But that is not the situation at hand.

The other note that Geddes left stated: “Warning due to high levels of faggotry an investigation has been launched to control the spread of HIV/AIDS. We are sad to say the bare backed orgy has been canceled. Burn that gay flag”. (04/18/22 District Court Rule 2.17(2) Findings of Fact, Conclusions of Law and Verdicts p. 2; 6/30/21 Minutes of Testimony, p. 34) (Conf. App. pp. 82, 38). This note might have been perceived to be even more offensive than the other notes, but it was also non-threatening and did not rise to the level of fighting words.

Aside from not including fighting words, Geddes’ words did not incite violence. In this case, there is no evidence that anyone was home when Geddes left the notes, so no homeowner or resident would have felt the need to confront Geddes. Further, there is no evidence that Geddes knocked on the doors, which shows even less or a confrontational action. Under different circumstances such as if Geddes had distributed these notes face-to-face, one-on-one, or even in a

large crowd of people, the protections offered by the First Amendment may be restricted. In those conditions, it is possible, the receiver of the note would have felt compelled to defend themselves from the unwanted interaction.

But, that is not the situation in this instance, here the contact was one-sided and no person was present when the notes were placed on the doors. Cf. State v. Fratzke, 446 N.W.2d 781, 785 (1989) ("[N]ot only was Fratzke's words contained in a letter – a mode of expression far removed from a heated, face-to-face exchange – the letter was mailed not to the trooper's home but to the clerk of court, a neutral intermediary…"). See also State v. Kool, 212 N.W.2d 518, 521 (Iowa 1973) (overturning the desecration conviction of defendant who hung a peace sign in front of an upside-down American flag because the action had no likelihood to incite violence).

Thus, without the threats of actual violence or inciting violence, Geddes did not relinquish the protections provided

by the First Amendment or Article one, section seven of the Iowa Constitution.

B. Under the First Amendment, the Iowa Supreme Court has protected speech that is not coupled with assaultive behavior.

Iowa appellate courts have never scrutinized whether, verbal, non-assaultive speech penalized by the hate-crime statute[9] violates the right to free speech under both the United States and Iowa Constitutions. But, the Iowa Supreme Court did address whether speech alone is protected under the current hate-crime's predecessor: Iowa Code section 729.5 (3).

In State v. McKnight, the defendant approached an African American male driver after intentionally running the vehicle off the road. The defendant then advanced on the

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9 One of the following public offenses was committed against a person or a person's property because of the person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability, or the person's association with a person of a certain race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability. Iowa Code § 729A.2 (2019).

Black driver and used derogatory, offensive, and racist words to address him. The defendant and his accomplice then began to physically assault the driver repeatedly. McKnight, 511 N.W.2d 389, 390-391 (Iowa 1994). The defendant, originally charged with assault causing serious bodily injury, second degree criminal mischief, and infringement of individual rights under Iowa's hate-crime statute, was convicted of criminal mischief and infringement of individual rights. Id. at 391. At the time the Iowa hate-crime statute provided:

> A person who maliciously and intentionally intimidates or interferes with another person because of that person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability, and while doing so commits any of the following acts, is guilty of an aggravated misdemeanor…

Iowa Code § 729.5(3) (1992); McKnight, 511 N.W.2d at 392.

The defendant relied heavily on Wisconsin v. Mitchell (*Mitchell I*), 178 Wis.2d 597 (Wisconsin 1993), which helped him, but *Mitchell II*, 508 U.S. 476 (1993), was pending before the United States Supreme Court. McKnight argued that

Iowa's hate-crime statute violated his First Amendment rights.

In *Mitchell I* and *Mitchell II*, a defendant challenged the enhancement of his aggravated battery conviction, under an enhancement statute that provided a greater sentence if the defendant intentionally selected a victim based on the victim's race. Wisconsin v. Mitchell (*Mitchell II*) 508 U.S. 476, 480 (1993). The U.S. Supreme Court rejected the free speech content-based argument in *Mitchell I* and held that "a physical assault is not by any stretch of the imagination, expressive conduct protected by the First Amendment." Id. at 484. "No violence and other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to constitutional protection." Id. at 484. Physical assault is not expressive conduct protected by the First Amendment, though the person committing the assault intends to thereby express an idea. Id. at 484.

This conclusion, pairs with the other case conclusions drawn by the United States Supreme Court in previous free

speech First Amendment challenges, that state words with violence can be restricted. See Cohen v. California, 403 U.S. 15 (1971) (threatening speech may be restricted, but it must precipitate a threat of imminent violence). See also Brandenburg v. Ohio, 395 U.S.444 (1969) (a rally in which threats of violence were spoken did not create a true threat of imminent violence); R.A.V v. City of St. Paul, 505 U.S. 377 (1992) (city ordinance was unconstitutional because it sought to proscribe messages of hatred instead of modes of communication.)

Applying the decisions in R.A.V. and *Mitchell II*, the McKnight court upheld the Iowa hate-crime statute as constitutional under the First Amendment related to McKnight's objection. The Court determined that the Iowa hate-crime statute was similar to that in Wisconsin, and did not protect physically assaultive behavior. The Court reasoned that defendant's speech was not protected because it went beyond mere words and into actions that were assaultive.

The Iowa Supreme Court held "…we see no meaningful difference between the Wisconsin statute and Iowa Code section 729.5(3). Both are directed at non-verbal, proscribed conduct – for example assault-motivated by bias." State v. McKnight, 511 N.W.2d 389, 396 (Iowa 1994). The court added:

> "The difference between *R.A.V.* and *Mitchell II* boils down to this: had McKnight limited his attack on Rone [victim] to mere words, the First Amendment would have protected his right to do so. He lost that protection when his racial bias toward Blacks drove him to couple words with assaultive conduct toward Rone, who is Black. In these circumstances, the words and the assault are inextricably intertwined in the First Amendment."

Id. at 395; See R.A.V v. City of St. Paul, 505 U.S. 377 (1992), and Wisconsin v. Mitchell (*Mitchell II*), 508 U.S. 476 (1993).

a. Geddes' speech is protected because it was not coupled with assaultive behavior.

The fundamental difference between McKnight and Geddes' case is that Geddes' speech was not combined with assaultive behavior. Without an accompanying assault or non-verbal physical conduct, Geddes did not relinquish the protections provided by the First Amendment or Article one,

section seven.

C. Geddes' speech was protected under the First Amendment but the State still attempted to restrict it based on what was expressed in the notes.

Geddes contends that because his speech did not include fighting words and/or accompany assaultive or physical behavior, the government only attempted to restrict his speech based on the unpopular viewpoints expressed.

In this case, the State alleged that, the hate-crime was committed with Geddes' "intent to leave a *hateful* note on their [Northup. Stines, Ginger-Goodsen, Burch, and Cox's] doorstep." (10/11/21 Resistance to Defendant's Motion to Dismiss p. 4) (App.pp. 28-33) (emphasis added). The crucial and important part of the State's argument is that it depends heavily on the content of the note and the viewpoint expressed therein. Because of Geddes' viewpoints, contained in the notes, he was subjected to an enhanced punishment. The State aimed the statute at prohibiting Geddes' communication simply because the government did not agree with his speech.

This is a direct violation of the protections of free speech rights. Geddes received harsher punishment than a trespasser leaving a complimentary note would have received. Thus, it is clear, that the prosecution of the crime turns on the viewpoint of the speech made by Geddes.

D. The hate-crime statute, as-applied to Geddes, does not pass the strict scrutiny test.

In order for the government to restrict Geddes' protected speech, the State must establish that there was a compelling interest and that the statute, as-applied to Geddes, was narrowly tailored. The Supreme Court has allowed governments to restrict protected categories of speech in a limited number of circumstances encompassing: (1) where the government enact time, place, and manner restrictions; (2) where the government seeks only to restrict a non-speech aspect of expression unrelated to the content of the speech; and (3) where the government satisfies strict scrutiny by demonstrating a compelling reason for intruding upon First Amendment freedoms, by using the least restrictive means to

serve that compelling interest. United States v. Grace, 461 U.S. 171, 176 (1983). See also United States v. O'Brien, 391 U.S. 367, 377 (1968) (creating a four-part test to determine when governments laws affecting expression may be valid); and Texas v. Johnson, 491 U.S. 397, 398 (1989) (defendant's act of burning American flag during protest rally was expressive conduct within protection of the First Amendment.)

When the State does seek to regulate protected speech, it bears the heavy burden of showing that the prohibition satisfies constitutional scrutiny. Animal Legal Defense Fund v. Reynolds, 353 F. Supp. 3d 812, 825 (2019) aff'd in part, rev'd in part by Animal Legal Defense Fund, 8 F.4th 781 (2021) (citing United States v. Alvarez, 567 U.S. 709, 762 (2012)). This burden is " for good reason" because "were we to give the Government the benefit of the doubt when it attempted to restrict speech, we would risk leaving regulations in place that sought to shape our unique personalities or to silence dissenting ideas." Animal Legal Defense Fund v. Reynolds,

353 F. Supp. 3d 812, 824 (2019) (quoting United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 818 (2000)) (a provision requiring cable operators either to scramble sexually explicit channels in full or limit programming certain hours, violated the First Amendment's free speech clause, absent showing by government that provision was least restrictive means of achieving goal of preventing children from hearing or seeing the images). In general, content-based and view-point based laws "are subject to strict scrutiny" and "are presumptively unconstitutional." Reed v. Town of Gilbert, 576 U.S. 155, 163-165 (2015).

Therefore, under strict scrutiny, a content or viewpoint-based law is presumptively unconstitutional and will be justified only if the State proves that the law is narrowly tailored to serve a compelling interest. United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 813 (2000). To be narrowly tailored, the speech restriction must be the least restrictive means available to achieve the compelling

interest and must not be underinclusive. Id. at 468.

> Strict scrutiny is an exacting test. It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has be to preserved; and even then the law must restrict as little speech as possible to serve the goal.

Turner Broadcasting System, Inc. v. F.C.C, 512 U.S. 622, 680 (1994). To meet the narrow tailoring requirement, however, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interest, not simply that the chosen route is easier. McCullen v. Coakley, 573 U.S. 464, 467 (2014).

Arguably, in this case, the State's compelling interest is to protect certain classifications of people from being specifically targeted based on their differences. It is conceivable that this Court, will find that interest to be sufficient, however, even if the State can establish a compelling interest, it must still prove that the statute is narrowly tailored to protect that interest. See Whitton v. City of Gladstone, 54 F. 3d 1400, 1406 (8th Cir. 1995). ("[E]ven

when a government supplies content-neutral justification for the regulation, that justification is not given controlling weight without further inquiry.").

The law in this case, as-applied, does not limit the punishment to speech that threatens, incites violence, or is paired with assaultive conduct, but rather incorporates speech that is protected but is perceived by the State to be motivated by bias. Here, the law, as-applied, focuses solely on particular viewpoints that the State found to be "hateful" despite that speech being protected by the federal and state constitutions.

Further, if the State's compelling interest is to protect classifications of people from being targeted, there are other laws in the Iowa criminal code that would serve that purpose. See Iowa Code section 708.7 (1)(a)(1) (a person commits harassment when, with intent to intimidate, annoy, alarm another person communicated with another by telephone, telegraph, writing, via electronic communication without

legitimate purpose and in a manner likely to cause the other person annoyance or harm). See Iowa Code section 708.1(a)(5)(b) (a person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following: A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.). All of the aforementioned harassment code sections would achieve the government's compelling interest and would be less restrictive on free speech. Here, the law fails to pass the strict scrutiny test because it is not narrowly tailored to fit a compelling government interest.

Conclusion: As-applied to Geddes, because Iowa Code sections 716.7, 716.8(3) and 729A.2 restrict his speech, it violated his free speech rights under both the federal and state constitution, thus Geddes' conviction should be reversed and dismissed.

III. Iowa Code section 716.7(2)(a)(1) makes it a public offense for a defendant to knowingly enter a property, without the express permission of the owner, and specifically intend to place an inanimate object on or in the property. This statute is unconstitutionally vague as-applied, overbroad as-applied and facially vague under the United States and Iowa constitutions.

Preservation of Error: In the district court, Geddes argued that the trespass statute and the hate-crime statute were vague and overbroad, which violated his right to due process under the Fourteenth Amendment to the United States Constitution and article one, section nine of the Iowa Constitution. Geddes also argued that the Iowa trespass statute and hate-crime statute violated his freedom of speech rights under the First Amendment of the United States Constitution and Article one, section seven of the Iowa Constitution. (09/28/21 Motion to Adjudicate Law Points and Dismiss) (App. pp. 11-27). Specifically, in relation to both vagueness, overbreadth, and free speech, Geddes stated:

> To convict Geddes of trespass for the act of leaving a note – would constitute a prosecution *selectively chosen* to punish his constitutionally free speech. …Geddes would not be facing punishment were it not *for the content of the*

speech contained in the notes.

(09/28/21 Motion to Adjudicate Law Points and Dismiss, p. 5, L6-9) (emphasis added) (App. p. 15). Geddes maintained that the statutes were constitutionally vague. (09/28/21 Motion to Adjudicate Law Points and Dismiss pp. 5-6, L9-10) (App. pp. 15-16). The State filed a resistance to Geddes' motion. (10/11/ 21 Resistance to Defendant's Motion) (App. pp. 28-33). The district court denied the motion ruling:

> The statutes charged in the trial information [harassment and trespass as a hate-crime] do not violate or infringe on the defendant's free speech rights, nor due process rights under state or federal constitutions. Further the statutes are not vague or overbroad as to deprive the defendant of equal protection of law.

(10/12/21 Rulings and Order Denying Defendant's Motion) (App. pp. 34-42). Therefore, error was preserved. State v. Allen, 304 N.W.2d 203, 206 (Iowa 1981).

Standard of Review: When a defendant raises constitutional challenges, reviews are de novo. State v. Fox, 491 N.W.2d 527 (Iowa 1992).

Discussion: The Due Process Clause of the Fourteenth

Amendment to the United States Constitution prohibits vague statutes. State v. Wiederien, 709 N.W.2d 538, 542 (Iowa 2006) (citing State v. Reed, 618 N.W.2d 538, 542 (Iowa 2000). The Iowa Supreme Court has held that a "similar prohibition has been recognized under the Iowa due process clause found in Article one, section nine of the Iowa Constitution." State v. Formaro, 773 N.W.2d 834, 840 (Iowa 2009). "This Court has generally deemed the federal and state due process clauses to be "identical in scope, import, and purpose." State v. Nail, 743 N.W.2d 535, 539 (Iowa 2007) (quoting In re Guardianship of Hedin, 528 N.W.2d 567, 575 (Iowa 1995)) (quoting Bruns v. State, 503 N.W.2d 607, 611 (Iowa 1993)).

There are three generally cited underpinnings of the void-for-vagueness doctrine. (1) a statute cannot be so vague that it does not give persons of ordinary understanding fair notice that certain conduct is prohibited; (2) due process requires that statutes provide those clothed with authority sufficient grounds to prevent the exercise of power in an arbitrary or

discriminatory fashion; and (3) a statute cannot sweep so broadly as to prohibit substantial constitutionally-protected activities, such as speech protected under the first amendment. Formaro v. Polk County, 773 N.W.2d 834, 840 (Iowa 2009). The court presumes statutes are constitutional. State v. Ryan, 501 N.W.2d 516, 517 (Iowa 1993). The defendant bears the heavy burden to rebut this presumption. State v. Mehner, 480 N.W.2d 872, 878 (Iowa 1992).

A. Iowa Code section 716.7(2)(a)(1) is vague-as-applied to Geddes.

"A defendant charged with violation of a statute has the standing to claim the statute is unconstitutionally vague as applied to him or her." State v. Hunter, 550 N.W.2d 460, 463 (Iowa 1996) (overruled on other grounds by State v. Robinson, 618 N.W.2d 306 (Iowa 2000)). With a vague-as-applied challenge, the question is "whether the defendant's conduct clearly falls within the proscription of the statute under any construction." State v. Musser, 721 N.W.2d 734, 745 (Iowa 2006) (quoting State v. Hunter, 550 N.W.2d 460, 463 (Iowa

1996)). In this case, Geddes was convicted of trespass in violation of Iowa Code section 716.7(2)(a)(1) because he left a note at a residential front door. Iowa Code section 716.7(2)(a)(1) is unconstitutionally vague because: (1) a person of ordinary intelligence would not understand that leaving an object on or near the front door of a residence constitutes a trespass, (2) the statute promotes arbitrary and discriminatory enforcement, and (3) it sweeps within the purview of a constitutionally protected activity, Geddes' right to free speech.

a. Geddes was not put be on notice that his specific conduct was prohibited.

A criminal statute "must give a person of ordinary intelligence fair warning of what is prohibited, and, in order to avoid arbitrary discriminatory enforcement, it must provide an explicit standard for those who apply it." State v. Speck. 242 N.W.2d 287, 290 (Iowa 1976).

The question in this case is whether the trespass statute gave notice, under any reasonable construction of the statute, that Geddes' conduct "clearly" constituted "trespassing" when

he left an inanimate object. In this case, the answer to the question is no because it was not clear – from the statute- that Geddes' conduct was prohibited or punishable. See State v. Musser, 721 N.W.2d 734, 745 (Iowa 2006).

In American society, it is often assumed by its citizens that a person has implied permission to approach a residential home to leave an object, often a piece of paper, such as a note or a flyer, on front the door or main entrance of a home. Unless the homeowner posts a sign saying no solicitation or no trespassing or unless the homeowner verbally indicates this position, most Americans believe it is legal to post a note. Without this notice, it is reasonable for a person to assume that they may approach a residence's front door and leave an object.

> The elements of criminal trespass incorporate the concept that "the property of another" was "not open to the public." See State v. Waller, 450 N.W.2d 864, 866 (Iowa 1990) (explaining criminal trespass element of entry upon property of another "corresponds to entry into an occupied structure not open to the public"); see also State v. Sangster, 299 N.W.2d 661, 664 (Iowa 1980) (holding "absence of authority is a common element in

> the two offenses”). As commentators have noted, “there must be some basis to believe that an area that appears open to the public *is not in fact so open before entry constitutes criminal trespass.”* 87 C.J.S. *Trespass* § 141, Westlaw (database updated Mar. 2019).

State v. Krieger, No. 18-0377, 2019 WL2374393 at *5 (Iowa Ct. App. June 5, 2019) (unpublished table decision).

Most Americans simply have the belief that approaching a neighbor’s door and leaving a written message is not a violation of the law. This is demonstrated in several regularly occurring instances including when a Girl Scout approaches a home and leaves an advertisement for a cookie sale or when a neighbor leaves a notice of an upcoming garage sale. See Florida v. Jardines, 569 U.S. 1, 8 (2013).

> A license may be implied from the habits of the country,” notwithstanding the “strict rule of the English common law as to entry upon a close.” We have accordingly recognized that *“the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds.”* This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. *Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident*

> *by the Nation's Girl Scouts and trick-or-treaters.* Thus, police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do.

Id. (quoting Kentucky v. King, 563 U.S. 452, 467 (2011) (emphasis added).

Though Jardines specifically references knocking on a front door, a comparison can still be drawn to the leaving of a note on the front door. Both leaving a note and knocking on a door are forms of communication and cannot be considered and both no more than what a normal citizen does on a regular basis in American society. The aforementioned examples are but a few frequently occurring situations involving written messages being left on front doors across this country. Because it is such a regular practice observed by millions of Americans, including Iowans, the trespass statute does not put a person of common intelligence on notice that leaving a not is a violation of the law. The lack of notice also extends to all notes, no matter the content. Because the law does not provide adequate and fair notice it is so vague that

Geddes would not have known that leaving a note on residence's front door was against Iowa law.

b. Iowa Code section 716.7(2)(a)(1) Geddes allowed arbitrary enforcement based on whether the police approve of Geddes' note.

The language of Iowa Code 716.7(2)(a)(1) authorizes law enforcement's arbitrary and discriminatory enforcement of the statute. In order to meet constitutional requirements, the statute must "provide sufficiently specific limits on the enforcement discretion of the police." City of Chicago v. Morales, 527 U.S. 41, 64 (1999).

Under Iowa trespass law which requires that a person "place thereon or therein anything animate or inanimate…" Iowa Code § 716.7(2)(a)(1) (2019). The language of the statute allows authorities to make arbitrary, discriminatory decisions about which inanimate objects warrant prosecution and instead of fairly and universally executing the law.

As mentioned, within residential neighborhoods, it is common for local businesses to place advertisements, community churches to place invitations to church service,

local restaurants to place menus, and political candidates to place pamphlets on doors without the express permission of the owner or resident. In those instances, it is highly unlikely that law enforcement and prosecutors would chose to arrest, charge, and criminally pursue any person under for trespass, despite the fact that under the statute these actions would constitute a trespass.

In this case, Geddes took the same action as the above-mentioned examples. He approached a residence and left a note. The note is no different than any other unwanted note, no matter the content. The difference here, is that law enforcement chose to criminally pursue this case because of the content of the notes.

It is unreasonable to require Geddes to determine when his conduct would be considered criminal. See Akron v. Rowland, 6178 N.E. 2d 138, 145 (Ohio 1993) ("[W]ithout being able to read the officer's mind, Rowland cannot be expected to have known that his actions manifested to them to

purpose to commit a crime."). Approaching a front door to leave a note, is not always prosecuted as a trespass, in actuality most times it is not prosecuted at all. Here, Geddes should not be required to know whether the police would arrest or prosecute him for his conduct. This is especially true when law enforcement does not arrest others for the same conduct.

Because the statute lends itself to arbitrary and discriminatory enforcement, the statute is unconstitutionally vague.

B. Iowa code section 716.7(2)(a)(1) is facially vague.

In addition to being vague-as-applied to Geddes, Iowa Code section 716.7(2)(a)(1) is also unconstitutionally facially vague.

"It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standard-less that it leaves the public uncertain as to the conduct is prohibits." City of Chicago v. Morales, 527 U.S. 41, 56 (1999). A statute may be unconstitutional on its face

as impermissibly vague if “it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests. City of Chicago v. Morales, 527 U.S. 41, 64 (1999) (citing Kolender v. Lawson, 61 U.S. 352, 358 (1983)).

a. Iowa Code section 716.7(2)(a)(1) does not provide fair notice that leaving a note on a front door would be a crime.

The Iowa trespass code is facially vague because it fails to provide fair notice as to what conduct is prohibited. City of Chicago v. Morales, 527 U.S. 41, 56 (1999); State v. Musser, 721 N.W.2d734, 745 (Iowa 2006) (citing Hill v. Colorado, 530 U.S. 703, 732, 120 S. Ct. 2480 (2000)).

Under any reasonable construction of the trespass statute, a person would not know what conduct is prohibited because societal norms make it acceptable for a person to approach a front door and leave a written note. Based on those societal norms a reasonable person would not know whether law enforcement would choose to enforce the statute. Different types of notes might lead different people to believe

the conduct is proper or improper. Because it is normal practice for people to leave notes without getting arrested and prosecuted, the statute alone does not put an ordinary citizen on notice. Thus, the statute "fails to give the ordinary citizen adequate notice of what is forbidden and what is permitted." City of Chicago v. Morales, 527 U.S. 41, 60 (1999).

b. Iowa Code section 716.7(2)(a)(1) is facially vague because it allows arbitrary enforcement.

In order to meet constitutional requirements, the statute must "provide sufficiently specific limits on the enforcement discretion of the police." City of Chicago v. Morales, 527 U.S. 41, 56 (1999); State v. Musser, 721 N.W.2d 734, 745 (Iowa 2006) (citing Hill v. Colorado, 530 U.S. 703, 732 (2000)). A criminal statute "establish minimal guidelines to govern law enforcement." City of Chicago v. Morales, 527 U.S. 41, 60 (1999) (citing Kolender v. Lawson, 461 U.S. 352, 358 (1983)). Iowa Code section 716.7(2)(a)(1) does not provide police with sufficient guidelines in determining what conduct should be prosecuted and prohibited. The law is

unconstitutional not because an officer can apply discretion, in a particular case, but because the officer enjoys too much discretion in every case. If every application of the statute provides police with the unlimited discretion to regulate the statute then the statue is invalid in all its applications. See City of Chicago v. Morales, 527 U.S. 41, 44 (1999) (holding that a city ordinance violated the federal constitution because it delegated too much discretion to police and was not saved by its limitation requiring that police reasonably believe that the person order to disperse was a gang member).

Here, because law enforcement is given loose reign to decide when to enforce the statute based on the content of the written note and not simply on placing any inanimate object on a door without the express permission of the homeowner, the statute is facially vague.

C. Iowa Code section 716.7(2)(a)(1) is overbroad, as-applied to Geddes, because it sweeps too broadly and invades his federal and state constitutionally protected right to free speech.

Vagueness and overbreadth are two separate matters although closely related. State v. Pilcher, 242 N.W.2d 348, 354, (Iowa 1976) (quoting Zwicker v. Koota, 389 U.S. 241, 249-250 (1967)). However, when the First Amendment becomes involved in a controversy, the concepts of vagueness and overbreadth become intertwined. State v. Pilcher, 242 N.W.2d 348, 354 (Iowa 1976).

> Uncertain (vague) meanings in a statute may lead citizens to steer far wide of the unlawful zone than if the forbidden areas were clearly marked. Expressed differently, a law which is vague may chill the valid exercise of constitutional rights. In this sense, the vagueness of the statute gives rise to its overbreadth; the concepts, in this situation, would merge.

Id. (quoting Grayned v. City of Rockford, 408 U.S. 104, 109 (1972)).

"[S]tatutes threatening to inhibit the exercise of constitutional rights receive a more stringent vagueness analysis." State v. Sylvester, 516 N.W.2d 845, 850 (Iowa 1994). "[A] statute cannot sweep so broadly as to prohibit substantial amounts of constitutionally-protected activities,

such as speech protected under the First Amendment." Formaro v. Polk County, 773 N.W.2d 834, 840 (Iowa 2009). "If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." State v. Duncan, 414 N.W.2d 91, 96 (Iowa 1987) (quoting Hoffman Estates v. Flipside Hoffman Estates, 455 U.S. 489, 496 (1983).

A statute is unconstitutionally overbroad if it attempts to achieve a government purpose to control or prevent activities constitutionally subject to state regulation by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. City of Maquoketa v. Russell, 484 N.W.2d 179, 181 (Iowa 1992)(quoting State v. Pilcher, 242 N.W.2d 348, 353 (Iowa 1976)). Overbreadth analysis is further confined to the alleged denial of First Amendment Rights. Moose Lodge #107 v. Irvis, 407 U.S. 163, 168 (1972) (while the doctrine of 'overbreadth' has not been held by this Court in prior decisions in accord stand by reason of the

'chilling effect' that particular law might have upon the exercise of the First Amendment rights, that doctrine has not been applied to the constitutional litigation in areas other than those relating to the First Amendment). See also Formaro v. Polk County, 773 N.W.2d 834, 842 (Overbreadth analysis applies where a statute sweeps too broadly and substantially chills the First Amendment).

Before the State can encroach into recognized areas of fundamental rights, such as the right to free speech, there must exist a compelling and necessary interest, not merely related to the accomplishment of a permissible state policy and be narrowly tailored to accomplish that compelling interest. State v. Pilcher, 242 N.W.2d 348, 354 (Iowa 1976) (citing Griswold v. Connecticut, 381 U.S. 479, 496 (1965)) (a Connecticut law forbidding use of contraceptives unconstitutionally intrude upon the right of marital privacy).

> Governments may restrict speech in three situations: (1) where government enact time, place, and manner restrictions on speech; (2) where the governments seek on to restrict a nonspeech aspect of expression unrelated

> to the content of the speech, although the restriction infringes on the speech; and (3) where governments satisfy strict scrutiny by demonstrating compelling reasons for intruding upon First Amendment freedoms, and by using the least restrictive means to serve those compelling interests.

Michael S. Degan, *"Adding the First Amendment to the Fire": Cross Burning and Hate-Crime Laws*, 26 Creighton L. Rev. 1109 (1993). Where a government tailors its legislation to restrict only the amount of expression that is absolutely necessary to serve its compelling intent. Burson v. Freeman, 504 U.S. 191, 196 (1992 (upholding a ban on political speech within a one-hundred-foot radius of the entrance to polling place after applying strict scrutiny because the law was narrowly tailored to restrict only speech presenting the greatest threat to ballot integrity, political speech). Law subject to strict scrutiny are "presumptively invalid, and the Government bears the burden to rebut the presumption." United States v. Stevens, 559 U.S. 460, 468 (Iowa 2010). To be narrowly tailored, the speech restriction must be the least restrictive means available to achieve that compelling interest

and must not be underinclusive. United States v. Playboy Entertainment Group, 529 U.S. 803, 813 (2000).

Perhaps, here the State's compelling interest with the trespass law is to protect residents from unwanted objects being placed on their doors and premises. However, in this case, the State does not have a justifiable compelling interest. Strict scrutiny is never satisfied when the interest served by the law is anything less than the most "pressing public necessity". Turner Broadcasting System, Inc. v. F.C.C. 512 U.S. 622, 680 (1994). Here, there is no indication that the leaving of notes on property, no matter the content of the note, is a regularly occurring criminally prosecuted action. In contrast, it is likely that if the notes left on residence were friendly or unwanted advertisements, the trespass law would not be employed by law enforcement. Because the action is likely rarely prosecuted, there is no compelling interest to be protected.

But, if this court determines that is a compelling interest

does exist, the State's attempt to regulate this speech by criminally punishing Geddes is not narrowly tailored to accomplish that compelling interest because there are existing Iowa laws that would advance the compelling interest in a less restrictive way.[10] Thus, the trespass statute is overbroad-as-applied to Geddes because it chilled his free speech. Here, the State alleged that Geddes' hate-crime conviction was based on the contents of his notes left at each residence. (10/11/21 Resistance to Defendant's Motion to Dismiss p. 4) (App. p. 31). Law enforcement and the State arbitrarily decided to arrest and prosecute Geddes based on the content of those notes. The arbitrary, subjective decision to pursue Geddes was clearly because of Geddes' written thoughts, which were perceived to be offensive by the police. Compare this to the lack of punishment, that a person, placing an "unoffensive" flyer would receive, even though under Iowa law, that person would be deemed a trespasser. The consequences for the

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10 See Iowa Harassment Code sections 708.7(1)(a)(1) and 708.1(a)(5)(b)

"unoffensive" trespasser would vastly different from Geddes. The "unoffensive" trespasser would not be subjected to a criminal prosecution.

It is clear, that the prosecution of the crime turns on the viewpoint within the speech made by Geddes. Because the statute infringed on Geddes constitutional fundamental right to free speech, the statute as-applied cannot pass the more stringent vagueness test. Further, the law, as-applied, is not the least restrictive means to advance the State's compelling interest because there are existing laws that meet those interests. Thus, the trespass statute is overbroad-as-applied to Geddes because it chilled his free speech. Because of this chilling affect on Geddes' speech, the application of the statute to him does not pass the more stringent vagueness test.

D. There is no reasonable construction of the statute that can save its constitutionality.

The Court will give the statute "any reasonable construction to uphold it." State v. Nail, 743 N.W.2d 535, 539–40 (Iowa 2007) (quoting State v. Millsap, 704 N.W.2d 426,

436 (Iowa 2005)). In other words, "challengers to a statute must refute every reasonable basis upon which a statute might be upheld." State v. Nail, 743 N.W.2d 535, 540 (Iowa 2007) (quoting State v. Seering, 701 N.W.2d 655, 661 (Iowa 2005)).

There is no reasonable interpretation of the inanimate portion of Iowa's trespass law that meets constitutional approval. Based on the language of the statute, the determination of whether a person violates the law is solely left to the arbitrary, subjective discretion of law enforcement. There no interpretation of the statute that would not allow the arbitrary approval of the written message or any other inanimate object left at the door of the residence by the police.

Therefore, there is no way to interpret the statute to provide the necessary, non-discriminatory enforcement required by Due Process.

Conclusion: Due to the statute's vagueness and overbreadth, Geddes' conviction should be reversed and dismissed.

CONCLUSION

For all the above reasons, the defendant requests this court vacate his conviction and sentence and remand for dismissal.

ORAL SUBMISSION

Oral submission is requested.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $12.93, and that amount has been paid in full by the Office of the Appellate Defender.

MARTHA J. LUCEY
State Appellate Defender

ASHLEY STEWART
Assistant Appellate Defender

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This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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/s/ Ashley Stewart Dated: 02/03/23

ASHLEY STEWART
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
astewart@spd.state.ia.us
appellatedefender@spd.state.ia.us